

## Health Care Law

### ACA's Impact on the Elderly and Individuals With Special Needs

Keeping abreast of new health-care options for your clients

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The Affordable Care Act (ACA) includes various mandates to ensure that all Americans obtain health coverage and seeks to improve the overall quality of the care provided. This article will discuss various components of the ACA and its impact on individuals with special needs and the elderly, including minimum essential health insurance coverage, Medicaid expansion, the health insurance marketplace, continued health insurance coverage for dependents and Medicare benefits.

#### Minimum Essential Coverage

Effective Jan. 1, 2014, all nonexempt individuals must have minimum essential coverage. 26 U.S.C. §5000A(a). Exempt individuals include prisoners, undocumented immigrants, Native American tribal members, individuals who cannot

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afford coverage, individuals who live in states that opted out of Medicaid expansion, individuals who have no plan options in the state health insurance marketplace or individuals with a gap in coverage not to exceed three months. 26 U.S.C. §5000A(e). Minimum essential coverage is defined as one of the following: group health plans; employer-sponsored retiree health plans; public benefits plans such as Medicaid, Medicare, the Children's Health Insurance Program (CHIP) or Tricare; private health insurance (including a marketplace plan); Medicare Advantage plans; and self-funded student health plans. 26 USC §5000A(f). An individual's failure to obtain such minimum essential coverage will result in a penalty upon filing his or her annual income tax returns. 26 USC §5000A(b).

#### Medicaid Expansion

Medicaid expansion is one component of the effort to provide all Americans with health coverage. It provides the states with an option, but not a requirement, to cover nondisabled individuals between ages 19 and 64, who meet the citizenship requirements, are not entitled to Medicare, are not incarcerated and have income below 133 percent of the federal poverty level. The ACA, as passed, provided that a state's failure to expand its Medicaid program will result in a loss

of all funding for its existing Medicaid programs; however, the Supreme Court in *National Federation of Independent Business v. Sebelius, Secretary of Health and Human Services*, 132 S. Ct. 2566 (2012), upheld the requirement for all states to participate in Medicaid expansion, but invalidated the resulting loss of all Medicaid funding for existing programs and instead limited the risk to forfeiture of funding for expansion programs. Prior to the ACA, the population aged between 19 and 64 would have been ineligible for Medicaid benefits unless an applicant was blind or disabled.

On Feb. 26, Gov. Chris Christie announced that New Jersey would accept federal dollars to expand its Medicaid program. The Center on Budget and Policy Priorities, a policy organization that focuses on fiscal policy and public policy that affects low- and moderate-income families and individuals, projects that approximately 307,000 additional individuals aged between 19 and 64 now will be served under the expanded Medicaid program in New Jersey. See [www.cbpp.org](http://www.cbpp.org).

#### Income Only Eligibility

Eligibility for Medicaid programs with a target population that includes children, pregnant women, families and the new "aged 19-64" applicants will not include an asset or resource limit. Instead, eligibility will be based solely on the applicant's income. The determination of income eligibility will be streamlined by using the applicant's modified adjusted gross income (MAGI) to determine

whether he or she is below the 133 percent threshold. The income calculation no longer will include an analysis of countable income, exempt income, earned income disregards, unearned income disregards, etc. The income calculation merely will use the applicant's MAGI as set forth on his or her income tax return and will provide a single 5 percent income disregard, so that, effectively, individuals up to 138 percent of the federal poverty level (\$15,856 for an individual or \$32,499 for a family of four in 2013) are eligible for services. New Jersey (and the other participating states) must establish income eligibility standards for applicants who do not file income tax returns because they have no income or their annual income is below the annual filing limits. 42 C.F.R. 435.603.

Eligibility determinations based solely on income should simplify the Medicaid application process and eliminate the need for special needs trust and other spend-down planning for people with disabilities who need health insurance coverage only. Applicants for the aged, blind and disabled (ABD) and other Medicaid waiver programs (e.g., nursing home care, home and community-based services, residential services, etc.) will continue to have financial eligibility determined by an income *and* asset/resource test. In such cases, the practitioner would advise the client to spend-down assets and/or establish and fund a special needs trust as a means of qualifying for the ABD or SSI Medicaid programs.

