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Medicaid Block Grants: Attacking the Safety Net for Low-Income Older Adults

Background

In the current budget battle, there is an outright attack on the safety net for low-income older adults. Serious efforts to block grant Medicaid, transform Medicare into a “premium support” voucher program, repeal the Affordable Care Act (ACA), and make significant changes to how people can access food or affordable housing support programs would effectively remove the safety net for millions of low-income (and many middle class) older adults.

Proposals to block grant Medicaid, which is a shared federal/state program in which the federal government currently sets the rules and shares the cost with the states, should set off alarm bells for low-income older adults, their families and advocates. With block grants, states would get a fixed amount of money from the federal government to do with presumably as they choose.

Medicaid is not only a program for low-income older adults. It also provides middle class individuals who have impoverished themselves with long-term care benefits. Medicaid provides financing for long term care in nursing homes for some 1.3 million people aged 65 and over and long-term services and supports for 4.8 million in the community. The nearly 9 million people 65 and over (and countless families) it helps range from those living at or close to the federal poverty level to those in the middle class. In addition, Medicaid covers 8 million people with disabilities under age 65. Close to half of all Medicaid beneficiaries are members of ethnic or racial minorities.

Already states are cutting Medicaid services at a rate not seen in 25 years, but most have been cautious about changing eligibility rules for fear of losing generous ACA funding for the program. Over time, states have consistently sought to make it harder for their citizens to access Medicaid or



tried to change benefits or rules set out in federal law. There have been numerous legal challenges to those attempts on behalf of those who would have been affected.

If Medicaid or other safety-net programs are turned into block grants and the grants are less than their current share of Medicaid dollars, there is clear evidence that, given the opportunity, states will not provide an adequate safety net for low-income older adults or anyone else currently covered by the program. In the name of “flexibility” and state’s rights, America’s safety net could be ripped to shreds.

The Problem: Eight Ways Medicaid Block Grants Could Hurt Low-Income Older Adults

States have tried for many years to get around federal rules in an effort to control their own share of the costs. On behalf of beneficiaries who could not afford the cost of litigation and to ensure that states consistently adhere to the legal requirements for eligibility, treatment, service, and access, the National Senior Citizens Law Center (NSCLC) and its allies have frequently sought relief in the courts. While there are more than eight ways block grants could affect state Medicaid programs, below are past examples in which states sought to make changes and how they were resolved in the courts. It is more than likely states would seek to make similar or more drastic changes to their programs along the same lines, if given the opportunity.

If Medicaid is block granted:

1. It Could be Harder to Qualify for Benefits

Medicaid law presently requires that those low-income older adults, persons with disabilities or low-income families who meet income, asset, and medical criteria be found eligible for benefits. If Medicaid becomes a block grant, states could place a limit on the number of people able to obtain benefits. While care for low-income older adults and persons with disabilities account for 25 percent of enrollees, it accounts for two thirds of the costs. Because of that high cost, placing limits on coverage and eligibility would be in states’ sights. States could even refuse to accept new applications for benefits once a certain cap in the number of Medicaid beneficiaries is reached.

In violation of Medicaid law, one state denied eligibility to grandparents raising



grandchildren, refusing to treat them the same as parents raising children.¹ The court found that they needed to be treated the same. In another case, individuals were prevented from filing applications for benefits and pressured to withdraw their applications.² The court found that federal law requires Medicaid applications to be promptly reviewed and ordered the state to comply.

2. Coverage for Long Term Services and Supports Could Be Threatened

Long term services and supports represent one third of all Medicaid spending. Medicaid law currently permits states to choose to provide home and community based services to individuals who would otherwise need nursing home care. If states choose to participate in offering these services, then Medicaid has numerous requirements, such as providing services in a reasonable time period. But if Medicaid becomes a block grant, then low-income older adults would be at risk of losing those benefits or waiting for years to access them. Moreover, the ACA contains several ways to stimulate progress toward less expensive and more desirable care in the home, instead of nursing homes. Repeal of the ACA would thus further undermine progress designed to keep people out of institutions.

Despite Medicaid's requirement for providing home and community based care in a reasonable time period, one state had a waiting list of up to seven years,³ while another state had a five year waiting list.⁴ The courts found that these incredibly long waits violated federal law.

3. Access to Nursing Home Care Could Be Lost

Care in a nursing home now averages approximately \$75,000 a year. Medicaid currently pays for half of all nursing home care nationwide, but if the program becomes a block grant, states would no longer be compelled to offer coverage. Low-income older persons who need nursing home coverage would then be either homeless or forced to live with family or friends. And if the state has already eliminated Medicaid services in the home and community, the family or friends would be completely responsible for all care and the expenses that go with it.

1 *Markva v. Haveman*, 317 F.3d 547 (6th Cir. 2003).

2 *Reynolds v. Giuliani*, 118 F.Supp.2d 253 (S.D.N.Y. 2000).

3 *Lewis v. N.M. Dep't of Health*, 261 F.3d 970 (10th Cir. 2001).

4 *Doe v. Chiles*, 136 F.3d 709 (11th Cir. 1998).

