



October 20, 2020

To: 2020 Special Committee on Foster Care Oversight

From: Norma Volkmer, Fiscal Analyst

Re: Medicaid Eligibility of Foster Care Children

MEDICAID ELIGIBILITY OF FOSTER CARE CHILDREN

This memorandum reviews the means by which children and youth in foster care qualify for Medicaid, the extension of Medicaid eligibility to young adults who have aged out of the foster care system, and the availability of Medicaid waivers.

Categorical Eligibility of Children in Foster Care for Medicaid

Children and youth in foster care are generally eligible for and covered by Medicaid. Title IV-E of the federal Social Security Act (IV-E) is the most common pathway for children in foster care to qualify for Medicaid. IV-E provides categorical Medicaid eligibility to children and youth in foster care in three situations:

- Foster care maintenance payments. Children and youth in foster care whose caregivers receive foster care maintenance payments for their care are eligible for Medicaid in the state of residence, up to age 21. Additionally, if a youth eligible for Medicaid through IV-E is, or becomes, a parent, their child is eligible for Medicaid through IV-E in the state of residence. Eligibility must be determined individually if the State has placement and care responsibility for both the youth in foster care and their child. Foster care maintenance payments cover the daily living costs of children who meet the statutory requirements, including a judicial determination that reasonable efforts were made to prevent removal and that continued living in the home would be contrary to the welfare of the child.¹
- Guardianship assistance program (GAP) payments. Children and youth in foster care whose caregivers receive GAP payments for their care are eligible for Medicaid in the state of residence, up to age 21. Kansas does not have a GAP.
- Adoption assistance agreement. Children and youth covered by adoption assistance agreements are eligible for Medicaid in the state of residence, up to age 21. Adoption assistance agreements are available for children determined to

¹ See 45 CFR § 1356.21.

have certain conditions, such as a physical, developmental, or behavioral disability and who might otherwise not be adopted.

Children and youth in foster care not categorically eligible for Medicaid under IV-E may still qualify for Medicaid under the mandatory eligibility for children under age 19 clause. States are required to provide Medicaid coverage for children under the age of 19 whose household income is below 133.0 percent of the federal poverty level (FPL), or higher if set by the State. In some states, only the youth's income is considered when determining Medicaid eligibility for youth in foster care.

Kansas has set the following income limits: 171.0 percent of FPL for pregnant women and children younger than 1, 149.0 percent of FPL for children ages 1-5, and 113.0 percent of FPL for children ages 6-18. Children in foster care who are not eligible through IV-E, or those who have been adopted that have special needs, are also eligible for Medicaid in Kansas.

Medicaid Eligibility of Youth Aged Out of the Foster Care System

Young adults formerly in foster care can be covered under Medicaid. The Foster Care Independence Act of 1999 (PL 106-169), better known as the Chafee Option, authorized extending Medicaid coverage for youth who aged out of the foster care system, up to the age of 21. States can limit this eligibility to certain groups of former foster care youth and set additional requirements. Kansas implemented the Chafee Option in 2004 and limited eligibility to youth in the following situations on their 18th birthday: living in a foster home, relative or kin placement, group home, independent living, transitional living, secure care, a trial home visit, or AWOL or runaway status.² Youth apply using a tailored Medicaid form with the assistance of a caseworker.³ The Chafee Option is considered the last resort in Kansas-- the youth are required to first be screened for eligibility under other Medicaid groups. Kansas renews the coverage every year until the youth turns 21 or the youth or caseworker notes a change in status.

The Patient Protection and Affordable Care Act (ACA), PL 111-148, expanded upon the Chafee Option by extending health coverage to the age to 26 for any youth who were in the foster care system at age 18, even if that youth no longer qualifies under the Chafee Option. For example, if a youth aged out of foster care at age 18 but is now age 24, that youth would be eligible for Medicaid under the ACA expansion. Foster care, for the purposes of the ACA, is defined as "24-hour substitute care for children placed away from their parents or guardians and for whom the [state or tribal] agency has placement and care responsibility."⁴ The ACA requires this coverage regardless of the youth's income or the State's decision on Medicaid expansion. However, the majority of states, including Kansas, have interpreted this provision to require coverage only if the youth was in the foster care system in that state. Only 13 states have extended the coverage to all former foster children. The ACA supersedes the Chafee Option.

