

2020 Disability
Policy
Webinar Series

The Arc Michigan logo features a stylized orange and yellow 'A' shape above the text 'The Arc Michigan' in a black serif font.

WELCOME

June 26, 2020

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National Public Policy

What is Happening in DC: COVID-19 and Beyond

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COVID-19

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COVID-19 & People with Disabilities

- January 31, 2020 – U.S. Department of Health and Human Services Secretary issues public health emergency declaration
- March 11 – World Health Organization declares COVID-19 a pandemic
- March 13 – U.S. President issues national emergency declaration
- People with disabilities and/or who are immunocompromised are at particular risk, facing high risk of complications and needing to isolate themselves for protection

Progress So Far-Bills that have become law

- **Housing:** Funding for various important housing programs including \$1.25 Billion for the Housing Choice Voucher Program & \$15 million for Section 811 Housing for Persons with Disabilities
- **Education:** \$30.75 billion for an education stabilization fund, some of which is to help meet the needs of students with disabilities
- **Support for Non-Profits:** PPP

Progress So Far - Home- and Community-based Services & Medicaid

- **Money Follows the Person:** Extended through Nov. 30, 2020
- **Spousal Impoverishment Protections:** Extended through Nov. 30, 2020
- Allows people receiving HCBS under 1915(c) waivers to have their direct support professionals assist them during short-term hospital stay
- Funding for the Administration for Community Living and specifically for home- and community-based services and support for family caregivers

Progress So Far

- **Unemployment:** Expanded unemployment to include people with disabilities who work part time (such as those on SSI/SSDI), boosted benefits by \$600 per week above standard state benefits, and allows for up to four months of benefits when the individual remains unemployed
- **Housing:** Funding for various important housing programs including \$1.25 Billion for the Housing Choice Voucher Program & \$15 million for Section 811 Housing for Persons with Disabilities
- **Education:** \$30.75 billion for an education stabilization fund, some of which is to help meet the needs of students with disabilities

Stimulus Payments, SSI and Social Security

- The Third COVID-19 Bill included “Recovery Rebate” payments for most people in America.
- If you file taxes, the payment will be made immediately.
- But most people on Supplemental Security Income (SSI), certain Veterans benefits, and many people who receive Social Security benefits do not file taxes.
- The IRS and the Social Security Administration fixed this problem for people who receive Social Security benefits.
- Updates: www.irs.gov/coronavirus

Progress So Far – Paid Leave

- The Second COVID-19 Bill included emergency paid sick days and paid leave for people to use during the COVID pandemic.
- Paid Sick Days: 2 weeks of paid sick leave for several different reasons, including for COVID-19 diagnosis and treatment, if your doctor has told you to stay home, and to care for someone with COVID-19 or who has been told to stay home.
- Paid Leave: 12 weeks of leave (2 unpaid that can be covered by the Paid Sick Days) for parents who need to care for children (of all ages) who have lost their usual source of care.
- Many people are left out:
 - Caregivers who are not parents.
 - You are not eligible if you work for an organization that has more than 500 employees.
 - If you work for an employer with less than 50 employees or you are a health care worker, you may not be eligible.
- Caregiving leave is only paid at 66%.

Progress So Far – Medications

- **Medicare:** CARES Act provided for 90-day supplies
- **Medicaid:** most states have taken action for early fills, longer-fills, and 90-day supplies
 - Some states require a State Plan Amendment
- **Private Payers:** most national payers have taken action, including for their Medicare and Medicaid plans
 - Some Medicaid MCOs require a CMS-approved contract amendment
- **Controlled Substances:** DEA has issued guidance on flexibilities, additional changes are up to the states



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WHAT REMAINS TO BE DONE

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Home- and Community-based Services (HCBS) Funding

- Dedicated HCBS funding
- Working on gaining bi-partisan support
- Provide wage support and flexibilities for direct support professional, home health and personal care attendant workforces

Workforce Support & Funding

- The HCBS funding would provide funds to support retention and recruitment for the workforce
- In addition we are seeking to deem this workforce as essential so that they have the desperately needed Personal Protective Equipment (PPE) and medical supplies that they need.
- Working to ensure that the definitions in every proposal is inclusive of all services that this workforce provides, including employment services.

Priority Asks for Package 4

- **Funding for a Medicaid grant program** to support access to home and community-based services to limit the risk of people with disabilities being put into institutions and support the workforce. Congress should pass the Coronavirus Relief for Seniors and People with Disabilities Act
- **Personal protective equipment (PPE)** for direct support professionals. This is urgently needed to protect the health and safety of this critical workforce. Direct support professionals must be designated as essential workers so that they can get access to the PPE and medical supplies they need.
- **Paid leave for caregivers.** As more people with disabilities lose their usual sources of care, family caregivers are scrambling and need access to paid leave and sick days to help their loved ones. Congress should include all family caregivers in the emergency paid leave provisions.
- **Economic impact payments for all people with disabilities.** Tell Congress to pass H.R.6420, the All Dependent Children Count Act, and make sure that adults with disabilities who are claimed as dependents get their \$500 economic credit.

