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CENTER *for* HEALTH LAW *and* POLICY INNOVATION
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THE MEDICAID TUBERCULOSIS OPTION:

An Opportunity for Policy Reform

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Executive Summary

The Medicaid Tuberculosis (TB) Option allows states to provide certain services to individuals infected with TB who would not otherwise be eligible for Medicaid benefits. The eligibility requirements for the TB Option are typically tied to federal Supplemental Security Income (SSI) standards. In contrast, MassHealth eligibility is tied to the federal poverty level. As a result, the adoption of a TB program in Massachusetts would result in a slight expansion of coverage for TB services in the Commonwealth. Specifically, it would expand coverage of TB services to otherwise uninsured adults with incomes that fall between $1,355 and $1,551 per month.

Therefore, we recommend that Massachusetts consider adopting a TB program in order to maximize coverage options, while also maintaining its current non-Medicaid TB support systems in order to ensure that those residents who remain uninsured receive sufficient care.

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Medicaid TB Amendment

Congress created the Medicaid TB Option in 1993 as part of the Omnibus Budget Reconciliation Act of 1993.[1] The Amendment is codified at 42 U.S.C. § 1396a(z). States which establish TB programs under this Amendment may provide the following limited set of TB-related services to individuals who do not otherwise qualify for Medicaid benefits: prescribed drugs, physician services, laboratory and x-ray services, clinic services, federally-qualified health center services, case management services, and services other than room and board that are "designed to encourage completion of regimens of prescribed drugs by outpatients, including services to observe directly the intake of prescribed drugs."[2]

In order to qualify for these services, individuals must meet certain eligibility requirements related to their health, income, and resources. Specifically, under the language of the Amendment, states may only provide services under the TB Option to individuals:

(A) who are infected with tuberculosis;

(B) whose income (as determined under the State plan under this subchapter with respect to disabled individuals) does not exceed the maximum amount of income a disabled individual described in subsection (a)(10)(A)(i) of this section may have and obtain medical assistance under the plan;[3] and

(C) whose resources (as determined under the State plan under this subchapter with respect to disabled individuals) do not exceed the maximum amount of resources a disabled individual described in subsection (a)(10)(A)(i) of this section may have and obtain medical assistance under the plan.[4]

Federal Guidance Regarding Income Limits for the TB Option

The federal government has issued both proposed rules[5] and guidance[6] regarding how states should interpret the language above when establishing eligibility requirements for the TB Option. In proposed rules, published on September 10, 1999, the Department of Health and Human Services (HHS) suggested that the federal government require states to adopt income and resource standards based upon the SSI earned-income break-even point[7] (currently $1,551/month for an individual), and SSI resource limits (currently $2,000 for an individual)[8].[9] However, the proposed rules noted that states should be permitted to exercise their authority under § 1902(r) of the Social Security Act (42 U.S.C. § 1396a(r)(2)) to adopt more lenient standards, if they so choose.[10] HHS does not appear to have ever finalized these regulations.

The 2010 passage of the Affordable Care Act (ACA) then resulted in significant changes to Medicaid eligibility standards. As explained in proposed regulations published on January 22, 2013, HHS has interpreted a number of these changes to impact how states set eligibility standards for the TB Option.[11] Most importantly, the proposed rules state that the TB Option is subject to the modified adjusted gross income (MAGI) rules under 42 U.S.C. § 1396a(e)(14).[12] This interpretation impacts eligibility for TB programs in two key ways. First, it establishes that the rule against income disregards under 42 U.S.C. § 1396a(e)(14)(B) applies to the TB Option. Therefore, states developing TB programs after December 31, 2013 cannot use their authority under § 1902(r) of the Social Security Act to adopt more lenient standards (though more lenient programs implemented prior to January 1, 2014 are permitted to continue operating). Second, it establishes that states can no longer apply a resource test when determining eligibility for the TB program.[13]

Thus, based on current HHS interpretations of the original Amendment and ACA, states developing new TB programs must typically set income eligibility limits no higher than the SSI break-even point, and should not include a resource limit.[14] CMS guidance and administrative documents reinforce these interpretations. On January 16, 2011, CMS issued guidance regarding the TB Option. In this guidance and the attached SPA template, CMS adopted the SSI-based income standard.[15] Similarly, CMS's recently developed state plan amendment template indicates that programs developed after December 31, 2013 must set an income limit at or below the SSI break-even point.[16]

Since the introduction of the Medicaid TB Option, several states have established TB programs. A number of these states apply the SSI-based income and resource standards.[17] However, some states that established their programs prior to January 1, 2014 were able to use their authority under 42 U.S.C. § 1396a(r)(2) to establish more lenient standards. For example, Connecticut established a TB program—based on the model developed in Rhode Island—with no specific income or asset limitations.[18] Connecticut's program currently serves 109 beneficiaries.[19]

Massachusetts Medicaid Eligibility

MassHealth currently offers coverage for parents and other adults with incomes up to 133% of the federal poverty level (FPL) (138% with the 5% disregard).[20] Based upon this standard, all adults with incomes of up to $1,355 per month are eligible for MassHealth benefits.[21]