#### **Health Insurance Marketplace**

The ACA created a competitive marketplace, also known as a health insurance exchange, for individuals and small businesses to purchase affordable comprehensive health insurance. The health insurance marketplace will begin on Jan. 1, 2014, and participants may enroll beginning Oct. 1, 2013. Individuals and families with incomes between 100 and 400 percent of the federal poverty level (\$45,960 for an individual or \$94,200 for a family of four in 2013) may apply for income-based subsidies to assist with coverage affordability. See 26 C.F.R. Parts 1 and 602. Likewise, small businesses will receive tax credits to assist with coverage affordability for their employees. 26 U.S.C. §4980H.

States may elect to establish an

exchange on their own, establish an exchange in partnership with the federal government or merely participate in the federally-facilitated "Marketplace" administered through the U.S. Department of Health and Human Services. 42 U.S.C. §18041. The New Jersey Legislature passed *A3186/S2135*, which was legislation establishing a state health insurance exchange within the Department of Banking and Insurance; however, Gov. Christie vetoed the legislation and announced, in the alternative, that New Jersey would default to the federally-facilitated exchange program. See "State Exchange Profile: New Jersey" published by the Henry J. Kaiser Family foundation and found at <http://kff.org/health-reform/state-profile/state-exchange-profiles-new-jersey/>.

Trustees of special needs trusts and individuals with special needs and their families may question whether health insurance should be purchased through the Marketplace instead of accessing Medicaid benefits. Those individuals who need or will need functional services from the New Jersey Division of Developmental Disabilities, or housing and other supports for mental illness, however, will need Medicaid waiver benefits. Therefore, such individuals should not replace Medicaid benefits with health insurance benefits obtained through the Marketplace.

#### **Continued Health Insurance Coverage**

One of the immediate effects of the ACA is the ability of children to join or remain on their parents' health insurance until age 26. A child may be covered regardless of whether he or she is married, living with the parents, attending school, no longer financially dependent on the parents or eligible to enroll in an employer's plan. Please note, however, that until Jan. 1, 2014, grandfathered employer plans do not have to offer coverage until age 26 if the child is eligible for group coverage outside of the parents' coverage. 29 C.F.R. 2590.715-2714.

The ability of parents to cover their adult disabled children until age 26 under their health insurance plan will be a very important benefit. In the past, uninsured adult disabled children were required to apply for ABD or SSI benefits to receive Medicaid health coverage unless funds

were available to purchase private health care insurance. The ABD and SSI programs include income and asset tests to establish eligibility, which may require a spend-down of assets or the establishment and funding of special needs trusts to hold assets of such adult disabled children. When special needs trusts are funded with the assets of the adult disabled child, the trust must contain a provision requiring that Medicaid be reimbursed upon the termination of the trust. If the disabled child does not need housing or day program supports and is ineligible for SSI, the practitioner may advise the parents to defer the Medicaid application until such time that the child is unable to remain on the parents' health insurance. The determination of whether to defer the Medicaid application should be based on the care needs of the child, the estimated additional premiums if any, the cost of establishing the special needs trust and the additional lien accruing during the proposed deferral period.

#### **The ACA and Medicare**

The ACA improved existing coverage offered in the Medicare program. Medicare HMO plans and Medigap policies will not be offered in the Marketplace; however, the ACA extended the Medicare Trust fund until 2029 and eliminated co-insurance for certain preventive care services, such as mammograms, colonoscopies and annual wellness exams. The ACA also provides Medicare Part D enrollees with a 50 percent discount for brand-name prescription drugs during the period in which the enrollee has reached his or her initial \$2,970 (in 2013) covered prescription drug limit, yet did not reach the catastrophic drug coverage threshold of \$6,733.75 (in 2013) (also referred to as the Medicare Part D coverage gap or the donut hole). See "Closing the Coverage Gap" published by the U.S. Department of Health and Human Services and found at [www.medicare.gov/Pubs/pdf/11493.pdf](http://www.medicare.gov/Pubs/pdf/11493.pdf).

In summary, the ACA is designed to provide benefits and programs to ensure health insurance coverage for all individuals. As regulations are developed and implemented, practitioners should continue to keep abreast of the health-care options that may be available to clients. ■