HEROES Act

- House Speaker Nancy Pelosi unveiled a more than \$3 trillion coronavirus aid package in May, providing nearly \$1 trillion for states and cities, "hazard pay" for essential workers and a new round of cash payments to individuals. It is called the Heroes Act
- The bill passed the House on May, 15, 2020
- This is a large bill, and it passed the House at the end of last week
- Senate Majority leader McConnell has indicated the Senate won't act until late July

HEROES Act: Medicaid/Health

- Provides a global FMAP bump of 6.2% through June 30 (this aligns with package 2). Effective July 1, it provides a 14% FMAP increase.
- Includes an HCBS-specific FMAP increase in lieu of a separate grant program. An additional 10% FMAP from July 1, 2020 to June 30, 2021 is available to be used to support Home and Community Based Services (HCBS) including workforce support, personal protection equipment for DSPs and other HCBS provisions.
- Provides for a two-month open enrollment period to allow individuals who are uninsured, for whatever reason, to enroll in coverage. Currently, Americans can only enroll in an Affordable Care Act (ACA) plan during open enrollment period, or because of a qualifying life event if they were previously insured.

HEROES Act: Housing and Transportation

- It also includes significant funding for including \$200 million for Sec. 811 Supportive Housing for People with Disabilities, \$4 billion for tenant-based vouchers (including \$1 billion for new vouchers), and \$750 million for Project-Based Rental Assistance.
- Codifies the regulatory requirement that state Medicaid programs cover non-emergency medical transportation (NEMT).

HEROES Act: Education

- Provides \$100 billion to support the educational needs of States, school districts, and institutions of higher education and requires states to include assurances when accepting funds that all students with disabilities are afforded their full rights under the IDEA.

HEROES Act: Recovery Rebates

- Expands the economic stimulus payments to adult dependents and issues another round of payments, including everyone this time.
- Stimulus funds will not impact eligibility for means tested programs

What You Can Do

- This bill is large and will certainly be greatly narrowed before it passes the Senate.
- It is very important to reach out to your Senators starting this weekend to highlight the issues mentioned here so that they know that the HCBS funding, paid leave changes, and other important funding for the disability community STAY IN



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Oklahoma's Proposal

Background



- On January 30, CMS Released guidance on the “Healthy Adult Opportunity” option for [states](#).
- Oklahoma is the first state to submit a proposal though there is interest in other states
- Note on Oklahoma’s Upcoming vote on Medicaid expansion

Why This Matters Nationally

- **One in five** people rely on Medicaid for health care.
- **Over 10 million people with disabilities** rely on it for health care services and to live independently.
- Medicaid is critical to fighting the impacts of the global health pandemic.
 - As a result of the pandemic, states will face budget crises, leaving Medicaid in great peril during a time when Medicaid should be strengthened to help more people access health care.
- Instead, CMS' guidance and Oklahoma's proposal represent a drastic restructuring of Medicaid financing that would weaken and permanently restructure the program.
 - If approved, CMS is creating a simple path for other states to move forward with a per capita cap.

Medicaid's Current Structure

Federal Government and states share actual costs of coverage

Agree in each state on who is eligible and what services and supports are provided

Feds pay on average 63%

Different matching rates by state (50-75%)

Current Structure

States receive federal funding for all allowable program costs

- **Since 1965, federal legal guarantee to share all costs with states**
- **State share determine by federal matching rate which vary by population and service**
 - For most beneficiary groups and services, matching rate in FY 2017 = 50%- 74%
 - Matching rate for expansion adults = 95% in 2017; 90% in 2020 and beyond
- **All costs- including unanticipated costs- are shared by states/federal government:**
 - Higher than expected enrollment; economic downturn
 - Rising drug costs
 - Public health epidemics (e.g., opioid epidemic)
 - Breakthrough treatments or medications
 - New initiatives related to delivery system reform or access

Medicaid Refresher(continued)

- Medicaid utilization by our constituents
 - Health care (doctors, hospitals, prescriptions, equipment, therapies)
 - Long term supports and services
 - Home and Community based services
 - ICF/DD facilities
 - Nursing homes
- Federal-State partnership
 - FMAP average 63%
 - Open ended entitlement, grows with # enrollees, added services, new treatments and drugs, increased provider reimbursements (e.g. DSP wages)

Medicaid

- The largest insurer in the country today
- 73 million individuals are covered
- Up from 4 million individuals when began in 1965 with a total cost of \$900 million, a result of
 - High poverty rates
 - Erosion in employer based group plans for lower wage workers
 - Aging population
 - Longer life spans for persons with disabilities
 - **People with disabilities and senior citizens account for about 48% of the total Medicaid budget and about 21% of the beneficiaries;**
- Projected to serve 77.5 million individuals in 2024 at a total cost of \$920.5 billion, with federal share of 61%