One state facing a budget shortfall sought to take away Medicaid coverage for 3,500 people residing in nursing homes by unlawfully changing the medical need standard, but was prevented from doing so by federal Medicaid requirements.⁵

4. Availability of Essential Services Could Be Eliminated

Medicaid law currently requires reimbursement rates to be sufficient to enlist providers who will treat beneficiaries. But if Medicaid is turned into a block grant, there will be no floor below which rates can be set. When reimbursement is below costs, doctors, hospitals, and pharmacies refuse to provide services.

When one state set reimbursement rates for prescription medications below costs, beneficiaries were turned away and could not obtain their medications.⁶ When another state did the same, pharmacies planned to refuse to accept new Medicaid customers and close several branches.⁷ In both cases, these cuts were prohibited by the courts based on federal Medicaid law.

5. Those with Both Medicare and Medicaid Could Be At Risk

For the eight million dual eligibles (people who qualify for both Medicare and Medicaid) who account for 40% of Medicaid spending, a block grant system would allow states to eliminate or reduce payments for Medicare premiums or cost-sharing or reduce the scope of benefits covered. States could also force low-income older adults into Medicaid managed care limiting their access to Medicare providers.

One state tried to impose arbitrary new eligibility criteria that would have cut adult day care services for dually eligible seniors and people with disabilities who needed the on-site care, a benefit not covered by Medicare. NSCLC and others filed suit and a court blocked the cut based on federal Medicaid rules.⁸

6. Spouses of Medicaid Nursing Home Residents Could Be Impoverished

A block grant system would allow states to eliminate current protections against the

5 *Kerr v. Holsinger*, 2004 WL 882203 (E.D.Ky. 2004).

6 *Independent Living Center v. Maxwell-Jolly*, 572 F.3d 644 (9th Cir. 2009), certiorari granted.

7 *Washington State Pharmacy Association v. Gregoire*, 2009 WL 1259632 (W.D. Wash 2009).

8 *Cota v. Maxwell-Jolly*, 688 F.Supp.2d 980 (N.D. Cal. 2010), appeal docketed, No. 10-15635 (9th Cir. 2010).



impoverishment of spouses of nursing home residents. As a result, middle class spouses living in the community could become destitute, unable to pay for their own care, and, in some cases, forced into nursing homes.

For “fiscal reasons,” a state ignored the federal spousal impoverishment rules and denied home and community based waiver services to the disabled, low-income spouse of a nursing home resident. The state appellate court reversed, noting that the federal law is designed to help the community spouse pay for basic needs.⁹

7. Nursing Home Consumers Would Lose Protection

Medicaid currently provides legal protections for residents of nursing homes under the Nursing Home Reform Act. If Medicaid becomes a block grant, then these protections would no longer apply. In other words, there are no guarantees that states would continue consumer protections related to elder abuse, safety or facility staffing now mandated by federal law.

After the passage of the Nursing Home Reform Law in 1987, a state threatened to derail the whole statutory scheme by announcing it would not implement the legislation. NSCLC won suit on behalf of a statewide class of residents and obtained an injunction requiring the state to implement the Nursing Home Reform Law.¹⁰

8. Getting Medical Equipment and Supplies Could Become Difficult

Medicaid requires states to provide durable medical equipment, such as oxygen and respiratory care equipment, wheelchairs and wheelchair batteries, orthotics, and prosthetics. Under a block grant, states could limit or completely refuse to cover these products.

One state seeking to cut costs offered beneficiaries wheelchairs without the expensive batteries needed to operate them, rendering the wheelchairs useless, but was prevented from implementing this cut due to Medicaid requirements.¹¹ In another case, a state ran afoul of Medicaid requirements when it refused to provide coverage for diapers to incontinent low-

9 *Koehler v. Colorado Dept. of Health Care Policy and Financing*, __ P. 3d __, 2010 WL 5248584 (Colo. App. Dec. 23, 2010).

10 *Valdivia v. California Dept. of Health Services* (E.D. Cal.)

11 *Lankford v. Sherman*, 451 F.3d 496 (8th Cir. 2006).



*income disabled adults who lived at home, forcing them to reuse diapers.*¹²

Conclusion

Deficit reduction should not increase poverty or inequality or hurt the disadvantaged. This principle was part of the President Obama's National Commission on Fiscal Responsibility and Reform and should be a guiding light in the budget debate.

If Medicaid ceases to provide meaningful assurance of access to health care for low-income older adults and persons with disabilities, then this principle will be violated. Experience has made it clear that if Medicaid is converted to a block grant, states will serve fewer people by restricting access and benefits. The health security of millions of the nation's most vulnerable citizens is at substantial risk if the Medicaid program is changed in this way.

While the current budget climate demands that leaders make smart fiscal decisions in solving deficit problems, taking health care away from America's most vulnerable older adults and people with disabilities is not the answer.

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.

¹² *Hiltibran v. Levy*, slip op., Case No. 10-4185-CV-C-NKL (C.D. Missouri Dec. 27, 2010).

