

October 26, 2018

Medicaid Coverage for Former Foster Youth Up to Age 26

Children may enter foster care due to incidents of abuse, neglect, or some other reason that prevents them from remaining with their families. During FY2016, some 687,000 children spent at least a day in foster care. Of the 250,000 children who exited foster care that year, more than 20,500 emancipated at 18 (or an older age, up to 21, if states extend care). In this context, emancipation means reaching the state legal age of adulthood and not being reunified with family or placed in a new permanent family.

The Patient Protection and Affordable Care Act (ACA, as amended; P.L. 111-148) required states, as of January 1, 2014, to provide Medicaid coverage to youth who have emancipated until their 26th birthday. The U.S. Department of Health and Human Services' (HHS') Centers for Medicare & Medicaid (CMS), which administers the Medicaid program, issued a proposed rule in January 2013 and a final rule in November 2016 to specify additional parameters about youths' coverage under the program.

The Medicaid and Foster Care Programs

Medicaid, authorized in Title XIX of the Social Security Act (SSA), is a federal-state program that jointly finances medical and related services to a diverse low-income population. To be eligible for Medicaid, individuals must meet both categorical (e.g., elderly, children, or pregnant women) and financial (e.g., income, assets) criteria in addition to requirements regarding residency, immigration status, and U.S. citizenship. For some eligibility groups or *pathways*, state coverage is mandatory, while for others it is optional. States and territories (*states*) must submit a state plan to the federal government to describe how they will carry out their Medicaid programs within the federal statute's framework. States that wish to make changes beyond what the law permits may seek CMS approval to waive certain statutory requirements to conduct research and demonstration waivers under Section 1115 of the SSA.

The Foster Care, Prevention, and Permanency program, authorized in Title IV-E of the SSA, is a federal-state program that, among other things, jointly finances foster care for children who a state determines cannot safely remain in their homes and who meet federal eligibility rules related to being removed from a low-income household and other factors. The program also provides some support for services to assist older children in foster care, and those who age out, in making a successful transition to adulthood. The Administration for Children and Families (ACF) at HHS administers the Title IV-E program.

While in foster care, nearly all children are eligible for Medicaid under mandatory eligibility pathways. This means that states must provide coverage because these children receive assistance under the Title IV-E foster care program, are disabled, or meet other eligibility criteria. Under the

Title IV-E program, states must inform foster youth within 90 days prior to emancipation about their future options for health care. Title IV-E also directs states to provide these youth with health information and, as of early 2018, official documentation that they were previously in care. Such documentation may be necessary to determine eligibility for some former foster youth who later apply for Medicaid.

Medicaid for Emancipating Youth

Young people who age out of foster care can have significant health needs. For example, a 2015 national survey of 21-year-olds who had been in foster care as teenagers found that nearly one-fourth had been referred for substance abuse assessment or counseling. The Medicaid pathway for former foster youth is intended to provide necessary health supports in the years immediately after leaving foster care. It parallels another ACA requirement that health insurance companies provide coverage of children up to age 26 under their parents' private health care plans.

Medicaid regulation requires states to determine whether current beneficiaries, including youth emancipating from foster care, are eligible for other Medicaid pathways to avoid gaps in coverage. Upon emancipating from foster care, youth may be eligible for mandatory Medicaid pathways available to adults (e.g., pregnancy or disability pathways). If determined eligible, they are to be enrolled via these other pathways (with the exception of a pathway for non-elderly low-income adults that was established under the ACA). However, if these young people do not qualify for other mandatory pathways, or states do not have sufficient information to determine such eligibility, they are to be enrolled in the mandatory Medicaid pathway for former foster youth without interruption in coverage.

To be eligible for the former foster youth pathway, individuals must (1) be under age 26, (2) have been "in foster care under the responsibility of the State" upon reaching age 18 (or any age up to 21 if the state extends federal foster care to that age); and (3) have been enrolled in Medicaid "while in such foster care." Unlike most eligibility pathways, the former foster youth pathway is available to eligible youth regardless of income.

Based on the national survey of former foster youth who were age 21 in FY2015, approximately 70% had Medicaid, 15% had some other health insurance, and 15% had neither.

Continuity of Medicaid Coverage

In the November 2016 final rule, CMS recommended that states use automated transition of eligible individuals to the former foster youth pathway if they are not eligible for other mandatory eligibility pathways. However, some former foster youth, such as those who emancipated before

January 1, 2014, may need to apply for coverage under this pathway. According to CMS, states may allow these youth to attest to their eligibility. States that do not accept self-attestation must use electronic records that show a youth's foster care history and receipt of Medicaid while in care (if available). If electronic records are not available or are limited, states can require that applicants provide documentation showing that they had been in foster care. Further, if a state cannot verify whether a youth remains a state resident it may require a former foster youth to self-attest or document his or her state residency.