MassHealth has higher income cutoffs for certain classes of individuals. For pregnant women, the income cutoff is 200% FPL.[22] Uninsured adults who work for small employers and are ineligible for other MassHealth coverage can qualify for premium assistance from MassHealth with incomes up to 300% FPL.[23] HIV positive individuals qualify for MassHealth with incomes up to 200% FPL.[24]

Potential for TB Option to Increase Medicaid Coverage in Massachusetts

Based on current FPL and SSI benefit levels, Massachusetts could expand TB coverage in the Commonwealth by adopting a TB program. Specifically, parents and other adults with earned incomes of up to $1,551 per month would be eligible, as opposed to up to $1,355 per month under current MassHealth income cutoffs. This window could fluctuate from year to year, as Medicaid TB eligibility is tied to SSI federal benefit rates, while Medicaid eligibility tracks the federal poverty level.[25] Under such a program, the Medicaid TB Option would not increase access for populations that have higher income cutoffs for Medicaid, such as those living with HIV.

Therefore, while we recommend that Massachusetts consider adopting a TB program in order to maximize coverage options, we also encourage Massachusetts to maintain its current non-Medicaid TB support systems in order to ensure that those residents who do not qualify for Medicaid coverage under the existing rules or the TB Option continue to receive sufficient care.

Additionally, given that HHS has not yet issued final regulations regarding the application of the MAGI rules to the TB Option, we encourage Massachusetts policymakers—such as those at MassHealth—to explore whether HHS might reconsider its position regarding state authority to adopt more lenient standards. In the event that HHS alters its interpretation, we recommend that Massachusetts follow the example of states such as Connecticut which have used their authority under 42 U.S.C. § 1396a(r)(2) to adopt more lenient income standards. Under

such a program, Massachusetts could fully maximize the effective treatment of individuals infected with TB, thereby preventing further spread of the disease. Based upon the experience of Connecticut's Medicaid agency, the full elimination of income standards meets public health objectives, effectively leverages federal Medicaid resources, and is not prohibitively costly, given the low numbers of individuals infected with the disease who are not otherwise insured.

Process for Adopting the Medicaid TB Option

In order to implement the Medicaid TB Option, Massachusetts must complete a Medicaid State Plan Amendment (SPA). CMS recently developed a series of fillable pdf forms that can be used to submit certain SPAs. These forms are available at: https://wms-mmdl.cdsvdc.com/ MMDLDOC/mac.html. Based upon Medicaid state plan records, it appears that states seeking to add the TB Option to their Medicaid program should complete template form S55 and submit it to CMS for approval.[26]

The timeline for receiving approval for such an amendment will depend upon the rate of CMS review. However, documents related to South Carolina's recent adoption of the TB Option indicate that the review period lasted roughly three months (December 19, 2014 – March 10, 2015).[27]

Conclusion

The Medicaid TB Option provides states with the opportunity to broaden the availability of TB treatment by providing some individuals who would not otherwise qualify for Medicaid benefits with Medicaid coverage for TB-related services. We recommend that Massachusetts adopt the TB Option in order to further combat the public health impact of TB in the Commonwealth. In order to support and drive state adoption of the TB Option, Massachusetts policymakers should also consider engaging with community partners to further understand the needs of patients and providers as well as the importance and potential impact of this program.

About the Authors

The Center for Health Law and Policy Innovation of Harvard Law School (CHLPI) advocates for legal, regulatory, and policy reforms to improve the health of underserved populations, with a focus on the needs of low-income people living with chronic illnesses. CHLPI works with consumers, advocates, community-based organizations, health and social services professionals, food providers and producers, government officials, and others to expand access to high-quality healthcare and nutritious, affordable food; to reduce health disparities; to develop community advocacy capacity; and to promote more equitable and effective healthcare and food systems. CHLPI is a clinical teaching program of Harvard Law School and mentors students to become skilled, innovative, and thoughtful practitioners as well as leaders in health, public health, and food law and policy.

