NSCLC
National Senior Citizens Law Center

PROTECTING THE RIGHTS OF LOW-INCOME OLDER ADULTS

POLICY ISSUE BRIEF

FEBRUARY 2011

Medicaid Payment for Assisted Living

Using Medically Needy Eligibility to Prevent Resident Evictions

The Issue

Many assisted living residents have incomes that exceed federal Medicaid eligibility minimum standards, but are insufficient to meet their assisted living expenses. They may manage for a time by spending from their savings, but they face eviction when they have depleted their savings.

Medicaid law provides states with several eligibility options in covering services provided to assisted living residents. Some options employ income limits, but these limits can be problematic. Given the expense of assisted living services, a resident can easily have income that exceeds the limit but nonetheless may be insufficient to pay for assisted living services they need.

Medically needy eligibility, which is allowed but not required by federal law, can offer coverage for such services when someone's income is over the relevant income limit but nonetheless insufficient to cover health care expenses. After a Medicaid beneficiary spends income to pay for such expenses down to a specified level, the Medicaid program will then cover the month's remaining health care expenses.

Thirteen states offer medically needy eligibility for assisted living services provided through a Medicaid Home and Community-Based Services (HCBS) waiver. A medically needy eligibility option reduces evictions and increases the accessibility of Medicaid coverage for assisted living services.

How Medicaid Eligibility Categories Work

Federal law generally requires a state to provide Medicaid coverage to all Supplemental Security Income (SSI) beneficiaries. For SSI beneficiaries, the coverage is "free"—they pay no share of the cost of their health care expenses. In 2010, SSI eligibility was based on a person having an income of no more than $674 monthly. A state's Medicaid program may increase the ceiling for no-share-of-cost

National Senior Citizens Law Center
www.nsclc.org
nsclc@nsclc.org

1444 Eye St., NW, Suite 1100
Washington, DC 20005
202-289-6976
Fax: 202-289-7224

3435 Wilshire Blvd., Suite 2860
Los Angeles, CA 90010
213-639-0930
Fax: 213-639-0934

1330 Broadway, Suite 525
Oakland, CA 94612
510-663-1055
Fax: 510-663-1051

Medicaid up to the federal poverty line ($903 in 2010) or to all persons receiving a state funded Supplemental State Payment (SSP) on top of SSI.

In addition, for long-term care expenses, a state can opt to provide coverage for persons who otherwise would be disqualified due to excess income. For these persons, a state can set a special income limit of up to 300 percent of the federal SSI rate (3 X $674 = $2,022, for 2010). But coverage under this eligibility category is not free—the beneficiary has an obligation to make state-specified *post*-eligibility payments towards health care expenses. If someone's income exceeds the income limit, he/she may nonetheless be able to obtain special-income-limit eligibility by transferring away the excess income to a qualified income trust.

Medically needy eligibility is an additional option that states can use to assist people who need long-term care. For persons eligible for Medicaid through age, disability, or blindness, the medically needy resource standard is not allowed to be any more stringent than the SSI resource standard of $2,000 for an individual. The vast majority of states have set their medically needy resource standard at or near this $2,000 limit.

As for income requirements, an applicant is eligible if his/her health care expenses reduce available income below the state's medically needy income standard. Unfortunately for some applicants, the income standard is capped at no more than 133 1/3 percent of the state's 1996 Aid to Families with Dependent Children (AFDC) income level, as adjusted for subsequent changes in the consumer price index. These income levels tend to be relatively low, in the range of $600 to $700 monthly.

In determining medically needy eligibility, some of an individual's resources or income are considered exempt or unavailable. States must offer at least the same deductions applicable in SSI, and additional deductions are available at a state's option. For example, a state can choose to deduct a certain portion of a resident's income already paid for room and board in an assisted living facility.

How States Offer Medically Needy Eligibility for Assisted Living Services

The study found wide divergence among those states that offer the medically needy eligibility option. The following state-specific discussions are provided to give the reader some sense of this divergence. They are listed roughly in the order of most to least restrictive.

Wisconsin

In Wisconsin, a medically needy beneficiary is required to spend down income all the way to $591.67 monthly. This has been the state's medically needy income standard since at least 2001.[1]

1 Wis. Dep't of Health Servs. Medicaid Manual § 39.4.1.

Montana

In Montana, medically needy beneficiaries constitute a notably high percentage of waiver beneficiaries overall—approximately 43 percent. This is less of function of generous eligibility standards, and much more the result of the state not offering special-income-limit eligibility. The medically-needy income level is $645 and the personal needs allowance is $100, leaving the resident with no more than $545 to pay for room and board.[2]

Washington

For one or two persons respectively, the medically needy income standards are $467 and $592; these figures represent 133 1/3 percent of the state's 1996 AFDC payment. Regardless, Washington is able effectively to use a medically needy standard that is equivalent to the federal SSI benefit rate, by disregarding any income between the medically needy standard and the federal SSI benefit level for an individual ($674 for 2010).

