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In February 2006, the President signed into law budget reconciliation legislation – the so-called Deficit Reduction Act (DRA) – that fundamentally alters many aspects of the Medicaid program. Some of these changes are mandatory provisions that states must enact and that will make it more difficult for people to either qualify for or enroll in Medicaid. Other changes are optional provisions that allow states to make unprecedented changes to the Medicaid program through state plan amendments. This series of issue briefs is designed to inform advocates about the specifics of these changes and to highlight key implementation issues and strategies to mitigate the harm these provisions could cause to people on Medicaid.

Health Opportunity Accounts:
What Are They, and Why Should State Advocates Care?

The Deficit Reduction Act of 2005 (DRA) includes a sweeping provision that allows the Secretary of Health and Human Services (HHS) to approve new demonstration projects in up to 10 states to establish "Health Opportunity Accounts" for people enrolled in Medicaid.[1] Health Opportunity Accounts, otherwise known as HOAs, would begin to privatize Medicaid. They are reminiscent of Health Savings Accounts (HSAs), the Administration's pet health insurance initiative in the private market. The new HOA provision went into effect on January 1, 2007. On January 10, 2007, the Centers for Medicare and Medicaid Services (CMS), the agency that oversees Medicaid, issued guidance to states about the new demonstration program.[2]

What Are HOAs?

An HOA is an account into which a state may deposit up to $2,500 per adult and $1,000 per child in a participating family. The account is coupled with a new deductible in Medicaid. States decide how much the deductible will be, but it can be no more than the amount the state contributes to the account plus an additional 10 percent. The money in the account must be used to purchase individual health care services. Once individuals meet the deductible, they receive "regular" Medicaid coverage. For example, in a state that uses the maximum amounts allowed, adults with HOAs would have $2,500 deposited in their account, and they would have to meet a deductible of $2,750 ($2,500 + $250). Once the $2,500 in the HOA is used up, they face a gap in their coverage: They will have to pay the next $250 in medical costs out of pocket before they can receive Medicaid coverage.

Can States Get around the DRA Rules?

The DRA HOA provisions are discussed throughout the rest of the issue brief. However, it is important to note that if a state wanted to go even *further* than the statute allows, it could use a Section 1115 waiver to customize an HSA-like program in Medicaid and avoid compliance with the rules set forth in the DRA. Such a waiver would be subject to budget neutrality and the typically long waiver negotiations with CMS. Under the DRA HOA demonstration program, the first 10 states to adopt an HOA would need to receive approval from the Secretary of HHS and amend their Medicaid state plans—a much simpler process.

Who Can Participate in an HOA?

In states that decide to participate in the HOA demonstration, individuals and families who are eligible will choose whether or not they would like to receive an account. There is a very limited group of people who can participate in an HOA—primarily children and their parents. See the box titled "Which Groups Are Exempt?" for a list of those who cannot participate in an HOA. This list mirrors the list of groups exempted from the new "benchmark benefit package" option of the DRA.[3] However, unlike the groups who are "exempted" from the reduced benefit packages under the DRA, groups who cannot enroll in HOAs are truly exempt and not allowed to participate, even voluntarily, in an HOA. HOA participants must have been eligible for Medicaid for at least three continuous months, and they must be under 65, not pregnant, and not disabled.[4]

Which Groups Are Exempt?

Groups Exempt from Participation in HOAs in the First Five Years:

- People over age 65
- People with disabilities (even if enrolled in Medicaid in a non-disability-related category)
- Pregnant women
- People who have been eligible for Medicaid for fewer than three months

Groups Exempt from Participation in an HOA at Any Time:[5]

- People who are blind
- People who are enrolled in both Medicare and Medicaid (dual eligibles)
- People who are terminally ill and receiving hospice care
- People who live in institutions
- People who are medically frail or who have special health care needs
- People who qualify for long-term care services
- Children in foster care
- Women in the breast and cervical cancer category of Medicaid
- People whose Medicaid coverage is limited to assistance with Medicare premiums and cost-sharing

How Do HOAs Work?

Once individuals opt to join an HOA demonstration, they will be provided with an account into which the state will contribute up to $2,500 per adult and $1,000 per child.[6] The state must ensure that the account can be debited electronically to pay for covered services.

The state will determine what the benefits package for HOA participants will include, and it is possible that people who opt to participate in an HOA will receive a different benefits package than individuals in "regular" Medicaid.[7] For example, if a state wished to entice people to participate in the HOA demonstration, it could offer coverage for health care services that are not covered by "regular" Medicaid in their state, such as dental, vision, or hearing benefits for adults.

