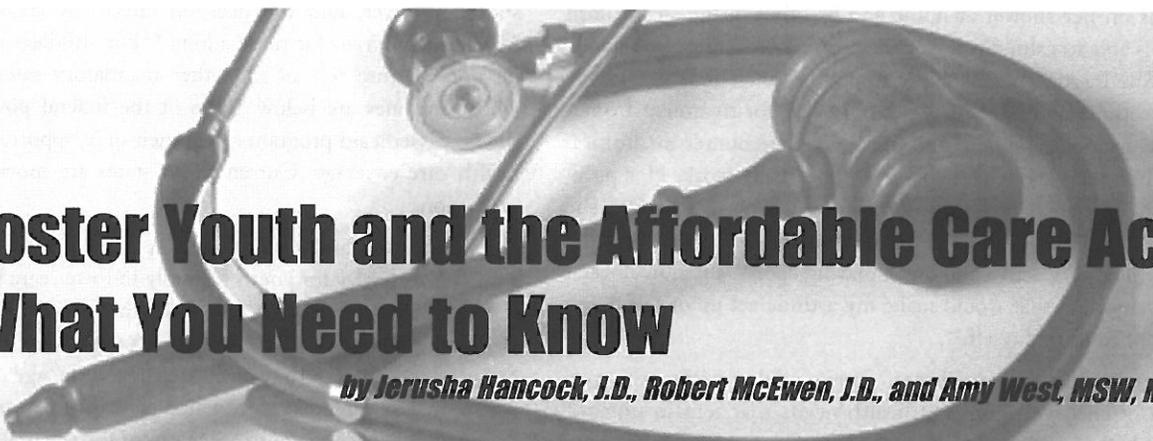


feature article



Foster Youth and the Affordable Care Act: What You Need to Know

by Jerusha Hancock, J.D., Robert McEwen, J.D., and Amy West, MSW, MPA

Note: names and certain events have been altered to protect the anonymity of the parties involved.

Jane is a 22-year-old young woman living in a mid-sized Nebraska city. She works full-time with disabled adults and is the primary caregiver for her teenage sister. She is also one of the over 300 young people who exit foster care each year without achieving permanency.¹

Jane faces several health challenges. She suffers from asthma, is allergic to “everything” (including grass), is diagnosed with polycystic ovarian syndrome, and has “really bad joints.” While in foster care, Jane had Medicaid. She regularly saw a doctor, had her own inhaler, and received the medication she needed.

A few months before her 19th birthday, Jane suffered a shoulder injury that prevented her from being able to work. She contacted her caseworker, afraid she would no longer be able to afford her housing. This spurred a court hearing to discuss potential resources that may be able to assist her. Jane’s progress was reviewed at the hearing, and, because she appeared to be self-sufficient, the decision was made to close her case. Jane lost her Medicaid coverage and had to take over payments for the treatment of her shoulder. She could no longer afford to visit a doctor or refill her prescriptions.

Although she works full-time hours at her current job, Jane is technically hired as a part-time employee; thus, she does not

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have access to insurance through her employer, and she cannot currently afford to purchase individual health insurance. When she has an asthma attack, which happens every few months, she turns on her shower at home and breathes in the steam until she is able to calm down - or she borrows someone else's inhaler. She frequently gets upper respiratory infections because of her asthma and has to pay out of pocket for treatment from a walk-in medical clinic. She tries over-the-counter medication for her allergies, which she says don't really work. Her polycystic ovarian syndrome goes untreated. Jane reports that she "lives with a constant fear of being cautious." Although she was once very active and loved playing sports, she now doesn't do "anything that would make my asthma act up or put me at risk of injuring myself."

As Jane's story indicates, young adults exiting the system often have significant health needs that remain unmet.² Youth formerly in foster care, as a group, struggle far more than their peers with access to health and mental health treatment. However, starting on January 1, 2014, a new health care opportunity will be implemented to help bridge the health care coverage gap for youth formerly in foster care.

Youth Formerly in Foster Care and Medicaid

For those unfamiliar with Medicaid, the program is a federal-state partnership that provides health care services to certain groups of low-income individuals. Medicaid is voluntary for states, but, once a state agrees to participate in the Medicaid program, it must provide coverage for certain "mandatory categories," such as children, pregnant women, very low-income caretaker relatives, and the aged, blind and disabled. There are also income limits as well as resource and asset tests for most categories in Medicaid. However, non-disabled adults without children are not currently eligible for Medicaid in Nebraska, no matter how low their income might be. All states currently participate in the Medicaid program, although coverage levels and services vary greatly from state to state.