2 Michael R. Pergamit, Marla McDaniel, Vicki Chen, Embry Howell, and Amelia Hawkins, "Providing Medicaid to Youth Formerly in Foster Care Under the Chafee Option: Informing Implementation of the Affordable Care Act," November 2012, <https://aspe.hhs.gov/basic-report/providing-medicaid-youth-formerly-foster-care-under-chafee-option#Toc336500548>.

3 *Id.*

4 45 CFR § 1355.20.

Use of Medicaid Waivers by States for Foster Children

States use both the Social Security Act Section 1115 and 1915 waivers to provide children, both inside and outside the foster care system, with health services, including behavioral health services.

1115 Waivers

Section 1115 waivers can also be used to extend Medicaid coverage to low-income populations. KanCare is a 1115 waiver. Prior to the enactment of the ACA, 1115 waivers were generally used to extend coverage to childless adults. Currently, some states, such as Pennsylvania and South Dakota, use the 1115 waiver vehicle to provide coverage for former foster youth from another state.

1915 Waivers

The Section 1915(c) Home and Community Based Services (HCBS) waiver is not specific to foster care; however, a number of states use waivers of this kind to provide behavioral health services to children and youth in foster care. The HCBS waiver includes a variety of waivers for specific populations. For example, the Frail Elderly waiver program is available only to individuals older than 65 years of age.

Kansas has six HCBS waiver programs available to qualifying children. These waivers are administered by the Kansas Department for Aging and Disability Services.

Autism (AU) Waiver Program

The AU waiver provides support and training to the parents of eligible children. To be eligible, the child must:

- Be 0-5 years old;
- Be diagnosed with an Autism Spectrum Disorder, Asperger's Syndrome, or a Pervasive Developmental Disorder – Not Otherwise Specified;
- Meet the level of care eligibility score; and
- Be financially eligible for Medicaid.

This service is limited to three years, with a one-year extension if needed after a review process.⁵

Intellectual/Developmentally Disability (I/DD)

This program provides a variety of services, including overnight respite, adult day supports, and wellness monitoring. To be eligible for I/DD waiver services, an individual must meet the following criteria:

- Be at least 5 years old;

5 Kansas Department of Aging and Disability Services (KDADS), Autism (AU) Waiver Program, [https://kdads.ks.gov/commissions/home-community-based-services-\(hcbs\)/programs/autism](https://kdads.ks.gov/commissions/home-community-based-services-(hcbs)/programs/autism).

- Have a defined intellectual disability that began before age 18, or a diagnosis of a developmental disability that began before age 22 with substantial limitations, or be eligible for care in an Intermediate Care Facility for Individuals with Intellectual Disabilities;
- Be determined program-eligible by the Community Disability Determination Organization;
- Meet the Medicaid long-term care institutional threshold score;
- Be financially eligible for Medicaid.⁶

The waitlist in Kansas for this waiver is currently over 8 years long.⁷ Children in foster care can bypass the waitlist for non-supervisory, disability-related support needs. Additionally, children in crisis situations may bypass the waitlist in order to avoid coming into custody, provided there is necessary documentation from the Department for Children and Families or a court. Lastly, a child exiting custody may bypass the waitlist to meet an identified disability support need.

Physical Disability (PD)

The PD waiver provides several services, including assistive services, personal care services, and medication reminder services. To be eligible for a PD waiver, an individual must:

- Be 16-64 years old;
- Be determined disabled by the Social Security Administration;
- Need assistance to perform activities of daily living;
- Meet the Medicaid nursing facility threshold score;
- Not have been determined eligible for the I/DD waiver; and
- Be financially eligible for Medicaid.⁸

Serious Emotional Disturbance (SED)

The SED waiver provides support to children with a diagnosed mental health condition that substantially disrupts the child's ability to function socially, academically, and/or emotionally. The purpose is to provide special intensive services that allow the child to remain in their home and community. All services actively involve the parents and child in the planning. Services provided include independent living skills building, short-term respite care, and attendant care. To be eligible, a child must:

- Be 4-18 years old;
- Have a diagnosed mental health condition that substantially disrupts their ability to function socially, academically, and/or emotionally;
- Be at risk of inpatient psychiatric treatment;
- Meet the Child and Adolescent Functional Assessment Scale and Child Behavior Checklist threshold for eligibility; and

⁶ See KDADS, Intellectual/Developmental Disability Waiver Program, [https://kdads.ks.gov/commissions/home-community-based-services-\(hcbs\)/programs/i-dd](https://kdads.ks.gov/commissions/home-community-based-services-(hcbs)/programs/i-dd).

