

**ANNALS OF HEALTH LAW**  
*Advance Directive*

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VOLUME 21    FALL 2011    PAGES 100-108

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**Access to Medicaid for the Mentally Ill: PPACA's  
Effect on Payment of Mental Health Services**

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I. INTRODUCTION

The prevalence of mental illness in our country causes more disability than any other class of illness.<sup>1</sup> “One in four Americans experience a mental disorder at one point in their lives. . .”<sup>2</sup> “The most serious of these conditions affect 10.6 million people,” with twice as many Americans living with schizophrenia than with HIV/AIDS.<sup>3</sup> Additionally, Americans suffering from a mental disorder are significantly more likely to be uninsured.<sup>4</sup> Therefore, those who suffer from a mental illness may find it difficult to find and pay for the services they need.

However, Medicaid can help alleviate some of the stress associated with paying for mental health services. Medicaid is the nation's largest health

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1. NATIONAL ALLIANCE ON MENTAL ILLNESS, GRADING THE STATES 2009: A REPORT ON AMERICA'S HEALTH CARE SYSTEM FOR ADULTS WITH SERIOUS MENTAL ILLNESS, [http://www.nami.org/gtsTemplate09.cfm?Section=Grading\\_the\\_States\\_2009&Template=/ContentManagement/ContentDisplay.cfm&ContentID=75459](http://www.nami.org/gtsTemplate09.cfm?Section=Grading_the_States_2009&Template=/ContentManagement/ContentDisplay.cfm&ContentID=75459). (last visited August 30, 2011) [hereinafter NAMI].

2. *Id.* at ix.

3. *Id.*

4. Rachel Garfield et al., *The Impact of National Health Care Reform on Adults with Severe Mental Disorders*, 168 AM. J. PSYCHIATRY 486, 490 (2011).

insurance program that aids millions of low-income individuals.<sup>5</sup> In recent years, Medicaid has become the largest payer in the mental health system.<sup>6</sup> Treatment of mental illnesses can be expensive, even with government sponsored health care coverage like Medicaid. Today, that is even more the case.

With the effects of the recent economic recession still lingering, newspaper and Internet headlines continue to report nationwide budget cuts to health services. In 2009, the National Alliance on Mental Illnesses (NAMI) took aim at the problems of the American healthcare system in its annual report, *Grading the States*.<sup>7</sup> The United States mental health system, as a whole, received a dismal grade of “D,” which publishers attributed to the growing need for financial assistance by the influx of new mental health sufferers into the system.<sup>8</sup> However, hope is on the horizon for these individuals. In the years to come, the issues concerning payment of mental health services may finally be solved. The Patient Protection and Affordable Care Act (PPACA) has several beneficial provisions, including mental health coverage under Medicaid expansion that is set to greatly increase service and funding for those suffering from mental illness.<sup>9</sup> The PPACA, once fully implemented in 2019, is expected to lead to an additional 2.3 million new users of mental health services.<sup>10</sup> Thus, uninsured individuals with mental conditions are likely to gain coverage under Medicaid expansion.

The focus of this article will be to provide an overview of Medicaid. Next, it will explain the provisions of the PPACA that authorize the expansion of Medicaid coverage to many uninsured Americans living with

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5. Diane Rowland et al., *Accomplishments and Challenges in Medicaid Mental Health*, 22 HEALTH AFF. 73, 74 (2003).

6. See NAMI, *supra* note 1, at 6.

7. *Id.* at 18.

8. *Id.* at 54.

9. Rachel Garfield et al., *Health Reform and the Scope of benefits for Mental Health and Substance Use Disorder Services*, 61 PSYCHIATRIC SERVS. 1081, 1081 (2010).

10. Garfield, *supra* note 4, at 490.

mental illness. Additionally, this article will discuss the effects of Medicaid reform on mental health coverage and analyze whether the reform will improve access to Medicaid for the mentally ill.

## II. MEDICAID OVERVIEW

Medicaid was enacted in 1965 under the Social Security Amendments.<sup>11</sup> It is now the primary program for providing comprehensive and affordable health care coverage to over sixty million low-income individuals,<sup>12</sup> paying up to sixty-five cents for every dollar of care provided.<sup>13</sup> Medicaid is also the largest source of financing for nursing home and community-based long-term care, and it provides essential funding as a “safety net” upon which many Americans rely.<sup>14</sup> It also provides coverage for children, maternity matters, and nearly nine million low-income Medicare beneficiaries, commonly referred to as “dual eligibles.”<sup>15</sup>

Furthermore, Medicaid also covers a broader range of behavioral health services than Medicare or private insurance.<sup>16</sup> The program is a lifeline for people suffering from mental illness, and since its enactment it has paid part of or all of the costs of care associated with individuals suffering from mental illness.<sup>17</sup> This includes prescription medications.<sup>18</sup> Medicaid does not, however, reimburse patients for treatment in state Institutions for Mental Disease (IMD).<sup>19</sup>

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11. *Overview Medicaid Management Information Systems* (2011), CTR. FOR MEDICARE & MEDICAID SERVS. (Sept. 9, 2011, 10:21 AM), <http://www.cms.gov/mmis>.