Individuals in fee-for-service Medicaid who use an HOA can see any participating Medicaid provider or any other provider who will take them. If the provider participates in Medicaid, the provider will be paid the "regular" Medicaid reimbursement rate. If the provider is not a Medicaid provider, he or she can be paid up to 25 percent more than the regular Medicaid reimbursement rate.

Individuals in managed care can also participate in HOAs, with some restrictions. No more than 5 percent of a Medicaid managed care plan's enrollees can participate in an HOA, and no one plan can have proportionately more participants than other managed care plans. The state must also negotiate payments to managed care plans and providers to reflect the expected changes in health care utilization by HOA participants.

The HOA not only covers the provider's regular Medicaid fee (or enhanced fee), it also covers any cost-sharing that the individual would otherwise be charged if he or she were in "regular" Medicaid. Thus, saving money on cost-sharing that would otherwise have come out of pocket could prove to be an incentive for people to join an HOA. This feature benefits healthier people in Medicaid who are unlikely to spend through their accounts and the deductible.

Would Everyone Get the Same Amount in His or Her HOA?

States can decide how much they will put into an HOA, and they can also set a maximum amount that may be contributed to the HOA. For example, a state could decide that it will put $2,500 into an account for an adult and that the maximum amount that can be in the account is $4,000. The difference between the state contribution and the maximum—$1,500 in this example—is the amount that could be contributed by an employer, an individual, or other private source. (These other contributions are generally not matchable by the federal government.) Potentially, any unspent funds in the account could roll over from year to year (although the statute does not speak to whether these funds can roll over if they are not spent in a year).

States can also decide to put different amounts into accounts in different parts of a state or for different individuals based on virtually any criteria they decide to use. However, a state cannot put more money into an HOA for people with higher incomes than it does for people with lower incomes.

Once in an HOA, Can Enrollees Get Out?

Once individuals opt into an HOA, they are locked in for 12 months, except in cases of hardship. (The Secretary of HHS was expected to define what counted as a hardship when CMS released guidance on the HOA demonstrations, but this definition was not included. The CMS guidance did leave open the possibility of hardship being defined at a later date.) It will be up to states to decide how people apply for a hardship exemption. Once people leave an HOA, they may not get back into one for 12 months.

If HOA participants lose Medicaid eligibility during the course of the year, they may keep 75 percent of any money left in their accounts (the state keeps 25 percent). Individuals may use the money to purchase private health coverage, or, in some cases, states may allow individuals to use the money for things such as job training or tuition expenses.[8] Once HOA participants lose eligibility, they have up to three years to use the remaining funds.

Why Should Advocates Be Concerned?

- **HOAs move Medicaid toward a dangerous "defined contribution" model**. HOAs are a radical departure from the way that Medicaid is administered today. Proponents use the rhetoric of "consumer control" to tout HOAs, but these accounts limit benefits and shift costs to low-income individuals. HOAs rely on a "defined contribution" approach that limits how much health care people get based on an arbitrary dollar amount rather than ensuring that low-income people get the health care they need.

  The HOA demonstration is tempered by an important safety feature that allows individuals back into "regular" Medicaid coverage once their deductible is met. Despite this protection, advocates should think of HOAs as "the camel's nose under the tent." Whether or not states save money through the HOA demonstration, or if they find it hard to work within the safeguards, proponents of the

What Is "Defined Contribution"?

In a defined contribution model, Medicaid contributes a fixed dollar amount to an account for each Medicaid participant, and the participant uses that money to purchase health insurance or to purchase services directly (as in an HOA). When the money runs out, people are left to pay any further health care expenses on their own. This contrasts with the traditional way Medicaid operates, where there is no preset cap on the amount of coverage an individual receives. Individuals are guaranteed access to covered services that are deemed to be medically necessary for them.

defined contribution approach in Medicaid may try to push the envelope. They may pursue changing the law or applying for Medicaid waivers from CMS that undermine or eliminate key protections in an effort to expand HOAs and the defined contribution approach.

