



**National Senior Citizens Law Center**

PROTECTING THE RIGHTS OF LOW-INCOME OLDER ADULTS

WHITE PAPER

## **MEDICAID PAYMENT FOR ASSISTED LIVING**

# **State Supplementation for SSI Recipients: A Resource for Advocacy and Policy Development**

MARCH 2011

## The Issue

The Supplemental Security Income (SSI) program is a federal program that provides basic income for low income persons who are aged, blind or disabled. The federal SSI rate is relatively minimal—only \$674 monthly in 2011—so states frequently have provided state supplemental payments (SSP) to augment the federal SSI payments. Some SSP supplements are targeted to persons living in residential care facilities: 28 states provide SSP for SSI recipients living in assisted living facilities and other residential care settings.

States paid SSP to persons living in residential care facilities well before Medicaid programs began paying for assisted living services. Supplementation was employed, for example, so that SSI recipients could afford room, board, and services in board and care homes and similar residential care facilities. Because the combined SSI/SSP payments were modest, supplementation usually was an effective form of assistance only for persons with relatively low care needs.

As assisted living evolved and Medicaid began to pay for assisted living services (but not room and board) for beneficiaries with higher care needs, state use of SSP began to respond. Today, some states use supplementation as a way of covering the room and board portion of assisted living costs, thus complementing Medicaid funding. Other states reserve supplementation for those who do not have access to Medicaid assisted living waiver funding. Various other permutations exist.

This white paper sets out basic information on how state supplementation works. Also, the white paper discusses different state models so that policy makers and advocates can better evaluate the value and challenges of SSP in making assisted living more available to Medicaid beneficiaries.

## Mechanics of State Supplementation

**How Federal SSI Works.** The federal Supplemental Security Income program (SSI) provides a safety-net income benefit for persons who are aged (at least 65 years old), blind or disabled. Also, eligibility for SSI brings with it automatic eligibility for Medicaid with no share-of-cost obligation.<sup>1</sup>

SSI eligibility standards require that the person have limited resources and income. For a single person, the resource limit is \$2,000 in available assets (not including a home, car, clothing, etc.). For married couples, the resource ceiling increases only slightly—to \$3,000.<sup>2</sup>

In 2011, the federal SSI benefit rate is \$674. So, for example, if a single, 70 year-old person had no income and only \$1,000 in savings, the SSI program would pay that person a monthly federal benefit of \$674. If, however, the person had a limited amount of income from another source, then

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<sup>1</sup> 42 U.S.C. § 1396a(10)(A)(i)(II).

<sup>2</sup> 20 C.F.R. § 416.1205(c)



SSI would supplement the person's total income up to \$694, rather than \$674, due to a \$20 any-income disregard in SSI income-counting rules.<sup>3</sup> For example, if a resource-eligible single person received \$520 in Social Security retirement benefits, the SSI program would pay an additional \$174, for a total monthly income of \$694.<sup>4</sup>

Additional considerations come into play for married SSI recipients who live with their spouse. The SSI standards for married couples who live together are approximately 50 percent higher than those applicable to single persons. The 2011 SSI benefit rate is \$1,011 rather than \$674. Importantly, if a married person is not living with his spouse, his SSI eligibility is evaluated without regard to his spouse's assets or income, as long as those assets and income are not made available to him.<sup>5</sup> This rule is most useful when the assisted living resident has little income in his name. The resident could be eligible for SSI even if the at-home spouse's income were significantly above SSI-eligibility levels. Although, theoretically, a married person in an assisted living facility could create or at least accelerate SSI eligibility by the transfer of the couple's assets and income into the name of the at-home spouse, this type of legal planning rarely occurs, in part because the kind of income a potential SSI recipient typically receives, for example, Social Security benefits, cannot easily be transferred from one spouse to another.

**State Authority for Making Payments.** States have the authority to offer a state supplemental payment (SSP) to the SSI federal benefit rate.<sup>6</sup> Assume that a state in 2011 offered a state supplement of \$200. The eligible person with no other income would receive a total benefit of \$874. The person with \$520 monthly retirement benefits would receive a total SSI/SSP payment of \$374, for a total income (retirement benefits + SSI/SSP) of \$894. The state would have the option of providing each such supplemental payment recipient with zero-share-of-cost Medicaid coverage; states in practice generally do so.<sup>7</sup> Otherwise, the loss of no-share-of-cost Medicaid coverage would overshadow the extra monthly income.