Medicaid

- Medicaid Restructuring
- Restructuring of Medicaid as a state matching funds “entitlement” to the states based on formula favoring poorer state since its beginning in 1965 as part of the “Great Society”
 - Elimination of many federal mandates and rules through one of two strategies:
 - Block grants
 - Per capita caps*
- Proposals in Tennessee and recent guidance from the administration

Medicaid – Current Threats

Medicaid Restructuring

- Currently: States receive Federal Medicaid matching funds as an “entitlement” for services provided under the state plan or approved waivers. The federal match is based on a formula - poorer states receive a higher federal match.
 - restructuring is a permanent change to Medicaid program
- Restructuring proposals would eliminate the automatic matching funds to the states. Depending on the nature of the restructuring, many federal requirements could be eliminated.
 - Block grants
 - Per capita caps*

Impact on Medicaid

- Destabilizes the program
- Governors and state legislatures will have to figure out where to come up with the money to replace the federal share
- Waiting lists will grow
- No change to institutional bias
- Mandatory vs. optional services

Money Follows the Person

History

Federal Demonstration Project

- Originated under the Deficit Reduction Act of 2005
- Expanded by the Affordable Care Act Rebalancing Initiative

Congressional Intent: Rebalance the Long-Term Care system from institution to community **Strong Bi-Partisan support

Mechanism: Enhanced federal match earned on HCBS for each MFP participant enrolled in HCBS program following discharge from a qualified institution

Legislative History of MFP

- First became law through The Deficit Reduction Act of 2005 (S. 1932)
- Reauthorized as part of the Affordable Care Act (H.R. 3590) (Senate passed the House version) and the
- Program expired September 30, 2016

Recent MFP Activity

There have been several short term extension bills, but the EMPOWER Care Act (S. 548, H.R. 1342) would extend and improve the MFP program through 2023

A 4.5 year extension passed the House in June now we will look to the Senate



HCBS Infrastructure Act

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Supports Implementation of the HCBS Rule

States will have to use demonstration grant funds to work on:

- HCBS Settings Rule Implementation
- Housing
- Employment
- Workforce
- Case Management System

7 year grant program

Housing and Employment

- Building Capacity
- Expanding programs that work
- Continued Focus on CIE

Transportation and Workforce

- People with disabilities and aging adults lack sufficient access to mass transit, paratransit, ride shares, their own vehicles, and other modes of transportation needed for everyday life.
- The quality and effectiveness of HCBS for people with disabilities and aging adults depends upon a high-quality workforce.

Fixes to Institutional Bias in Medicaid



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Employment

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Access to Employment Matters

- Supporting people to work in competitive integrated employment is critical to:
 - Helping people with disabilities access the greater community;
 - Facilitating relationships with people without disabilities;
 - Building new skills and self-esteem;
 - Helping bring people with disabilities out of poverty;
 - Reducing utilization of other Medicaid services; and
 - Providing meaningful ways for people to spend their days.

WIOA: Setting the Employment Vision

- Statute prioritizes and increases employment of people with disabilities in competitive integrated employment
 - Defines CIE as work at or above minimum wage, with wages & benefits comparable to, & fully integrated with, co-workers w/o disabilities
- Clear statutory goal to limit significantly the use of 14(c) sub-minimum wage
 - Requires anyone under 24 to explore and try CIE before they can be placed in a sub-minimum wage setting; prohibits schools from contracting with sub- minimum wage providers; and requires at least annual engagement of anyone in sub-minimum wage setting
- Statute recognizes the importance of and requires cross-agency collaboration (including VR, Medicaid and IDD)

Challenges:

WIOA's CIE Definition

- Starting in 2017, there has been a push from some providers and some members of Congress on the Department of Education to change the definition of CIE.
- Specific push back on:
 - Focus of “integration” on interaction with co-workers
 - Whether AbilityOne jobs are CIE -- longstanding VR policy to evaluate individual settings but guidance acknowledges many A1 programs may not meet the definition
 - “Typically in the community,” meaning not a job just created for people with disabilities

Challenges: Efforts at Regulatory Changes

- Throughout 2017 and 2018, strong advocacy against opening the regulations
 - Letters from a broad range of disability stakeholders opposing opening the regulations
 - Reports from National Council on Disability and Senate HELP Committee advocating for additional TA, not regulatory changes
 - Consensus letter from disability advocacy groups and providers recommending additional sub-regulatory guidance and technical assistance, not opening the regulations



Transition to Competitive Integrated Employment Act

- Eliminates 14c
- Grant funding to states
- Providers can also apply

Contact me at
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Questions?

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