



30,700 Ohioans Using Medicaid Spend-down Eligibility Face a July 1 Transition

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Many individuals with a disability who fall into a specified income range are eligible for Medicaid. The Ohio Department of Medicaid (ODM) is preparing to change the program's disability determination process. Currently, disability determination is performed by ODM, and income verification is handled by county job and family service departments. Starting in July, 2016, the program will have a unified disability determination system, so that individuals who qualify for Supplemental Security Income (SSI) through the federal process will automatically qualify for Medicaid. In legal terms, this means the state is implementing Section 1634 of the Social Security Act, rather than using Section 209(b). The Opportunities for Ohioans with Disabilities agency handles disability determinations for the Social Security Administration in Ohio. In Federal Fiscal Year 2014, OOD made determinations for 183,976 individuals, with an average wait time of 82 days.¹

As part of the transition to a 1634 state, ODM will use SSI program eligibility rules for income and assets. For individuals living in the community, income limits will increase from 64 percent to 75 percent of the federal poverty level (FPL), and resource limits will increase from \$1,500 to \$2,000.² Individuals enrolled in Medicaid waiver programs or in institutions would continue to have a "special income limit" of 300 percent of the Federal Benefit Rate, or about 225 percent of FPL, equivalent to \$2,227 per month for an individual in 2016. Waiver programs provide a specified set of services, such

as homemaker and personal care, to allow people to remain in their homes.)

As part of the change, the current practice of allowing individuals with incomes above eligibility thresholds to use medical bills to "spend down" to achieve Medicaid eligibility will no longer exist. Spend-down takes place on a monthly basis and allows the applicant to use incurred medical expenses to offset enough income to reach the eligibility threshold. If income or expenses are variable, people can move in and out of eligibility on a monthly basis as their income and expenses change. In an institutional setting, however, it is more common to have recurring spend-down that happens automatically because monthly medical expenses and income (e.g., Social Security) are more predictable. The spend-down process can be used to access both institutional care, such as nursing homes and intermediate care facilities for the developmentally disabled, as well as waiver services, such as Home Care, PASSPORT, MyCare, Assisted Living, and Individual Options. In 2014, the median monthly spend-down amount was \$287.³

The impact of ending spend-down for those who are currently using it depends on a number of different factors, including the individual's income and resource levels, whether the individual is accessing a waiver or institutional care, and whether the individual can also access Medicare or other health insurance. The 5,500 individuals who are in institutions or on waivers have a clear alternative called a qualified income trust (QIT), also known as a Miller Trust. The trust receives income and uses it to make payments for medical care. The Miller Trust is irrevocable and must name the state as beneficiary so that any amount remaining after an individual dies is subject to estate recovery. The Miller Trust should not be confused with a special needs trust, another type of irrevocable trust currently allowed under

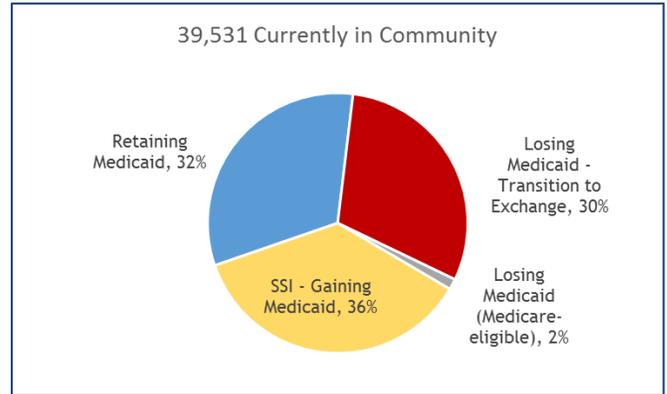
federal and state law that is used to shield assets (but not income) from being countable resources in Medicaid eligibility decisions.⁴

The transition to 1634 status requires ODM to request modifications to current waiver authorities granted by the federal government. The proposed modifications are available for public comment until March 2, 2016.⁵ The proposed transition plan calls for the state to send letters to each waiver participant and to provide information about Miller Trusts to waiver case managers. The state will contract with a vendor, Automated Health Systems, to assist in the process of contacting individuals who are currently in institutions or on waivers to help them establish a trust.

Requiring individuals to create a trust raises a number of concerns. A trust is a legal arrangement, necessitating legal advice in order to be drawn up and executed, as well as a bank that is willing to service the trust. If a potential beneficiary is not competent, it raises even more serious issues. A guardian or someone exercising power of attorney cannot create an irrevocable trust under Ohio law, so a Miller Trust can only be created in this situation with court consent.⁶

Transition Scenarios for Individuals in the Community ODM data released in January show that over 39,500 individuals in the community and not on waivers will be impacted by the end of spend-down (Figure 1). Thirty percent are expected to lose coverage and transition to health insurance through the federal marketplace (otherwise known as the exchange or healthcare.gov), but a greater share, 36 percent, are current SSI recipients who will automatically gain coverage. Nearly one-third of this group will retain Medicaid by transitioning to another category, and 2 percent who are Medicare-eligible will no longer retain Medicaid premium assistance.⁸ Limited assistance with Medicare Part D (pharmacy plan) premiums, deductibles, and copays still may be available for this latter group through a Social Security Administration program called “Extra Help,” depending on their resources, income, and household size.⁹