The *Patient Protection and Affordable Care Act* of 2010 (ACA) created new paths to health insurance coverage for low-income adults like Jane. The law created tax credits for those with incomes between 100% and 400% of the federal poverty level, or \$11,490 to \$45,960 for an individual. The tax credits will reduce the amount an eligible person pays every month for a health care plan, if they purchase the plan in the new health insurance marketplace. If Jane's income is above 100% of the federal poverty level, this provision could help Jane access affordable coverage.

In addition to the tax credits, the ACA also made changes to the Medicaid program by adding two new mandatory coverage categories. First, the law extended coverage to all adults

between 19 and 64 with incomes under 133% of the federal poverty level, which is \$15,282 for an individual.³ The U.S. Supreme Court ruled that this expansion was optional for states, however, and the decision effectively created a new Medicaid program for these adults.⁴ For childless adults who do not fall into one of the other mandatory categories and whose incomes are below 100% of the federal poverty level, the new Medicaid program offers their only opportunity to get health care coverage. Currently, 28 states are moving toward expansion.⁵

Second, section 2004 of the ACA created a new mandatory eligibility category for youth formerly in foster care by amending section 1902(a)(10)(A)(i)(IX) of the Social Security Act. Beginning January 1, 2014, this makes it possible for youth to receive Medicaid coverage until they reach the age of 26. This provision was intended to equalize insurance coverage among young adults, placing youth aging out of foster care on par with their same-age peers who can remain on their parents' insurance until age 26 under the ACA.⁶ The U.S. Supreme Court decision did not impact this new category, which remains mandatory.

The language of the ACA states that youth formerly in foster care must receive coverage if they:

- are under 26 years of age;
- are not described in or enrolled under any [other mandatory category] or are [otherwise eligible under another category] but have income that exceeds the level of income applicable under the State plan for eligibility;
- were in foster care under the responsibility of the State on the date of attaining 18 years of age or such higher age as the State has elected; and
- were enrolled in the State plan under this title or under a waiver of the plan while in such foster care.⁷

Income Limits Inapplicable

Unlike other Medicaid eligibility categories, income limits do not apply to youth formerly in foster care, nor are there asset or resource tests. The requirement in the ACA effectively mirrors the provision that allows young adults to stay on their parents' insurance until age 26, even if they have access to health care coverage through their employer or are not dependent upon their parents. If a youth would have been otherwise eligible for Medicaid under another category but is over the income limit, he or she can still receive Medicaid coverage under this provision.

"Under the Responsibility of the State"

In order to be eligible for Medicaid under this category, youth formerly in foster care must have been "under the responsibility of the state" at the age of 18 or a higher age as the state

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has elected under the Fostering Connections to Success and Increasing Adoptions Act. Because the ACA requires that youth be under the responsibility of the state, it is important to note that generally those who have been discharged to independent living prior to age 18 or who are in guardianships when they exit foster care will not be eligible for Medicaid under this new category.⁸ When working with this population, it is imperative that legal professionals understand the impact of placing a youth in a guardianship or discharging them before they reach the age of 18, as doing so could jeopardize their ability to obtain health care coverage. As discussed further below, Nebraska may implement this provision to also exclude from eligibility young people who are discharged to independent living before age 19.

Legal professionals should also be aware that youth formerly in foster care who leave the state may or may not be able to receive Medicaid in a different state. On January 22, 2013, the Centers for Medicare and Medicaid Services (CMS) issued proposed federal regulations that gave states the option to cover youth from other states, but did not make such coverage mandatory.⁹ CMS has indicated that it will not be providing further guidance or regulation on the issue.

Enrolled in Medicaid Upon Exiting Foster Care

The ACA requires that youth have Medicaid at the time they exit foster care, whether that be at age 18 or a higher age as the state may have elected under the Fostering Connections Act, in order to be eligible to receive Medicaid under this category. Therefore, it is important for advocates working with this population to understand how the Nebraska Division of Medicaid & Long Term Care (Nebraska Medicaid) currently covers youth in the foster care system.

Nebraska Medicaid is required to cover all children in foster care who are receiving Title IV-E maintenance payments.¹⁰ Currently, Nebraska is covering non IV-E eligible children only if they are income eligible for Medicaid. For purposes of determining who is in the child's income unit, Nebraska is considering non IV-E eligible children as their own income unit, if they are expected to be in an out-of-home placement

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for more than 90 days. Almost all children in this situation will meet the income eligibility requirements for Medicaid. However, if the child is not expected to be in an out-of-home placement for more than 90 days, the child's parental income is included in determining Medicaid eligibility. Thus, youth who are returned to their home before aging out may be ineligible for Medicaid under this category.



