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Medicaid to 26 for Former Foster Youth:

An Update on the State Option and State Efforts to Ensure Coverage for All Young People Irrespective of Where They Aged Out of Care

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Introduction

Signed into law on March 23, 2010, the Affordable Care Act (ACA) makes notable improvements to Medicaid and the Children's Health Insurance Program (CHIP) and ensures that millions of Americans have access to affordable health coverage through insurance exchanges.

Among the ACA provisions that took effect in 2014 were several new requirements that are critical for foster children and other vulnerable youth. Most notably, the law expands Medicaid coverage to former foster children up to age 26. To qualify, individuals must be under the responsibility of the state when they turn 18 (or older, if the state's federal foster care assistance under title IV-E continues beyond that age), and to enroll in or maintain Medicaid eligibility, they must have been enrolled in Medicaid while in foster care and not yet reached the age of 26.

Recognizing the importance of health care coverage for youth who age out of foster care, Congress specifically provided Medicaid coverage for this population in the ACA. The provision equalizes insurance coverage among young adults, placing youth aging out of foster care on par with their peers who are able to stay on their parents' insurance until age 26 by allowing them to explore educational and professional opportunities, many of which do not often come with insurance coverage. Medicaid coverage will help young people become successful adults by ensuring that they, like their peers, have health care coverage and by removing barriers to success in post-secondary education and employment that can result from unexpected health care costs, unmet medical needs, and unaffordable insurance premiums or co-payments. This provision is mandatory, and was not impacted by the Supreme Court decision to give states the option to expand Medicaid to all adults with an income up to 133 percent of the federal poverty level (FPL).

This policy brief provides an overview of the new mandatory Medicaid coverage for former foster youth under the ACA, highlighting relevant Centers for Medicare and Medicaid Services (CMS) regulatory activity to date and additional concerns regarding the "state option"; in particular, the interpretation by CMS that states have the *option*, but are not required, to cover former foster care children who aged out of foster care in another state. It further summarizes state progress in taking up this option to provide coverage for former foster youth, irrespective of where they aged out of care, and makes recommendations for what more should be done to ensure access to coverage for every young person aging out of care.

Patient Protection and Affordable Care Act (ACA) Section 2004: Medicaid Coverage for Former Foster Care Children

Beginning in 2014, states *must* provide Medicaid coverage for individuals under age 26 who were in foster care at age 18 and receiving Medicaid. Consistent with this rule, youth are eligible for Medicaid if they:

- Are under age 26;
- Are not eligible for and enrolled in mandatory Medicaid coverage; and
- Were in foster care under the state's or tribe's responsibility and also enrolled in Medicaid under the state's Medicaid state plan or 1115 demonstration (or at state option were in foster care and Medicaid in any state rather than "the" state where the individual is now residing and applying for Medicaid) at age 18 or older if the state's federal foster care assistance under title IV-E continued beyond that age.

Why Health Coverage Matters

The expansion of Medicaid to cover youth previously in foster care to age 26 is a significant victory for this population because it provides access to critical health coverage for an especially vulnerable group of young adults. Children who have been abused or neglected often experience a range of physical and mental health needs, physical disabilities and developmental delays, far greater than other high-risk populations. For example, foster children are more likely than other children who receive health coverage through Medicaid to experience emotional and psychological disorders and have more chronic medical problems. Research suggests that nearly 60 percent of children in foster care experience a chronic medical condition, and one-quarter suffer from three or more chronic health conditions.[1] [2] Roughly 35 percent have significant oral health problems.[3] In addition, nearly 70 percent of children in foster care exhibit moderate to severe mental health problems,[4] and 40 to 60 percent are diagnosed with at least one psychiatric disorder.[5]

Not surprisingly, youth aging out of foster care continue to experience poor health outcomes into adulthood, including high rates of drug and alcohol use, unplanned pregnancies and poor mental health outcomes. More than half of former foster youth report being uninsured, and more than one-fifth report unmet needs for medical care.[6] Findings from the Midwest Study highlight that one-third of youth aging out reported two or more emergency room visits in past year, 22 percent were hospitalized at least once, 43 percent were uninsured, fewer than half had dental insurance, three-quarters of young women had been pregnant, and 19 percent received mental or behavioral health care in the past year.[7]

Given that former foster youth have well-documented and often significant health care needs, these young people should be eligible for Medicaid coverage in any state, and once enrolled, should be able to retain their coverage irrespective of changes in residency.