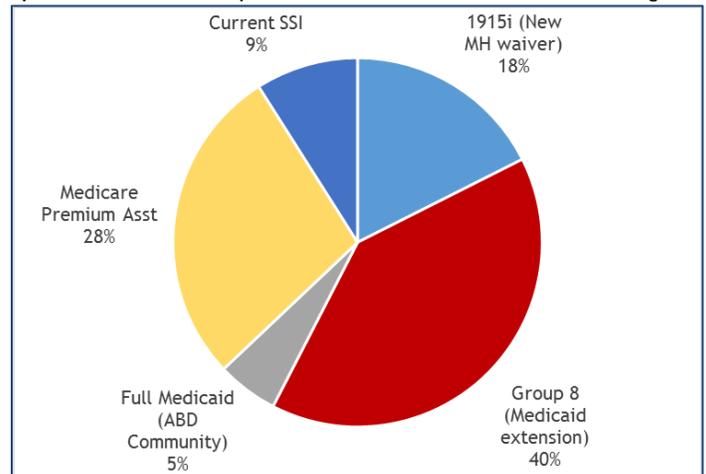
Figure 1. Expected Transition Outcomes for Community Spend-down Participants



Source: ODM, Oct-Dec. 2015 Cris-E Data Extracts

Of the 12,717 individuals in the community who are retaining Medicaid coverage, the largest number (over 5,088, or 40 percent) have incomes below 138 percent FPL and will qualify under the Medicaid extension (Group 8) (see Figure 2).

Figure 2. Expected Transition Outcomes for Community Spend-down Participants who Retain Medicaid Coverage



Source: ODM, Oct-Dec. 2015 Cris-E Data Extracts

Another group of about 3,500 who have Medicare will qualify for premium and copay assistance according to their income level.¹⁰ In recognition that some of the affected individuals have severe mental illness, ODM is starting a special waiver program (1915i) for individuals who meet certain diagnostic and medical history criteria. A recent Community Solutions paper, [Ohio Creates a New Medicaid Waiver Program For Individuals with Severe and Persistent Mental Illness](#), describes this program in detail. Under the current criteria, about 2,200 individuals will be

enrolled in the waiver, but ODM is considering various rule changes that would allow more people to qualify.

Another group will retain Medicaid through their current SSI status. Advocates have raised many concerns regarding the implementation of ending spend-down, including the lack of certain services on the exchange (e.g., case management, vision, and dental), the narrow scope of the proposed waiver for behavioral health services, and how affected individuals will be notified and walked through the complicated process of creating a trust or determining which eligibility category they now fall into. Also, it is still unclear whether standard retroactive 90-day Medicaid eligibility applies when a Miller Trust is used, and, by law, eligibility cannot start until all of the elements of eligibility are fulfilled. This could affect an institution's willingness to admit an individual before eligibility is determined. Many issues remain to be sorted out before the July 1 implementation date.

¹ Opportunities for Ohioans with Disabilities agency, *Annual Report*, Federal Fiscal Year 2014.

² The Federal Poverty Level changes based on family size. For a family of two, it will be \$16,020 in 2016.

Meet the Author: Jon Honeck, Ph.D.



Jon Honeck joined Community Solutions in March, 2009, and is based in the Columbus office. Jon has broad experience in state fiscal policy issues, particularly as they impact low- and moderate-income groups.

As director of the Public Policy Team, he guides staff members who work on a wide variety of public policy issues, including taxation, aging, mental health and addiction services, TANF, and Medicaid.

Before coming to CCS, he worked for Policy Matters Ohio and, before that, the Ohio Legislative Service Commission.

Jon obtained his Ph.D. in political science from the University of Wisconsin and his undergraduate degree in the same field from Miami University (OH).

³ Ohio Department of Medicaid, powerpoint presentation slide, "Medicaid spend-down analysis overview."

⁴ Ohio Revised Code section 5163.21 defines how various kinds of trusts are treated in Medicaid eligibility decisions.

⁵ Medicaid Waiver Notices are available for comment at <http://medicaid.ohio.gov/RESOURCES/PublicNotices.aspx>.

⁶ Ohio guardianship law (R.C. 2111.50 (B)(3)) allows a guardian to "Enter into contracts, or create *revocable* trusts of property of the estate of the ward, that may not extend beyond the minority, disability, or life of the ward;" (Emphasis added).

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⁸ The two percent losing coverage but not going into the exchange are likely seniors with assets above the resource limits for Medicare premium assistance programs, but this is unclear.

⁹ For more information, see

<https://www.socialsecurity.gov/medicare/prescriptionhelp/>

¹⁰ Medicare Assistance Premium programs allow the Medicaid program to pay for Medicare premiums and copays for low-income individuals. Benefit levels are tied to income. Qualified Medicare Beneficiaries, with incomes up to 100 percent of FPL, receive help with both Part A (hospitalization) premiums, deductibles, and coinsurance, including skilled nursing facility stays, and also with Part B premiums (outpatient services). Individuals with incomes above 100 percent of FPL receive assistance with Part B only. See Ohio Administrative Code Sec. 5160:1-3-02.1.

Better Birth Control NEO



Better Birth Control NEO is a public/private partnership convened by The Center for Community Solutions to improve knowledge of and access to the most effective methods of birth control – IUDs

and the implant—among women in Northeast Ohio. The project has included extensive clinic-level training and evaluation; we also seek to change policies and systems that present barriers to access for women. A social marketing campaign was launched in December in Lorain, Lake, Geauga, and Ashtabula counties to raise awareness of the methods among women outside of the clinic setting. The campaign goes live this month in Cuyahoga County. Look for it on RTA and Laketrans buses, billboards, and on your mobile devices. —*Melissa Federman, Treuhaft Chair for Health Planning*

