

## 2010 AAICAMA Training

# *Medicaid Eligibility*

- ◆ Providing Medicaid to Title IV-E Recipients
- ◆ Providing Medicaid to State-Funded Adoption Assistance Recipients
- ◆ Frequently Asked Questions



Medicaid and Title IV-E

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## Making Medicaid Happen: Title XIX for Title IV-E

Sharon McCartney, JD

The Association of Administrators of the  
Interstate Compact on Adoption and Medical Assistance (AAICAMA)

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Medicaid Presentation Points

- Medical assistance and placement success-  
data and statistics
- Medicaid - facts, eligibility, supremacy of  
federal law, residency (RTFs)
- Medicaid services - types, limitations, EPSDT
- Receiving Medicaid services - differences  
between title IV-E populations; ICAMA
- Questions and Answers
- Open discussion - State practice

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Question

- *How important is the receipt of  
Medicaid to the title IV-E population?*

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## Data and Statistics

Quote: *"Most of the children who enter foster care have been exposed to conditions that undermine their chances for healthy development. Research indicates that children and youth in foster care are in worse health than those who are homeless or those living in the poorest sections of our inner cities. They have a higher likelihood of chronic medical problems, lifelong psychiatric and behavioral issues, as well as permanent physical, cognitive and developmental disabilities than children in the general population."*

*A Case for Action for Children and Youth with Disabilities in Foster Care, A Project of United Cerebral Palsy and Children's Rights, 2006 (Multiple citations)*

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## Data and Statistics

Quote: *"Whether they experience maltreatment that results in disabilities, or are victims of maltreatment because of their disabilities, children who enter foster care with special needs, on average, already have experienced more than 14 different environmental, social, biological and psychological risk factors before coming into care."*

*A Case for Action for Children and Youth with Disabilities in Foster Care, A Project of United Cerebral Palsy and Children's Rights, 2006 (Multiple citations)*

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## Data and Statistics

Quote: *"While there have not been systematic national studies of the prevalence of disability among children in foster care, individual studies in various states and localities have highlighted a range of potential challenges. These studies have found the following:*

- 40% born low birth weight or premature
- 80% prenatally exposed to substances
- 30-80% with at least one chronic medical condition [e.g. asthma, HIV, TB]
- 30-50% with dental decay
- 25% with three or more chronic health problems
- 30-60% with developmental delays
- 50-80% with mental and behavioral health problems
- 20% fully handicapped
- 30-40% receiving special education services."

*A Case for Action for Children and Youth with Disabilities in Foster Care, A Project of United Cerebral Palsy and Children's Rights, 2006 (Multiple citations)*

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## Questions

- *What is Medicaid?*
- *How are title IV-E eligible children eligible to receive Medicaid?*
- *Federal law and the right to receive Medicaid - can state policy affect the receipt of Medicaid?*

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## Medicaid Facts

- Medicaid was established in 1965
- Medicaid is a partnership between the federal government and the states- jointly funded (FMAP), operated by the states, and overseen by the Centers for Medicare & Medicaid Services (CMS)
- Medicaid is a major source of funding for medical and health-related services for limited income families and individuals

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## Medicaid Eligibility

- Medicaid eligibility is by 'category'. Different programs fall into different Medicaid categories of eligibility.
- Title IV-E eligible children are referred to as 'categorically eligible' to receive Medicaid as 'mandatory categorically needy'.

*Citations:* The federal law on this subject can be found in the United States Code (U.S.C.), the Social Security Act (SSA), and the Code of Federal Regulations (C.F.R.) at the following citations:

- 42 U.S.C. 673(b)(1) [found also at Section 473(b)(1) of the SSA]
- 42 U.S.C. 1396a(10)(A)(i)(I) [found also at Section 1902a(10)(A)(i)(I) of the SSA]
- 42 C.F.R. 435.145

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## Medicaid Eligibility

**Federal law:**

- 'For purposes of subchapter title XIX of this chapter, any child who is described...*(as a federal adoption assistance recipient)* is deemed to be a dependent child as defined in section 606 of this title (as in effect as of July 16, 1996) and deemed to be a recipient of Aid to Families with Dependent Children... in the state where such child resides.'

*Cite: 42 U.S.C. 673 (b)(1) for adoption assistance and 42 U.S.C. 672 (h)(1) for foster care*

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## Medicaid and IV-E Payments

**More on the federal law:**

(b)(1) For purposes of title XIX, any child who is described in paragraph (3) is deemed to be a dependent child as defined in section 406 (as in effect as of July 16, 1996) and deemed to be a recipient of Aid to Families with Dependent Children under part A of this title (as so in effect) in the State where such child resides.

(2) For purposes of title XX, any child who is described in paragraph (3) is deemed to be a minor child in a needy family under a State program funded under part A of this title and deemed to be a recipient of assistance under such part.

*Cite: 42 U.S.C. 673(3)(A)(B)and (C)*

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## Medicaid and IV-E Payments

**More on the federal law (cont'd):**

(3) A child described in this paragraph is any child—

- (A) (i) who is a child described in subsection (a)(2), and
- (ii) with respect to whom an adoption assistance agreement is in effect under this section (whether or not adoption assistance payments are provided under the agreement or are being made under this section), including any such child who has been placed for adoption in accordance with applicable State and local law (whether or not an interlocutory or other judicial decree of adoption has been issued),
- (B) with respect to whom foster care maintenance payments are being made under section 472, or
- (C) with respect to whom kinship guardianship assistance payments are being made pursuant to subsection (d).

*Cite: 42 U.S.C. 673(3)(A)(B)and (C)*

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## Categorical Eligibility

*The effect of the federal law:*

- The AFDC look-back provision to title IV-E means title IV-E eligible children are treated like AFDC eligible children were for the purposes of Medicaid eligibility- automatically eligible.

*Note: This remains true after P.L. 110-351, Fostering Connections to Success and Increasing Adoptions Act of 2008.*

- States must provide Medicaid to title IV-E eligible children for whom foster care maintenance payments are made, a valid adoption assistance agreement exists, or a subsidized guardianship under an active title IV-E waiver or subsidized relative guardianship exists for which assistance payments are made.

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## Frequently Asked Questions

- Is a child Medicaid-eligible if the AA agreement includes a zero maintenance payment?
- Do FC and GAP payments have to be made in order to receive Medicaid?
- Does a child become ineligible for title IV-E or Medicaid if placed in an unlicensed foster care home?

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## Medicaid Eligibility & the Constitution

- The Constitution of the United States is supreme over all other law. \*
- This principle is known as 'Federal Supremacy' and its origin is found in the Supremacy Clause of the U.S. Constitution.

*Cite: The U.S. Const. art. VI, cl. 2.*

*\* Congress can legislate otherwise*

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## Eligibility & Federal Supremacy

*The effect of the federal law:*

- Federal law trumps state law, policy, and practice. The receipt of Medicaid by otherwise eligible children cannot be delayed or denied due to state law, policy, or practice.

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## Questions

- *Which state is responsible for the provision of Medicaid for title IV-E eligible children in interstate cases?*
- *Which state is responsible for Medicaid when the child is in a Residential Treatment Facility (RTF/RTC)?*

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## Medicaid & Residency

- *State of residence.* Medicaid is received through a child's state of residence.

*Cite: 42 C.F.R. 435.403 (g)*

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## Residency

*The effect of the federal law:*

- For children receiving title IV-E, the state of residence is defined as the state where the child "lives". The physical presence of a title IV-E eligible child in a state usually \* triggers state responsibility for the provision of Medicaid to the child.

