Protect Medicaid – Consumer Protections and Due Process

Kim Lewis, Managing Attorney
Wayne Turner, Senior Attorney
www.healthlaw.org @NHeLP_org

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Housekeeping

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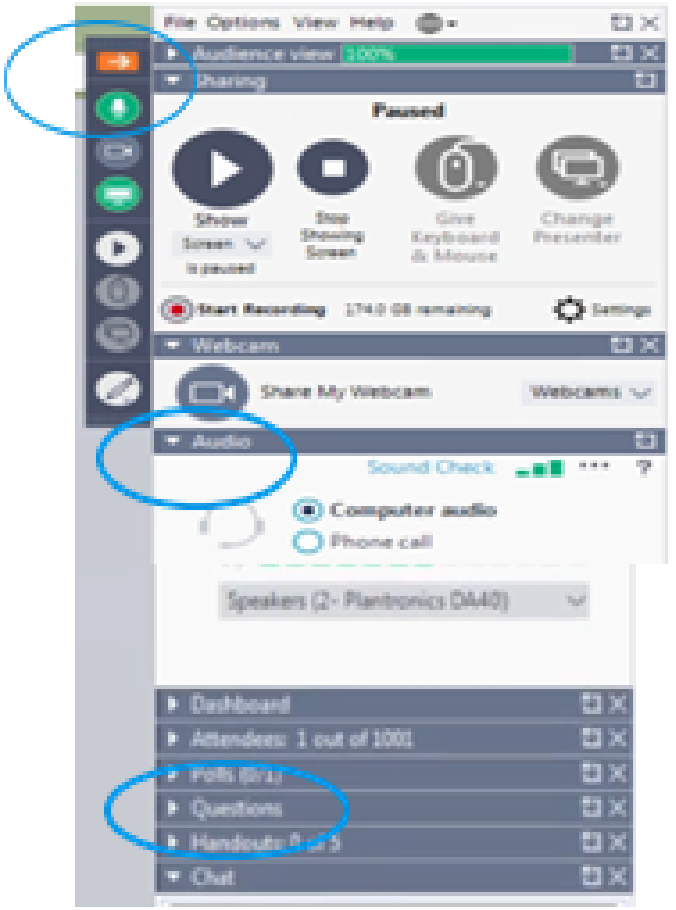

About NHeLP

- National non-profit committed to improving health care access and quality for low income and underserved individuals and families
- State & Local Partners:
  - Disability rights advocates – 50 states + DC
  - Poverty & legal aid advocates – 50 states + DC
- Offices: CA, DC, NC
- Join our mailing list at

  www.healthlaw.org
- Follow us on Twitter

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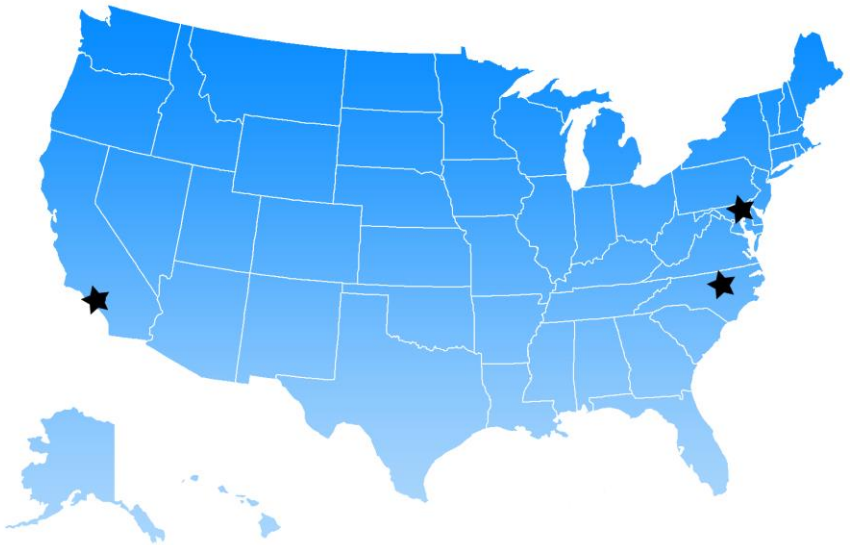