Regulatory Guidance to Date on the ACA Provision for Former Foster Youth

In early 2013, CMS issued a number of documents to clarify how states should implement the new provision. On January 22, 2013, CMS issued a proposed rule in the Federal Register, which clarified CMS's interpretation that **a youth is only eligible for Medicaid coverage in the same state in which he or she was in foster care at age 18 and enrolled in Medicaid.** While CMS gave states the option to cover youth under this group who were in foster care and Medicaid in any state at the relevant point in time, it did not require that they do so.

On July 15, 2013 CMS published the final rule, clarifying several outstanding issues, including that the new eligibility category of former foster youth are eligible for full Medicaid benefits including Early, Periodic, Screening, Diagnosis, and Treatment (EPSDT) up to age 21. On December 31, 2013, CMS issued a FAQ that clarified that it would approve state plan amendments[8] to cover youth who were in foster care and receiving Medicaid when they turned 18 or aged out of foster care in another state – meaning that states could receive federal reimbursement for out-of-state foster youth if they choose to enroll them in Medicaid.

More recently, on August 24, 2014, CMS posted a State Highlights feature on Medicaid.gov focusing on the provision to enable former foster youth to keep their Medicaid coverage, and highlighting efforts in Idaho and Georgia to reach out to and enroll young people who have aged out of care. It is noteworthy that CMS chose to highlight this provision and demonstrates that it is tracking implementation progress in states.

To date, only 12 states have taken up the option to extend coverage to youth who aged out in another state:

- California
- Georgia
- Kentucky
- Louisiana
- Massachusetts
- Michigan
- Montana
- New York
- Pennsylvania
- South Dakota
- Wisconsin
- Virginia (pending state plan amendment)[9]

Unfortunately, with a majority of states opting to not cover youth aging out in other states, many young people will be left without essential medical coverage.

Congressional Intent

Advocates have argued that the Congressional intent of sponsors of ACA Sec 2004 (extending Medicaid coverage to age 26 for former foster youth) was never to limit eligibility for coverage to residence of a given state, but rather to ensure that any young adult who had been in foster care on their 18th birthday and enrolled in Medicaid on aging out - irrespective of where he or she had been in foster care and currently living - would be eligible for new mandatory Medicaid coverage up to age 26.

In fact, Senator Mary Landrieu (D-LA), the sponsor of the provision, clearly articulated her intent to make all eligible former foster care youth able to receive Medicaid to age 26 in remarks delivered on the Senate floor on December 22, 2009). [10]

"So the bill includes this important provision to allow kids to stay on their parents' insurance for a bit longer as they transition into adulthood... But my question was where do the young people who age out of the foster care system sign up, because they do not have parents? I was proud to work on a provision that Leader Reid included in this bill to ensure that every young person who ages out of the foster care system will be able to stay on Medicaid until the age of 26 starting in 2014. Almost 30,000 young people age out of the foster care system every year, having never been adopted or reunified with their birth parents. The fact that they aged out is our failure as a government. We have failed them once and we just can't fail them twice. We must support their transition to adulthood, and guaranteeing access to quality health care will help with that transition."

Additionally, in a letter sent to Health and Human Services Secretary Kathleen Sebelius on February 22, 2013, Congresswoman Karen Bass (D-CA) and Congressman Jim McDermott (D-WA), co-chairs of the Congressional Caucus on Foster Youth and 13 other Members of the Caucus urged the department to refine the proposed interpretation of the "state option." Congresswoman Bass and colleagues noted that,

"*although the draft regulation is a major step in the right direction, it has come to our attention that we may need to clarify the Congressional intent of this specific ACA provision. Specifically, Congressional sponsors and supporters of this provision intended to ensure that any young person who had been in foster care on their 18th birthday and was enrolled in Medicaid, would be able to enroll in Medicaid up until age 26, starting in January 2014, even if the young person moved to a different state between the ages of 18 to 26*."