A state may target its supplement to a particular population or populations. State supplements designated for residents of residential care facilities such as assisted living facilities are not uncommon. Because a \$674 monthly income is often considered insufficient for room, board and

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<sup>3</sup> 20 C.F.R. § 416.1124(c)(12). The SSI program also offers other income disregards. See generally 20 C.F.R. § 416.1124.

<sup>4</sup> For purposes of assisted living payment, states have some flexibility in how they treat the \$20 income disregard. Oregon, for example, adds the "extra" \$20 to the resident's personal needs allowance, which the resident can keep for personal expenses. Or. Dep't Hum. Servs., Div. of Seniors & People with Disabilities, Policy Transmittal SPD-PT-07-037 (Dec. 27, 2007). California also treats the \$20 as a personal needs allowance but permits it to be applied to room and board charges if a facility's admission agreement designates the amount as going to the facility's charges. 22 Cal. Code Regs. tit. 22, § 87507(c)(3)(A); Letter from William Jordan, Cal. Dep't of Soc. Servs., to Michael Parks, Bet Tzedek Legal Servs. (May 9, 1989).

<sup>5</sup> 20 C.F.R. §§ 416.1163, 1202(a).

<sup>6</sup> 20 C.F.R. § 416.2001.

<sup>7</sup> 42 U.S.C. § 1396a(10)(A)(ii)(XI); 42 C.F.R. § 435.232.



services in an assisted living facility, states often establish these supplements to give SSI recipients a more realistic chance of paying for assisted living care.

**Wide Variation in SSP Amounts.** Of the 37 states (including the District of Columbia) that cover assisted living services through a Medicaid Home and Community Based Services (HCBS) waiver, 28 states in 2008 provided state supplements. In 25 of these states, a supplement was designated specifically for assisted living residents. There was a wide variance in the amount of these supplements—from \$1.70 monthly in Oregon to \$676 in Northern Virginia. Eleven states offered supplements of at least \$363, enough to increase the resident’s total SSI income (federal benefit rate plus state supplement) to \$1,000 or more. (See table at conclusion of white paper.)

Wisconsin’s state supplement has an unusual twist—no supplement was paid if the resident’s income exceeded the federal SSI rate, even if this income fell below the combined SSI-plus-state supplementation rate. For example, in 2008 the federal SSI rate and Wisconsin state supplement rate were \$637 and \$179.77 monthly, respectively, resulting in an overall rate of \$816.77. A resident with an initial income of \$520 would be entitled to federal SSI and a state SSP for a total income of \$836.77 (taking into account the \$20 federal income disregard). If, however, the resident had an initial income of \$720 and thus would not be entitled to SSI supplementation of her income, she would not be entitled to any additional supplementation from the state.

**Indexing is Rare.** The federal SSI rate is tied to the consumer price index,<sup>8</sup> but state supplements often are not tied to inflation in any way. In Wisconsin, for example, the state residential care supplement had been \$179.77 since 1996. Similarly, the residential care supplements in at least six other states—Delaware, Maryland, Montana, New Jersey, New Mexico, and Oregon—had been the same since at least 2000. In these states, the total SSI/SSP amount had been increasing—because the federal SSI benefit rate increases each year—but the overall increase has been less than the corresponding increase in consumer prices, since the state supplement portion of the payment has been static.

**Budgetary Swings.** State budgeting processes are not solely focused on long-term care policy objectives; political and budgetary pressures are always present. The Nebraska assisted living supplement shows this reality in year-to-year fluctuations – a supplement of \$438 in 2000, and then \$455 (2002), \$446 (2004), \$438 (2005), \$428 (2006), and \$438 again (2007 & 2008). During each of these years, however, the resident’s personal needs allowance was \$60, meaning that the fluctuations affected the bottom line for the state and for assisted living facilities, but did not have a direct effect on residents.<sup>9</sup>

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<sup>8</sup> 42 U.S.C. § 1382f(a).

<sup>9</sup> Soc. Sec. Admin., State Assistance Programs for SSI Recipients (reports for 2000, 2002, 2004, 2005), 2006, 2007 & 2008).