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The Medicaid Promise

- Federal-state partnership –
  - States pay part of the costs
  - On average 57% paid by the federal government but up to 75% in states with lowest per capita income
  - Enhanced federal match for systems upgrades, services for newly eligible adults, family planning, preventive services
- No waiting lists (except for some waiver programs)
- As an "entitlement" Medicaid is a "property interest" under the Constitution and cannot be taken away without due process

GUARANTEED

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Overview of Consumer Protections

1. **General Medicaid Protections**

   Single state agency; statewideness; comparability amount, duration, and scope; reasonable promptness; any willing provider; nondiscrimination

2. **Consumer protections in Medicaid managed care**

   Choice of plan; network provider transparency and adequacy standards; right to disenroll; grievances

3. **Due Process**

   Constitution; notice (including pre-termination); fair hearing; continuing aid

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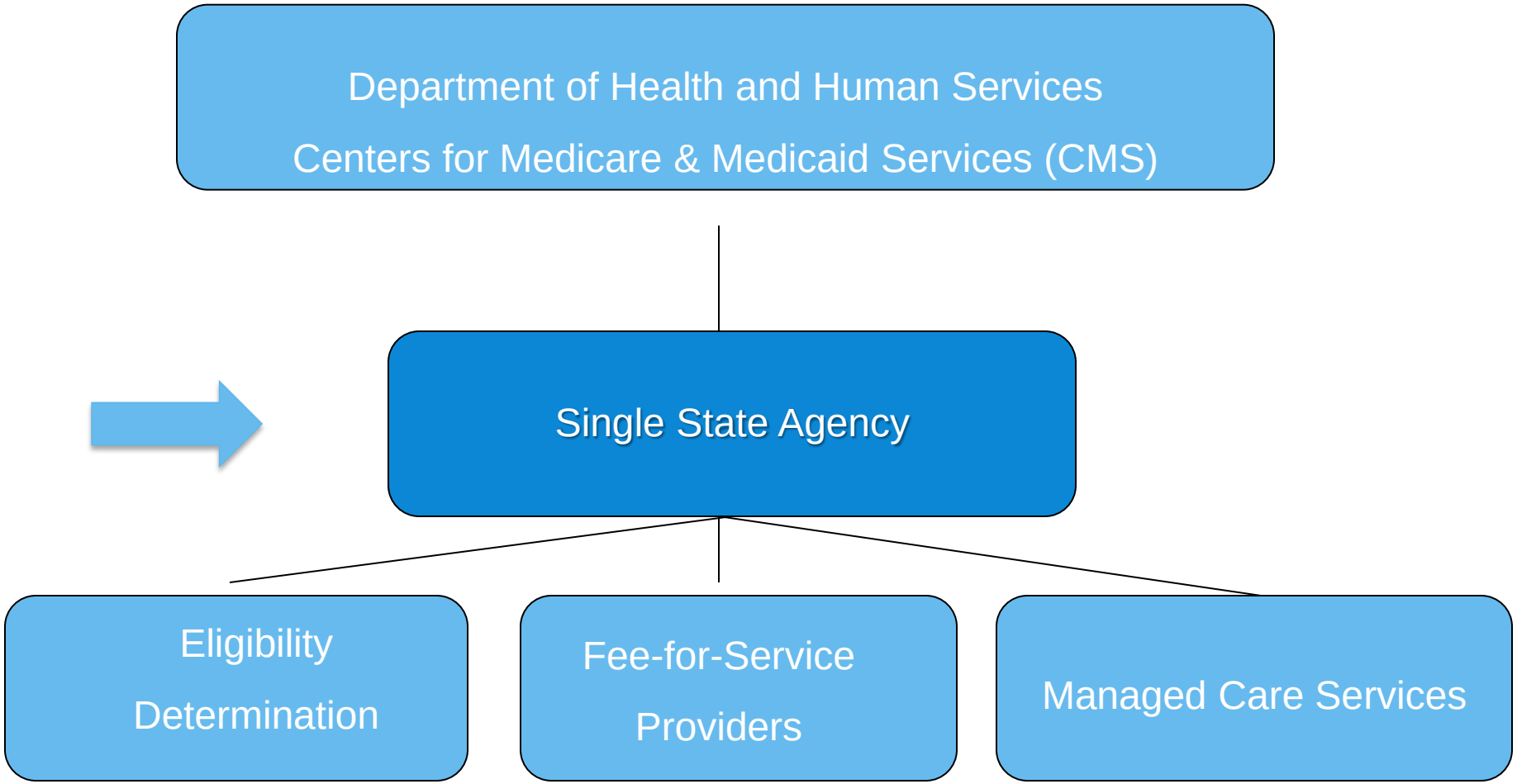
GENERAL CONSUMER PROTECTIONS

