

# WORKING

Newsletter of the New York Makes Work Pay Initiative · Issue 1 UPDATED · February 2012

## **New York's Medicaid Buy-In for Working People With Disabilities Program Allows Individuals with Disabilities to Work and Keep Medicaid**

Many persons with significant disabilities are unable to obtain employer-funded private health insurance that provides coverage comparable to Medicaid. The fear of losing Medicaid is one of the greatest barriers keeping individuals with disabilities from maximizing their employment, earnings potential, and independence. For many Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) beneficiaries, the risk of losing Medicaid through work activity is a greater work disincentive than the risk of losing cash benefits through work activity. (See article 2 on The Importance of Medicaid on page 5).

As we explain below, since 1987 when the section 1619(b) Medicaid provisions became permanent, SSI beneficiaries have been able to keep Medicaid when they lose cash benefits due to wages. No parallel provisions

have existed for persons who do not receive SSI, including individuals who receive SSDI without an SSI supplement. Although SSDI beneficiaries who work are eligible for extended Medicare coverage for eight years or more following a nine-month trial work period, Medicare typically does not provide the scope of coverage available through Medicaid. Medicare, for example, has very restrictive and limited coverage for home health care benefits, a service covered by Medicaid.

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## Additional Articles Relating to the Medicaid Buy-in Program

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To provide readers a comprehensive view of where the Medicaid Buy-In for Working People with Disabilities (MBI-WPD) fits in, this issue of the newsletter will also include four additional separate articles. The first will explain the importance of the Medicaid program and what it covers. The second will cover the 1619(b) program for former SSI beneficiaries who can keep Medicaid while working. The third will explain the spend down program for individuals with income that is higher than Medicaid's eligibility threshold. The fourth article will provide strategy tips for filing an MBI-WPD application.

Congress created the Medicaid Buy-In option in section 4733 of the Balanced Budget Act of 1997 and enhanced this option through the Ticket to Work and Work Incentives Improvement Act of 1999. By authorizing states to offer Buy-In programs, these landmark pieces of legislation created an opportunity for states to develop comprehensive work incentives that encourage people with disabilities to work or increase their levels of work, thereby reducing or eliminating their dependency on cash SSDI or SSI benefits.

In 2003, New York implemented the Medicaid Buy-In For Working People With Disabilities (MBI-WPD) program adopted by

our state legislature and signed by Governor Pataki on January 16, 2002. In 2012, individuals with disabilities who have net incomes at or below 250 percent of the federal poverty level and non-exempt resources in 2012 at or below \$20,000 qualify for the MBI-WPD program. Because SSI-related earned income exclusions are used to determine net income in the Buy-In program, this means that an individual could be eligible for the program in 2012 with annual income as high as \$56, 892.

This issue of *Working* will briefly describe New York's Medicaid Buy-In for Working People with Disabilities Program. We will describe the basics of the program, who it is designed to serve, and eligibility criteria, providing examples to illustrate the program's importance to individuals with disabilities.

## ~Article 1~

### New York's Medicaid Buy-In For Working People with Disabilities Program

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New York's Buy-In program is quite unique as it consists of two eligibility groups: the Basic Coverage Group and the Medical Improvement Group.

#### The Basic Coverage Group

To be eligible for the Basic Coverage Group, an individual must have a disability that meets the medical criteria established for the SSI program, but have too much income to qualify for SSI. In addition to the usual

Medicaid rules, the specific requirements are:

- \$ **Disability** - Certified disabled under SSI criteria
- \$ **No SGA test** - In determining disability, there is no “substantial gainful activity” (SGA) test (i.e., earnings over \$1010 per month in 2012 are irrelevant)
- \$ **Age** - Be at least 16 but not yet 65 years old
- \$ **Work** - Be engaged in paid work (includes part-time and full-time work)
- \$ **Income** - Have a gross income that may be as high as \$56,892 for an individual<sup>1</sup> and \$76,692 for a couple (as of January 1, 2012)
- \$ **Resources** - Have non-exempt resources that do not exceed \$20,000 for an individual or \$30,000 for an eligible couple. Additionally, as of October 2011, retirement accounts are exempt for MBI-WPD applicants and recipients.