- **People enrolled in HOAs may not be able to afford health care after their accounts are depleted**. Because the deductible for an HOA plan may be up to 10 percent greater than the amount the state contributes to an HOA account, people who have HOAs can have a gap in their coverage. Even a modest gap in coverage may mean that individuals will forgo necessary medical care because they cannot afford it. Proponents of HOAs say that these accounts will encourage "personal responsibility" among participants, but forgoing needed medical care should not be considered a "responsible" thing to do. Forcing people to do without necessary care is a misguided attempt at encouraging "personal responsibility," particularly since the largest segment of people potentially eligible for HOAs are children.
- **HOAs are likely to cost more than they will save.** Although states may look to HOAs as a way to save money in Medicaid without directly cutting services or eligibility, HOAs are more likely to cost money than to save it.
  - The Congressional Budget Office determined that HOAs were likely to cost $56 million over five years.[9]
  - States will incur additional administrative costs to run HOAs.
  - People using HOAs can use providers who do not normally take Medicaid, and these providers can be paid up to 25 percent more than the state would pay a Medicaid provider. Moreover, when individuals run through the deductible and go back into "regular" Medicaid, they will no longer be able to see non-Medicaid providers and will experience disruptions in their care that could add costs.
  - The state will not reap any cost savings that would have been generated from co-payments or co-insurance while an individual is using an HOA.
  - Individuals who leave Medicaid during the year may take 75 percent of any unspent funds from their HOAs with them. This may leave states "on the hook" for payments to individuals who are no longer eligible for Medicaid that they would not otherwise have made.
- **After the five-year demonstration period, HOAs can be implemented anywhere.** The long-term implications of HOAs are also a cause for concern. Although the Secretary of HHS may approve only 10 demonstrations between 2007 and 2011, once the five-year demonstration period is up, if the Secretary determines that at least one of the demonstrations was a "success," any state may adopt HOAs, and certain individuals who were previously exempt from HOAs will be allowed to enroll in them (see "Which Groups Are Exempt?").

Case Study: South Carolina

While HOAs have not yet been implemented in any state, a few states have publicly expressed interest in implementing the demonstration project. South Carolina was the first state to show interest in using the HOA option. In February 2007, South Carolina presented a plan to its Medical Care Advisory Committee that included applying for and implementing an HOA demonstration.* Although the proposal lacks many specifics, it may be instructive to look at South Carolina's plan to see how other states may craft such programs.

Under the South Carolina proposal, HOAs will be offered only to "well" adults and children in the state's Medicaid program, and the pilot will be limited to 1,000 participants in Richland County. The state will deposit into each account $2,500 for adults and $1,000 for children. Participants will then obtain services directly from a physician using the funds in the HOA to pay for these services. Benefits will be the same as in regular Medicaid. Certain preventive care services, including exams and childhood immunizations, will be covered for individuals in the HOA pilot, but the cost of these services will not be taken from the HOA.

When HOA participants leave the program, they will be able to use their account balances (after the state gets back 25 percent of the remaining funds) for medical or other expenses for up to three years.

A counseling program will be established, and counselors will assist HOA pilot participants to ensure that they understand the rules of the program before they sign up. During the first six months of the program, counselors will also contact participants regularly to make sure they understand how the program works.

Although the proposal lacks details, as currently written, the South Carolina proposal appears to follow the DRA. The state also expects to submit a state plan amendment under the DRA benchmark benefit plan option to operate another pilot program. This one would be an HSA-like plan that mirrors a plan offered to state employees. By implementing the two pilot programs, the state hopes to "increase beneficiary satisfaction" by providing more health care coverage choices and to "better prepare" Medicaid recipients for the commercial health care market when they leave Medicaid.

* South Carolina also released a Medicaid reform concept paper in September 2006 that included a different version of an HOA demonstration project.

What Should Advocates Do about HOAs?

If your state is dead set on joining the HOA demonstration project, there are a few things you can suggest to ameliorate the harm. The following is not an exhaustive list, but a starting point.

- **Limit the populations eligible for HOAs.** The legislation exempts many groups from eligibility for HOAs (see "Which Groups Are Exempt?"), but states could choose to limit eligibility *even further*.
- **Limit the geographical area of the demonstration.** There is no requirement that states offer HOAs statewide, and these accounts may be particularly inappropriate for residents in rural areas where finding specialists and managing one's own health care needs may be even more difficult than in an urban setting.
- **Minimize the deductible.** Although federal law allows the deductible to be up to 10 percent greater than the contributions to the HOAs, states do not have to set it that high. The deductible can be set at the same amount as the HOA contribution, leaving no gap for the participant to fill out of his or her own pocket.
- **Provide preventive care services outside the deductible.** The legislation requires that HOA demonstrations include incentives for participants to seek preventive care services. In line with this requirement, the legislation also allows states to provide preventive care coverage outside the annual deductible. Advocates should encourage their states to do so. Moreover, a liberal definition of "preventive care services" allows a greater range of free services for participants.
- **Create strong enrollment counseling and education programs.** Federal law states that HOA demonstrations may not be approved unless they include enrollment counseling and ongoing education activities. Advocates should demand that states create strong counseling and education components to ensure that participants understand how HOAs work before enrolling in them.

What's Next?

The HOA option went into effect on January 1, 2007. Beginning on that date, the Secretary of HHS was allowed to approve HOA demonstration projects. On January 10, 2007, CMS released a template state plan amendment that makes it easy for states to apply for the demonstration.