Optional Coverage for Certain Youth

The Medicaid regulation requires emancipated youth to have had coverage at the time they left care at age 18 (or older, up to age 21). However, the rule gives states the option of providing coverage to youth who emancipated from foster care and received Medicaid (1) at some point while in foster care but not at the time they aged out; or (2) while in the custody of the state child welfare agency, but were placed in another state and were enrolled in that state's Medicaid program while in foster care or when they emancipated. According to CMS, this option is made available in response to the possible interpretation of the law that youth are not necessarily required to have had Medicaid coverage at the time they emancipated. CMS stated that this could apply to foster youth who reached age 18 while they were on a runaway episode and whose Medicaid coverage had lapsed.

Youth Who Move to Another State

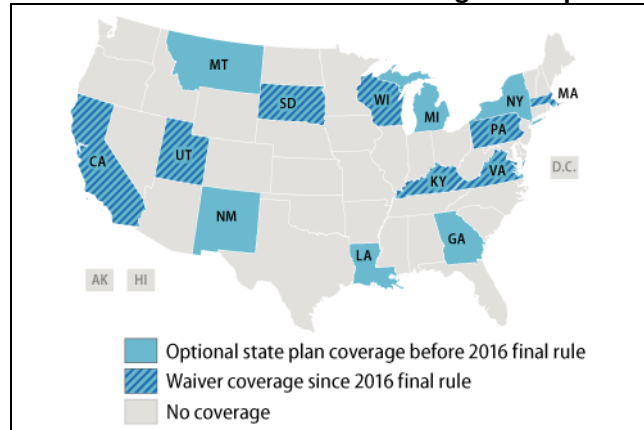
As noted, the ACA specified that individuals were eligible for the former foster youth pathway if they were "in foster care under the responsibility of the State" upon reaching age 18 or an older age, up to 21, in states that extend care. In its January 2013 proposed rule, CMS interpreted the statute to mean that states were not required to provide coverage to youth who were enrolled in Medicaid and aged out in another state, but could do so. In separate guidance in 2013, CMS indicated that it would approve state plan amendments that offered coverage to out-of-state youth, pending publication of a final rule. **Figure 1** shows the 14 states that received approval following the proposed rule.

In its November 2016 final rule, however, CMS reversed its earlier interpretation. The rule explained that because the statute provided eligibility to former foster youth who had emancipated in *the* state—not *a* state or *any* state—it could not be applied by a state to youth who emancipated in a different state. Accordingly, states could no longer cover these youth via state plan authority; however, they were encouraged to seek CMS approval under the Section 1115 waivers. Based on CRS review of the CMS website as of mid-October 2018, 8 of the 14 states received such waiver approval to provide this coverage. (See **Figure 1**.)

The Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (P.L. 115-271), enacted on October 24, 2018, amended the Medicaid statute on the former foster youth pathway. It will permit states, as of January 2023, to use state plan authority for providing coverage to former foster youth who move across state lines. The law directs HHS, within one year of the law's enactment, to issue

guidance to states on best practices for removing barriers and ensuring timely coverage under this pathway, and on conducting related outreach and raising awareness among eligible youth.

Figure 1. Medicaid Coverage for Former Foster Youth Who Move to Another State Following Emancipation



Source: Based on CRS review of HHS and CMS websites.

Medicaid Benefits

In general, the rules for Medicaid benefit coverage for former foster youth under age 21 are the same as for non-disabled children. For those over age 21, benefit coverage is the same as for non-disabled adults. Former foster youth generally receive services through what is sometimes called traditional Medicaid—an array of required or optional medical assistance items and services listed in statute. However, states may also furnish Medicaid through alternative benefit plans (ABPs). Under ABPs, states may provide a benefit that is defined by a reference to an overall coverage benchmark, rather than a list of discrete items and services. Like traditional Medicaid, ABPs must include services under Medicaid's early and periodic screening, diagnostic and treatment (EPSDT) benefit for youth under age 21. ABPs can be targeted to certain Medicaid groups, including former foster youth. However, states may not require such individuals to receive Medicaid via ABPs.

Cost Sharing

States may require certain enrollees, including adult former foster youth, to share in the cost of Medicaid services. Cost sharing requirements for program participation fees (e.g., premiums) and point-of-service cost sharing (e.g., copays, coinsurance) may vary by income, and certain services (e.g., emergency services, family planning services and supplies) are exempt. Maximum allowable amounts may differ for individuals with annual income (1) at or below the federal poverty level (FPL) (i.e., \$12,140 for an individual in 2018), (2) from 100%-150% of FPL, and (3) above 150% of FPL. However, in aggregate, all types of cost sharing must not exceed 5% of household monthly or quarterly income, as chosen by the state.

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