\* *Temporary absences from the state*

*Cite: 42 U.S.C. 1392a (16)*

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## Residency

- Further clarifications: The state of residence is required to provide Medicaid to children receiving title IV-E, *even if it is not the state making the title IV-E payment.*

*Cite: 42 U.S.C. 673 (b)(1) or Section 473 (b)(1) of the Social Security Act*

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## Residency

*The effect of the federal law:*

- Residence is the controlling factor in determining responsibility for the provision of Medicaid.
- Title IV-E foster care and guardian assistance: State of residence provides Medicaid, however, maintenance payments must be made in order for the child to be eligible to receive Medicaid.
- Title IV-E adoption assistance: State of residence provides Medicaid, however, maintenance payments do not have to be made for a child to be eligible to receive Medicaid.

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## Residency & RTFs

- The CMS defines 'living' to include a stay in a Residential Treatment Facility (RTF/RTC).
- The state in which the RTF is located is responsible for the provision of Medicaid to title IV-E eligible children for the length of their treatment.

Note: The same applies for schools and in-patient care.

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## Questions

- *Is there any limit to what states must provide under Medicaid?*
- *What Medicaid services must states provide?*
- *What Medicaid services can states elect to provide?*
- *How can a placement professional secure a Medicaid service for a title IV-E eligible child if the service is not covered in the resident state's State Medicaid Plan?*

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## Medicaid Services

- There are two broad categories of Medicaid services:
  - Mandatory services
  - Optional services

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### Mandatory Services

- Physician services
- In-patient and out patient hospital
- Medical and surgical dental
- EPSDT
- Laboratory and x-ray
- Family planning services and supplies
- Rural health clinic services

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### Optional Services

- Optometrists' Services
- Psychologists' Services
- Private Duty Nursing
- Clinic Services
- Dental Services
- Occupational Therapy
- Speech, Hearing and Language Therapy
- Prescription Drugs
- Eyeglasses
- Diagnostic Services
- Screening Services
- Preventive Services
- Rehabilitative Services
- Emergency Hospital Services
- Nursing Facilities Services for Under Age 21

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### Medicaid Coverage

- There are limits to state responsibility for the provision of Medicaid.

*Cite: 42 U.S.C. 1396a (Social Security Act, Section 1902) and 42 U.S.C. 1396d (Social Security Act, Section 1905)*

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## Medicaid Coverage

*The effect of the federal law:*

- States must provide Medicaid to eligible children through age 18 and states must include federally defined "mandatory" Medicaid services in the State Medicaid Plan.
- States can choose to provide certain programs up to the age of 21 for children in eligible categories\* and decide which optional services they wish to include in the State Medicaid Plan.

\* Note: States must provide Medicaid to title IV-E recipients under the age of 21.

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## EPSDT

- EPSDT: Early and Periodic Screening, Diagnostic and Treatment Services
- Provides: Preventive, comprehensive health services for Medicaid-eligible under age 21 *as a mandatory Medicaid service*
- Created: In recognition of the fact that children have unique medical needs and cannot be treated as 'little adults'

*Cite: 42 U.S.C. 1396d (Section 1905(r) of the SSA)*

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## EPSDT

*The effect of the federal law:*

- States must provide medically necessary treatment detected through a health screen or otherwise "whether or not such services are covered under the state plan".

*Cite: 42 U.S.C. 1396d*

Note: This obligation is limited to mandatory and optional services potentially covered by Medicaid. States must also make necessary exceptions to across-the-board limits in amount, duration, and scope of covered services.

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## EPSDT

- **Early** - Assessing a child's health early in life so potential diseases and disabilities can be prevented or detected in the early stages when they can be most effectively treated.
- **Periodic** - Assessing a child's health at key points in her/his life to assure continued healthy development.
- **Screening** - Using tests and procedures to determine if children being examined have conditions requiring closer medical (including mental health) or dental attention.
- **Diagnostic** - Determining the nature and cause of conditions identified by screenings and those that require further attention.
- **Treatment** - Providing services needed to control, correct, or reduce physical and mental health problems.

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## Securing Medicaid Services

- EPSDT provides a mechanism for children to receive **MEDICALLY NECESSARY** services under Medicaid, even if not included in a state's Medicaid Plan.
- EPSDT may provide an avenue for securing services when the State Plan of the resident state does not provide a necessary service and/or provides different coverage than was available through a previous state of residence.

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## Questions

- *Are title IV-E eligible children guaranteed Medicaid receipt in interstate cases?*
- *What is the process for title IV-E eligible children to receive Medicaid in an interstate case?*

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## Receiving Medicaid Services

- Title IV-E Adoption Assistance
- The ICAMA: The Interstate Compact on Adoption and Medical Assistance
- ICAMA Form 6.01

*Cite: 42 U.S.C. 675 (3)(B)*

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## Receiving Medicaid Services

*The effect of the federal law:*

- Federal law directs states to protect the interests of special needs adopted children in interstate cases.
- This protection has come to be the ICAMA. The mechanisms of ICAMA ensure the interstate receipt of Medicaid in the new state of residence for title IV-E adoption assistance eligible children.

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## Receiving Medicaid Services

The adoption assistance agreement:

- Is a contract between the adoption assistance state and the adoptive family
- Obligates the adoption assistance state to the payments, services, and assistance terms of the agreement

*Cite: 42 U.S.C. 675 (3) (Section 475 of the SSA)*

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## Receiving Medicaid Services

*The effect of the federal law:*

- The language used in the adoption assistance agreement is important in determining state Medicaid responsibility if the State Medicaid Plan in a new state of residence does not include a needed service and/or the same Medicaid services as were available through a previous state of residence.

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## Receiving Medicaid Services

Making it happen.

- Questions and Answers. States are free to ask questions and share answers.
- Open discussion: States will share their practice and procedures for interstate Medicaid receipt for the title IV-E adoption assistance.

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## Questions and Answers for Basic Learning: Medicaid for Title IV-E Adoption Assistance

Note: The following questions all relate to Medicaid (title XIX) eligibility and receipt of services for children who are eligible for title IV-E adoption assistance.

### 1. What is Medicaid?

**Answer:** Medicaid is a health service program. It is publicly supported health insurance and is available in all states, the District of Columbia and the Territories. Medicaid pays for medical assistance for eligible individuals and families with low incomes and limited resources. Medicaid is a Federal-state partnership, both financial and administrative. The program is implemented by the states and overseen by the Federal government through the Centers for Medicare and Medicaid Services (CMS), an agency under the U.S. Department of Health and Human Services (HHS). Medicaid provides medical care assistance to people who meet certain eligibility criteria and is the major source of funding for medical and health-related services for people with limited income in the United States.

### 2. Where can I get information on the Medicaid program?

**Answer:** 'The' Medicaid program is actually many programs. Every state, the District of Columbia and the Territories have a Medicaid program and all states currently have a website dedicated to the state Medicaid program. There are similarities and differences across Medicaid programs. Check the state's website or webpage dedicated to the state medical assistance program for specifics on a state's Medicaid services and coverage or contact the state Medicaid agency directly.

The Federal agency that oversees the Medicaid program, the Centers for Medicare and Medicaid Services (CMS), also has a website that provides extensive information on the Medicaid, Medicare, and State Health Insurance Programs (SCHIP). The CMS website is maintained by the Federal government and contains information on a wide range of topics related to the Medicaid program in general and state-specific information found in State Medicaid Manuals. See links below to the CMS website.

**Note:** Medicaid is sometimes referred to by different names. There are state-specific names, such as Medi-Cal in California and TennCare in Tennessee. Regardless of the various names, the programs are still Medicaid and are governed by Federal Medicaid law and regulations.

**Web tip:** Some state Medicaid programs are housed within the state's social services agency, such as the Department of Family and Children's Services or the Department of Human Resources. Other state Medicaid departments are separate from social services and are part of a

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state medical agency. Search with the word 'Medicaid' and the name of your state to link to the website or web page dedicated to Medicaid information in your state.