Additionally, they argued that the "state option" "*unfairly limits foster youth from leaving a state to seek a college education, a new job, and a location closer to family members as doing so may result in a loss of healthcare coverage.*"

Why This Provision Is Important

Many young people who have aged out of foster care are on a positive path, pursuing higher education, job opportunities and other promising pursuits, but the lack of guaranteed health coverage creates an unnecessary hurdle for these youth. Looking back at the intent of this coverage option - to provide parity for young people aging out of care relative to their peers who can continue to stay on their parent's insurance – it is unfair to expect this population to stay in place at such a critical time in their life. The general population of young adults is mobile at this age, and expected, even encouraged to pursue college, jobs and travel – to leave the nest. These young adults are free to pursue opportunities, to go to other states for college, training school or even just to live. They will have no trouble taking their insurance along as they seek out these new experiences. However for young people aging out of foster care, already facing many odds, they are limited in their options for where they can attend post-secondary school and other opportunities. This restriction on eligibility for health coverage impacts all young people aging out of foster care and limits their ability to succeed.

This is especially concerning given that a subset of former foster youth are a very vulnerable and highly mobile population. As Dworsky and Colleagues (2012) point out in a literature review of research on housing for youth aging out of foster care, young people who have aged out of care experience frequent periods of housing instability, often living with others in temporary arrangements. When they do live on their own, they

often have difficulty maintaining housing and experience residential mobility.[11] The researchers highlight a number of studies that found that former foster youth report high rates of couch surfing or doubling up,[12] moving several times soon after leaving care,[13][14]experiencing high rates of homelessness,[15] [16] [17]and also reporting more mobility than their peers.[18] [19]

Data from the Midwest Evaluation of the Adult Functioning of Former Foster Youth ("the Midwest Study") suggests that while some young adults aging out experience fairly stable living arrangements after leaving care, a significant number – over two-thirds of the Midwest Study sample – had lived in at least three different places, including 30 percent who had lived in five or more places since leaving care.[20] Thirty-seven percent of the sample had been homeless or had couch surfed since exiting care.[21] Not surprisingly, homelessness is associated with poor health outcomes,[22] [23] [24] poor access to ambulatory care and increased use of acute care.[25] Young adults aging out of care are also less likely to be insured. In fact, Kushel and Colleagues (2007) found that the majority (76.6%) of foster care alumni in their study sample who had experienced an episode of homelessness were uninsured, as compared with 53% of unstably housed and 46.5% of stably housed emancipated participants.[26]

State Action on the ACA Provision for Former Foster Youth

With only 12 states so far taking the option to extend Medicaid coverage to youth who have aged out of foster care in another state, the remaining states cite several challenges to opting in. In some states, administrators have expressed concern with the potential costs and time associated with tracking, identifying and confirming eligibility for this population of youth. Others may be weary of costs associated with the new coverage, given that the federal matching rate for young adults in the former foster youth coverage group remains the same as for existing Medicaid coverage, which averages 50 percent nationwide compared to the enhanced match rate provided for newly eligible adults.[27] [28] Despite this concern, states will incur greater costs for the care of former foster youth in the long run if the youth do not receive routine physical and mental health care and preventative services, so paying for a portion of the cost of their coverage now is a smart investment.

Other challenges include the "optics" of providing this coverage to youth aging out in other states in states where the expansion of Medicaid has been politically controversial. In several states, advocates have observed that clear opposition to Medicaid expansion has made it much more difficult to advocate for the "state option," because many people do not understand the distinction between this coverage for former foster youth from the broader Medicaid expansion included in the ACA.

Lastly, in many states, ACA implementation has been a challenge with state administrators who are more focused on setting up their health exchanges, enrollments, Medicaid expansions and other implementation issues – of which coverage for former foster youth is a small component. Without strong advocacy from child welfare agencies, advocates and others can get lost in the shuffle, and it can be difficult to identify an appropriate contact in state Medicaid agencies to facilitate the implementation of this provision. For these reasons, and without a mandate from CMS to expand coverage to all youth aging out of care irrespective of where they aged out, it is unlikely that additional states will opt to provide this critical health coverage to youth in need.