## **States' Use of SSP For Medicaid-Covered Assisted Living Residents**

A state Medicaid program, upon approval of the federal government, may offer coverage for services provided by an assisted living facility. Most often this coverage is offered through a Medicaid HCBS waiver. To qualify for assisted living services under an HCBS waiver, a person must require a nursing home level of care

Alternatively, a few states cover assisted living services through a Medicaid state plan. To qualify for state plan services, it is unnecessary for a beneficiary to require a nursing home level of care.

Medicaid can cover assisted living services but, regardless of whether coverage is provided through an HCBS waiver or a state plan service, Medicaid cannot pay for room and board in an assisted living facility. Thus, the ability of a Medicaid-covered resident to pay for room and board expenses is dependent upon the amount of income that a resident is allowed to retain under Medicaid income allocation rules and, for residents with very low incomes, any income supplements provided by federal and state governments.

## **Examples of States' SSP Payments to Assisted Living Residents**

### **North Carolina**

Some of the highest supplements are paid by states that have state-plan Medicaid coverage of assisted living services, along with a relatively high number of Medicaid-reimbursed residents. North Carolina historically has had the highest number of Medicaid-reimbursed residential care facility residents—20,442 residents in 2007, but not limited to assisted living residents—and the state pays a relatively generous state supplement. In 2008, this supplement amounted to \$571, for a total payment of \$1,208 (\$637 + \$571) for a qualifying resident of an assisted living facility. If the facility was additionally licensed as an Alzheimer's special care unit, the supplement increased to \$938, for a total income payment of \$1,575. Of these payments, the resident retained a \$46 personal needs allowance, leaving \$1,162 and \$1,529, respectively, for the facility.<sup>10</sup> The Medicaid reimbursement for services, which varied depending on the resident's care needs and the facility's size, generally pushed the facility's total monthly reimbursement into the low \$2,000's.<sup>11</sup>

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<sup>10</sup> Soc. Sec. Admin., State Assistance Programs for SSI Recipients, January 2008, SSA No. 13-11975, at 86 (Dec. 2008).

<sup>11</sup> Pa. Gen. Assembly, Legislative Budget & Finance Comm., State Efforts to Fund Assisted Living Servs., at 31 (June. 2008); Robert Mollica et al., Residential Care & Assisted Living Compendium: 2007, at 3-263 (Nov. 2007).



## New York

Like North Carolina, New York in 2008 offered state-plan Medicaid coverage for assisted living, and reported relatively broad participation and a high rate for the state supplement. The Medicaid program paid for residential care services for 3,335 residents (although not all of these resided in assisted living facilities). The monthly supplement rate was \$656, for a total monthly payment of \$1,293 (\$637 + \$656 = \$1,293). The resident was entitled to a minimum personal needs allowance of \$168 monthly, which was relatively high compared to other states.<sup>12</sup>

## California

Among the 37 states that offer Medicaid coverage through HCBS waivers, California has one of the highest state supplements for assisted living. In 2008, this supplement amounted to \$436 monthly, creating a total benefit of \$1,073 (\$637 + \$436). Of this, the resident retained a personal needs allowance of \$124, leaving \$949 for room, board and services. Added to the Medicaid reimbursement rate for services, the total amount might well be adequate for a facility. But for persons not covered under a Medicaid waiver—because their care needs are not at nursing home levels, or because they otherwise cannot obtain a slot in the waiver program—this \$949 likely would not truly cover room, board and services for a resident with any significant care needs. The same would be true in states with lesser supplemental payment levels, only more so.

## Virginia

In Virginia, the waiver program is only available to persons who receive the state supplement—called the Auxiliary Grants Program.<sup>13</sup> A grant in 2008 consisted of a state payment of \$676 (Northern Virginia) or \$515 (rest of state). The resident was entitled to a \$77 personal needs allowance.<sup>14</sup>

## Wisconsin

In some states, a facility's size serves as a line of demarcation, with the smaller facility deemed more appropriate for the state supplement. Wisconsin in 2008 offered a state supplement of \$83.78 for *any* SSI recipient, although an additional “Exceptional Expense Supplement” was available to residents of certain specified facilities and to any resident of a Community-Based Residential Facility with no more than 20 residents.<sup>15</sup> This additional supplement raised the total state

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<sup>12</sup> Soc. Sec. Admin., State Assistance Programs for SSI Recipients, January 2008, SSA No. 13-11975, at 83 (Dec. 2008); Robert Mollica et al., Residential Care & Assisted Living Compendium: 2007, at 3-253 (Nov. 2007).