## The Medical Improvement Group

To be eligible for the Medical Improvement Group, an individual must have been in receipt of coverage through the basic group, no longer disabled under the criteria established by the Social Security Administration, but continuing to have a severe medically determined impairment. Keep in mind that loss of eligibility under the Basic Coverage Group must be the direct and specific result of loss of disability status because of medical improvement. Finally, an individual in the Medical Improvement Group must be

employed at least 40 hours per month and earn at least the federally required minimum wage.

As of early 2012, we have seen few many participants in the Medical Improvement Group.

## Eligibility is Based on Monthly Income

The easiest way to understand this is through an example.

Sharon receives Social Security Disability Insurance (SSDI) benefits of \$1,062 per month – too much income to qualify for SSI. After the county Medicaid agency disregards \$20 of her SSDI, this is still \$250 above the \$792 per month threshold for Medicaid eligibility. Sharon must pay a \$250 spend down each month to establish Medicaid coverage.

Sharon could start work at a job that pays \$865 gross per month. Under regular Medicaid spend down rules, \$65 of her wages and 50 percent of the remainder would be disregarded ( $\$865 - 65 = 800 - 400 = \$400$ ). The remaining \$400 would increase her spend down from \$250 to \$650 – a real disincentive to any thoughts Sharon may have about working.

Under these facts, Sharon should qualify for the MBI-WPD, as her monthly countable income of \$1,417 ( $\$1,017 + \$400$ ) is less than the monthly eligibility threshold for 2012 (\$2,328). In fact, Sharon could earn considerably more per month and retain Medicaid under the MBI-WPD program, so long as her countable wages are less than \$2,328.

## How the Premium Works

For both the Basic Coverage and Medical Improvement Groups, no premium is owed if countable income is below 150 percent of the federal poverty level. If income is between 150 and 250 percent of the federal poverty level, the premium will be \$25 per month for an eligible individual and \$50 per month for an eligible couple. For 2012, a \$25 per month premium would ordinarily be owed if countable income (earned and unearned) is more than \$1,396—per month. As this article is written, the State Department of Health still does not have a system in place to collect premiums.

## The Application Process

Individuals must apply for the Medicaid Buy-In program through their local Department of Social Services (DSS), or the Human Resource Agency (HRA) in New York City, by completing the form all applicants for public assistance complete, The Access New York Health Care Form (DOH-4220). The application can be mailed; it need not be done in person. If the individual, however, needs assistance completing the application, he or she can request an appointment at the local office.

In those cases in which the individual has not been previously certified disabled, the local DSS or HRA must assist the applicant in establishing proof of disability by having the individual sign the appropriate consent forms for release of medical information and by sending requests for medical information to all relevant medical providers. If the application for the MBI-WPD program

is approved, the recipient will be entitled to up to three months of retroactive eligibility.

In all cases, the local DSS or HRA must provide information to the applicant about the Plan for Achieving Self Support (PASS) and Impairment Related Work Expenses (IRWEs). The authors are hopeful that the Department of Health will better train local Medicaid caseworkers concerning this important program as well as the PASS, IRWEs, and other SSI-related work incentive provisions that can be used to reduce countable income, as these special rules have long been overlooked in the Medicaid program.

Participants in the Medicaid Buy-In program for Working People with Disabilities will be given the option to choose managed care if their income is below 150 percent of the Federal Poverty Level. Individuals cannot be required to enroll in managed care even in counties with mandatory participation in managed care.

## Grace Periods

A major question asked by individuals considering applying for the MBI-WPD program is what happens to a participant if he or she stops working while participating in the program. Pursuant to the program's provisions, recipients may be granted a grace period if the individual is not working but remains eligible for the program. A grace period can be for up to six months in a 12-month period. Multiple grace periods may be granted as long as the sum of the grace periods does not exceed six months in a 12-month period. Two types of grace periods may be granted.