CMS link: <http://www.cms.hhs.gov/> (CMS homepage)

### 3. Are all types of medical services available under Medicaid?

**Answer:** No, every type of medical service is not available under the federal Medicaid service guidelines. Medicaid services are either *mandatory* (required by the federal government) or *optional* (chosen by the individual state). The federal government requires that states provide mandatory services to Medicaid-eligible individuals considered to be residing in the state. The following are examples of *mandatory services* most often used by children receiving adoption assistance:

- ❖ Inpatient and outpatient hospital services
- ❖ Physician services
- ❖ Medical and surgical dental services
- ❖ Home health care for persons eligible for nursing facility services
- ❖ Rural health clinic services and any other ambulatory services chosen by your State that are offered by a rural health clinic
- ❖ Laboratory and x-ray services
- ❖ Pediatric and family nurse practitioner services
- ❖ Federally-qualified health center services and any other ambulatory services chosen by your State that are offered by a Federally-qualified health center
- ❖ Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services for individuals under age 21

The federal government does not require optional services. Each state chooses whether and which services to provide in the optional category to Medicaid eligible individuals. There is a Federal listing of optional services states may provide and not all medical services, procedures, or therapies are included in this list. The *optional services* under the Medicaid program most often used by children receiving adoption assistance include:

- ❖ Mental health
- ❖ Speech, physical, occupational, behavioral therapy
- ❖ Prescription drugs
- ❖ Optometry and eyeglasses
- ❖ Dental services (general)
- ❖ Clinic services
- ❖ Nursing facility services for those under age 21
- ❖ Intermediate care facility
- ❖ Services for those who are categorized as 'mentally retarded'

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#### **4. Can Medicaid be received outside the United States?**

**Answer:** Yes, Medicaid can be received outside the United States. Medicaid can be received in U.S. territories. There are Medicaid programs in Guam, Puerto Rico, the (American) Virgin Islands, the Northern Mariana Islands, and American Samoa. Note: There are no Medicaid programs in Mexico or Canada.

Cite: *42 CFR §§435-436.*

#### **5. Are title IV-E adoption assistance recipients eligible for Medicaid?**

**Answer:** Yes, title IV-e adoption assistance recipients are Medicaid eligible. In fact, it is mandatory for children to receive Medicaid if they are eligible for title IV-E adoption assistance. Individuals eligible for title IV-E are in a Medicaid eligibility group known as 'mandatory categorically needy'. This means that their receipt of Medicaid is automatic by virtue of their eligibility for title IV-E. A separate Medicaid application is unnecessary, and precluded by law.

#### **6. Are title IV-E adoption assistance recipients eligible for Medicaid in all states?**

**Answer:** Yes, children receiving title IV-E adoption assistance are eligible to receive Medicaid in all states in which they live. Title IV-E eligible children are considered to be living in the state in which they are physically present- even if their presence is due to a placement in residential treatment or attendance in an out-of-state boarding school.

#### **7. What is a 'Medicaid eligibility group'?**

**Answer:** There are three broad Medicaid eligibility groups: 'categorically needy', 'medically needy', and 'special group'. Children eligible for title IV-E adoption assistance are in the 'categorically needy' group as defined by Medicaid. Title IV-E adoption assistance is the category and children receiving Title IV-E adoption assistance are considered 'categorically eligible' for Medicaid. This means that receipt of Medicaid is automatic and continues as long as a child remains eligible for title IV-E adoption assistance, i.e. in the mandatory categorically needy Medicaid category of title IV-E.

#### **8. Must a title IV-E adoption assistance recipient permanently live in a state to receive Medicaid from the state?**

**Answer:** No, a title IV-E recipient does not necessarily have to have a permanent residence in a state to receive Medicaid from the state.

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Medicaid is generally received through an individual's state of residence. It is important to know which state is considered a child's state of residence in order to determine which state is responsible for the provision of Medicaid. The term 'residency' is a legal term and is uniquely defined for title IV-E recipients.

For children receiving Federal payments for adoption assistance under title IV-E, the state of residence is defined as the state 'where the child *lives*'. Where a child lives is where they are physically located. This can be their resident state, or an interstate placement, such as a residential treatment facility, boarding school, or in-patient care. The child is eligible to receive Medicaid from the state in which the school or facility is located for the time period that the child receives treatment or attends school.

*Cite: 42 CFR §435.403 (g).*

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**Questions and Answers for Advanced Learning:  
Medicaid for Title IV-E Adoption Assistance**

Note: The following questions all relate to Medicaid (title XIX) eligibility and receipt of services for children who are eligible for title IV-E adoption assistance.

- 1. Which state is responsible for providing Medicaid when a title IV-E adoption assistance eligible child is placed in a Residential Treatment Facility (RTF) outside the state in which they usually reside?**

**Answer:** Federal law states that title IV-E adoption assistance eligible children are eligible to receive Medicaid from the state in which they *live*. Where a child lives can be different than where they reside. Residence is a legal term that is used to describe a physical presence in the state and intent to stay in the state. Under title IV-E law, title IV-E eligible children have a different definition of ‘resident’, requiring only a physical presence. A child is considered to be living in the RTF during their treatment period and, therefore, the state in which the RTF is located is required to provide Medicaid to the child during their stay.

Note: This answer also applies to residential educational placements and in-patient care out-of-state.

*Cite: 42 U.S.C. §§ 673 (b)(1) and 1396a(10)(A)(i)(I); 42 C.F.R. §§ 435.145, 435.403(g).*

- 2. Is it necessary for an adoption assistance maintenance payment to be made on behalf of a title IV-E adoption assistance eligible child in order for the child to receive Medicaid?**

**Answer:** No, it is not necessary for a child to receive a title IV-E adoption assistance maintenance payment in order to receive Medicaid. The law only requires that an adoption assistance agreement be in effect under Title IV-E of the Social Security Act, ‘whether or not adoption assistance is being provided’.

**Note:** States have various names for an adoption assistance agreement with a maintenance payment of zero. These agreements are often called deferred adoption assistance. States refer to them as ‘dormant subsidies’, ‘zero cash payment’ agreements, ‘agreement only assistance’, ‘medical/Medicaid only agreements’, and ‘conditional agreements’. A deferred adoption assistance agreement allows the adoptive family an opportunity to activate assistance and/or add a maintenance payment after adoption finalization if there is a change in the needs of the child.

*Cite: 42 CFR 435.115 (e)(1) and 435.145; 42 U.S.C. §§673(b) and 1396a(10)(A)(i)(I).*

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**3. Is a new state of residence required to provide a particular Medicaid service to a child eligible for title IV-E adoption assistance because the child received the service under the Medicaid program in a previous state of residence?**

**Answer:** No, a new state of residence is not required to provide a particular Medicaid service to a title IV-E adoption assistance eligible child simply because the child was receiving the service in a previous state of residence. States can only provide services as listed in their Medicaid State Plan. If the child received a service in a previous state that is not in the current state's Medicaid Plan, the service cannot be received from the new state. \*(Note exception below: EPSDT.) There are mandatory Medicaid services that all states must provide and there are services that are optional under Medicaid. States can elect which, if any, optional services they will provide under their Medicaid program. It is possible for a child to have received an optional Medicaid service in one state and move to another state whose Medicaid program does not provide that service.

**Practice issue:** If the language of the adoption assistance agreement reads that the Medicaid services of the adoption assistance state are to be provided or if the agreement specifies that a particular medical service would be provided, the adoption assistance state remains responsible for ensuring the receipt of that service.

**\*Note: Exception:** Early and Periodic Screening, Diagnosis and Treatment (EPSDT) is one of the mandatory services of the Medicaid program. Under EPSDT, if a service is deemed medically necessary for a child to receive, states must cover the service, even if the service is not in the state's Medicaid State Plan. See Question #3 below for more on EPSDT.