<sup>13</sup> Va. Alzheimer's Assisted Living Waiver § 2; 22 Va. Admin. Code § 40-25-30, -40.

<sup>14</sup> Virginia Dep't of Soc. Servs., Auxiliary Grant Eligibility Manual, ch. J.

<sup>15</sup> Wisc. Dep't Health & Fam. Servs., Div. of Disability & Elder Servs., Supplemental Security Income Exceptional Expense Supplement: State SSI-E Administration Policy, at 4-5; Wis. Stat. § 49.77(3s).



supplement to \$179.77, for a total monthly payment (including the federal SSI benefit) of \$816.77 (\$637 + \$179.77).<sup>16</sup>

### **Montana, Ohio and Idaho**

In Montana, Ohio, and Idaho, the state supplement was unavailable to waiver beneficiaries in 2008.<sup>17</sup> This was a relatively trivial matter in Montana—the state supplement was only \$94 monthly. In general, however, ineligibility for the state supplement is a significant loss, and greatly limits a resident's ability to pay a meaningful room and board rate. In Idaho, for example, the state supplement was \$319, \$386 or \$453 monthly, depending on whether an assisted living resident received care at Levels I, II or III.

In Ohio, similarly, the state supplement in 2008 for a resident of an adult residential care facility was \$506 monthly.<sup>18</sup> A waiver beneficiary, ineligible for the state supplement, still likely was able to pay for room and board charges—since the room and board rate is designated to be \$50 less than the monthly federal SSI rate—but the waiver allotments leave precious little money for the resident or for the facility.<sup>19</sup> An evaluation of the Ohio waiver program identified the \$50 allowance as a significant disincentive for a consumer to participate, and pointed out how such a low allowance might leave the Medicaid-reimbursed residents feeling stigmatized in comparison to private-pay residents.<sup>20</sup>

### **Florida**

Florida's history illustrates how state supplements are deemphasized as Medicaid payment for assisted living becomes more prevalent. In 2000, Florida paid an SSP of \$228 (on top of the federal SSI payment) to assisted living residents. That supplement, however, was reduced to \$78.40 in 2002, where it has remained ever since.<sup>21</sup> All told, a resident in 2008 was entitled to a total monthly income of \$715.40 (\$637 federal SSI benefit rate + \$78.40 SSP), including a \$54 personal needs allowance.<sup>22</sup>

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<sup>16</sup> Soc. Sec. Admin., State Assistance Programs for SSI Recipients, January 2008, SSA No. 13-11975, at 115 (Dec. 2008).

<sup>17</sup> Ohio Admin. Code § 5101:1-17-02(A)(6).

<sup>18</sup> Soc. Sec. Admin., State Assistance Programs for SSI Recipients, January 2008, SSA No. 13-11975, at 39, 68, 89 (Dec. 2008).

<sup>19</sup> Ohio Admin. Code §§ 5101:3-33-03(B)(7), 5101:3-39-24.1(C)(4).

<sup>20</sup> R.A. Applebaum, et al., An Evaluation of the Assisted Living Medicaid Waiver Program, at 22. 49-50 (2009).

<sup>21</sup> Soc. Sec. Admin., State Assistance Programs for SSI Recipients, January 2002, at 29 (Aug. 2004); Soc. Sec. Admin., State Assistance Programs for SSI Recipients, January 2008, SSA No. 13-11975, at 33 (Dec. 2008).

<sup>22</sup> Fla. Dep't of Children & Families, SSI-Related Programs Fact Sheets, at 27 (Jan. 2009); Pa. Gen. Assembly, Legislative Budget & Finance Comm., State Efforts to Fund Assisted Living Servs., at 82 (June. 2008).



## Issues for Policy Makers and Advocates

States have used supplemental payments to address two Medicaid limitations in payment for assisted living services. These limitations are: Medicaid cannot pay for room and board in assisted living and, in waiver programs, can pay only when a resident has care needs that would warrant nursing home care.

