

New York State Medicaid Buy-In Program for
Working People with Disabilities (MBI-WPD)
Demonstration Program &
Career Pathways Training (CPT)
Program Amendment

Comment to the
Center for Medicare & Medicaid Services – HHS

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NYLAG Strongly Supports Expansion of the MBI-WPD Program and Recommends Some Modifications to Ensure Access

Founded in 1990, the New York Legal Assistance Group (NYLAG) is a leading civil legal services organization that provides civil legal representation for people experiencing poverty or who are in crisis. Our services include comprehensive, free civil legal services, financial empowerment, impact litigation, policy advocacy, and community partnerships. NYLAG exists because wealth should not determine who achieves justice. NYLAG goes to where the need is, providing services in more than 150 community sites (e.g. courts, hospitals, libraries) and on our Mobile Legal Help Center. NYLAG's staff of 350 impacted the lives of 129,000 people last year.

NYLAG strongly supports the proposed expansion of the Medicaid Buy-In for Working People with Disabilities (MBI-WPD) to include people age 65 and over, and to expand the income and asset limits for this important program. We applaud New York State (NYS) for implementing the MBI-WPD program from the very inception of the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA). Below, we review why we support this expansion and offer some recommendations for how this important expansion is implemented.

We have chosen not to comment in detail on the Career Pathways Training (CPT) Program Amendment but are generally in support of the amendment.

I. NYLAG strongly supports expansion of the MBI-WPD Program, as it will enable aging people with disabilities to continue working, maintain critical health care coverage, and save money needed for their eventual retirement.

The proposed waiver amendment cites important research findings documenting the high unemployment rate for people with disabilities, which was exacerbated by COVID-19. This population, at large, has not benefited from the post-pandemic economic recovery enjoyed by the able-bodied population. Thus, providing broad support to people with disabilities who choose to and are able to work is crucial to achieve goals of promoting independence. Medicaid recipients who want to and can work must be provided support in doing so, both before and after they reach age 65.

When a person with a disability does find work, the availability of Medicaid continues to be critical even after they reach age 65, when most qualify for Medicare. Most people eligible for the MBI-WPD program age 65 and over will *not* rely on Medicaid to pay for their primary and acute care for their chronic medical conditions, as either Medicare or employer-based insurance will be their “primary” coverage for health care. Medicaid being only “secondary” insurance coverage contributes to “budget neutrality” of this waiver. However, as stated in the proposed waiver amendment, neither Medicare nor

employer-based group health insurance covers Long Term Services and Supports (LTSS). Only Medicaid provides these critical services – most commonly state plan Personal Care services or its self-directed option – that enable an individual with a disability to work.

Given the critical role Medicaid plays in the lives of people with disabilities, including those who want to and can work, we strongly support the proposed waiver amendment for the reasons stated below, followed by some recommendations to improve this program.

First, we support the elimination of the upper age limit of 65 years of age. The proposed amendment would allow NYS to gain and share experience with CMS of the outcomes of expanding access to Medicaid under the Ticket to Work program to those age 65 and over. We expect that this demonstration will show improved health and stability of chronic conditions for people who, despite severe disabilities, can continue to work after age 65. Moreover, it will show that with Medicaid supports people with disabilities who are aging can continue to work, support themselves and their families, and contribute to the economy.

This expansion will benefit those working individuals with disabilities who have a financial need to continue to work past the age of 65. Under the current Medicaid Buy-In Program eligibility rules, those individuals who are working past the age of 65 are no longer eligible for the program. As a result, NYLAG has had to counsel many working clients who reach age 65 that they will be eligible for the life-saving long-term services and supports they need only if they *stop working*, since the income limit for Medicaid will drop from 250% FPL under the MBI-WPD to 138% FPL under regular Medicaid eligibility rules. If they continue to work, they would be burdened with a high “Medicaid spend-down” or “share of cost” they cannot afford. This is the amount by which their income exceeds the Medicaid income limit – which must be paid toward the cost of medical care before they are eligible for Medicaid services. Many would be unable to pay that share of the cost and still pay their bills. With the important changes in this waiver amendment, our clients in the MBI-WPD program will be able to continue working, and continue to qualify for the Medicaid LTSS they need not only to work but to live.