*Cite: 42 U.S.C. 1396d (a)(4)(B) and (r); 42 CFR 441 Subpart B.*

**4. What is EPSDT?**

**Answer:** Early and Periodic Screening, Diagnosis and Treatment (EPSDT) is one of the mandatory services of the Medicaid program. Therefore, all states must provide EPSDT services to individuals under the age of 21, even when the service is not in the state's Medicaid State Plan, if the service is deemed medically necessary for the child to receive. This obligation is limited to mandatory and optional services potentially covered by a state's Medicaid program under the State Plan. States must also make necessary exceptions to across-the board limits in amount, duration, and scope of services.

**Note:** The Medicaid program is administered by a federal agency, the Centers for Medicare and Medicaid Services (CMS), in partnership with the states. Information on the EPSDT program can be found on the CMS website at: <http://www.cms.hhs.gov/MedicaidEarlyPeriodicScrn/>. Information includes the following regarding the EPSDT program: *Overview, EPSDT Benefits, and State Agency Responsibilities.*

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Cite: 42 U.S.C. §§1396d (a)(4)(B) and (r); 42 CFR 441 Subpart B.

- 5. If a child is Medicaid eligible in one state and moves to another state in which they are Medicaid *ineligible*, can the child receive a Medicaid service in the new state if the service is deemed medically necessary under EPSDT?**

**Answer:** No, a child may not receive a Medicaid service in a state in which they are ineligible for the Medicaid program. EPSDT is not a separate program from Medicaid. EPSDT is a mandatory service under the Medicaid program. A child must be eligible for Medicaid to be able to receive any Medicaid service, including EPSDT.

Cite: 42 U.S.C. §1396 (a)(10)(A).

- 6. Can Medicaid be terminated for a title IV-E adoption assistance eligible child if a family does not complete a redetermination of adoption assistance eligibility?**

**Answer:** No, Medicaid cannot be terminated under title IV-E adoption assistance if a family does not complete a redetermination of adoption assistance eligibility. There is no federal requirement to assess title IV-E adoption assistance eligibility after the initial state assessment. Medicaid for this population is based on eligibility for title IV-E adoption assistance and can be terminated *only* under the following three circumstances:

- a) Child has attained the age of eighteen (or, where the State determines that the child has a mental or physical handicap which warrants the continuation of assistance, the age of twenty-one)
- b) Parent(s) is no longer legally responsible for the support of the child (legal custody)
- c) Parent(s) is no longer providing any support\* to the child

Since a failure to complete a redetermination of adoption assistance eligibility is not a listed circumstance for termination, title IV-E AA eligibility would continue and the child would remain Medicaid eligible and continue to receive services.

**\*Note:** Support can be other than financial, such as providing items of clothing or maintenance of the child's room in the home.

Cite: 42 U.S.C. 673 (a)(4).

**Practice issue:** Medicaid eligibility, with respect to circumstances that may change, usually must be (re)determined at least every 12 months. This requirement does not extend to title IV-E recipients and adoption assistance recipients in general. As title IV-E adoption assistance confers

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automatic eligibility for Medicaid, a child's continued eligibility for the assistance program is confirmation of continued eligibility for Medicaid. If a state staffer needs information, they may contact the adoption assistance state's adoption assistance staff to obtain information. This practice is known as 'passive' and is commonly used to gather information for title IV-E recipients.

**7. Can Medicaid be terminated or suspended if a state attempts to withhold title IV-E adoption assistance payments while a child is in a Residential Treatment Facility?**

**Answer:** No, Medicaid cannot be terminated or suspended if a state attempts to withhold title IV-E adoption assistance payments while a child is in a Residential Treatment Facility. Title IV-E adoption assistance can be terminated only under three conditions. (See Question #7 for more information.) Title IV-E adoption assistance cannot be terminated, suspended, or discontinued for any other reason. Withholding adoption assistance payments due to a temporary placement outside the home, as in the circumstance of an RTF placement, is impermissible. As long as a parent continues to provide any support to the child, the child remains eligible for title IV-E adoption assistance and, therefore, is Medicaid eligible.

\*Note: Support can be other than financial, such as providing items of clothing or maintenance of the child's room in the home.

Cite: *42 U.S.C. 673 (a)(4)*.

**8. Is it possible for a title IV-E adoption assistance eligible child to receive Medicaid past the age of eighteen?**

**Answer:** For children receiving title IV-E adoption assistance, Medicaid receipt is not considered separately from their adoption assistance eligibility. Adoption assistance eligibility is the basis for Medicaid eligibility for most title IV-E adoption assistance children.

The real question is, 'Can a child receive title IV-E adoption assistance past the age of eighteen?'

And the answer is, 'Yes, a child can receive title IV-E adoption assistance past the age of eighteen.'

It is the adoption assistance state's option to continue adoption assistance past the age of eighteen. If the adoption assistance state determines that a child has a mental or physical handicap that warrants the continuation of assistance, the state can continue assistance up to the age of 21. Since children who are title IV-E adoption assistance eligible are also eligible for Medicaid, the Medicaid would also continue in the state in which the child lives.

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**Practice issue:** *Interstate implications of the extension of title IV-E adoption assistance past the age of eighteen.* It is at the option of the adoption assistance state to extend the receipt of adoption assistance past the age of eighteen. It is mandatory for all states to provide Medicaid through the age of eighteen. The receipt of Medicaid past 18 is dependant on state option whether to continue Medicaid coverage for certain categories of eligibility (such as title IV-E) past the age of eighteen. States can choose to extend Medicaid coverage through the age of nineteen or twenty, up to the age of 21, depending on category, and whether to extend title IV-E programs under their title IV-E State Plan past the age of 18 for children in continued need.

**CMS Clarification:** If a child lives in a state that ends title IV-E/Medicaid coverage for children receiving adoption assistance at an age *lower than the age to which the adoption assistance state extends a child's adoption assistance*, the child may not be able to receive Medicaid from the resident state. Depending on the resident state in which the youth lives, the youth's family may need to look to the adoption assistance state for Medicaid coverage. Currently, several states end Medicaid coverage below the age to which resident youth receive title IV-E.

AAIACMA currently is working with the Centers for Medicare and Medicaid Services to clarify the issue of a resident state's responsibility for the provision of Medicaid to a title IV-E recipient who receives title IV-E past the age to which the resident state provides title IV-E assistance in the youth's title IV-E category.

Cite: 42 U.S.C. 673 (a)(4); 42 U.S.C. §§1396a and 1396d.

#### **9. Does Medicaid eligibility end if a title IV-E adoption assistance eligible child's adoptive parent(s) dies, or the adoption dissolves?**

**Answer:** Yes, Medicaid eligibility *through title IV-E adoption assistance eligibility* ends if a child's adoptive parent(s) dies, or the adoption dissolves *and the child is not readopted*. The child must be adopted to receive adoption assistance, and the Medicaid that accompanies it. The child may be eligible for Medicaid through another eligibility category, such as Supplemental Security Income for the Aged, Blind, or Disabled (SSI) under title XVI of the Social Security Act.

Cite: 42 U.S.C. 673 (a)(4) and 42 U.S.C. §§1381-1383(f).

**Practice issue:** *In the event of the death of a parent.* If a child initially has two adoptive parents and one parent dies, the name of the deceased parent can be removed from the agreement and adoption assistance can continue if the adoption assistance agreement includes the signatures of both parents. If the child initially had one adoptive parent and the agreement was completed with that parent and that parent dies (or two adoptive parents and both parents die), the child would need to be readopted and another adoption assistance agreement would have to be negotiated in a subsequent adoption.

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**Practice suggestion:** If the child initially has one adoptive parent, and that parent gains a partner or individual who adopts the child, the agreement can be updated with the signature and information of the second adoptive parent. This measure is a safeguard in case one of the parents dies and is survived by the second adoptive parent. In this way, the adoption assistance agreement can remain in effect and the child's benefits and services can continue uninterrupted.

