



COMMONWEALTH of VIRGINIA

Department of Medical Assistance Services

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November 1, 2024

MEMORANDUM

TO: The Honorable Luke E. Torian,
Chair, House Appropriations Committee

The Honorable Mark D. Sickles
Chair, House Health and Human Services Committee

The Honorable L. Louise Lucas
Chair, Senate Finance Committee

The Honorable Ghazala F. Hashmi
Chair, Senate Education and Health Committee

FROM: Cheryl Roberts
Director, Virginia Department of Medical Assistance Services

SUBJECT: Disregarding Social Security Disability Insurance Income When
Determining Medicaid Eligibility for Developmental Disability Waiver
Recipients

This report is submitted in compliance with Chapters 211 and 257 of the 2024 Acts of Assembly, which states:

That the Department of Medical Assistance Services (the Department) shall analyze the implications of amending the financial eligibility standards for individuals receiving services under the Family and Individual Support Waiver, Community Living Waiver, and Building Independence Waiver, so that Social Security Disability Insurance income is disregarded by the Department when calculating such individuals' financial eligibility for such waivers. The analysis shall determine the costs and the number of individuals who would benefit from amending the financial eligibility standards. The Department shall provide a report of its findings to the Chairmen of the Senate Committees on Education and Health and Finance and Appropriations and the House Committees on Health and Human Services and Appropriations no later than November 1, 2024.

Should you have any questions or need additional information, please feel free to contact me at 804-664-2660.

CR/wf
Enclosure

Pc: The Honorable Janet V. Kelly, Secretary of Health and Human Resources

Disregarding Social Security Disability Insurance Income When Determining Medicaid Eligibility for Developmental Disability Waiver Recipients

November 2024

Report Mandate:

Chapters 211 and 257 of the 2024 Acts of Assembly state: That the Department of Medical Assistance Services (the Department) shall analyze the implications of amending the financial eligibility standards for individuals receiving services under the Family and Individual Support Waiver, Community Living Waiver, and Building Independence Waiver, so that Social Security Disability Insurance income is disregarded by the Department when calculating such individuals' financial eligibility for such waivers. The analysis shall determine the costs and the number of individuals who would benefit from amending the financial eligibility standards. The Department shall provide a report of its findings to the Chairmen of the Senate Committees on Education and Health and Finance and Appropriations and the House Committees on Health and Human Services and Appropriations no later than November 1, 2024.

Background

The Department of Medical Assistance Services (DMAS) administers three Medicaid 1915 (c) Home and Community-Based Services (HCBS) Waivers targeted at serving individuals with an intellectual or developmental disability: the Building Independence Waiver, the Community Living Waiver, and the Family and Individual Supports Waiver, collectively referred to as the Developmental Disabilities (DD) Waivers. These waivers provide a continuum of

services that promote the successful living, learning, physical and behavioral health, employment, and community inclusion of individuals with developmental disabilities.

Unlike other Medicaid programs, DD Waiver enrollment is capped, based on the number of DD Waiver slots approved by Virginia's General Assembly and the Centers for Medicare and Medicaid Services (CMS).

DD Waiver eligibility consists of three components: diagnostic criteria, functional criteria, and Medicaid financial criteria. Individuals who meet the diagnostic and functional criteria are placed on the DD Waiver waitlist. When a slot becomes available to them, the individual, if not already enrolled, must apply and be approved for Medicaid to receive the DD Waiver. Their financial eligibility is reviewed each year through the Medicaid renewal process.

Per Medicaid eligibility rules, the 2024 monthly income limit for DD Waiver recipients is \$2,829 a month (300% of the maximum individual Supplemental Security Income (SSI) benefit). Income includes both earned and unearned income. Parental income is not counted when determining eligibility for a child DD waiver recipient.

Historically, CMS's interpretation of 42 CFR § 435.217 required states to apply their Medicaid eligibility rules consistently to all members in an eligibility category. As a result, income disregards targeting sub-populations, such as DD Waiver recipients, were prohibited. CMS reversed this interpretation in 2019. Pursuant to this change, the 2024 General Assembly adopted House Bill (HB) 908 and Senate Bill (SB) 676 (2024 Acts of Assembly Chapters 211 and 257, respectively) directing DMAS to disregard Social Security Disability Insurance (SSDI) income above the maximum SSI benefit amount when determining Medicaid financial eligibility for DD Waiver recipients with a sunset of July 1, 2026.

DMAS submitted a Medicaid state plan amendment to disregard SSDI income as directed by HB908 and SB676 to CMS on July 9, 2024, and received approval on September 13, 2024. On September 6, 2024, DMAS concluded the public comment period for 1915(c) waiver amendments incorporating changes made during the 2024 General Assembly session, including disregarding SSDI for DD Waiver participants. A public comment period is required prior to submission of waiver amendments to CMS for approval. Implementation plans, including system change design, policy manual updates and worker training, have been developed and are scheduled to be deployed in November 2024.

