



# Medicaid Managed Care: Our Clients do NOT Surrender Rights at the Door

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Bridges to Better Advocacy  
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# Fee for service (FFS)

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Traditional Medicaid coverage  
Provider paid for each service performed

- single state agency
  - comparability
    - statewide
    - free choice



# Managed care

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Services must be  
obtained through certain providers

(Most Medicaid managed  
care is HMO-type)



## Managed care—positives

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- Coordination of care
- Preventive services
- Potential to change behaviors
- Cost predictability
- Integration of services
- Potential for innovation
- Data



## Medicaid Managed Care (2006)

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- 65% of Medicaid population
- All states but Alaska, Mississippi, WY
- High enrollment states: AZ-90%; CO-92%; KY -92%; MI-91%; MO-99%; OR-91%; TN-100%
  - <http://www.cms.hhs.gov/MedicaidDataSourcesGenInfo/Downloads/mmcer06.pdf>
- *National Summary of State Programs:*  
<http://www.cms.hhs.gov/MedicaidDataSourcesGenInfo/Downloads/nationalsummreport06.pdf>



# Managed Care Terminology

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- MCO
  - HMO, PPO, PCCM
- PCP - Primary Care Provider
- In-network (plan) vs. Out-of-network (plan)
- Capitation
- Risk sharing (full or partial risk)
- Provider incentives: withholds, bonuses
- Grievance/Appeal
  
- Mandatory vs. Voluntary
- Enrollment, Disenrollment, Default
- Carve out (populations; services)



## Important federal statutes:

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- 42 U.S.C. § 1396u-2 (state plan option)
  - Exceptions: SSI, title V, foster & out-of-home placement
- 42 U.S.C. § 1396n(b) (managed care waivers)
- 42 U.S.C. § 1396b(m) (MCO stds.)
- 42 U.S.C. § 1315 (demonstrations)



# Regulation of Medicaid Managed Care

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- U.S. Department of Health and Human Services
- State Department of Health, Division of Medical Assistance (single state agency)
  - May delegate to other gov't agency, county
- State Department of Insurance
- State Department of Corporations



# Basic Legal Protections

see 42 USC § 1396u-2

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- Choice of plan (ex. rural) & provider in plan
  - The “opt out” option
- Adequate provider networks
- Full scope of services preserved
  - For children and youth=EPSDT
- Prudent layperson controls emergencies
- Free choice of family planning
- Gag clauses prohibited
- Medical necessity decided by medical personnel
- Quality assurance and improvement
- No door-to-door marketing



## Getting off on the right foot: Choosing a Plan

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- New beneficiaries should receive information which describes plans
- Should receive information on covered services, participating providers, rights to disenroll
- Beneficiary who does not choose is “defaulted” into a plan (auto-assigned)
- Plans may offer special services to attract particular populations, e.g. “new mother” services to attract pregnant women



## Problems we see with Medicaid managed care

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- Lack of information re: covered services
- Lack of information re: enrollment rights
- Inadequate access to specialists
- MCOs apply private coverage standards
- Beneficiary gets the bill
- Quality of care issues
- Lack of timely written, adequate notice
- Services not continued pending appeal
- Complaints can take months



# Addressing Denials of Care

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**Due process:** written notice and an opportunity to be heard by an impartial decision maker regarding any action that delays, denies, reduces, or terminates eligibility or services

**Grievance:** complaint at the plan level

**Fair Hearing:** complaint at the state level

- Beneficiaries entitled to a fair hearing to the same extent as in fee-for-service
- NOTE:
  - Filing grievance does NOT toll time for filing for fair hearing
  - State may require grievance to be exhausted



## Medicaid managed care & due process

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“Because of the pecuniary incentives that MCOs have for denying, suspending, or terminating care under the TennCare system, and because of other differences between Tennessee’s pre-1994 [fee-for-service] Medicaid program and TennCare, TennCare enrollees need strong due process protections to protect themselves from inappropriate denials of health care.”

*Daniels v. Wadley*, 926 F. Supp. 1305 (M.D. Tenn. 1996)



## How the appeal process compares

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<b>Fee-for-service</b>	<b>Managed care</b>
Complaint involves statutes & rules	Complaint also involves a contract
Complaint involves payment	Complaint involves service
Choice of provider	Lock in
Provider-advocate	Can' depend on provider
Direct access to state fair hearing	May have exhaustion requirement @ plan



# Requirements for written notice

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- Understandable
- Describes action taken, factual basis for action, legal basis for action
- Notice re: continued benefits
- Info on fair hearing & time frames
- Right to representation
  
- Model notices: [www.healthlaw.org](http://www.healthlaw.org)



## Accountability & sunshine—depends on who's doing the talking

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- “States can improve quality and lower costs by consistent monitoring of programs over time.”

(Barbara Starfield, MD, MPH et al., JAMA 1994)

- “We believe that the marketplace and the satisfaction statistics that most managed care plans enjoy suggest that excessive regulation is not necessary.”

(Prudential Health Care, 1998)



# Accountability and sunshine

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- Repeated government investigations find inadequate government oversight, e.g. GAO & OIG
- Beneficiary advocates can monitor:
  - Get a copy of the state plan/waiver
  - Get a copy of the RFP/model K
  - Check the state Medicaid law & APA

There is a lack of formal requirements for public input: **GET YOURSELF INTO THE PROCESS!**



## Accountability & Sunshine: Getting started

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- All informational materials must be easily understood. 42 CFR 438.10
- Written materials must be available in alternative formats that account for persons who are, e.g. visually limited or have limited reading proficiency. *Id.*
- Enrollees & potential enrollees must be informed that information is available in alternative formats. *Id.*



# Accountability & Sunshine Access

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- MCOs must make available to enrollees and potential enrollees:
  - Names, locations, qualifications of providers
  - Responsibilities for care coordination
  - Services and items, including cost sharing
  - How to obtain benefits not covered
  - Quality and performance information



# Accountability and Sunshine Quality

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- Performance improvement projects
- External independent quality reviews
- HEDIS (Health Plan Employer Data and Information Set)
  - <http://www.ncqa.org/Programs/HEDIS/2007/MeasuresList.pdf>



# Accountability & Sunshine Financing

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- Financial incentives
- Information on commercial plans
  - Form 10-K. Financial position
  - Form DEF 14a. Executive compensation & board membership
    - <http://www.sec.gov/edgar/searchedgar/companysearch.html>



## Medicaid managed care NHeLP Resources

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- Somers & Perkins, *Medicaid Managed Care and People with Disabilities: Challenges and Opportunities*, 41 Clearinghouse Rev. 285 (Sept./Oct. 2007)
- NHeLP Accountability & Sunshine Project
  - *Assuring Accountability and Stewardship in Medicaid Managed care: Public Reporting Requirements for States and MCOs* (May 2007)
  - *Obtaining Documents through the Recently-Amended FOIA* (Mar. 2008)
  - <http://www.healthlaw.org>