Minnesota

Minnesota's medically needy eligibility standard is set at 75 percent of the federal poverty level for a single person. The poverty level was $903 in 2010, resulting in a medically needy income standard of $677. Also, the state offers no-share-of-cost Medicaid for all those elderly or disabled persons with incomes at the federal poverty level or below. Thus, a person with a monthly countable income of $900 would have no payment obligation, but a person with a countable income of $925 would be required to pay $248 monthly ($925 - $677) for health care as a precondition for medically needy coverage.

Utah

Utah's medically-needy income standard is $382. The state employs an income deduction to raise this amount to 100% of the federal poverty line—$903 in 2010.

California

California's medically needy income limit has been and remains only $600 monthly, but various income deductions make medically needy coverage more accessible to assisted living residents than might be expected. A resident has a choice of two income deductions. The first is based on the resident's obligation to pay for basic services in an assisted living facility. The resident is given a $315 deduction to compensate her for the expense of those basic services. It applies regardless of the fee actually charged by the facility. With this deduction, the resident effectively can retain $915—the $600 medically needy income limit plus the $315 deduction.

2 Montana Application for HCBS Waiver, Appendix I-5.

Alternatively, the resident can claim a deduction based on the actual amount paid for room, board and basic services. If, for example, the resident pays $1,200 monthly, she can retain the entire $1,200. The standard $600 income limit is swallowed up by this deduction.

Vermont

Vermont offers medically-needy eligibility with an income deduction. Vermont is in many ways a special case: its Medicaid program operated under a demonstration waiver from 1994 through 2000, and its long-term care programs since 2005 have operated under the Choices for Care demonstration waiver (*not* an HCBS waiver).

In 2010, Vermont set its medically needy standard at $991 for an urban area and $916 in a rural area. In each case, this was far higher than what would be allowed under the 133 1/3-percent-of-AFDC requirement. In essence, the state offers an additional deduction for the amount of money equal to the amount by which the 1996 AFDC payment amount would have increased from then until the present, if increases based on the consumer price index had been applied annually. The end result is that the medically needy standard has been effectively raised to account for inflation from 1996 through the present.

Recommendations

State Waiver Programs Should Offer Medically Needy Eligibility

State Medicaid programs should utilize medically needy eligibility to prevent assisted living residents from falling through the cracks. The availability of medically needy eligibility would obviate the need for qualified income trusts, and offer residents a relatively straightforward way of obtaining eligibility. In so doing, it would make assisted living care more accessible and prevent the evictions that otherwise occur when residents with income over the special income limit exhaust their savings.

States Should Utilize Income Deductions to Make Medically Needy Eligibility More Accessible for Assisted Living Residents

Federal law authorizes income deductions that make medically needy eligibility more accessible, by allowing a resident to retain additional income. States should utilize these deductions so that medically needy residents are able to retain the same amount of income that is retained by residents eligible under the special income limit. If this amount of income is set at an adequate level (as will be recommended in this series' forthcoming papers on special-income-limit eligibility), residents regardless of eligibility will be more likely to have access to Medicaid-covered assisted living care.

Next Steps

NSCLC looks forward to working with those in federal and state government and with advocates to address the challenges facing Medicaid-eligible assisted residents. For more information on the practices discussed here or information about the situation in a particular state, contact NSCLC attorneys Eric Carlson, ecarlson@nsclc.org, or Gene Coffey, gcoffey@nsclc.org.

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.

Introduction to Assisted Living Policy Issue Brief Series

The National Senior Citizens Law Center (NSCLC) recently undertook an extensive study of federal and state Medicaid policies towards assisted living, with a focus on how those policies impact the lives of assisted living residents.[1] The study and the development of this policy issue brief were supported by the Commonwealth Fund, a national, private foundation based in New York City that supports independent research on health care issues and makes grants to improve health care practice and policy. The views presented here are those of the author and not necessarily those of The Commonwealth Fund, its directors, officers, or staff.

Policy recommendations resulting from this study are laid out in a series of policy issue briefs that are 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. This is the fourth paper in the series. This policy issue brief discusses how medically needy Medicaid eligibility can be used to pay for assisted living services, and includes recommendations for policy changes. A companion white paper discusses the same issues in more detail.

1 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.