12. THE HENRY J. KAISER FAMILY FOUNDATION, *MEDICAID MATTERS: UNDERSTANDING MEDICAID’S ROLE IN OUR HEALTH CARE SYSTEM* (2011), available at <http://www.kff.org/medicaid/upload/8165.pdf> [hereinafter KAISER, MEDICAID].

13. David C. Main & Melissa M. Starry, *The Effect of Health Care Reform on Hospitals: A Summary Overview* (2010), PILLSBURY LIFE SCIENCES & HEALTH CARE, 4 [hereinafter Main & Starry].

14. KAISER, MEDICAID, *supra* note 12, at 1.

15. *Id.*

16. Garfield, *supra* note 9, at 1082.

17. Joanmarie Davoli, *No Room at the Inn. How the Federal Medicaid Program Created Inequities in Psychiatric Hospital Access for the Indigent Mentally Ill*, 29 AM. J. OF L. & MED. 160, 163 (2003).

18. Garfield, *supra* note 9, at 1082. (In 2007, among individuals who were treated for mental illnesses, 84% received pharmacotherapy.).

19. See MEDICAID DISCRIMINATION AGAINST PEOPLE WITH SEVERE MENTAL ILLNESS,

Currently, Medicaid is experiencing difficulties such as the high costs of some medications<sup>20</sup> and states budget cuts that specifically target mental health services.<sup>21</sup> For example, the state of Illinois stopped automatically prescribing seventeen brand name psychotropic drugs to individuals on Medicaid in order to save costs.<sup>22</sup> The changes are meant to trim \$90 million annually from the \$14 billion Medicaid budget of Illinois, which accounts for nearly a quarter of the state spending.<sup>23</sup> Likewise, the state of Utah shifted money away from services for the uninsured, specifically decreasing the funding to mentally ill citizens by forty percent.<sup>24</sup> In Arizona, lawmakers have slashed \$65 million from mental health services since 2008.<sup>25</sup> According to the National Association of State Mental Health Program Directors, at least \$2.1 billion has been collectively cut from state mental health budgets in the last three fiscal years alone.<sup>26</sup>

With continued budget cuts taking place, it is hard to imagine any meaningful improvement in NAMI's evaluation of the condition of America's mental health care system.<sup>27</sup> However, the PPACA may help to solve many of the issues related to uninsured individuals and payment of mental health services.

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<http://treatmentadvocacycenter.org/resources/473?task=view> (last visited August 30, 2011).

20. See Garfield, *supra* note 9, at 1082 ("Approximately a quarter of currently uninsured adults . . . experience serious . . . psychological distress. . . ; and over 6% of uninsured adults show indications of having a serious mental illness. Similarly, more than a quarter uninsured youths report a past-year major depressive episode."); see also Rowland, *supra* note 5, at 73.

21. See, e.g., John Keilman, *Illinois Limits Psychiatric Drugs for Medicaid Patients*, CHI. TRIB., Sept. 7, 2011 at 1, available at <http://www.chicagotribune.com/news/local/ct-met-medicad-drugs-20110907,0155283.story>.

22. *Id.*

23. *Id.*

24. Julia Lyon, *Deep Budget Cuts Coming for Utah's Mentally Ill*, THE SALT LAKE TRIB., Aug. 27, 2001 at 1, available at <http://www.sltrib.com/sltrib/news/52420332-78/medicaid-health-mental-ill.html.csp>.

25. Betty Ann Bowser & Lea Winerman, *State Budget Cuts Slash Mental Health Funding*, PBS NEWS HOUR (Jan. 17, 2011, 1:37 PM), <http://www.pbs.org/newshour/rundown/2011/01/state-budget-cuts-slash-mental-health-funding.html>.

26. Marc Lacey et al., *States' Budget Crises Cut Deeply Into Financing for Mental Health Programs*, N.Y. TIMES, Jan. 20, 2011 at 1, [http://www.nytimes.com/2011/01/21/us/21mental.html?\\_r=1](http://www.nytimes.com/2011/01/21/us/21mental.html?_r=1).