**Change in Medical Condition.** A grace period of up to six months will be allowed if, for medical reasons, the recipient is unable to continue working. Medical verification will be required.

**Job Loss (through no fault of participant).** A grace period of up to six months will be allowed if, through no fault of the recipient, a job loss occurs (layoff, etc.). The local DSS must verify that the recipient is reasonably expected to return to work as it is a temporary layoff, or that the recipient is actively seeking new employment.

The local DSS will be responsible for grace period determinations.

## Miscellaneous Details, the Need for a MBI-WPD Program

For mixed households (i.e., households including individuals applying for the MBI-WPD program and individuals not applying for the MBI-WPD), only the applicant for the MBI-WPD program will be eligible for participation in the program. For mixed households, only the application of the individual, seeking assistance from the program, will be processed by the local DSS or HRA. Normal Medicaid eligibility for the rest of the household will be determined by the local DSS or HRA.

As already noted, the section 1619(b) program is only available to persons who have received SSI in the past (see article 3 page 7). For persons with disabilities eligible for Medicaid only through the medically needy or spend down program (see article 4 on page 9). As their wages increase their spend down obligation may increase to a

level that makes continued work unrealistic. In fact, if wages remain above the substantial gainful activity level (\$1010 in 2012), Medicaid will no longer be available with a spend down because the individual would not meet the SSI definition of disability. By contrast, SGA-level work will not disqualify an individual from MBI-WPD eligibility.

The MBI-WPD program promises to address the health care needs of many New Yorkers who want to work despite severe disabilities. Combined with the continued availability of section 1619(b) Medicaid, there is now a means for ensuring continued Medicaid eligibility for nearly all individuals with disabilities who hope to work for significant wages. Readers of this newsletter can play a major role in helping to get out the word about this work incentive.

## ~Article 2~

### The Importance of Medicaid

Medicaid, also known as Medical Assistance, is an incredibly comprehensive publicly-funded health insurance program. The federal, state and local governments share Medicaid costs. It is administered at the state level by the State Department of Health. At the local level, the county Departments of Social Services (DSS) administer Medicaid, except in New York City where it is run by the Human Resources Administration (HRA).

Medicaid should be distinguished from Medicare, a federal insurance program most frequently associated with receipt of Social Security benefits. An SSDI beneficiary qualifies for Medicare after 24 months of eligibility. Medicare Part A, hospital insurance, is automatic and cost free. Part B is optional and subject to a monthly premium (i.e., \$99.90 for most beneficiaries in 2012). The Medicare Part D prescription drug plan is also optional and subject to premiums and significant out-of-pocket expenses in many cases. Medicaid can pay the Part B premiums for many individuals who receive both Medicaid and Medicare. Those who are dually eligible for Medicaid and Medicare are automatically eligible for the Full Part D Low-Income Subsidy Program, meaning that out-of-pocket expenses can be reduced to no more than minimal copayments on prescriptions. Since Medicare has very limited coverage of community-based care, it is not as important as Medicaid to persons with disabilities.

### **Services Covered By Medicaid**

New York’s Medicaid program, considered by many as one of the best in the country, covers more than 40 categories of services. The more important Medicaid services, for persons with disabilities, tend to be those that are most expensive and often not covered by employer-funded insurance plans. These include:

- \$ Inpatient and outpatient hospital care
- \$ Physician’s services
- \$ Mental health counseling

- \$ Home health care, including personal care services and private duty nursing
- \$ Physical therapy, occupational therapy, speech and language therapy
- \$ Prescription drugs
- \$ Durable medical equipment

In addition to the services available to all Medicaid beneficiaries in the state, New York provides additional services to special populations under Medicaid Waiver programs. For example, one waiver program for persons with developmental disabilities will fund certain vocational services, including job coaching. Thus, for most individuals with disabilities, Medicaid is a necessity.

### **Basic Medicaid Eligibility Concepts**

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### **SSI and Welfare Recipients Qualify for Medicaid Automatically**

In New York, recipients of SSI and welfare benefits, including Family Assistance and Safety Net benefits qualify for Medicaid automatically.