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Implementation in Nebraska

On July 26, 2013, Nebraska Medicaid proposed regulations regarding the new category covering youth formerly in foster care. The provision states that, in order to receive Medicaid, the individual must:

- be under age 26;
- have received Medicaid at the time they aged out;
- have been in foster care under Nebraska or a Nebraska tribe's responsibility; and
- not be eligible for and enrolled in mandatory Medicaid coverage through parent/caretaker relatives, pregnant women, children, or AABD/MA.¹¹

There are two aspects of the proposed Nebraska regulation that should be noted by advocates. First, it requires that youth age out in Nebraska. The proposed Nebraska regulation does not take the option to cover youth from other states, which essentially means, for example, that an otherwise eligible youth that exited foster care in Iowa and moved to Nebraska to attend college would lose his/her health care coverage.

Second, the proposed regulation likely excludes coverage for youth that are discharged from foster care prior to their 19th birthday by requiring that youth have "aged out," as opposed to covering youth after age 18 as allowed by the plain language of the statute.¹² This could result in hundreds of youth who were discharged from care before their 19th birthday, including Jane, being determined ineligible for Medicaid in Nebraska.¹³ In the words of Jane, "They close a lot of cases at 18 because they think youth are ready to live on their own. I shouldn't have to suffer without insurance because I was capable of that." If Nebraska moves forward with these proposed regulations, youth discharged between their 18th and 19th birthdays will not likely be eligible for Medicaid under the new ACA category.

Both of these proposed regulations will create coverage gaps of which legal professionals working with this population must be aware.

Youth Formerly in Foster Care and the Medicaid Expansion

Although the ACA makes considerable strides in providing health care access for this population, there will be gaps

in coverage for youth who do not age out in Nebraska and who are discharged to independent living prior to age 19 if Nebraska chooses to implement the program narrowly. Under the language of the federal law, there will be gaps in Medicaid coverage for youth who exit foster care to guardianship or who were not enrolled in Medicaid at the time they left foster care.

However, many of these youth could access coverage under the new optional adult eligibility category. Therefore, the Medicaid expansion would close the gap for many of these vulnerable youth and ensure continuity of care for young people making the difficult transition from foster care to adulthood. 

Endnotes

- ¹ Nebraska Appleseed, "Bridging the gap: Supporting youth in the transition from foster care to adulthood," available at neappleseed.com/downloads646.
- ² Aisha Amanda Marie Hunter, "Toward providing equal access to health care for foster youth," *Michigan J. of Social Work and Social Welfare*, Volume II, Issue I (Spring 2011).
- ³ *Patient Protection and Affordable Care Act*, Section 2001(a) (2010).
- ⁴ *Nat'l Fed. Of Independent Business, et al., v. Kathleen Sebelius*, 567 U.S. ___, 132 S. Ct. 2566 (2012).
- ⁵ The Advisory Board Company, "Beyond the pledges: Where the states stand on Medicaid," July 26, 2013, available at <http://www.advisory.com/Daily-Briefing/Resources/Primers/MedicaidMap> (last visited August 13, 2013).
- ⁶ *See the Patient Protection and Affordable Care Act* (2010) Section 1001.
- ⁷ *Social Security Act*, 42 U.S.C. 1396(a)(10)(A)(i)(IX).
- ⁸ Brooke Lehmann, Jocelyn Guyer & Kate Lewandowski, "Child Welfare and the Affordable Care Act: Key Provisions for Foster Care Children and Youth," June 2012, available at <http://ccf.georgetown.edu/wp-content/uploads/2012/07/Child-Welfare-and-the-ACA.pdf> (last visited August 13, 2013) (However, if a guardianship is disrupted and a youth reenters foster care, they may still be eligible for Medicaid coverage under this category.)
- ⁹ Centers for Medicare & Medicaid Services 78 Fed. Reg. 4594, 4604 (Jan. 22, 2013) (amending 42 C.F.R. 435.150)
- ¹⁰ *Social Security Act*, 42 U.S.C. § 1396a(a)(10)(A)(i)(I); see also Sarah Helvey, "Federal Foster Care Financing Issues in Nebraska," *The Nebraska Lawyer* (November/December 2008) (describing the basic requirements for Title IV-E eligibility), available at <http://nebar.com/associations/8143/files/TNL-1108c.pdf>
- ¹¹ 477 NAC 24-006 (proposed July 26, 2013), available at http://www.sos.ne.gov/rules-and-regs/regtrack/details.cgi?proposal_id=0000000000001296 (last visited August 9, 2013).
- ¹² *Id.*
- ¹³ Nebraska Appleseed, "Bridging the Gap: Supporting youth in the transition from foster care to adulthood," available at <http://neappleseed.com/downloads646>