

## THE ACA: A WIN FOR KIDS

Signed into law on March 23, 2010, the ACA makes notable improvements to Medicaid and the Children's Health Insurance Program (CHIP) and ensures that millions of Americans will soon have access to affordable health coverage through Insurance Exchanges. While most of the provisions of the ACA do not take effect until January 1, 2014, the law has already delivered wins for kids. Among others improvements, the ACA blocks insurance companies from denying kids coverage when they need it most—even if they have a pre-existing condition, and helps more than 1 million young adults get the care they need through their parent's health plan.

Among the provisions that will take effect in 2014, the law includes several new requirements that are critical for foster children and other vulnerable youth. Most notably, it expands Medicaid coverage to former foster children up to age 26. To qualify, individuals must be under the responsibility of the state when they turn 18 (or older if the state's federal foster care assistance under title IV-E continues beyond that age). In order to enroll in or maintain Medicaid eligibility, these youth must have been enrolled in Medicaid while in foster care and have not yet reached the age of 26.<sup>1</sup>

## PROPOSED RULE FOR STRENGTHENING MEDICAID, THE CHILDREN'S HEALTH INSURANCE AND THE NEW HEALTH INSURANCE MARKETPLACE: IMPLICATIONS FOR MEDICAID COVERAGE FOR FORMER FOSTER YOUTH

On January 14, the Centers for Medicare and Medicaid Services (CMS) released a proposed rule<sup>2</sup> that outlines a structure and options for coordinating Medicaid, CHIP and the Exchange. The proposed rule clarifies a number of important provisions with respect to Medicaid eligibility and administration that are relevant for children in out-of-home placement and youth who have "aged-out" of foster care.

*This brief focuses on CMS' interpretation of Medicaid eligibility for former foster children under ACA Section 2004. A forthcoming brief will detail regulations impacting other ACA provisions relevant for youth in out-of-home care and former foster care youth.*

First Focus is pleased that CMS has clarified the statutory language with respect to eligibility for Medicaid for former foster care youth. Beginning in 2014, states *must* provide Medicaid coverage for individuals under age 26 who were in foster care at age 18 and receiving Medicaid. Consistent with this rule, youth are eligible for Medicaid if they:

- Are under age 26;
- Are not eligible for and enrolled in mandatory Medicaid coverage; and
- Were in foster care under the state's or tribe's responsibility and also enrolled in Medicaid under the state's Medicaid state plan or 1115 demonstration (or at state option were in foster care and Medicaid in any state rather than "the" state where the individual is now residing and applying for Medicaid) at age 18 or older if the state's federal foster care assistance under title IV-E continued beyond that age.

Accordingly, on January 1, 2014, *all* youth who turned 18 in foster care between 2007 and 2013 should be eligible for Medicaid. This translates to over 180,000 youth.<sup>3</sup> As drafted, the provision does not place any restrictions on *when* eligible youth turned 18. We interpret this to mean that so long as a youth has not yet turned 26 on the effective date of January 1, 2014, they must be eligible for Medicaid.

### Transition to Adulthood: Why Medicaid Matters

The transition to adulthood – marked by adolescence – is a challenging period in development when new social and biological experiences converge and propel youth into adult life. During this time, young adults begin to develop a sense of self, forge a unique path, make career decisions, exercise independence and take on new challenges. A significant percentage of foster youth - 12% to 36% - experience homelessness, having few resources to turn to in order to secure adequate housing upon leaving foster care, and the few federal programs that include transitioning youth are severely under-funded.

Each year, over 26,000 youth age out of the child welfare system, meaning they no longer qualify for foster care services and are left without the supports needed to successfully transition to independent adult life.<sup>4</sup> As a result, too many teens end up homeless or in unstable housing situations, and do not attain high school or postsecondary degrees. For the majority of youth in foster care, a number of services, including foster care itself, as well as health care and housing abruptly end when a teen turns 18.

The range of services and supports available to children who age out of the foster care system varies considerably from state to state. Most teens aging out of care receive minimal services, and feel abandoned at a time when they are in desperate need of critical guidance and support. Statistics show a very negative outlook for these youth. One in four will be incarcerated within the first two years after leaving the child welfare system, and over one-fifth will become homeless at some point.<sup>5</sup> These teens are also more likely to experience serious mental health problems and to be involved in the juvenile justice system.

Under current law, The Foster Care Independence Act of 1999 (P.L. 106-169) gives states the option to extend Medicaid coverage to youth who have aged out of the foster care system up to age 21. The so-called Chafee option, enacted through P.L. 106-169, allows states to extend Medicaid coverage to former foster children ages 18 to 21, but not enough states have done so. While a number of states have moved to extend their Medicaid coverage using the Chafee option, others have used several alternative programs to provide health coverage for youth aging out of the foster care system.

For instance, several states have utilized Section 1115 waivers under the Medicaid program to extend care, while others offer former foster youth the opportunity to qualify for additional benefits if they remain in care or in an educational setting. Unfortunately, there is considerable variability in access across programs, and restrictions on eligibility. In addition, a number of states only extend coverage for youth to age 19. As a result, the majority of foster care youth receiving health care through Medicaid lose this coverage once they age out of care. In fact, the Midwest Evaluation of the Adult Functioning of Former Foster Youth Study, conducted in 2007 by the Chapin Hall Center for Children at the University of Chicago, found that only half of young adults surveyed, reported having medical insurance, and even fewer – only 39 percent – had dental insurance. A significant number of youth reported not having received medical care in the past year, and cited a lack of insurance as the primary reason for not accessing care.<sup>6</sup>

Importantly, former foster youth will be eligible for *full* Medicaid benefits and not the Alternative Benefit Plan.<sup>78</sup> As such, they will have access to benefits that include Early, Periodic, Screening, Diagnosis and Treatment (EPSDT) services, such as screening, preventative and early intervention services, diagnostic services and treatment for physical and mental health conditions (both acute and chronic). In addition, coverage includes dental and vision care, and durable medical equipment for children with disabilities.