Single State Agency



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Services: Amount, Duration and Scope

- Services must be “sufficient in A/D/S to reasonably achieve their purpose”
- Cannot be arbitrarily denied or reduced based on illness or condition
- If covered, it meets most people’s need for that service
  - e.g. limit on physician visits (3 per mo) or hospitalizations (14 days per yr) likely legal
  - e.g. exclude an item of medical equipment that meets the definition of Durable Medical Equipment – likely illegal
- Children not subject to the A/D/S limits due to the EPSDT entitlement (enhanced right to services for children under age 21)

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Services: Comparability

- Services or benefits must be comparable
  - between individuals *within* a categorically or medically needy group (optional or mandatory)
    - E.g. poverty-level eligible children
  - between individuals in *other* categorically needy or medically needy groups
    - E.g. aged or disabled SSI recipients and poverty-level children

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Services: Non-Discrimination

- Cannot not arbitrarily deny or reduce the amount, duration, or scope of a required service solely based on diagnosis, type of illness, or condition

- Section 1557 – federal health programs
  - race,
  - color,
  - national origin,
  - sex (including sexual orientation and gender Identity*),
  - age, or
  - disability

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Services: Statewideness

- Services must be available in all parts of the state to any eligible individual
  - e.g. a Medicaid health plan in one county or region must cover what another region plan must cover
- Applies to both mandatory and optional benefits
  - e.g. prescription drugs must available in both rural and urban areas of the state
- Doesn't require providers or plans to offer services everywhere
- Exceptions for some services
  - e.g. targeted case-management to certain pops /regions
  - Home and Community Based waiver services

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Services: Any Willing Provider

- Beneficiaries may obtain covered services from any institution, agency, pharmacy, person or organization that is
  - a) qualified and b) willing to furnish the services
- states cannot set unreasonable standards to unfairly target certain providers (e.g. Planned Parenthood)
- free choice of family planning providers, even if enrolled in managed care plan that restricts to a network
  - No referral required in or out-of-network

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Eligibility/Services: Reasonable Promptness

Assistance must be furnished with reasonable promptness to all eligible individuals

Medicaid Eligibility Determinations

- 45 days, 90 days if disability determination

Access to services when needed

- Generally means no cap on services, or imposing arbitrary waiting period before can get a particular service

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CONSUMER PROTECTIONS IN MEDICAID MANAGED CARE

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Medicaid managed care basics

- 77% of Medicaid enrollees are in managed care
- Capitation = per member/per month payment
  - MCOs assume risk
  - More services = less profit for the MCO
- Increasing use for Long Term Services and Supports (e.g., persons with disabilities, older adults)

"Because of the pecuniary incentives that MCOs have for denying, suspending, or terminating care […] enrollees need strong due process protections to protect themselves from inappropriate denials of health care."