In order for a state to implement HOAs, it must first amend its Medicaid state plan (or amend a Section 1115 waiver, if necessary). CMS must also approve the state plan or waiver amendment. Although the guidance has been released for only a short time, we do expect HOA projects to be approved in early 2007, so advocates should carefully watch for any proposed changes to their state's Medicaid program.

As of late February 2007, other states have joined South Carolina in expressing interest in applying for HOA demonstration projects. Washington's state legislature is considering multiple bills that would implement HOAs, and the state's governor is supportive of the plan.[10] Texas Governor Rick Perry has hinted that he will introduce health savings accounts to the state's Medicaid program in his proposed FY 2008-2009 budget,[11] and Indiana Governor Mitch Daniels has a proposal to use Medicaid funds for HSA-like accounts to expand coverage to the uninsured.[12] Although it is thin on details, Indiana's proposal could be one example of a state that is planning to use a Medicaid waiver to go further than the DRA's HOA demonstration allows.

If your state has not yet become interested in HOAs, you may want to consider another strategy for preventing a demonstration in your state: If your state does not require legislative approval of Medicaid state plan changes, you may want to consider trying to get such legislation passed. Depending on the political makeup of your state legislature, this may be one way to prevent your state from implementing HOAs.[13]

Conclusion

The new Health Opportunity Account demonstration project will dramatically change the way some people in Medicaid get health care services and will make health care more unaffordable, with added costs to beneficiaries. HOAs have the potential to affect beneficiaries in all states, since a "success" in one of the initial 10 demonstration projects means that HOAs could become a permanent feature of the Medicaid program. As states begin to apply for and craft their HOA programs, Families USA will continue to update advocates so that we can all work to minimize the harm that HOAs can cause to Medicaid beneficiaries.

Endnotes

[1] Section 6082 of the Deficit Reduction Act of 2005, P.L. 109-171.

[2] Centers for Medicare and Medicaid Services, Dear State Medicaid Director Letter #07-001, January 10, 2007.

[3] For more on what states can do to reduce benefits under the DRA, see *Medicaid Benefit Package Changes: Coming to a State Near You*? (Washington: Families USA, March 2006), available online at http://www.familiesusa.org/assets/pdfs/DRA-Benefit-Package.pdf.

[4] A person with a disability may not be enrolled in an HOA during the first five years of a demonstration, regardless of whether they qualified for Medicaid based on their disability.

[5] A strict reading of the statute also appears to exempt parents in the family coverage category of Medicaid from participating in an HOA at any time. The section of the statute that contains these exemptions refers to Section 6044 of the Deficit Reduction Act, which purports to exempt parents from the DRA's benchmark benefit package option. However, CMS' "Dear State Medicaid Director" letter on Section 6044 states that this exemption relates to "individuals who qualify for Medicaid solely on the basis of qualification under the State's TANF rules." Since Medicaid and TANF eligibility were never linked, this exemption is meaningless, and under CMS' interpretation, no parents are exempt from the benchmark benefits provision. (See Centers for Medicare and Medicaid Services, Dear State Medicaid Director Letter #06-008, March 31, 2006.) Therefore, parents are also not exempt from being enrolled in Health Opportunity Accounts.

[6] HOA maximum contributions may be increased annually based on the percentage increase in the medical care component of the consumer price index for all urban consumers.

[7] The benefits package can include only services that federal law allows to be covered in Medicaid.

[8] Using remaining HOA funds for something other than the purchase of health insurance is allowed only for individuals who have been in an HOA for at least one year.

[9] Congressional Budget Office, *Congressional Budget Office Cost Estimate of S. 1932 Deficit Reduction Act of 2005* (Washington: U.S. Congress, January 27, 2006).

[10] See H.B. 1490, 2007 Leg., Reg. Sess. (Wa. 2007), S.S.B. 5930, 2007 Leg., Reg. Sess. (Wa. 2007), and Governor Christine Gregoire, *Healthy Washington Initiative* (Olympia, WA: Washington State Office of the Governor, January 2007), available online at http://www.governor.wa.gov/priorities/healthcare/healthcare_brief.pdf.

[11] Governor Rick Perry, *Governor's Budget 2008-2009 Summary* (Austin: State of Texas, February 2007), available online at http://www.governor.state.tx.us/divisions/bpp/budget/files/budgetsummary2008-09.pdf.

[12] Governor Mitch Daniels, *Protection, Prevention, Peace of Mind: Governor Introduces Plan for a Healthier Indiana*, Press Release (November 17, 2006).

[13] To learn more about this issue, see *Model State Legislation to Implement State Flexibility in Medicaid* (Washington: National Association of Community Health Centers, February 2006), available online at http://www.nachc.com/advocacy/Files/state-policy/model%20state%20legislation.pdf.

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