



# First Things First: Advocacy Tips and Strategies

Session Eight  
ADMH Webinar Series for Families



# Wellness without Barriers

## Our Mission:

ADMH provides comprehensive, coordinated, person-centered healthcare for teens and adults with developmental disabilities. We strive to empower individuals and their families to become advocates for their own health and wellness needs.





# What is a Medical Home?

- a model of primary care that is **patient-centered**, comprehensive, **team-based**, coordinated, accessible, and focused on quality and safety
- a place where **patients are treated with respect, dignity, and compassion**, and enable strong and trusting relationships with providers and staff
- a model for achieving **primary care excellence** so that care is received in the right place, at the right time, and in the manner that best suits a patient's needs

# Advocacy Tips and Strategies

Joshua Norris  
Law Office of Joshua H. Norris, LLC  
One West Court Square  
Suite 750  
Decatur, Georgia 30030  
404-867-6188  
[josh.norris@childrenshealthlaw.org](mailto:josh.norris@childrenshealthlaw.org)

# Topics

- Overview of Medicaid
- EPSDT
- Medicaid Waivers
- Due Process
- Redeterminations of Medicaid Eligibility

# Law Office of Joshua H. Norris

- Litigation practice focused on the representation of people with disabilities
  - Medicaid eligibility and services
  - Disability discrimination
    - State and local governments
    - Public accommodations
- I do not handle employment or special education cases

# Medicaid Act

- Enacted in 1965
- Medicaid is the largest source of health insurance coverage for people with low-income, people with disabilities, and people over 65.
- In 2022, Medicaid covered over 83 million Americans, or about one in four Americans.

# Medicaid Act

- The U.S. Supreme Court has described it as “among the most intricate ever drafted by Congress. Its Byzantine construction...makes the Act ‘almost unintelligible to the uninitiated.’”
- A lower court described it as “an aggravated assault on the English language resistant to attempts to understand it.”



# Medicaid Act

## 42 U.S.C. §1396 et seq.

- Federal-State partnership to provide health insurance to various classes of individuals
- If a state participates in Medicaid, it is bound to abide by the Medicaid Act.
- It is a great deal for the States!
  - Federal gov't covers at least 50% of the cost
  - In Georgia, the current federal contribution is 65.89%.
  - For every Medicaid dollar spent, Georgia responsible for only 34 cents.

# Medicaid – Scope of Benefit

- Medicaid Act specifies
  - Basic requirements that states must meet regarding eligibility and services, and options that states may adopt
  - 7 mandatory services and 22 optional services
- State has broad discretion to define the scope of services it will cover in the State Medicaid Plan
  - Exception is services for children under 21

# Georgia Medicaid

- Georgia Department of Community Health is state Medicaid agency
  - Commissioner Russel Carlson
- GA Medicaid program governed by Medicaid State Plan
  - <https://medicaid.georgia.gov/organization/about-georgia-medicaid/medicaid-state-plan>

# Children and Youth under 21

- **EPSDT - Early and Periodic Screening, Diagnostic and Treatment**
- Goal is comprehensive health care for all Medicaid-eligible children under 21

# What is EPSDT?

- Mandatory Medicaid program
- Requires provision of comprehensive preventive, acute, and chronic care services
- Emphasizes early discovery and treatment of conditions and illnesses
- Includes mental health and behavioral health services

# Screening and Treatment

- Primary components
  - Screening
  - Treatment
- DCH has an affirmative obligation
  - to inform parents of EPSDT benefits and services.
  - to ensure all necessary screenings and treatments are provided.

# Screening

- Screenings
  - to identify any health or developmental issues as early as possible
  - Prompt referral for treatment
- Comprehensive health and development history
  - assess for physical and mental health issues
  - Includes substance use disorders

# Screening Requirements

- Medical screens (including behavioral health)
- Vision screens, including eyeglasses
- Hearing screens, including hearing aids
- Dental screens, including relief of pain, restoration of teeth and maintenance of dental health



# Screening cont'd

- Any contact with a healthcare professional is a potential “screen” that can trigger treatment
  - Screens by non-Medicaid providers count too!
- A state cannot require prior authorization for interperiodic screens

# Screening triggers Treatment

- DCH must provide any treatment found to be necessary to “correct or ameliorate” during a screen.
- “Correct or ameliorate” is recognized as the medical necessity criteria for Medicaid-eligible children under 21.

# Ameliorate

- A treatment “ameliorates” a condition
  - when it maintains or improves a child’s current health condition, or
  - when it prevents a condition from worsening or prevents the development of additional health problems.

# Scope of the Treatment Benefit

- If treatment is covered within Medicaid Act's 29 Categories of Services, state must provide service even if not covered by state Medicaid plan.
- The Categories of Services are broad
  - Examples are private duty nursing, personal care services, medical equipment and supplies, OT/PT/Speech, and dental services
  - Also covers community based behavioral health services

# Scope of Treatment Benefit

- State cannot place hard caps or limits on services
- Deference to the treating provider
- Treatment **not** required to cure
- If treatment is ameliorative, it is covered.