Potential Costs

The fiscal impact of the SSDI income disregard is projected to be minimal. The change will not increase DD Waiver enrollment due to the cap on the number of DD Waiver slots. Once implemented, the change will expand the population eligible for DD Waivers and, therefore, may increase the number of individuals on the DD Waiver waitlist.

Potential Population Impacted

Certain DD Waiver recipients who receive SSDI will be newly able to obtain employment or increase their earnings without losing their DD waiver eligibility; however, the scale of the impact is difficult to project. Financial information of the over 15,000 individuals on the DD Waiver waitlist is not collected because the Medicaid financial eligibility determination is not conducted until individuals are offered a DD Waiver slot. There is also no mechanism to determine how many SSDI recipients in Virginia meet the DD Waiver diagnostic and functional criteria and would meet Medicaid eligibility but for SSDI income. Additionally, current Medicaid eligibility rules and system functionality do not differentiate between types of Social Security benefits received, apart from SSI.

Disabled Adult Child (DAC)

The SSDI disregard for DD waiver recipients will potentially expand the Medicaid eligibility of DD Waiver recipients who are also a Disabled Adult Child (DAC), as defined by the Social Security Administration (SSA). A DAC is eligible to receive SSDI based on a parent's work history

and earnings and their own disability if the disability began before the child reached age 22. In 2022, there were 26,205 DACs in Virginia and their median monthly SSDI benefit was \$961¹.

DACs can receive up to 50% of a retired parent's SSA benefit and up to 75% of a deceased parent's benefit². Based on the 2024 maximum monthly SSA benefit of \$3,822, the maximum monthly DAC SSDI benefit \$2,866.50 (75% of \$3,822)³. This is above the \$2,829 income limit for DD Waiver recipients. DACs are permitted to work and continue to receive SSDI so long as their monthly earned income does not exceed \$1,550 (or \$2,590 if blind).

There are two scenarios in which a DAC could lose DD Waiver eligibility based on SSDI income prior to implementing the SSDI income disregard:

Scenario 1: The DAC receives the maximum DAC SSDI benefit. Only 6% of workers have high enough earnings to receive the maximum SSA benefit⁴.

Scenario 2: The DAC receives less than the maximum DAC SSDI benefit and earns enough additional income to exceed the Medicaid income limit. Individuals in this scenario may be limiting their work activity to preserve their DD Waiver eligibility.

Disregarding SSDI above the SSI limit will allow DACs in the above scenarios to increase their work activity without losing DD Waiver eligibility.

Summary

While the scope of the impact of disregarding SSDI when determining Medicaid financial eligibility for DD Waiver recipients is difficult to project, the change will allow some individuals to begin or increase their work activity without fear of becoming ineligible for and losing their DD waiver. Permitting additional work activity aligns with DD Waiver goals of promoting the well-being, employment, community integration and independence of individuals with developmental disabilities.

About DMAS and Medicaid

The mission of the Virginia Medicaid agency is to improve the health and well-being of Virginians through access to high-quality health care coverage. The Department of Medical Assistance Services (DMAS) administers Virginia's Medicaid and CHIP programs for approximately two million Virginians. Members have access to primary and specialty health services, inpatient care, dental, behavioral health as well as addiction and recovery treatment services. In addition, Medicaid long-term services and

¹ Social Security Administration, [Annual Statistical Report on the Social Security Disability Insurance Program, 2022 \(ssa.gov\)](https://www.ssa.gov/pubs/10122.html)

² Social Security Administration, [Benefits for Children \(ssa.gov\)](https://www.ssa.gov/benefits/children/)

³ Social Security Administration, [Social Security Changes - COLA Fact Sheet \(ssa.gov\)](https://www.ssa.gov/pubs/10122.html)

⁴ Social Security Administration, [Fast Facts & Figures About Social Security, 2024 \(ssa.gov\)](https://www.ssa.gov/pubs/10122.html)

supports enable thousands of Virginians to remain in their homes or to access residential and nursing home care.

Medicaid members historically have included children, pregnant women, parents and caretakers, older adults, and individuals with disabilities. In 2019, Virginia expanded the Medicaid eligibility rules to make health care coverage available to more than 600,000 newly eligible, low-income adults.

Medicaid and CHIP (known in Virginia as Family Access to Medical Insurance Security, or FAMIS) are jointly funded by Virginia and the federal government under Title XIX and Title XXI of the Social Security Act. Virginia generally receives an approximate dollar-for-dollar federal spending match in the Medicaid program. Medicaid expansion qualifies the Commonwealth for a federal funding match of no less than 90% for newly eligible adults, generating cost savings that benefit the overall state budget.