27. NAMI, *supra* note 1, at 54.

## III. PPACA REVISIONS

On March 23, 2010, President Barack Obama signed the PPACA into law.<sup>28</sup> A number of the key financing reforms to expand Medicaid will not be implemented until January 1, 2014.<sup>29</sup> However, a few provisions are already in effect, and others will be phased in over the next several years, until the law is fully implemented in 2019.<sup>30</sup>

PPACA makes sweeping changes to the U.S. health care system.<sup>31</sup> The law requires the creation of health insurance exchanges to provide individuals and small employers with access to insurance.<sup>32</sup> Additionally, the PPACA increases access to health insurance coverage by extending funding to the Children's Health Insurance Program (CHIP), and subsidizing private insurance premiums and cost-sharing for certain lower-income individuals enrolled in exchange plans.<sup>33</sup> It also includes several changes to the regulation of insurance, such as the extension of dependent coverage through age twenty-six, which aims to increase availability and affordability of coverage.<sup>34</sup> It will likely solve many of the states' issues with funding services, because the federal government will pay 100% of the cost for newly eligible individuals from 2014 through 2016.<sup>35</sup> That percentage will gradually reduce after 2017.<sup>36</sup> Finally, the PPACA expands Medicaid and makes coverage available to individuals with incomes up to 133% of the federal poverty level.<sup>37</sup> This amounts to approximately \$14,404 for individuals and \$29,327 for a family of four,<sup>38</sup> regardless of

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28. THE HENRY J. KAISER FAMILY FOUNDATION, FOCUS ON HEALTH REFORM: SUMMARY OF NEW HEALTH REFORM LAW 1 (2010). [hereinafter KAISER, SUMMARY]

29. *Id.* at 2.

30. *See generally*, THE HENRY J. KAISER FAMILY FOUNDATION, MEDICAID COVERAGE AND SPENDING IN HEALTH REFORM: NATIONAL AND STATE-BY-STATE RESULTS FOR ADULTS AT OR BELOW 133% FPL 2 (2010).

31. *See* Main & Starry, *supra* note 13, at 1.

32. *See* KAISER, SUMMARY, *supra* note 27, at 1-2.

33. *Id.*

34. Garfield, *supra* note 9, at 1081.

35. KAISER, SUMMARY, *supra* note 27, at 1-2.

36. *Id.*

37. ACA § 2001(a) (to be codified at 42 U.S.C. § 1396(a)).

38. THE HENRY J. KAISER FAMILY FOUNDATION, EXPANDING MEDICAID: COVERAGE FOR

traditional eligibility categories like health status, pre-existing conditions, and family composition.<sup>39</sup>

Coverage of mental health services is further extended through the inclusion of behavioral health treatment and prescription drugs under “Essential Health Benefits.”<sup>40</sup> States will now be allowed to enroll mentally ill citizens in “benchmark” plans.<sup>41</sup> Federal law defines “benchmark” coverage “as that equal to the Federal Employees Blue Cross/Blue Shield preferred provider organization plan. . .”<sup>42</sup> For example, the newly covered individuals with mental illnesses will have the same “coverage available to state employees, coverage offered by the health maintenance organization with the state’s largest commercially enrolled population, or other coverage approved by the U.S. Secretary of Health and Human Services.”<sup>43</sup> “Benchmark equivalent” coverage includes basic specified services and has an aggregate actuarial value.<sup>44</sup>

In addition, the PPACA specifies that federal parity requirements apply under “benchmark equivalent” coverage.<sup>45</sup> The federal parity requirements established by the Mental Health Parity of 2008<sup>46</sup> essentially puts mental health treatment on par with other types of medical care.<sup>47</sup> This includes such factors as deductibles, copayments, coverage, and doctor visits.<sup>48</sup>

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LOW INCOME ADULTS UNDER HEALTH REFORM 1 (2010), *available at* <http://www.kfff.org/healthreform/upload/8052.pdf>.

39. ACA §2705(a) (to be codified at 42 U.S.C. §300gg-4).

40. PPACA mandates “Essential health benefits” coverage. “Essential health benefits” includes items and services within at least 10 categories: ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care. ACA § 1302(b) (to be codified at 42 U.S.C. § 18022).

41. Garfield, *supra* note 9, at 1084.

42. *Id.*

43. *Id.*

44. Aggregate actuarial value refers to a position where two or more conditions or plans have the same current value. *Id.*

45. *Id.*

46. *Id.* at 1083.

47. ACA § 1302(c)(6) (to be codified at 42 U.S.C. § 1396(a)).

48. ACA §1302 (to be codified at 42 U.S.C. § 18022).

Therefore, mental health must be provided with the same coverage as someone treated for diabetes, cancer, or heart disease.