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Endnotes

1. Cindy Mann, *CMCS Informational Bulletin: State Option to Enroll Tuberculosis (TB) Infected Individuals into the Medicaid Program*, Center for Medicaid, CHIP and Survey & Certification, 1 (June 16, 2011), http://downloads.cms.gov/cmsgov/archived-downloads/CMCSBulletins/downloads/Info-Bulletin-TB.pdf.
2. 42 U.S.C.A. § 1396a(z)(2) (West). Note that the TB option does not allow states to provide these individuals with the full range of Medicaid benefits.
3. For states that automatically enroll SSI recipients in their Medicaid programs, this provision generally means that income may be no higher than that allowed for individuals under the Supplemental Security Income standards. Massachusetts automatically enrolls SSI recipients. 130 C.M.R. § 505.002(A)(2) (2015).
4. 42 U.S.C.A. § 1396a(z) (West).
5. 64 Fed. Reg. 49121-28.
6. Cindy Mann, *CMCS Informational Bulletin: State Option to Enroll Tuberculosis (TB) Infected Individuals into the Medicaid Program*, Center for Medicaid, CHIP and Survey & Certification, 1 (June 16, 2011), http://downloads.cms.gov/cmsgov/archived-downloads/CMCSBulletins/downloads/Info-Bulletin-TB.pdf.
7. The break-even point is calculated as: 2 x the SSI Federal Benefit Rate + $85. *See* 64 Fed. Reg. 49123. State supplemental payments are not factored into this calculation. *See* email from Gene Coffey, CMS, to Katie Garfield, CHLPI , dated June 24, 2015 (on file with CHLPI).
8. *2015 SSI and Spousal Impoverishment Standard*, Centers for Medicare & Medicaid Services (Jan 1, 2015), http://medicaid.gov/medicaid-chip-program-information/by-topics/eligibility/downloads/2015-ssi-and-spousal-impoverishment-standards.pdf.
9. 64 Fed. Reg. 49123.
10. 64 Fed. Reg. 49123. Section 1396a(r)(2) provides states with the option to apply more lenient income standards for optional categories of Medicaid beneficiaries than those described in federal laws and regulations.
11. *See* 78 Fed. Reg. 4609-10.
12. 78 Fed. Reg. 4610.
13. 42 U.S.C.A. § 1396a(e)(14)(C) (West).
14. *See* email from Mary Corddry, CMS, to Katie Garfield, CHLPI, dated June 24, 2015 (on file with CHLPI); email from Gene Coffey, CMS, to Katie Garfield, CHLPI, dated June 24, 2015 (on file with CHLPI).
15. Cindy Mann, *CMCS Informational Bulletin: State Option to Enroll Tuberculosis (TB) Infected Individuals into the Medicaid Program*, Center for Medicaid, CHIP and Survey & Certification, 1 (June 16, 2011), http://downloads.cms.gov/cmsgov/archived-downloads/CMCSBulletins/downloads/Info-Bulletin-TB.pdf. Note that this guidance also includes the SSI resource standard because it was published prior to January 1, 2014. Under CMS's current interpretation, the SSI resource standard no longer applies to the TB Option.
16. *See S55: Eligibility Groups – Options for Coverage: Individuals with Tuberculosis*, available at https://wms-mmdl.cdsvdc.com/

MMDLDOC/mac.html.

[17] *See e.g.*, *Wisconsin State Plan Amendment WI-13-021-MM1*, Centers for Medicare and Medicaid Services, available at http://www.medicaid.gov/state-resource-center/medicaid-state-plan-amendments/medicaid-state-plan-amendments.html (indicating that Wisconsin applies the SSI break-even income standard).

[18] *See Connecticut State Plan Amendment CT-14-0001MM1*, Centers for Medicare and Medicaid Services, available at http://www.medicaid.gov/state-resource-center/medicaid-state-plan-amendments/medicaid-state-plan-amendments.html; Email from Ellen Andrews, CT Health Policy Project, to Katie Garfield, CHLPI (June 23, 2015) (on file with CHLPI).

[19] Email from Ellen Andrews, CT Health Policy Project, to Katie Garfield, CHLPI (June 23, 2015) (on file with CHLPI).

[20] 130 C.M.R. § 505.002 (C)(1)(a); 130 C.M.R. § 505.008(A)(2)(c).

[21] *MassHealth & Other Health Programs: Upper Income Levels, March 1, 2015 to Feb 29, 2016*, Massachusetts Association of Councils on Aging, available at http://www.mcoaonline.com/sites/mcoa/files/file/file/2015_fpl_mlri_masshealth_income_chartapr7.pdf.

[22] 130 C.M.R. § 505.002(D)(1)(a).

[23] *Member Booklet*, Commonwealth of Massachusetts, Executive Office of Health and Human Services, 16 (Jan. 1, 2015), available at http://www.mass.gov/eohhs/docs/masshealth/membappforms/aca-1-english-mb.pdf.

[24] *Member Booklet*, Commonwealth of Massachusetts, Executive Office of Health and Human Services, 14 (Jan. 1, 2015) available at http://www.mass.gov/eohhs/docs/masshealth/membappforms/aca-1-english-mb.pdf.

[25] *SI 00810.350 Income Break-Even Points General Information*, Social Security Administration (Dec. 11, 2014), https://secure.ssa.gov/poms.nsf/lnx/0500810350.

[26] *See, e.g.¸ South Carolina State Plan Amendment SC-14-0004-MM1*, Centers for Medicare and Medicaid Services, available at http://www.medicaid.gov/state-resource-center/medicaid-state-plan-amendments/medicaid-state-plan-amendments.html (indicating that South Carolina submitted form S55 in order to enact an SPA to adopt the TB Option).

[27] *Approval Letter, South Carolina State Plan Amendment SC-14-0004-MM1*, Centers for Medicare and Medicaid Services, available at http://www.medicaid.gov/state-resource-center/medicaid-state-plan-amendments/medicaid-state-plan-amendments.html.