# Limits on Treatment

- State not required to provide
  - Treatment that is medically unnecessary
  - Treatment that is experimental or cosmetic
- State is entitled to review treatment requests for medical necessity and make its own determination

# Medicaid HCBS Waivers

- Medicaid Act amended in 1981 to provide Home and Community Based Services (HCBS) to people with disabilities and older adults
- Allow states to provide services in the community rather than institutional settings

# Medicaid HCBS Waivers

- Optional service under state Medicaid plan
- Provides flexibility
  - Tailored to meet the needs of a specific population
  - Able to cover services not otherwise covered by Medicaid



# Georgia HCBS Waivers

- State has broad discretion to define eligibility and scope of services
- Provides a defined package of services
- Limits on the type and amount of services available
- Limits on how many people can be served
  - Waiting Lists

# Waiver Advocacy

- The Waiver document approved by CMS is the controlling document
  - Agreement between Fed Gov't and Georgia
  - Typically reauthorized/amended every 5 years
- DCH policy manuals have no legal standing
  - Not duly enacted regulations under GA law
  - Language in the Waiver controls

# Waiver Advocacy

- Opportunities for Waiver Advocacy
  - Who is served
    - Target population
    - Eligibility criteria
  - What services are provided
    - Health/Independence/Community living
  - How services are provided
    - Defines each service
      - Amount, scope, provider qualifications
      - reimbursement

# Medicaid Advocacy Issues

- Generally, Medicaid is the payer of last resort
- Exception: Special Education
  - Where medically necessary services are included in a Medicaid-eligible child's IEP, the financial responsibility of the state Medicaid agency for the services **precedes** the financial responsibility of the school

# Medicaid Advocacy Issues

- Medicaid eligible children under 21 may receive EPSDT and HCBS Waiver services at the same time
- EPSDT provides necessary care covered by Medicaid Act
- HCBS Waiver provides services not otherwise covered by Medicaid
  - Examples: respite and home modifications

# Due Process

- Medicaid members are entitled to due process.
- Entitled to written notice and a fair hearing
  - if determined ineligible, or
  - If services are denied, reduced, or terminated
- Due process applies to all Medicaid services (state plan, EPSDT, HCBS Waiver)

# Notice Requirement

- Written Notice must include:
  - Description of action state is taking
  - **Specific reasons** for the action
  - Inform of right to an appeal hearing
  - Circumstance under which Medicaid services are continued if a hearing is requested
- Notices without the required information may be subject to legal challenge and reversed

# Due Process Issues

- Did you receive a written notice in the mail?
- Does the written notice provide specific reasons for the denial/reduction?
  - Only listing the person's conditions
  - Indecipherable codes of numbers and letters
  - "We have determined the services aren't medical necessary."



# Redeterminations of Medicaid Eligibility

- All states currently redetermining the Medicaid eligibility of every Medicaid member
  - Reviews of eligibility were suspended during pandemic
  - Redeterminations are subject to the requirements of the Medicaid Act

# Redetermination Requirements

- State's review must determine eligibility under all available Medicaid classes of assistance
  - Katie Beckett
  - Medicaid Waivers
- State must contact you if it doesn't have sufficient information to make a determination of eligibility

# Due Process Requirements

- Entitled to Due Process/Written Notice
- Must include:
  - Determination of eligibility under all available classes of assistance
  - Statement of the specific reasons why the person is not eligible under each class of assistance reviewed
  - Right to a fair hearing and how to request one

Thank you

Questions?

# Letter for Intent and Emergency Plan



These two tools will help your family members to know what to do in the case of an emergency and how to keep your loved one with a disability be able to continue with few disruptions in their routine when you are not there.

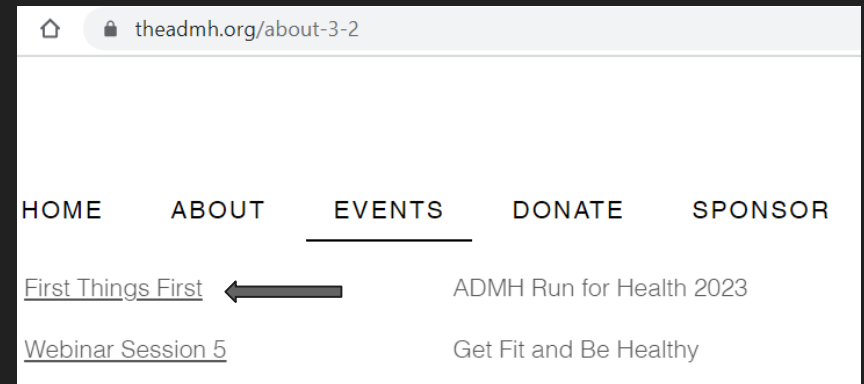
Pat Satterfield will explain these tools in Session Nine of our series.  
November 16<sup>th</sup> , 7 pm



# Resources



Please go to our website [www.theadmh.org](http://www.theadmh.org) for the recording of this session and more information on all of the topics in our series so far.



# Thank You for Joining Us



Please give us your feedback and additional questions by completing this short survey!

Register for the next webinar at [www.theadmh.org](http://www.theadmh.org)



# We appreciate YOU