We are however, concerned that the proposed rule interprets the requirement as meaning that a youth is only eligible for Medicaid coverage in the *same* state in which he or she was in foster care at age 18 and enrolled in Medicaid. While CMS gives states the option to cover youth under this group who were in foster care and Medicaid in any *state* at the relevant point in time, *it does not require that they do so*. We have grave concerns about this interpretation. Former foster youth are an especially vulnerable and highly mobile population. In fact, a number of studies have found that former foster youth report moving several times soon after leaving care.<sup>910</sup> These youth also experience more mobility than their peers.<sup>1112</sup> Former foster youth should be eligible for Medicaid coverage in any state, and once enrolled, should be able to retain their coverage irrespective of changes in state of residence.

## Affordable Care Act (ACA) Coverage for Youth Aging Out of Foster Care

Looking ahead, it is critical that states employ effective strategies to ensure that former foster youth are identified and enrolled in Medicaid, and that their coverage is maintained until they turn 26. These include:

- Utilizing information technology systems that provide simplified, automatic enrollment and continuous coverage for all who are Medicaid eligible;
- Utilizing a “no wrong door” approach to coverage that allows for one-stop, consumer-friendly enrollment and reenrollment systems to ensure that former foster youth seeking coverage are screened and processed through to enrollment without requiring additional application forms or multiple eligibility determinations;
- Utilizing strategies including public information campaigns to spread the word about eligibility for Medicaid to foster care alumni, partnering with foster care alumni or other youth serving organizations to develop strategies to identify and enroll former foster youth in Medicaid, and developing application materials and informing those who are responsible for helping individuals enroll in Medicaid about the importance of asking about an applicant’s foster care status during the enrollment process; and,
- Ensuring seamless coverage for youth across states; youth should be eligible for Medicaid in any state and retain coverage until age 26 - irrespective of changes in state of residence.

### SUMMARY

The ACA provides crucial opportunities to improve health care for vulnerable children and families involved with the child welfare system. The expansion of Medicaid to cover youth previously in foster care to age 26 is a significant victory for this population. One of the most popular parts of health reform is coverage for kids up to age 26 on their parents’ insurance plan. This rule has the potential to provide equal treatment in cases where the state steps in to care for children removed from the home as a result of abuse or neglect.

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<sup>1</sup> Income does not factor into eligibility for this Medicaid category and the Supreme Court decision which makes Medicaid expansion for adults up to 133 percent of the federal poverty level optional for states does not impact this requirement.

<sup>2</sup> 42 CFR Parts 430, 431, 433, 435, 440, 447, and 457; 45 CFR Part 155; [CMS-2334-P]; RIN 0938-AR04.

<sup>3</sup> In 2011, 26,286 children who were not reunified or adopted aged out of foster care. Therefore, on January 1, 2014, all those who turned 18 in foster care from 2007 to 2013 would be eligible for Medicaid under this provision, or approximately 182,000 youths.

<sup>4</sup> U.S. Department of Health and Human Services, Administration for Children and Families (2012). *2011 Adoption and Foster Care Analysis and Reporting System (AFCARS)*.

<sup>5</sup> *Time for Reform: Aging out and on their own. More teens leaving foster care without a permanent family* (2007). The Pew Charitable Trusts.

<sup>6</sup> *Ibid*, 3.

<sup>7</sup> Previously referred to as Medicaid benchmark benefit coverage options.

<sup>8</sup> State Medicaid programs have the option of extending coverage through Social Security Act Section 1937 Medicaid benchmark or benchmark equivalent plans (known as Alternative Benefit Plans). In accordance with the ACA, any Alternative Benefit Plan must cover EHB. Section 1302(b) of the Affordable Care Act directs the Secretary of Health and Human Services to define essential health benefits (EHB). Section 1302(b)(1) provides that EHB include items and services within the following 10 benefit categories: (1) ambulatory patient services, (2) emergency services (3) hospitalization, (4) maternity and newborn care, (5) mental health and substance use disorder services, including behavioral health treatment, (6) prescription drugs, (7) rehabilitative and habilitative services and devices, (8) laboratory services, (9) preventive and wellness services and chronic disease management, and (10) pediatric services, including oral and vision care. See <http://nasadad.org/wp-content/uploads/2012/07/CMS-Letter-to-Medicaid-Directors-on-ABP.pdf> for CMS memo on Essential Health Benefits in the Medicaid Program.

<sup>9</sup> Dworsky, A., and Courtney, M. (2009). *Homelessness and the transition from foster care to adulthood among 19 year old former foster youth*. Child Welfare, vol. 88, no. 4, pp. 23-56.

<sup>10</sup> Reilly, T. (2003). *Transition from Care: Status and Outcomes of Youth Who Age Out of Foster Care*. Child Welfare, vol. 82, no. 6, pp. 727-46.

<sup>11</sup> Courtney, M.E., Dworsky, A., Cusick, G.R., Havlicek, J., Perez, A., and Keller, T. (2007). *Midwest evaluation of the adult functioning of former foster youth: Outcomes at age 21*. Chicago: Chapin Hall Center for Children at the University of Chicago.

<sup>12</sup> Courtney, M., Dworsky, A., Lee, J.S., Rapp, M. (2010). *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 23 and 24*. Chicago, IL: Chapin Hall at the University of Chicago.