Revisiting the Legality of the State Option

CMS's "state option" interpretation may infringe on the constitutional right to travel, guaranteed through the Privileges and Immunities clause of the Fourteenth Amendment. Multiple courts, including the U.S. Supreme Court, have consistently held that public benefits should not be withheld from residents of a state based on their duration of residency. [29] Such infringements on the right to travel have been held to strict scrutiny review and courts have rejected state justifications for such requirements including to preserve resources for current residents, to sustain the political viability of a program, and to deter the migration of indigents.[30]

What's Next: Advocacy is Needed at Federal and State Level

Federal-Level Recommendations

Given the clear Congressional intent for states to provide Medicaid coverage for all youth aging out of foster care up to age 26, advocates have urged CMS to reconsider its interpretation of the law. Although CMS has responded that it cannot interpret the statute as such, it can take additional action to support this population of young people, including the following:

- Issue an Informational Bulletin or joint letter in partnership with the Administration for Children and Families to state Medicaid and child welfare agencies that highlights the importance of providing coverage for youth aging out of foster care, providing examples of effective outreach and enrollment by states, as well as highlighting states that have opted to provide coverage for all youth aging out, irrespective of where they aged out of care;
- Request that states report on whether they have or plan to take up the option to extend coverage to youth who have aged out in other states and help to track state progress, making this information easily accessible to the public;
- Consider providing incentives for states that opt to take up the option;
- Provide technical assistance to states that plan to take up the option; and,
- Facilitate data sharing across states that would make it easier for states to confirm eligibility for youth who have aged out in another state.

Congress can also take additional action through legislation. The Children's Health Insurance Program (CHIP), which provides health insurance for children of working families whose parents earn too much to qualify for Medicaid but too little to purchase private health insurance, is due to be reauthorized at the end of FY2015; this reauthorization provides an opportunity to include language to address Medicaid coverage for former foster youth. Legislation has been introduced in both the U.S. House of Representatives and U.S. Senate that both reauthorizes CHIP and addresses this issue: S. 246 (CHIP Extension Act of 2014) and H.R. 5364 (CHIP Extension and Improvement Act of 2014) extend the program for four years, as well as ensure Medicaid coverage for former foster care youth, regardless of state of residence. At the time of this writing, it appears likely that Congress will approve a "straight funding extension" or reauthorization of CHIP, without this provision regarding Medicaid coverage for former foster youth.

State-Level Recommendations

State Advocacy: Meet with Child Welfare and Medicaid Staff

Advocates should know about and be involved with what their Medicaid and child welfare agencies are doing or planning in terms of continuous coverage of youth who aged out of foster care, so that efforts can be streamlined and coordinated. Advocates should consider the following:

- Urge your Medicaid agency to expand eligibility to youth who aged out elsewhere, sharing examples from states that have opted to provide this coverage;
- For states that have opted to cover youth irrespective of where they aged out of care, encourage the Medicaid agency to streamline the state's Medicaid application and ensure that the process does not create additional barriers for these young people. The application process should be simplified and the same regardless of where the applicant was in foster care, and the state should take on the responsibility of verifying the applicants' foster care history and begin coverage while verification is in process;
- Urge your child welfare agency to advocate for the "state option" to cover youth irrespective of where a young person aged out of care in discussions with their Medicaid agency counterparts;
- Ask your child welfare agency to assist in efforts to identify young people who may become eligible for coverage as a result of the state's decision to cover youth aging out of care in another state.

State Advocacy: Push for Legislation to Ensure Out of State Youth are Covered by Medicaid to 26

State-level advocates can also promote legislation to ensure out of state youth are covered by Medicaid to age 26. California enacted legislation that requires California's Medicaid plan to cover young people who were in foster care in another state until age 26. For states that decide to cover out-of-state youth in the state's Medicaid plan, it is important to specify ways for the young person to verify they were in foster care and receiving Medicaid in another state. States should take care to streamline the process and quickly verify eligibility for other states if youth move and are trying to enroll in a new state's Medicaid program.