### **Some Former SSI Recipients Continue to Qualify for Automatic Medicaid**

In addition, four separate classes of former SSI recipients can retain automatic Medicaid. This includes individuals eligible un-

der the 1619(b) provisions, discussed in a separate article of this newsletter, and three other categories of recipients:

- § Individuals who lose SSI when they become eligible for Social Security widows/widowers benefits retain Medicaid during the 24-month waiting period for Medicare.
- § Under the Pickle Amendment, individuals become eligible for Medicaid at the future date when they would once again become eligible for SSI if cost-of-living increases in Social Security benefits, since the last month they received SSI and Social Security, are ignored.
- § Individuals who lose SSI when they become eligible for Social Security Disabled Adult (DAC) Child's benefits (also known as Childhood Disability Benefits or CDB) or an increase in those benefits retain automatic Medicaid if they would be eligible for SSI by ignoring the DAC benefits or most recent DAC increase.

## All Others Must Submit an Application

Persons who do not receive SSI or welfare benefits, including SSDI beneficiaries, must apply for Medicaid through the local DSS or HRA. Persons with disabilities must satisfy both the categorical (i.e., disability) and financial eligibility requirements.

# ~Article 3~

## Section 1619(b): A Best Kept Secret

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### Continued Medicaid Following a Loss of SSI Due to Wages

The section 1619(b) program is a powerful work incentive. A permanent part of the SSI program since 1987, this provision allows individuals, in most cases, to retain Medicaid when they lose SSI due to increased wages.

If an SSI beneficiary works, the first \$65 of wages each month is not counted (or \$85 if there is no unearned income). The SSI check is then reduced by \$1 for every additional \$2 of gross monthly wages. For a person who lives alone, SSI eligibility will cease if they earn \$1,655 or more per month in 2012. This is because countable income, at this rate of pay, would be equal to the SSI living alone rate of \$785 per month.

Section 1619(b) allows automatic Medicaid to continue if a person loses SSI due to wages. If the person is still disabled and would be eligible for SSI if the wages were not counted, Medicaid should continue. In New York, the 2012 income limit is \$46,318 in wages per year. The income limit can be higher if medical expenses are high enough.

Two examples show how section 1619(b) could work. Cynthia suffered a back injury on the job. She resides with her two young children and receives \$642 in SSDI benefits and \$75 in SSI benefits. What if she goes to

work part time and earns \$365 per month in gross wages? She will lose SSI benefits. This is because \$666 of her SSDI and \$150 of her wages will be counted against the living with others SSI rate of \$721. Under these facts, Cynthia should be able to continue Medicaid through 1619(b). This is because she lost her SSI due to wages.

What if Cynthia's earnings increase to \$1,085 per month? She would probably lose her SSDI if she has already exhausted her trial work period. If she loses her SSDI, the 1619(b) rules will allow her to once again qualify for SSI benefits of \$197 per month, based on SSI's formula for counting earned income ( $\$1,085 - 20 - 65 = 1000 \div 2 = \$500$ ;  $\$721 - 500 = \$221$  SSI payment). Until she loses her SSDI benefits, she will continue to be ineligible for SSI, but will be eligible for 1619(b) Medicaid.

William, an SSI beneficiary who is spinal cord injured, goes to work and earns \$48,000 per year. He loses SSI benefits and his annual wages are more than the 1619(b) income threshold of \$46,318. He can keep Medicaid under 1619(b) if his Medicaid costs are high enough. If we assume Medicaid would pay \$35,000 per year for medical expenses (most of this would be for home health care), that amount would be added to a "base amount" of \$19,860 and William's "individualized" 1619(b) threshold for 2012 would be \$54,860. Since his \$48,000 salary is below that figure, William remains eligible for Medicaid.

To remain 1619(b) eligible, the individual's resources must stay within SSI limits. This means an individual's non-exempt assets

cannot exceed \$2,000. This would limit the person's ability to save for a house, for a car, for a child's education, or for retirement.