**10. Does a child's Medicaid eligibility continue if a child whose adoptive parent(s) die (or the adoption dissolves) is placed with an aunt and uncle who were made legal guardians under the deceased parent's will?**

**Answer:** No, Medicaid eligibility ends through IV-E adoption assistance if a child's adoptive parent(s) dies, or the adoption dissolves *and the child is not readopted*. Legal guardianship is not adoption, so Medicaid through the adoption assistance program would end unless and until the child was readopted. However, the child may be eligible for Medicaid through another eligibility category/program, and the adoption assistance state staff can connect the child and family to other federal, state, or non-profit sources to find assistance. Examples include the following:

- State Children's Health Insurance Program (SCHIP)  
Link: <http://www.cms.hhs.gov/home/schip.asp>
- Medicaid (income-based and other categorical eligibility)  
Link: <http://www.cms.hhs.gov/home/medicaid.asp>
- Non-profit state or national support and advocacy organizations that address a child's specific special need(s) can assist adoptive families in locating and/or funding services.
  - Examples: Easter Seals, link: <http://www.easterseals.com>; Autism Society of America, link: <http://www.autism-society.org>; American Association on Intellectual and Developmental Disabilities: <http://www.aamr.org>.

**11. Which state is responsible for providing Medicaid to a title IV-E eligible child if the child's adoption dissolves while s/he is living outside the adoption assistance state - the adoption assistance state or the state in which the child currently lives?**

**Answer:** No state is responsible for providing Medicaid to a child based on adoption assistance eligibility unless the child is readopted. If the child enters care of a state at the time of disruption (i.e., the adoption process ends prior to finalization) or dissolution (i.e., the adoption fails after finalization), that state is responsible for the application for and determination of title IV-E adoption assistance eligibility in a subsequent adoption and the provision of Medicaid that would accompany that eligibility.

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If a child does not enter custody of a state at the time of disruption or dissolution and is subsequently adopted, the state of the adoptive parents is responsible for the application and drafting of the agreement for title IV-E adoption assistance and the provision of Medicaid.

*Cite: 42 U.S.C. 673 (a)(2)(C).*

**12. Can an Interstate Compact on Adoption and Medical Assistance (ICAMA) member state require documentation of the title IV-E eligibility determination in addition to the ICAMA 6.01 form before providing Medicaid in an interstate case?**

**Answer:** No, an ICAMA member state should not require documentation of the title IV-E eligibility determination in addition to the ICAMA 6.01 form before providing Medicaid in an interstate case. Under the Interstate Compact on Adoption and Medical Assistance a completed ICAMA 6.01 accompanied by a copy of the fully executed adoption assistance agreement is all that is required of the sending state to send the receiving state in order for the receiving state to initiate Medicaid for a title IV-E adoption assistance eligible child.

*Cite: The Interstate Compact on Adoption and Medical Assistance, Section E of the 6.01 ICAMA form, Certification (Reflecting back to what is listed in Section A. 6, Basis of Medicaid Eligibility).*

**13. Can Medicaid be received outside the United States?**

**Answer:** Yes, Medicaid can be received outside the United States. Medicaid can be received in U.S. territories. There are Medicaid programs in Guam, Puerto Rico, the (American) Virgin Islands, the Northern Mariana Islands, and American Samoa. Note: There are no Medicaid programs in Mexico or Canada.

*Cite: 42 CFR §§435-436.*

**14. Can an adoption assistance eligible child maintain more than one Medicaid card?**

**Answer:** Medicaid is received through a child's state of residence. Residence for title IV-E adoption assistance eligible children is defined as where they live- in general, where they are present physically. Since a child can only be physically present in one state at a time and only one state can claim federal reimbursement for Medicaid services at a time, a child should be eligible for Medicaid in only one state at any one time.

**Note:** It is not required for a state to issue a Medicaid card to confirm an individual's Medicaid enrollment. Also, more than one card might be issued, such as an eligibility card issued by the state's Medicaid program and a managed care enrollment card issued by the child's managed care organization.

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Possession of a Medicaid card does not necessarily guarantee that the child is currently enrolled in that state's Medicaid program. Providers are encouraged to verify an individual's current Medicaid enrollment before rendering services, using the state Medicaid program's eligibility verification system. Out-of-state providers may be enrolled in a state's Medicaid program, especially in border areas and are able to provide Medicaid through multiple states' Medicaid programs.

*Cite: 42 U.S.C. §§ 673(b)(1) and 1396a(10)(A)(i)(I); 42 C.F.R. §§ 435.145, 435.403(g).*

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April 19, 2010

Medicaid and Non Title IV-E

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Making Medicaid Happen:  
Providing Title XIX  
to Non Title IV-E Populations

Sharon McCartney, JD

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State-Funded Adoption Assistance

- States have the option of extending Medicaid to children receiving state-funded adoption assistance *without regard to the income of their adoptive parents.*
- *Federal law: Section 1902(a)(10)(ii) of the Social Security Act*

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The COBRA Option

- Medicaid eligibility for state-funded adoption assistance eligible children can be through the COBRA option.
- 49 states and the District of Columbia have elected the COBRA option\*

\* NM in question

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**What is the COBRA option?**

- States are not required to provide Medicaid to their state-funded adoption assistance eligible children.
- States have the option to provide Medicaid to their state-funded adoption assistance eligible children.
- This option is the COBRA option.

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**COBRA Eligibility Criteria**

- The COBRA option has three criteria. There must be:
  1. An existing, legally executed adoption assistance agreement between the state and adoptive parent(s);
  2. A pre-existing need for special medical or rehabilitative care that the state finds would have precluded adoption absent medical assistance; and

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**COBRA Eligibility Criteria**

3. Before or at the time the adoption assistance agreement was executed,
  - (a) (at the state's option) the child would have been eligible for medical assistance given his/her own income and resources (i.e. title IV-E criteria used to determine payment for children in foster care rather than standards and methodologies of the state's AFDC program under Part A of title IV)
  - or*
  - (b) the child was receiving or was eligible to receive Medicaid as either mandatory or optional categorically needy.

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### COBRA Reciprocity

- Not all states provide Medicaid to children who reside in their state who are receiving state-funded adoption assistance from *another* state. Whether they choose to do this is known as reciprocity.
- If a state chooses reciprocity, it provides Medicaid services to children who: live in their state, receive state-funded AA from a different state, and meet COBRA eligibility criteria.

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### Extending Reciprocity

- Not all states extend reciprocity in the same way.
- The two most common examples of how states extend reciprocity include offering reciprocity to children from:
  - All statesor
  - ICAMA member states only

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### Reciprocity and Interstate Cases

- When a child receiving state-funded aa is placed for adoption across state lines *or* permanently moves, you must know:
  - If the new state has elected the COBRA option and if state B *has* elected the option, then
  - If the new state offers reciprocity and if state B *does* offer reciprocity, then
  - How the new state extends reciprocity  
Is it extended to *your* state?

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### States without Reciprocity

- District of Columbia
- Hawaii
- Illinois
- Iowa
- Nebraska
- Nevada
- New Hampshire
- New Mexico

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### State-Funded Foster Care

- State-funded foster care recipients can become eligible for Medicaid if they meet the eligibility requirements under *one of the mandatory or optional needy groups*.  
*Examples: 42 CFR 435.222 (optional group) and Section 1931 of the SSA (mandatory group)*
- The issue in interstate cases is one of residency. The general Medicaid residency requirements apply.

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### State-Funded Foster Care

Eligibility and residency:

- State-funded foster care eligible children retain the residency of the sending state (which retains custody).
- Therefore, they cannot receive Medicaid from the state in which they are physically located.
- The family will need to find a Medicaid provider in the state in which they reside that will take the child's out-of-state Medicaid card.