Recommendations shared in an earlier SPARC brief, *Medicaid to 26 for Youth in Foster Care: Key Steps for Advocates*, include the following strategies:

- Dedicate a staff person in the child welfare or Medicaid agency to verify former foster care status for another state;
- Allow for electronic submission of documentation of former foster care status and Medicaid eligibility;
- Develop an on-line request and authorization form that has an established response time; and
- Include a form that verifies former foster care status and Medicaid eligibility in transition plans that can be accessed if request for coverage in another state is made.

State Highlights: Virginia

Virginia was directed to amend its state plan via a budget language amendment,[31] which was also tagged with a state cost of approximately $11,000/per year in General Funds (does not include the federal NGF reimbursement, which is a 50% match). Voices for Virginia's Children wrote the budget language based on California's effort, then sought patrons in both the House and the Senate to put an amendment forward. Ultimately, it was a Senate amendment that survived in the final budget negotiation.

Virginia extended the option during its 2014 legislative session, with enactment set for July 1, 2014. This effort was led exclusively by Voices for Virginia's Children, with support from SPARC and First Focus. Most policymakers were not aware of the option until it was brought to their attention. The state Medicaid agency knew of the option, but had initially declined to opt in, as it was not a federally mandated group.

Voices for Virginia's Children first learned of the opportunity to provide coverage for youth who have aged out in other states through participation in a SPARC workgroup, and thought it might be a good opportunity to advocate for Virginia to opt in this year, with the initial thought that Voices would spend this year educating policymakers on the issue, and perhaps stage a successful campaign in 2015. They put forward a targeted advocacy effort, specifically focusing narrowly on key finance/appropriations committee members, staying sensitive to the negative connotations that the ACA and "Obamacare" hold in the more conservative corners of the state legislature.

By characterizing this option as a small step towards ensuring that vulnerable out-of-state former foster youth would have a basic level of coverage akin to that of in-state former foster youth, and positioning the population as a small but high-risk group, they were able to use a softer-sell to convince key members that the effort was worthy and cost-effective. It also helped that there was not specific resistance in the state Medicaid agency; they had simply not opted in to this provision solely because it was not a requirement, not out of any rejection of the policy itself.

Virginia does not yet have any data on whether out-of-state youth have opted into coverage via this provision; however, the policy only went into effect on July 1, 2014, and the state has not yet launched its larger outreach effort on the overall Medicaid-to-26 provision. Virginia has not yet even solidified its procedure for applications from youth aging out in the state, but will be heavily involved in creating processes for enrolling both youth who aged out in the state and those who aged out in another state. So far, there is reason to believe that Virginia will allow for self-attestation, or a reasonable verification process that will not impede enrollment for young people.Virginia's state plan amendment, which included the out-of-state option, was approved by CMS in late September. The state agency has announced that the option start date was July 1, 2014. Those enrolled through this option have been covered since August, before the plan was approved, but the agency has also confirmed to advocates that this coverage option, whether in a current or new enrollment, will be retroactive to July 1.

State Highlights: California

California opted to cover youth from other states under the ACA by statute: Calif. Welf. & Inst. Code 14005.28(a): … *the department shall implement the federal option to provide Medi-Cal benefits to individuals who were in foster care and enrolled in Medicaid in any state.* It extended the option on October 1, 2013, effective 2014, as part of a bill implementing various provisions of Affordable Care Act (ACA) relating to determining eligibility for the Medi-Cal program.

Historically, California has had a strong commitment to supporting former foster youth. For example, the state has implemented both the Chafee Medicaid option for former foster youth and extended Foster Care, Adoption Assistance, and Kinship Guardianship Assistance benefits for youth after the age of 18. In this instance, advocates, the Legislature, and the Administration were all in agreement that all former foster youth from other states should be covered. Medi-Cal, advocates for California foster youth report challenges in obtaining health care for youth who move from California to other states. We also note that California has a one-page application for all former foster youth. Youth aging out of foster care in California are transferred to the former foster youth aid code without having to file an application.

State Highlights: Pennsylvania

Pennsylvania opted to cover youth from other states under the ACA through the state plan amendment process. Field instructions for caseworkers on implementing Medicaid coverage for former foster youth were initially issued Dec. 16, 2013 and describe the application process for youth aging out outside of the state. Advocates were informed of the state's decision to provide coverage for youth who aged out in another state in October 2013.