Unearned income must also be within SSI limits to retain 1619(b) eligibility. If either Cheryl or William, in the examples above, were to get married, they could cease to be eligible for 1619(b) Medicaid if the spouse's income is high enough. This is because the income of a spouse, which is deemed available to the other spouse, is considered the unearned income of that other spouse. For example, based on 2012 SSI rates, Cheryl or William would cease to be eligible for 1619(b) Medicaid if the spouse's gross earned income is \$2,283 per month or higher.

Section 1619(b) has a major limitation: it is only available to individuals who have received an SSI check in the past! This makes the MBI-WPD an important, additional work incentive.



## Law and Policy Governing the Medicaid Buy-In

### New York Social Services Law § 366(1)(a) (12) & (13)

State Department of Health's Administrative Directives (ADMs): 03 OMM/ADM-4; 04 OMM/ADM-5. These policies are available at: <http://onlineresources.wnyc.net/pb/docs/03adm-4.pdf> and <http://onlineresources.wnyc.net/pb/docs/04adm-5.pdf>.



## ~Article 4~

### The Medically Needy or Spend Down Program

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If a person is not eligible for SSI or welfare benefits (or eligible for continued Medicaid as a former SSI recipient under one of the special rules), he or she must apply separately for Medicaid. A single individual with a disability will be eligible, under 2012 rules, if countable income is no more than \$792 per month and resources no more than \$20,000. If income is more than \$792 the individual will qualify only with a spend down.

### Income Disregards for Persons Who are Working

Medicaid's rules for disregarding income are nearly identical to SSI's rules. The first \$20 of unearned income is disregarded. The following amounts are disregarded from earned income: the first \$65 (or \$85 if there is no unearned income); impairment related work expenses; one half of remaining earned income; blind work expenses, for persons who are legally blind; up to \$1,700 per calendar month, but not more than \$6,840 per year for a full-time student under age 22; and any income set aside in a Plan for Achieving Self Support (PASS). [For a listing of all income disregards, see 18 N.Y.C.R.R. § 360-4.6(a).]

Consider June, who is deaf and receives \$862 in SSDI benefits. She earns too much to qualify for SSI. After a \$20 deduction,

it is also \$50 more than the \$792 income limit for Medicaid, meaning June will have a \$50 per month Medicaid spend down. June goes to work and earns \$465 gross per month. The Medicaid program will disregard the first \$65 which June earns and disregard an additional 50 percent, leaving her with \$200 in countable wages ( $\$465 - 65 = 400 \div 2 = \$200$ ). Her countable income is now \$1,052 per month (\$862 unearned + \$200 earned), making her spend down \$250 per month. Thus, as her income went up by \$465, her spend down increased by \$200. If June, however, applied for the Medicaid Buy-in for Working People with Disabilities program, given that SSA has already found her disabled, she would qualify for the program without a spend down.

June's countable income could be reduced further if she were to put all or part of this \$250 into an approved PASS (see immediately below).

### Medicaid's Plan for Achieving Self Support

The PASS is best known as an SSI work incentive. It allows a person to take income or resources that would be counted by SSI and exclude the money by using it to help the person achieve a vocational goal. SSI's PASS has, for example, been used to take SSDI benefits or wages and use the money for items like tuition, computer equipment, or a vehicle. When the PASS is approved, the person qualifies for SSI without counting the excluded income.

A PASS can also be used to exclude income or resources that would be counted

by Medicaid. 18 N.Y.C.R.R. § 360-4.6 (a) (2) (xxiii). For example, consider Mary who is spinal cord injured. She receives \$1,162 in SSDI benefits each month. After the first \$20 of her SSDI is excluded, Mary's monthly income is \$350 above the one-person Medicaid limit of \$792.

Mary proposes to set aside \$250 per month (\$3,000 per year) in a PASS to save toward the purchase of a modified van and a laptop computer to pursue a career in accounting. If approved by Medicaid, Mary's countable income is reduced from \$1,162 to \$892 and her spend down is reduced from \$350 to \$100 per month. If Mary sets aside \$350 in an approved PASS her spend down will be eliminated. Mary can also reduce her countable resources below the \$20,000 limit by designating part of her savings toward PASS expenses.