The PPACA also targets insurance companies by creating a mandate that they cover mental health disorders.<sup>49</sup> In essence, the PPACA requires insurance companies to cover mental health services as a necessity. For example, at the state level the PPACA will stimulate coverage by “allowing states to seek service and training grants for psychiatric emergencies, child and adolescent conditions, and postpartum depression and psychosis.”<sup>50</sup>

Mental health advocates believe health reform will be a huge victory for persons with mental health issues, and policymakers anticipate that when fully implemented in 2019, “[the] PPACA will reduce the number of uninsured by 32 million at a net cost of \$778 billion over 10 years.”<sup>51</sup> More specifically, 3.7 million individuals with severe mental disorders will gain coverage once reform is fully implemented, most of them under Medicaid.<sup>52</sup> However, only time will tell if the PPACA is successful at meeting its goals; in this case, reducing the amount of uninsured suffering from mental illness while improving the quality of services they receive.

#### IV. EFFECTS OF REFORM ON MENTAL HEALTH COVERAGE

The PPACA will expand and improve services for persons with mental illness. However, the problematic issues that remain are a point of debate. “First, the PPACA largely relies on states to implement key provisions even as they experience fiscal crises that threaten mental health services.”<sup>53</sup> Even after reform is fully implemented in 2019, behavioral health coverage will continue to vary by coverage source because different rules are in place

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49. Neil Krishan Aggarwal et al., *Is Health Care a Right or a Commodity? Implementing Mental Health Reform in a Recession*, 61 *PSYCHIATRIC SERVS.* 1144, 1144 (2010).

50. *Id.*

51. Garfield, *supra* note 4, at 486.

52. *Id.* at 490.

53. Aggarwal, *supra* note 48, at 1144.

for existing and new coverage sources.<sup>54</sup> Additionally, the PPACA does not stipulate that states cannot cut services after reform is implemented.<sup>55</sup> Therefore, mental health coverage may fluctuate because it is ultimately up to the states to enact reform. This may be attributed, in part, to recent state budget cuts in mental health services.

Although the PPACA guarantees access for the newly covered individuals under benchmark plans, it does not substantially change mental health services for current Medicaid recipients.<sup>56</sup> Newly eligible Medicaid beneficiaries with serious mental disorders may require additional services because the “benchmark equivalent” only covers basic services.<sup>57</sup> Ultimately, access for newly eligible individuals with serious mental illness will depend on state coverage decisions and final regulations on benchmark coverage under the PPACA.

Regardless of the issues concerning payment and coverage of mental health services, the PPACA is a stepping-stone in the right direction. NAMI believes that the PPACA will help by expanding mental health service coverage through state-based private health exchanges and extending the Medicaid poverty level.<sup>58</sup> Moreover, health reform provides an unprecedented opportunity for millions of individuals with behavioral health needs to gain insurance coverage for crucial services, such as psychosocial counseling and prescription drugs. It is estimated that Medicaid will cover 24.5% of the population with a mental illness when reform is fully implemented, compared to 12.8% currently.<sup>59</sup> Those suffering from mental illness will particularly benefit, as nearly one-third (31.2%) of currently uninsured individuals with severe mental disorders

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54. Garfield, *supra* note 9, at 1083-4 (“Policy makers estimate that approximately 40% of currently uninsured individuals will remain uninsured”).

55. *Id.* at 1084.

56. *Id.* at 1083-4.

57. *Id.* at 1084.

58. See Laura Usher, *Will Health Care Reform Help Those Most at Risk? A Unique Perspective from the NAMI Crisis Intervention Team (CIT) Action Center*, NAMI BLOG (Nov. 23, 2010), <http://blog.nami.org/2010/11/will-health-care-reform-help-those-most.html>.

59. Garfield, *supra* note 4, at 489.

will be covered under the Medicaid expansion, compared to only 21.8% of other low-income individuals without severe mental illness.<sup>60</sup> Despite the shortfalls of mental health coverage under the PPACA and Medicaid Expansion, the legislation will ultimately help alleviate access issues for those with mental illness.

#### V. CONCLUSION

The PPACA will go a long way in improving the way of our nation's mental health system is perceived by organizations like NAMI. Reform is needed in the mental health system as the vast majority of people with mental illness continue to need care, but lack the coverage to seek that care. One must not assume that the PPACA was meant to be the final solution to all of the problems plaguing the mental health system. Additional work must continue to be done to further provide mental health services to those who need it the most. Policy makers will need to develop strategies to ensure adequate coverage of mental health services. The PPACA may not be the final solution to cover uninsured mental illness sufferers, but it is a legitimate and honest attempt that will aid a significant portion of the population.

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60. *Id.*