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### Supplemental Security Income (SSI)

- 32 states and DC automatically provide Medicaid to children receiving SSI (so-called '§1634 states')
- 7 states use eligibility criteria identical to that used for SSI, but require the filing of a separate application (so-called 'criteria states')
- 11 have opted to use eligibility criteria which is more restrictive than used for SSI in determining Medicaid eligibility (so-called §209(b) states)

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### §1634 states

Alabama	Georgia	Montana	South Dakota
Arizona	Iowa	New Jersey	Tennessee
Arkansas	Kentucky	New Mexico	Texas
California	Louisiana	New York	Vermont
Colorado	Maine	N. Carolina	Washington
Delaware	Maryland	Pennsylvania	West Virginia
DC	Massachusetts	Rhode Island	Wyoming
Florida	Michigan	S. Carolina	
	Mississippi		

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### Criteria States

- Alaska
- Idaho
- Kansas
- Nebraska
- Nevada
- Oregon
- Utah

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§209(b) states

- Connecticut
- Hawaii
- Illinois
- Indiana
- Minnesota
- Missouri
- New Hampshire
- North Dakota
- Ohio
- Oklahoma
- Virginia

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SSI Interstate

*The Federal law:*

- For any individual not residing in an institution...whose Medicaid eligibility is based on blindness or disability, the state of residence is the state in which the individual is living.
- 42 CFR 403(h)(20(b))

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SSI Interstate

*CMS State Medicaid Manual:*

- 3230.1 State of Residence Criteria Specific to Individuals Under Age 21 –  
A. Social Security Income (SSI) Related Individuals–  
For an individual not residing in an institution, whose Medicaid eligibility is SSI related, and is based on blindness or disability, the state of residence is the state where the individual is living.
- *State Medicaid Manual, Chapter 3, Eligibility*

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### SSI Interstate

- Whether the child retains Medicaid eligibility depends upon whether the new state is a §1634, criteria, or §209(b) state:
  - §1634: retain Medicaid eligibility
  - Criteria: retain eligibility, complete new application
  - §209(b): may not be eligible

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### TANF

Placement supported by child-only TANF payment:

- No automatic eligibility for Medicaid
- Must qualify for Medicaid through meeting the requirements for an optional or mandatory needy group
- May be eligible for low-cost health insurance under the State Children's Health Insurance Program (SCHIP)

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### Residential Treatment Facilities

- The special exception to residency rules given to title IV-E recipients does not apply to non title IV-E recipients.
- Therefore, the child ineligible for title IV-E placed in an out-of-state institution is considered a resident of the state which arranged for or actually made the placement, *not the state where the RTF is located.*

Federal law: 42 CFR 435.403(e)

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## Questions and Answers for Basic Learning: Medicaid for State-Funded Adoption Assistance

### 1. What is Medicaid?

**Answer:** Medicaid is a health service program. It is publically supported health insurance and is available in all states, the District of Columbia and the territories. Medicaid pays for medical assistance for eligible individuals and families with low incomes and limited resources. Medicaid is a federal-state partnership, both financial and administrative. The program is implemented by the states and overseen by the federal government through the Centers for Medicare and Medicaid Services (CMS), an agency under the U.S. Department of Health and Human Services (HHS). Medicaid provides medical care assistance to people who meet certain eligibility criteria and is the major source of funding for medical and health-related services for people with limited income in the United States.

### 2. Where can I get information on the Medicaid program?

**Answer:** ‘The’ Medicaid program is actually many programs. Every state, the District of Columbia and the territories have a Medicaid program and all states currently have a website dedicated to the state Medicaid program. There are similarities and differences across Medicaid programs. Check the state’s website or webpage dedicated to the state medical assistance program for specifics on a state’s Medicaid services and coverage or contact the state Medicaid agency directly.

The federal agency that oversees the Medicaid program, the Centers for Medicare and Medicaid Services (CMS), also has a website that provides extensive information on the Medicaid, Medicare, and State Health Insurance Programs (SCHIP). The CMS website is maintained by the federal government and contains information on a wide range of topics related to the Medicaid program in general and state-specific information found in State Medicaid Manuals. See links below to the CMS website.

**Note:** Medicaid is sometimes referred to by different names. There are state-specific names, such as Medi-Cal in California and TennCare in Tennessee. Regardless of the various names, the programs are still Medicaid and are governed by federal Medicaid law and regulations.

**Web tip:** Some state Medicaid programs are housed within the state’s social services agency, such as the Department of Family and Children’s Services or the Department of Human Resources. Other state Medicaid departments are separate from social services and are part of a state medical agency. Search with the word ‘Medicaid’ and the name of your state to link to the website or web page dedicated to Medicaid information in your state.

CMS link: <http://www.cms.hhs.gov/> (CMS homepage)

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### 3. Are all types of medical services available under Medicaid?

**Answer:** No, every type of medical service is not available under the federal Medicaid service guidelines. Medicaid services are either *mandatory* (required by the federal government) or *optional* (chosen by the individual state). The federal government requires that states provide mandatory services to Medicaid-eligible individuals considered to be residing in the state. The following are examples of *mandatory services* most often used by children receiving adoption assistance:

- ❖ Inpatient and outpatient hospital services
- ❖ Physician services
- ❖ Medical and surgical dental services
- ❖ Home health care for persons eligible for nursing facility services
- ❖ Rural health clinic services and any other ambulatory services chosen by your State that are offered by a rural health clinic
- ❖ Laboratory and x-ray services
- ❖ Pediatric and family nurse practitioner services
- ❖ Federally-qualified health center services and any other ambulatory services chosen by your State that are offered by a Federally-qualified health center
- ❖ Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services for individuals under age 21

The federal government does not require optional services. Each state chooses whether and which services to provide in the optional category to Medicaid eligible individuals. There is a Federal listing of optional services states may provide and not all medical services, procedures, or therapies are included in this list. The *optional services* under the Medicaid program most often used by children receiving adoption assistance include:

- ❖ Mental health
- ❖ Speech, physical, occupational, behavioral therapy
- ❖ Prescription drugs
- ❖ Optometry and eyeglasses
- ❖ Dental services (general)
- ❖ Clinic services
- ❖ Nursing facility services for those under age 21
- ❖ Intermediate care facility
- ❖ Services for those who are categorized as 'mentally retarded'

### 4. Can Medicaid be received outside the United States?

**Answer:** Yes, Medicaid can be received outside the United States. Medicaid can be received in U.S. territories. There are Medicaid programs in Guam, Puerto Rico, the (American) Virgin U.S.C. refers to the United States Code  
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Islands, the Northern Mariana Islands, and American Samoa. Note: There are no Medicaid programs in Mexico or Canada.

Cite: 42 CFR §§435-436.

##### **5. What is meant by the term 'COBRA' in relation to Medicaid?**

**Answer:** The acronym COBRA stands for The *Consolidated Omnibus Budget Reconciliation Act of 1985*. Its importance in the provision of Medicaid to adoption assistance eligible children is that it contains a provision for optional Medicaid support for resident state-funded adoption assistance programs and mandates Medicaid coverage from resident states for all title IV-E eligible children.

COBRA gave states the choice of providing Medicaid to resident state-funded adoption assistance eligible children and mandated that title IV-E eligible children receive Medicaid from the state in which they live. Many state-funded children had previously been receiving medical assistance paid for through state funds. COBRA offered federal financial assistance (FFP) to states that chose to include the medical coverage of resident state-funded adoption assistance eligible children in their State Medicaid Plans. States were able to receive federal funding for a percentage of the cost of medical coverage, just as they did and do for title IV-E adoption assistance eligible children.

The COBRA option refers specifically to whether a state has elected to provide Medicaid to resident children who receive state-funded adoption assistance from the state (i.e. the adoption assistance state, the state with whom a child has an adoption assistance agreement and receives an adoption assistance maintenance payment.)

##### **6. What is meant by the term 'COBRA reciprocity' in relation to Medicaid?**

**Answer:** COBRA reciprocity refers to whether a state chooses to extend Medicaid coverage to children living in the state that receive state-funded adoption assistance through another state.