Second, we support the continued disregard of all funds held in retirement funds or retirement accounts, and the continued use of other more liberal methods of treating resources under New York’s State Plan. As stated previously, the current MBI-WPD program rules enable program participants to maintain their retirement benefits untouched, allowing retirement benefits to grow over time. This disregard of funds held for retirement is crucial for our clients, who are low income and do not often have much held in retirement accounts. Enabling MBI-WPD program participants to work past 65, without withdrawing from their retirement until required by tax rules at age 73, ensures they will be able to support themselves with their retirement funds for longer than they would otherwise.

Third, we support the increased income and resource rules. Establishing an MBI-WPD program income limit of 2,250% of the FPL, and a resource standard of \$300,000, will greatly expand the number of working individuals with disabilities who are eligible for Medicaid benefits through this program. Those at the higher income levels will pay a sliding-scale premium, ensuring reduced costs to the program. We note that NYS proposes only to increase, rather than eliminate the asset test for this TWWIAA program, as some other states have done (e.g., MA, CO, TX). Some may be able to save enough to purchase a home, which is an exempt asset, protecting them for the time that they do need to stop working and bring their assets under the regular Medicaid limits.

Fourth, we support waiving a spouse's income and resources by deeming the income and resources of a legally responsible relative as unavailable. This will effectively end the "marriage penalty" that people with disabilities are currently subject to. This penalty prevents people with disabilities from marry marrying the person they love, for fear that the spouse's assets would disqualify the recipient from Medicaid.

II. NYLAG makes the following recommendations for changes to this important expansion.

First, we recommend there be no cap on enrollment – or in the alternative, that the cap on enrollment does not include individuals eligible under existing criteria.

The proposed waiver amendment states that the program enrollment cap of 30,000 members will include those who qualify for MBI-WPD under the existing criteria set forth in SSL 366, subd. 1(c)(5) and (6) and SSL 367-a, subd. 12. We acknowledge that the cap should not be a barrier for a number of years, given that: the stated number of current enrollees is 12,500; the State estimates that the program will increase by 2,195 people annually; and there will be attrition as some people of advanced age no longer have the ability to work. However, we hope and expect for NYS to eventually reach 30,000 program participants. When the cap is reached, subsequent eligible applicants in need of the program will be unable to enroll, regardless of their income. In effect, this means that some higher-income program enrollees may prevent lower-income applicants from enrolling.

To prevent that inequity, we recommend that CMS approve this proposal but with no enrollment cap. Alternatively, we recommend that the cap not be applied to people who qualify with incomes under 250% FPL and assets under the current regular asset limits.

Second, we recommend the monthly premium schedule be modified so it is capped at no higher than 7.5% for all income levels at or under 450% FPL, as required by the TWWIIA.

NYLAG recommends that the premium schedule be modified to include a 7.5% cap for all incomes, including those between 400 - 450% FPL. As the proposal states on page 6 (page 9 of the PDF), “[t]he Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA) provides that the premium the individual must pay when income is 450% FPL or less must not exceed 7.5% of the individual’s income. SSA §1916 (g)(1)(B).” Despite the authority provided in TWWIA, this proposed waiver amendment would impose a premium of 8.5% for people with incomes from 400 - 450% FPL.¹ Thus, we urge that the premium schedule be modified to be consistent with the TWWIIA 7.5% cap for *all* incomes at or below 450% FPL, including those between 400 - 450% FPL.

Third, we recommend that additional premium relief be applied to middle income families, so as to avoid a regressive premium structure.