As states continue to grapple with ways to make home and community-based options, including assisted living, more accessible to low-income persons, the states need to consider whether and how to supplement SSI for low-income assisted living residents. In any such examination, states should consider:

- **Adequacy:** For assisted living facilities to care for Medicaid-covered residents, the facilities should receive reasonable reimbursement for both care and for room and board. Is the state supplement structured to reflect reasonable costs? Can it be structured to recognize cost increases over time?
- **Purpose:** How should a state target its supplements? To all SSI recipients? Those in waiver programs? To those not in waiver programs?
- **Relationship to Resident's Financial Obligations and Allocations:** How does state supplementation relate to room and board rates set by the state? Are residents' personal needs allowances adequate?

In looking at these issues, policy makers and advocates in one state should find it helpful to review the actions and experiences in other states. The Centers for Medicare and Medicaid Services (CMS) also should consider more global responses to the needs shown by the current patchwork of state supplementation programs.



**2008 State Supplements for Assisted Living Care**

State	State Supplement (in addition to federal SSI of \$637/mo.)	Supplement Based on Assisted Living Care	Personal Needs Allowance
Alaska	\$100	yes	none specified
Arizona	\$70	no	none specified
Arkansas	none	n/a	\$58
California	\$436	yes	\$119
Colorado	\$25	no	\$98
Connecticut	facility-specific rate	yes	none specified
Delaware	\$140	yes	\$116
District of Columbia	\$485 (50 beds or less), \$595 (over 50 beds)	yes	\$100
Florida	\$78.40	yes	\$54
Georgia	none	n/a	\$97
Idaho	\$319, \$386, or \$453, depending on level of care	yes	\$83
Illinois	based on resident's needs	yes	\$90
Indiana	\$559.90	yes	\$52
Iowa	\$289.45	yes	\$91
Kansas	none	n/a	none specified
Maryland	\$184	yes	\$82
Minnesota	\$228	yes	\$89
Mississippi	none	n/a	none specified
Montana	\$94	yes	\$100
Nebraska	\$433	yes	\$60
Nevada	\$391	yes	\$102
New Hampshire	\$221	yes	\$56
New Jersey	\$150.05	yes	\$94.50
New Mexico	\$100	yes	none specified

State	State Supplement (in addition to federal SSI of \$637/mo.)	Supplement Based on Assisted Living Care	Personal Needs Allowance
North Dakota	\$571	yes	\$60
Ohio	\$506	yes	\$50
Oregon	\$1.70	no	\$90
Rhode Island	\$575	yes	\$100
South Dakota	\$671	yes	\$60
Tennessee	none	n/a	none specified
Texas	none	n/a	\$85
Utah	none	n/a	none specified
Vermont	\$48.38	yes	\$60
Virginia	\$676 (Northern Virginia), \$515 (rest of state)	yes	\$77 plus 15% differential in Northern Virginia
Washington	none	n/a	\$62.79
Wisconsin	\$179.77	yes	\$65
Wyoming	none	n/a	none specified

The National Senior Citizens Law Center is a non-profit organization whose principal mission is to protect the rights of low-income older adults. Through advocacy, litigation and the education and counseling of local advocates, we seek to ensure the health and economic security of older adults with limited income and resources, and access to the courts for all.



## **The Assisted Living Policy Issue Brief Series**

With support from the Commonwealth Fund, the National Senior Citizens Law Center (NSCLC) recently undertook an extensive study of federal and state Medicaid policies for assisted living coverage, focusing on how those policies impact the lives of assisted living residents.<sup>1</sup>

The results of this study are laid out in a series of policy issue briefs being released by NSCLC from Fall 2010 through Spring 2011. Each of these policy issue briefs discusses problems with the status quo, and makes recommendations for change. In many instances, a policy issue brief has a companion white paper that discusses the same or related issues in greater detail.

This paper is one of the companion white papers, providing more detail on how medically needy eligibility works, and how states are using and could use medically needy eligibility to expand access to assisted living care. This paper is designed to be used as a resource by advocates, state Medicaid officials, facility operators, and others with an interest in developing or improving Medicaid payment for assisted living. Both this paper and the accompanying policy issue brief are available at NSCLC's website, [www.nsclc.org](http://www.nsclc.org).

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<sup>1</sup> The research included a survey of respondents in the 37 states that pay for assisted living services through a Medicaid Home and Community-Based Services waiver, as well as more in-depth research of policies and practices in five of those states: Arkansas, New Jersey, Oregon, Texas, and Washington. The research was conducted in cooperation with the University of California at San Francisco. This paper, however, is written by the National Senior Citizens Law Center, which is solely responsible for the findings, opinions, and recommendations expressed herein.