When children who receive state-funded adoption assistance (re)locate outside the adoption assistance state, the new state of residence can currently choose whether to extend Medicaid coverage to them. When a state makes a choice to do this, they are said to have *COBRA reciprocity*. There are several ways in which a state can extend this reciprocity. Once a state has chosen to have COBRA reciprocity, it must decide how to extend it. States chose which states with whom they will have reciprocity. The two most common ways states have chosen to extend COBRA reciprocity is to state-funded adoption assistance eligible children from:

(a) All states

or

(b) Interstate Compact on Adoption and Medical Assistance (ICAMA) member states.

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There are a growing number of states that offer reciprocity in a slightly different manner. Some states chose to extend Medicaid to state-funded adoption assistance eligible children whose adoption assistance state extends Medicaid to the state. For a specific state-by-state listing of the COBRA option, COBRA reciprocity, and how reciprocity is extended, please contact the AAICAMA Secretariat offices at: (202) 682-0100 x 269 or see the COBRA reciprocity chart on the AAICAMA website.

AAICAMA website: <http://www.aaicama.org>

**Practice issue:** Reciprocity in relation to Medicaid receipt does not include the traditional connotations of equality, of receiving in like kind what is given. Under Medicaid law, any state that has a Medicaid program and accepts federal Medicaid funding- and all do- must provide certain mandated services under their program. However, in addition to these mandatory services, there are optional services that states are free to include in their programs and for which they receive federal financial support. Since these services are optional, states vary in the services available from their Medicaid state program.

#### **7. Are all state-funded adoption assistance recipients eligible for Medicaid?**

**Answer:** No, all state-funded adoption assistance recipients are currently not eligible for Medicaid.

There are three Medicaid eligibility groups: 'categorically needy', 'medically needy', and 'special group'. Children eligible for title IV-E adoption assistance are in the 'categorically needy' group as defined by Medicaid. Title IV-E adoption assistance is the category and children receiving title IV-E adoption assistance are considered 'categorically eligible' for Medicaid. This means that receipt of Medicaid is automatic in state and across all states and continues as long as a child remains eligible for title IV-E adoption assistance, i.e. in the mandatory Medicaid category that includes title IV-E recipients. .

State-funded adoption assistance eligible children are a part of the 'optional categorically needy'. Their Medicaid coverage is optional, not mandatory like title IV-E recipients. This means that Medicaid eligibility for this population is not automatic and it is not guaranteed in all states or across state lines. However, some states do not provide Medicaid to resident children who have a state-funded adoption assistance agreement with another state- they do not have the COBRA reciprocity with any state. Other states provide Medicaid to some resident children who receive state-funded adoption assistance from another state, depending on the state with which the child has an assistance agreement.

**Note:** Please see the AAICAMA website to link to the current listing of states' extension of COBRA reciprocity.

AAICAMA website: <http://aaicama.org>

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**8. Must a state-funded adoption assistance recipient be considered permanently living in a state to receive Medicaid from the state?**

**Answer:** Yes, a state-funded adoption assistance recipient must have a permanent residency in a state to receive Medicaid from the state.

All children receiving state-funded adoption assistance and living in the adoption assistance state are eligible to receive Medicaid (COBRA option). Most states provide Medicaid to resident children who receive state-funded adoption assistance through another state, but a minority of states do not. These states are commonly referred to as 'non-reciprocity states'. When a state-funded adoption assistance child is temporarily placed for educational or psychiatric reasons, they are not automatically eligible for Medicaid from the state in which the school or treatment center is located. The reason for this is residency and how it is defined for the two adoption assistance populations.

Medicaid is generally received through an individual's state of residence. It is important to know which state is considered a child's state of residence in order to determine which state is responsible for the provision of Medicaid. The term 'residency' is a legal term and is defined differently for title IV-E and state-funded adoption assistance recipients.

For children receiving federal payments for adoption assistance under title IV-E, the state of residence is defined as the state 'where the child *lives*'. Where a child lives is where they are physically located. (*Cite: 42 CFR §435.403 (g)*) When a title IV-E recipient is physically located in a state for the purposes of treatment or education, that state is considered the resident state and responsible for the provision of Medicaid during the duration of the child's stay.

For children receiving state-funded adoption assistance, however, residency is defined differently. It is defined generally as a physical presence *and* intent to remain in the state, or follows the residency of the parent. Medicaid law defines state residence for children receiving state funded adoption assistance, '*[a] child is a resident of the State in which he or she is living other than on a temporary basis. Residence may not depend upon the reason for which the individual entered the State, except insofar as it may bear upon whether the individual is there voluntarily or for a temporary purpose*'.

For residency that follows the parent, the adult must be living in the state, not receiving assistance from another state, and entering the state for a job or to seek a job. In that case, the residence of the child is that of the State 'in which the caretaker is a resident'. (*Cite: 45 CFR §233.40(a)(1)(ii)*) When a state-funded adoption assistance recipient is physically located in a state to the purposes of treatment or education, that state is *not* considered the resident state and is not responsible for the provision of Medicaid during the child's stay. The child's resident

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state, as defined above, is responsible for the provision of Medicaid, or if that state is a non-reciprocity state, the child's adoption assistance state.

CMS Clarification: AAICAMA currently is working with the Centers for Medicare and Medicaid Services to clarify the issue of a resident state's responsibility for the provision of Medicaid to resident children receiving state-funded adoption assistance through another state when the resident state has chosen the COBRA option.

**9. Are state-funded adoption assistance recipients eligible for Medicaid in all states?**

**Answer:** No, children receiving state-funded adoption assistance are not automatically Medicaid-eligible and are not able to receive Medicaid in all states. The provision of Medicaid to this category of children is optional, not mandatory; as it is for title IV-E recipients. Most states provide Medicaid to state-funded adoption assistance recipients, though some do not. The answer to this question will depend on the resident state and the circumstances of the child's presence in the state. Regardless of a child's eligibility for Medicaid in the resident state, the adoption assistance state, through the language of the adoption assistance agreement, is generally responsible for ensuring the receipt of medical assistance to children who have a current, valid adoption assistance agreement with the state. See AAICAMA's information on 'COBRA' and the 'COBRA option' for full information.

For a specific state-by-state listing of the COBRA option, COBRA reciprocity, and how reciprocity is extended, please contact the AAICAMA Secretariat offices at: (202) 682-0100 x 269 or see the COBRA reciprocity chart on the AAICAMA website.

AAICAMA website: <http://www.aaicama.org>

**10. Can a state-funded adoption assistance recipient be denied Medicaid?**

**Answer:** No, as long as a child is eligible for adoption assistance and living in a jurisdiction in which they are Medicaid eligible, they are entitled to receive Medicaid. If a child is living in a jurisdiction in which they are Medicaid ineligible, they may look to the adoption assistance agreement and the adoption assistance state for receipt of medical assistance as agreed to in the agreement.

AAICAMA website: <http://www.aaicama.org>

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## Questions and Answers for Advanced Learning: Medicaid for State-Funded Adoption Assistance

### 1. Question: Is Medicaid an automatic benefit of state-funded adoption assistance?

**Answer:** No, Medicaid is not an automatic benefit of state-funded adoption assistance. It is optional under Medicaid law to provide Medicaid to a state-funded adoption assistance recipient. States have the choice whether to provide to this category of recipients. This is known as the COBRA option. However, if a child is placed for adoption outside the adoption assistance state or moves out of state after placement, they are not guaranteed to receive Medicaid in the new state of residence. Some states provide Medicaid to resident children who have an state-funded adoption assistance agreement with another state, but some states do not. This is known as 'COBRA reciprocity'.

Note: Please see AAICAMA website at <http://www.aaicama.org> for AAICAMA's current listing of state policies regarding the in-state and interstate provision of Medicaid to state-funded adoption assistance eligible children.

### 2. Question: Why is Medicaid automatic for title IV-E adoption assistance eligible children and not guaranteed for state-funded adoption assistance eligible children?