Historically, the state has taken on some level of flexibility and inclusiveness with respect to Medicaid. The Department of Public Welfare administers the Medicaid program, and oversees the Office of Children, Youth and Families (OCYF) with responsibility for child welfare and the Office of Income Maintenance which determines eligibility for programs including Medicaid, SNAP and TANF.

Well in advance of January 2014, state advocates met with OCYF and discussed the state's plans with respect to coverage for youth who aged out in another state. They were told that the state planned on covering these young people. It appears that the state made this decision without much push from the advocacy community. We should note that Pennsylvania's neighboring states had all opted to expand Medicaid and provide coverage up to 133% of poverty. While Pennsylvania had not at that time opted to expand Medicaid, it is possible that its neighbors' decisions to expand the program played some role in the state's decision to provide coverage for this population of vulnerable young adults. Throughout the process, the state agency provided an opportunity for advocates to review policy guidance, field instructions, etc. and to provide input on the implementation of Medicaid to 26 for former foster youth. Individuals who move to Pennsylvania from another state must submit an application and provide verification of receipt of foster care and medical assistance in that state.

Data are not currently available for number of young people enrolled who aged out in other states, but as of July 2014, 563 former foster youth were covered in Pennsylvania as a result of this new coverage option.

State Highlights: Michigan

Michigan opted to cover youth from other states under the ACA through the state plan amendment process. It extended the option in fall of 2013, motivated in large part by the Michigan Department of Human Services. In Michigan, Foster Care Transitional Medicaid (FCTMA) is a program administered by the Department of Human Services (DHS) that allows youth from foster care to receive Medicaid between age 18 (when a youth "ages out") and when they turn 21.

In order to access Medicaid to 26, a youth already enrolled in FCTMA will take different steps than a youth who is not, and who may need to enroll directly through the ACA. Specifically, if a youth is receiving FCTMA on January 1, 2014, the medical coverage will automatically continue until they reach the age of 26. The youth will NOT need to take any action to make sure Medicaid continues until age 26. If a youth has already aged out of their current Medicaid program (for example, the youth turned 21) OR if the youth is between 18 and 21 and not enrolled in FCTMA and the foster care case closed prior to 1/1/14, they will need to apply to continue Medicaid until age 26 through the ACA application, DCH-1426, Application for Health Coverage & Help Paying Costs.

If a youth was in foster care in another state and has relocated to Michigan, they will need to apply to continue Medicaid until age 26 through the ACA application. If a current youth from foster care will transition out of foster care in 2014, the young person will need to speak with his or her foster care worker about continuing health care coverage through the ACA as part of a transition plan. A caseworker will complete the procedures needed to transfer care and ensure continued Medicaid coverage.

Conclusion

The expansion of Medicaid to cover youth previously in foster care to age 26 is a significant victory for this population. One of the most popular parts of health reform is coverage for kids up to age 26 on their parents' insurance plan. This new mandatory coverage for former foster youth has the potential to provide equal treatment in cases where the state steps in to care for children removed from the home as a result of abuse or neglect. It is critical that we remove any barriers to coverage for young people aging out of care, and that includes removing the eligibility restriction tied to residency.

While we hope that both Congress and CMS will consider taking steps to resolve this concern, it is also critical that state advocates, policymakers and other stakeholders continue to work to push states to take up the option to cover all former foster youth residing in their state.

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The First Focus State Policy Advocacy and Reform Center (SPARC), an initiative funded by the Annie E. Casey Foundation, Jim Casey Youth Opportunities Initiative, and Walter S. Johnson Foundations, aims to improve outcomes for children and families involved with the child welfare system by building the capacity of and connections between state child welfare advocates. You can visit us online at www.childwelfaresparc.org or on Twitter at @ChildWelfareHub.

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Notes

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[29] *Saenz v. Roe* 526 U.S. 489, 502-503 (1999); *Memorial Hospital v. Maricopa Country.* 415 U.S. 250 (1974); *Shapiro v. Thompson* 394 U.S. 618 (1969).
[30] *Ibid.*
[31] Budget amendments can be put forward by either the Governor or any member of the General Assembly.