



150 State Street, Suite 301 Albany, New York 12207-1698 Telephone (518) 449-2707 Fax (518)455-8908 www.nyahsa.org

Preserving Long Term Care for the Long Term Future: A Report of the NYAHSA Medicaid Reform Task Force Briefing Paper

Introduction

Medicaid, the federal/state health insurance program for the poor, is the major public program covering long term care (LTC) services for elderly and disabled people. Medicaid is an amazing study in contrasts. It has been very successful in some basic respects—filling in gaping holes in Medicare LTC benefits, providing access to LTC for low-income individuals, and allowing flexible development of many programs and services. It has been an utter failure in other ways—focused on money rather than client-centered, inconsistently administered, too complicated, compartmentalized and hard to finance at the state/local levels.

Medicare and Social Security have been at the forefront of national debate, although Medicaid is now the single biggest government financed health care program. Why has Medicaid received far less national attention? This is due, in part, to the fact that Medicaid is a poorly understood program with bifurcated federal and state responsibilities. It is both a welfare program and a government insurance program covering a broad assortment of recipients and services.

Medicaid deserves more attention, if for no other reason than its emergence as the *de facto* LTC insurance program. New York's residents rely more on Medicaid than residents of other states to pay for LTC costs, making it a compelling issue for the state. In addition, New York is one of only a few states that requires local governments to contribute towards Medicaid costs, and local governments are rapidly exceeding their ability to do so. The financial pressure that Medicaid is creating at all levels of government may be the catalyst for broad based reform.

About the Report and the NYAHSA Task Force

P*reserving Long Term Care for the Long Term Future* reports the work of the New York Association of Homes and Services for the Aging (NYAHSA) Medicaid Reform Task Force. The report discusses relevant issues and provides recommendations on the subject of Medicaid reform in eight major areas: (1) Medicaid eligibility and private financing options; (2) system capacity/configuration; (3) information and coordination of covered services; (4) access to covered services; (5) payment for services; (6) state administration of Medicaid; (7) local administration of Medicaid; and (8) other federal issues.

The NYAHSA task force was charged with identifying ways to make New York's Medicaid program more efficient while providing quality LTC services. Over the course of several meetings, the fifteen-member task force developed a charge, agreed on Medicaid reform principles, identified 63 priority issues, and arrived at over 100 recommendations to state policymakers and six recommendations to federal policymakers to address these issues. The report also provides implementation details for each recommendation.

The potentially most far-reaching recommendations in the report involve:

- 1. Developing an overall state Medicaid policy, supported by agency business plans;**
- 2. Limiting the local government financial share of Medicaid costs;**
- 3. Having the state take over responsibility from local governments for Medicaid service authorization and eligibility determinations;**
- 4. Creating a uniform process with multiple points of entry into the LTC system to provide unbiased information on services, and help with screening and eligibility;**
- 5. Tightening Medicaid eligibility, improving estate recoveries, and increasing private funding through LTC insurance and a new “defined private contribution option.”**
- 6. Allowing nursing homes to voluntarily “rightsize,” and expanding home and community-based services (HCBS) capacity and the use of case management;**
- 7. Addressing inadequate Medicaid and SSI payments; and**
- 8. Making Medicaid a more proactive program focused on expanded primary care, preventative care and disease management.**

Overall, the report makes a compelling case for shaping Medicaid’s future growth by realizing savings through efficiencies, and using these savings to make cost effective investments in improved access to HCBS, intermediate care options, case management and technology.

Medicaid Eligibility and Private Financing Options

As a means-tested program, Medicaid requires applicants to demonstrate that they are impoverished. This is not an issue for people who are truly poor. However, it becomes a very real issue for people who have assets and income above the Medicaid thresholds. Many of these individuals are literally forced in one of two directions to qualify for Medicaid—to exhaust their resources paying out-of-pocket for their care, or to divest assets. Medicaid rules offer many legal strategies to become eligible without actual impoverishment through so-called “asset divestiture” or “estate planning.” There is ongoing debate about the extent of asset divestiture, although anecdotal evidence of this phenomenon is powerful. A few states are proposing significant steps to curtail asset divestiture activities.

Private LTC insurance holds potential as an under-utilized option for addressing the individual problem of catastrophic out-of-pocket costs and the societal challenge of rising public expenditures. The relatively low penetration of private LTC insurance has been attributed to: (1) denial of the risk of needing LTC; (2) lack of awareness about who pays for LTC and confusion about LTC insurance; (3) concerns about affordability of premiums; and (4) delayed purchase.