**Answer:** Medicaid eligibility is based on categories. Individuals are eligible or ineligible for different categories under Medicaid, and their category determines how and if they are able to receive Medicaid in a state. Title IV-E adoption assistance eligible children are in what is called a 'mandatory categorically needy' group and are automatically eligible for Medicaid in all states by virtue of their category of title IV-E receipt. That means that they are part of an eligibility group that all States are required to include in their Medicaid coverage. State-funded adoption assistance eligible children are considered 'optionally categorically needy' and states can choose whether or not to include them in their Medicaid coverage. This category distinction explains why title IV-E adoption assistance and state-funded adoption assistance eligible children are not equally eligible for Medicaid in all states.

### 3. Question: What is the process for determining if a state-funded adoption assistance recipient will be Medicaid eligible in the adoption assistance state? (i.e. the COBRA option)

**Answer:** Determining Medicaid eligibility for state-funded adoption assistance recipients residing in the adoption assistance state is a four-step process. Ask yourself:

1. Is the child eligible for state-funded adoption assistance?

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2. Does the child reside in the state that provides the state-funded adoption assistance? (meaning, is the state of residence also the adoption assistance state)
3. Has the state of residence elected the COBRA option?
4. Does the child meet the COBRA option eligibility criteria?

*Note: There are three eligibility criteria for the COBRA option:*

- ❖ *There must be a state adoption assistance agreement in effect.*
- ❖ *The state must determine that the child cannot be placed for adoption without Medicaid because the child has special needs for medical or rehabilitative care.*
- ❖ *Before or at the time the adoption assistance agreement was executed:*
  - a.) *The child would have been eligible for medical assistance given their own income and resources or*
  - b.) *The child was receiving Medicaid as an eligible member of a mandatory or optional categorically needy group.*

If the answer to all four questions is, 'yes', then the child is eligible to receive Medicaid from their adoption assistance state/state of residence.

**4. Question: What is the process for determining if a state-funded adoption assistance recipient will be Medicaid eligible when the child resides outside the adoption assistance state? (i.e. COBRA reciprocity)**

**Answer:** To determine if a state-funded adoption assistance recipient can receive Medicaid in an interstate case, you must know the following four things:

1. Has the new state of residence elected the COBRA option?  
*And if the new state has elected the option, then-*
2. Has the new state of residence elected COBRA reciprocity?  
*And if the new state has elected COBRA reciprocity, then-*
3. How does the new state extend COBRA reciprocity?  
*Does the new state extend COBRA reciprocity to the adoption assistance state?*

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*(Note: The adoption assistance state is the state that is referenced to determine if a new state of residence will provide Medicaid in an interstate, state-funded adoption assistance case.)*

4. Does the child meet the eligibility criteria for the COBRA option?

*Eligibility criteria for the COBRA option:*

- ❖ *There must be a state adoption assistance agreement in effect.*
- ❖ *The state must determine that the child cannot be placed for adoption without Medicaid because the child has special needs for medical or rehabilitative care.*
- ❖ *Before or at the time the adoption assistance agreement was executed:*
  - a.) The child would have been eligible for medical assistance given their own income and resources or*
  - b.) The child was receiving Medicaid as an eligible member of a mandatory or optional categorically needy group.*

If the answer to each of the above four questions is 'yes', then the child is eligible to receive Medicaid in the new state of residence.

**5. Question: If a state has 'COBRA reciprocity' with another state, does that mean that the state will provide the same Medicaid services as the other state and at the same rate, in the same amount and for the same duration?**

**Answer:** No, the term 'reciprocity' in the phrase 'COBRA reciprocity' does not have the connotation of 'sameness' that the word usually implies. There is no guarantee of benefit type in Medicaid services across state lines. States are compelled by Medicaid law to include some services in their Medicaid plans- these are known as mandatory services- and can choose whether to include in their Medicaid programs services that the federal government has designated as 'optional'. Because optional services are not compulsory, states vary in the optional services they choose to include under their Medicaid program. Some of the most requested services for special needs children include services that are optional under Medicaid, including prescription drugs, mental health services, and therapies such as speech, behavioral, and physical therapy.

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**6. Question: If a state-funded adoption assistance recipient is Medicaid eligible in a state, are the Medicaid services available to them the same as those available to a title IV-E adoption recipient?**

**Answer:** Yes, if a state-funded adoption assistance recipient is Medicaid eligible in a state, they will receive the same benefits under the state's Medicaid program as a title IV-E adoption recipient. There is no such thing as 'title IV-E Medicaid' or 'state-funded adoption assistance Medicaid'. Title IV-E and state-funded adoption assistance receipt are only categories of eligibility FOR Medicaid, not Medicaid types.

**7. Question: Does ICAMA membership mean that a state has COBRA reciprocity?**

**Answer:** No, membership in the Interstate Compact on Adoption and Medical Assistance does not mean that a state provides Medicaid to resident children with state-funded adoption assistance agreements with other states. ICAMA membership and COBRA reciprocity are not synonymous. A state can be a member of the ICAMA and not have reciprocity with any state, and a state can be a non-member of the ICAMA and chose to have reciprocity with all states.

**8. Question: Which state is responsible for Medicaid coverage in an interstate Residential Treatment Facility (RTF) placement for a child receiving state-funded adoption assistance?**

**Answer:** Medicaid is received through a child's residence. Residency is defined differently under Medicaid law for the two adoption assistance populations. Residency for state-funded adoption assistance eligible children is defined as the permanent residence that the child maintains (where they are physically present and intend to permanently stay) and/or the state of residence of the adoptive parent. A state-funded adoption assistance recipient's residence does not change during an RTF stay. It comes under the category of a 'temporary absence from the state'. Therefore, in an interstate RTF placement for a state-funded adoption assistance recipient, the placing state (where the child is considered to maintain residency status) continues to be responsible for the provision of Medicaid to the child while the child receives treatment in another state.

Contrast this with title IV-E adoption assistance. Title IV-E adoption assistance residency, for Medicaid purposes, is defined as 'where the child lives' and does not include the requirement of 'intent to stay'. A title IV-E recipient, while in a RTF, is physically located in the facility and considered to reside in the state in which the facility is located. For the duration of the child's stay, the state in which the facility is located is responsible for the provision of Medicaid to a title IV-E eligible child.

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**9. Question: If a state-funded adoption assistance recipient is Medicaid eligible in a state, can the state require the adoptive family to complete a separate application for Medicaid before providing Medicaid to the child?**

**Answer:** Yes, a state can require an adoptive family to complete a Medicaid application in order for a state-funded adoption assistance eligible child to receive Medicaid. There is no provision in federal law to preclude states from requiring a separate Medicaid application for a state-funded adoption assistance eligible child to receive Medicaid. This scenario occurs most often in interstate cases. If a child remains in the adoption assistance state, the provision of Medicaid to the child is connected to and premised on the child's eligibility for the state adoption assistance program and Medicaid receipt, while in the adoption assistance state, is assured and states usually do not require a separate Medicaid application for the child.

However, when a state-funded adoption assistance recipient is placed or moves interstate, the new resident state was not a part of the process for determining adoption assistance eligibility and may request that the family complete an application in order to secure a form of documentation within the state that the child is Medicaid eligible. A criteria for Medicaid eligibility for a state-funded adoption assistance recipient *is* a state determination that the child is eligible for state-funded adoption assistance and has a state agreement in effect. However, it a criteria for Medicaid eligibility for state-funded adoption assistance recipients, but not the only criteria.

In addition to having a state-funded adoption assistance agreement in effect, the adoption assistance state must determine that the placement cannot be made without Medicaid because the child has special needs for medical or rehabilitative care, and, before, or at the time the assistance agreement was executed, the child *would have been* Medicaid eligible if assessed as a family of one or the child *was* Medicaid eligible in a mandatory or optional categorically needy group.

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