Under the proposed waiver amendment, the monthly premium is set at the lesser of a specific dollar amount or a specific percentage of net monthly income. When applied at different income levels, this scheme has a regressive impact, with individuals earning at the highest income level of 1500% FPL paying *less* than 6% of their income, while those with less income pay premiums of 6% or 8.5% of their income.²

The following table created by NYLAG shows the regressive nature of the proposed premium caps. The highlighted cells show that the premium for those at the highest income levels of 1500% FPL or higher is a *lower* actual percentage of net income than for those under 400% FPL.

¹ NYLAG commends the state for ensuring that at all other income ranges below 450% FPL, the state’s proposal is compliant with the 7.5% cap provided for in the TWWIIA.

² Please note our second point, above, regarding our recommendation that New York lower the premium cap for individuals making 400 – 450% FPL to 7.5% of their income.

Examples of Maximum Premium, Using Statutory Cap on Percentage of Income					
Consumer has net available income of:	Net monthly income (2023) - single	Max premium/month before applying cap of % income	Statutory premium cap % monthly income	Actual premium applying statutory cap	Premium is what actual % of net income
250%	\$3,038	\$347	4%	\$ 122	4%
275%	\$3,341	\$347	4%	\$ 134	4%
300%	\$3,645	\$518	6%	\$ 219	6%
350%	\$4,253	\$518	6%	\$ 255	6%
400%	\$4,860	\$779	8.5%	\$ 413	8.5%
500%	\$6,075	\$1,033	8.5%	\$ 516	8.5%
1000%	\$12,150	\$1,033	8.5%	\$ 1,033	8.5%
1500%	\$18,225	\$1,033	8.5%	\$ 1,033	5.7%
2000%	\$24,300	\$1,033	8.5%	\$ 1,033	4.3%
2250%	\$27,340	\$1,033	8.5%	\$ 1,033	3.8%

Highlighted cells –At higher income levels, premium is a smaller percentage of actual net income because max premium is capped at \$1,033/mo.

To remedy this problem, we recommend that CMS require NYS to reduce the premiums for individuals earning between 250 - 399% FPL to 3.8% of their net income, or to another percentage of income that is no greater than the percentage paid by the highest earning families.

III. NYLAG asks for the following clarification, either in the waiver amendment or in implementing guidance.

First, we ask that language around the income limit be clarified to state it is based on the full family, including non-eligible spouses and children.

To promote the ability of working people with disabilities to support their dependent children, the income limit should be based on the Federal Poverty Level for the “family of the size involved,” as used for the Part D Low Income Subsidy. 42 U.S.C. 1395w-114(a)(1); 42 C.F.R. 432.772. Various courts have held that this definition must be used by the Medicare Savings Program.³ All of these cases required non-eligible spouses to be counted in the household size. The same reasoning as to other family members, especially dependent minor children, is applicable.

³ See, e.g., *Wheaton v. McCarthy*, 800 F.3d 282 (6th Cir. 2015); *Winick v. Department of Children and Family Services*, 161 So.3d 464 (Dist. Court of Appeal 2014); *Martin v. N.C. DSS*, 670 S.E.2d 629 (N.C. Court of Appeals 2009); *Skaliotis v. R.I. Dep’t of Hum. Servs.*, No. C.A. NO. 95-2438, 1996 WL 936920 (R.I. Super. Apr. 18, 1996).

Example: NYLAG has a 45-year-old client who is quadriplegic and works in technology. He is married and has twins, now age 8. The proposed expanded income limit will be beneficial for him and his family. To maximize that benefit, however, it is important to use the Federal Poverty Level for a family size of four, rather than only one or two as is currently used. (Whether the size is currently one or two depends on the spouse's income amount). A working parent with a disability has expenses from raising children – from the cost of day care, summer camp, activities, and clothing to saving for future college education.

By enabling a parent to qualify at the income level for the true family size, they can better support their entire family. This definition can be implemented administratively without any change in the law.

Thank you for the opportunity to submit this comment. Please feel free to contact us with any questions.

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