The Task Force’s recommendations on eligibility and private financing options focus on:

- Modifying eligibility rules to prevent spousal impoverishment of spouses of HCBS recipients;
- Strengthening Medicaid estate recoveries and rules surrounding transfers of real property;
- Streamlining eligibility determination processes;
- Aligning Medicaid and other programs with health coverage typically offered in the workplace;
- Developing a new defined private contribution option combining out-of-pocket spending with Medicaid re-insurance;
- Encouraging LTC insurance purchases through tax incentives; workplace initiatives; and a statewide public relations campaign.

System Capacity/Configuration

New York was one of the first states to institute a Certificate of Need (CON) program intended, among other things, to estimate the need for services and necessary system capacity. While CON stemmed the unlimited development of nursing home beds and other facility-based capacity, New York has a large infrastructure of nursing home services. The state was also an early leader in the development of HCBS through the Medicaid personal care option and federal waiver programs.

A number of key system capacity and configuration issues face the state today. Labor shortages and a trend towards fewer informal caregivers pose major challenges to the LTC system. The U.S. Supreme Court’s *Olmstead* decision raises serious questions about the availability of HCBS options. Senior housing, the ideal platform for delivery of supportive services, is in short supply. The existing transportation infrastructure is creating access problems for seniors.

The Task Force’s recommendations in the area of system capacity/configuration focus on:

- Allowing nursing homes to voluntarily “rightsize” their facilities by temporarily decertifying beds or permanently converting beds to other levels of care;
- Addressing the insufficient capacity of Medicaid-funded assisted living and HCBS access issues;
- Focusing on the availability of affordable, supportive housing as a service option;
- Fundamentally re-examine the state’s transportation systems;
- Encouraging the development of continuing care retirement communities, and managed LTC programs such as the Program of All Inclusive Care for the Elderly; and
- Addressing growing shortages of health care workers and informal caregivers.

Information and Coordination of Covered Services

The delivery of LTC and other health care services to seniors and other disabled individuals is oftentimes fragmented, disjointed and poorly coordinated. This stems from the many programs that currently exist, the lack of appropriate, centralized information, and patchwork efforts to coordinate care and services. It could be said that New York has built the programs, but not the LTC system they should be a part of.

The Task Force’s recommendations in this area focus on:

- Creating a uniform process with multiple points of entry into the system for providing unbiased information on LTC services, and help with screening and eligibility; and
- Focusing on programs that coordinate care, particularly for “dually eligible” individuals who are eligible for Medicare and Medicaid benefits.

Access to Covered Services

Together with quality and cost, access represents a vitally important “leg” of the three-legged stool representing the LTC service infrastructure. Access takes on an added significance in the context of Medicaid reform, since the biggest challenges most often involve individuals with limited financial means. As demand for LTC services grows in concert with impending demographic changes, access will become more pivotal for New Yorkers. In the immediate future, the meaning of “access” is being revisited in the wake of *Olmstead*. The state—in its role as administrator of Medicaid and several other programs for frail elderly and disabled individuals—can have a major effect on access to services, positively or negatively.

The Task Force's recommendations in the area of access to covered services focus on:

- Re-orienting Medicaid from a reactive to a more proactive program focused on expanded primary care, preventative care and disease management;
- Enabling providers, via regulations and payment, to deploy telemedicine and other technologies;
- Addressing rising drug costs by improving acquisition costs and utilization management; and
- Providing greater support to programs designed to help disabled people who have modest financial means to remain in their homes to receive care.

Payment for Services

Medicaid and Supplemental Security Income (SSI) are the predominant payors for LTC services in New York state and as such, greatly influence provider finances. Therefore, growing financial problems among nursing homes, adult care facilities (ACFs) and home care providers suggest serious problems with Medicaid and SSI payments. Providers have been a frequent target for payment reductions and slowdowns. Not surprisingly, provider cuts are viewed as more politically palatable than outright service reductions. In the end, the result is the unfortunately the same. Access to services is compromised by inadequate and untimely payments. Payment for services should instead be viewed as a means to an end, a powerful tool that can encourage development of a more efficient and effective LTC system.

The Task Force's recommendations in the area of payment for services focus on:

- Defining, articulating and implementing a reasonable Medicaid payment standard;
- Addressing rapidly increasing labor, drug and other operating costs;
- Providing short-term relief to assist financially troubled nursing homes;
- Convening a temporary commission to reform the nursing home reimbursement methodology;
- Enhancing SSI and Medicaid payments to ACFs; and
- Addressing cash flow difficulties attributable to Medicaid, including having the state take over responsibility for collecting Medicaid cost-sharing amounts from recipients.