A PASS can fund a wide range of items, including child care, equipment or supplies to start a business (including a business operated from the home), and modifications to vehicles or buildings to allow use by the person with a disability. So long as the cost is connected to the long-term vocational goal, it should be allowed under Medicaid's PASS.



**TOLL-FREE Work Incentives  
Hotline available statewide!**

**1-888-224-3272**



## ~Article 5~

### Filing a MBI-WPD Application: Strategy Tips

Despite the State Department of Health's extensive training program, statewide, for Medicaid agency staff, we have heard numerous reports of individuals who have faced difficulties when they applied for the Medicaid Buy-In. While we have no way of knowing how common these problems have been, the following appear to be common responses from Medicaid agency staff to attempts to apply for the Buy-In as reported to us from several regions of the state:

- "There is no such program."
- "Oh, the Buy-In, you mean the 'Medicaid spend down program.' Our nickname for that program is the Buy-In."
- "Oh, the Buy-In, you mean the 'Qualified Medicare Beneficiaries (QMB) program,' through which the Medicaid agency will pay for an individual's Medicare Part B premiums. Our nickname for that program is the Buy-In."

Unfortunately, the last two responses were probably predictable, since both the spend down and QMB programs have often been referred to as buy-in programs, since either the individual (in the case of spend down) or the Medicaid agency (in the case of QMB) are buying in to a program by paying a monthly dollar amount. Individuals

with disabilities and their advocates will have to be vigilant to make sure Medicaid staff understands that the individual wants to apply for the Medicaid Buy-In for Working People with Disabilities and not either of the other two programs. We are hopeful that the first response, that the program does not exist, will become much less common over time.

Here are some strategy tips to ensure that a Buy-In application will be taken and treated appropriately:

- At the top of the application (i.e., the same application used for all Medicaid and public assistance programs), write in a bold script: MEDICAID BUY-IN APPLICATION FOR PERSONS WITH DISABILITIES. Some advocates suggest using a highlighter to make this stand out even more.

- Give the Medicaid agency worker documentation that explains the MBI-WPD program. Some advocates have told us they have submitted a copy of a newsletter these authors wrote in 2009, or a copy of the State Department of Health’s policy on the MBI-WPD, Administrative Directive (ADM) 03-04, or a copy of the Medicaid Buy-in Toolkit issued by the State Department of Health in 2005, or all three.

*For copies of any of these documents or the Medicaid Buy-In “At-a-Glance” sheet that we have prepared and regularly update, call our toll-free technical assistance line at 1-888-224-3272. Please let us know of problems or success stories so we can report on these in subsequent issues of Working.*

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## **New York Makes Work Pay Partnering Organizations**

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Cornell University  
ILR School  
Employment and Disability Institute



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*Working* is the newsletter of the New York Makes Work Pay Initiative.

**Editors:**

James R. Sheldon, Jr. J.D.  
Neighborhood Legal Services, Inc.

Edwin J. Lopez-Soto, J.D.  
Employment and Disability Institute  
Cornell University

Thomas P. Golden, M.S., C.R.C.  
Employment and Disability Institute  
Cornell University

## Contact Us

.....

Employment and Disability Institute  
201 Dolgen Hall, Ithaca, NY 14853-3901

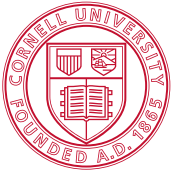
Voice: 607.255.7727

Fax: 607.255.2763

TTY: 607.255.2891

Web: [www.NYMakesWorkPay.org](http://www.NYMakesWorkPay.org)

Email: [NYMakesWorkPay@cornell.edu](mailto:NYMakesWorkPay@cornell.edu)



**Cornell University**  
ILR School  
Employment and Disability Institute

New York Makes Work Pay  
201 Dolgen Hall  
Ithaca, NY 14853-3901