⁷ *Id.*

⁸ KDADS, Physical Disability (PD) Waiver Program, [https://kdads.ks.gov/commissions/home-community-based-services-\(hcbs\)/programs/physically-disabled](https://kdads.ks.gov/commissions/home-community-based-services-(hcbs)/programs/physically-disabled).

- Be financially eligible for Medicaid.

Under the current Kansas SED waiver, children and youth in foster care cannot access either the short-term respite care or professional resource family care services.⁹ Those services must be arranged by the foster care contractor in its contract with the State.

Technology Assisted (TA)

The TA waiver supports youth dependent on medical devices who require a level of care comparable to what is provided in a hospital setting. Services provided include home modification, intermittent intensive medical care, and medical respite. To be eligible, an individual must:

- Be 0-21 years old;
- Meet the HCBS TA program definition;
- Require one or more of the identified primary medical technologies and meet the minimum technology score for the specified age group;
- Meet the minimum nursing acuity level of care threshold for the specified age group; and
- Be financially eligible for Medicaid.¹⁰

When an individual with a TA waiver approaches the age of 22, the individual has the opportunity to transfer to a PD, I/DD, or Brain Injury waiver if they qualify.

Brain Injury (BI)

The BI waiver provides services focused on developing new skills or re-learning skills lost due to an acquired or traumatic brain injury. The individual's progress is reviewed every six months until they no longer need services or reach a plateau and are transferred to another waiver program. Brain injuries diagnosed as a chromosomal or congenital condition do not qualify for the BI waiver. If the brain injury occurs before age 22, the individual may be considered developmentally disabled and referred to the I/DD program.

Services offered under the BI waiver include assistive services, home-delivered meals, transitional living skills, and rehabilitation therapies, including behavior therapy, cognitive rehabilitation, physical therapy, speech-language therapy, and occupational therapy.¹¹ To be eligible for a BI waiver, an individual must:

- Be 0-64 years old;
- Be a resident of the State of Kansas;
- Be determined disabled or have a pending determination by the Social Security Administration;
- Be financially eligible for Medicaid;

9 Application for a § 1915(c) Home and Community-Based Services Waiver, April 1, 2017.

10 KDADS, Serious Emotional Disturbance (SED) Waiver Program, [https://kdads.ks.gov/commissions/home-community-based-services-\(hcbs\)/programs/sed-waiver](https://kdads.ks.gov/commissions/home-community-based-services-(hcbs)/programs/sed-waiver).

11 KDADS, Brain Injury (BI) Waiver Program, [https://kdads.ks.gov/commissions/home-community-based-services-\(hcbs\)/programs/tramatic-brain-injury](https://kdads.ks.gov/commissions/home-community-based-services-(hcbs)/programs/tramatic-brain-injury).

- Have a documented medical diagnosis of a traumatic brain injury or acquired brain injury, verified by an acceptable medical provider. Brain injuries due to chromosomal or congenital diagnoses do not qualify for the BI waiver. To be eligible under a BI diagnosis, the participant must meet the criteria for placement in a Traumatic Brain Injury Rehabilitation Facility. To qualify under a BI diagnosis for ages 4 years and older, the participant must meet the level of care required for hospital placement. For ages 0-3 years, the participant must submit current brain injury diagnostic and treatment recommendations from the treating physician;
- Have active habilitation or rehabilitation need for BI therapies; and
- Participants 4-64 years old must meet the level of care criteria based on the state-approved Medicaid Functional Eligibility Instrument completed by the Aging and Disability Resource Center.¹²

¹² *Id.*