State Administration of Program

Although the federal government establishes general Medicaid program guidelines, each state actually establishes its own eligibility requirements; determines the type, amount, duration, and scope of services offered; sets payment rates; ensures compliance with requirements; makes payments to providers; and otherwise administers its program.

The Task Force's recommendations in the area of state administration of program focus on:

- Articulating an overall Medicaid policy, and requiring business plans of relevant state agencies;
- Improving coordination within and among state agencies overseeing Medicaid services;
- Focusing the state's *Olmstead* response on the disabled elderly, in addition to younger people;
- Improving the data systems and technical assistance that support Medicaid eligibility determinations and payments for services; and
- Providing greater access to the wealth of data on service utilization, Medicaid payments, program enrollments and other indicators to a variety of stakeholders.

Local Administration of Program

Under state law, local social services districts—counties and New York City—bear major responsibilities under the state’s Medicaid program. First, they are generally responsible for furnishing Medicaid to individuals residing within their territories. Secondly, they are financially responsible for a portion of the non-federal share of Medicaid costs for services furnished to their residents. Finally, they authorize the amount, nature and manner of services provided for certain programs.

Of the twenty states that require local governments to contribute towards Medicaid costs, New York’s local share percentages are the highest. Local governments contribute 10 percent of LTC Medicaid costs, and 25 percent for other Medicaid services, or about 16 percent overall. Growing Medicaid costs are placing a crushing financial burden on local governments.

The Task Force’s recommendations in the area of local administration of program focus on:

- Placing rational limits on local Medicaid financial responsibility through a cap, gradual percentage reductions and/or swapping responsibility for certain programs;
- Having the state assume responsibility for Medicaid service authorization and eligibility determinations in concert with reductions in local financial obligations; and
- Ensuring consistency with state policies governing service authorization and timeliness of eligibility processing.

Other Federal Issues

As the principal architect of Medicaid and Medicare policy in the United States, the federal government can make or facilitate the most sweeping changes in these programs. While states have a certain degree of flexibility under Medicaid to determine eligibility, coverage and provider payments, significant authority still rests with the federal government.

The Task Force’s recommendations to federal policymakers focus on:

- Increasing the federal Medicaid contribution to New York and other states based on an improved formula that better measures demands on the Medicaid program;
- Assuming full responsibility for care and services for dually eligible individuals and expediting Medicare disability determinations;
- Giving states more flexibility to make Medicaid eligibility and other changes, reserving waivers for experimental demonstration programs;
- Eliminating the requirement for a prior three-day hospital stay to access Medicare covered nursing home and home care benefits; and
- Establishing Medicaid rate-setting standards in federal law ensuring adequate rates.

Conclusion

Efforts to reform Medicaid, which are desperately needed, must be predicated on realistic goals that balance the expectations of the program with its fiscal and programmatic underpinnings. Medicaid is repeatedly called upon to solve a variety of health care needs that no other public program or private sector program is prepared or willing to address.

It is unrealistic to assume that Medicaid cost growth can be avoided, that New York’s capacity to finance Medicaid costs will grow in tandem with Medicaid cost, or that there are any easy or magical solutions to growing Medicaid costs. The program provides essential services to the

frailest, poorest, oldest and most disabled individuals in society, and is affected by economic cycles, growing numbers of older persons, and unanticipated service needs. From a financial perspective, Medicaid reform efforts should focus on sustainable growth, optimizing use of available resources, public-private approaches and financing through a broad tax base.

Given the inevitability of growing program costs, Medicaid reform represents an opportunity to shape future program growth. Medicaid can and should be transformed from a rigidly defined, overly medical, institutionally biased, all-or-nothing program to a program that is more flexible, adaptable, proactive, coordinated and client centered. New York state cannot hope to fundamentally transform its Medicaid program without articulating a LTC policy and an overall Medicaid policy, since the two are inseparable.

There is an opportunity—a brief window—to act today to begin the process of Medicaid reform and take affirmative steps to ensure that our state's frail elderly and disabled citizens have a full range of LTC services available to them today and into the future.

NYAHSa represents over 650 providers of LTC services to over 500,000 elderly, disabled, and chronically-ill New Yorkers each year. NYAHSa's members are all not-for-profit—sponsored by religious, fraternal and community-based not-for-profit organizations or public—sponsored by state, county and municipal governments and public benefit corporations. NYAHSa members include nursing homes, home care agencies, adult care facilities, adult day care programs, assisted living facilities, senior housing facilities and retirement communities located throughout the state. If you have questions on this briefing paper or the full report, please contact Dan Heim at NYAHSa, (518) 449-2707 ext. 128, or via e-mail to dheim@nyahsa.org.

Doc ID #14212302