Daniels v. Wadley, 926 F. Supp. 1305 (M.D. Tenn. 1996)

Enrollee rights

- Be treated with respect and dignity
- Have timely access to services including specialists
- Receive information on risks, benefits, and consequences of treatment options, or non-treatment
- Participate in decisions regarding his or her health, including the right to refuse treatment
- Choose a plan
- Disenroll w/in 90 days or for cause

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Right to plan info and choice

Covered benefits	Plan performance indicators and star ratings	Procedures for obtaining prior authorization of services
Searchable provider directories	Any cost sharing (co-pays or co-insurance)	Information on grievance and fair hearing procedures
Prescription drug formularies	Information on the accessibility of providers and facilities	Information on accessing services plans refuse to cover (e.g., family planning)

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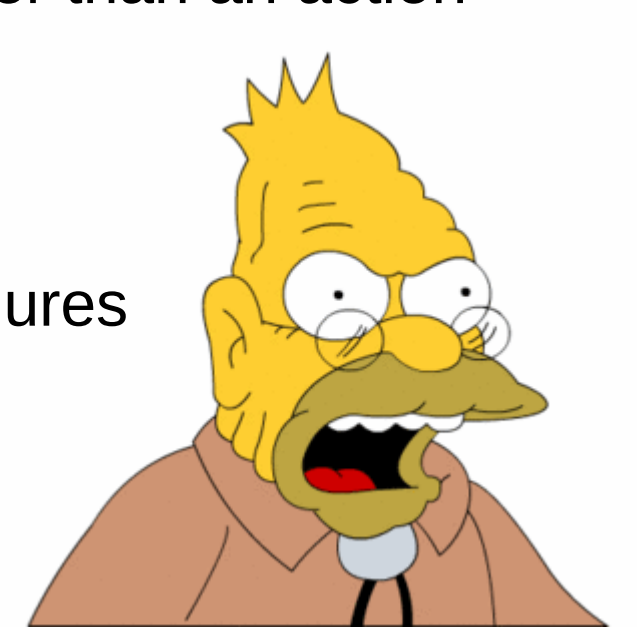
Managed care grievances

- Dissatisfaction about any matter other than an action
  - quality of care or services provided,
  - rudeness of a provider or employee, or
  - failure to respect the enrollee's rights
- States and MCOs must have procedures and systems
- Enrollees must be informed
- Tracked to monitor quality



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DUE PROCESS PROTECTIONS

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Medicaid Due Process

Medicaid applicants and recipients have rights to notice and administrative hearings when claims for assistance are denied or not acted upon with reasonable promptness

Forums for Enforcement

- Administrative complaint/appeal
  - Medicaid – Administrative Fair Hearing
  - Managed Care – Internal grievance or appeal
- State Courts
- Federal Courts

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Medicaid Due Process: Legal Authority

- Due Process Clause of the U.S. Constitution: 14th Amd.
- *Goldberg v. Kelly*, 397 U.S. 254 (1970):
- 42 U.S.C. § 1396a(a)(3): fair hearing
- 42 C.F.R. pts. 431 subpt. E (Traditional Medicaid), 438 subpt. F (Managed Care)

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What triggers right to appeal

- Denial of application for benefits OR failure to act with reasonable promptness
- Reduction, suspension, termination of service (including transfer or discharge from a nursing facility)
- Any other decision or action affecting Medicaid applicant or enrollee where a hearing is required by law
- Exception: if sole issue is federal or state law requiring automatic change

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Requirements for written notice

- Describe action taken, factual basis for action, legal basis for action
- Right to continued benefits, and notice about how to get them
- Info on fair hearing & time frames
- Explain right to representation
- Describe when expedited hearing is available
- Must be translated for certain LEP beneficiaries

Hearing Rights

- Right to:
  - Present witnesses and submit evidence
  - Question/cross examine witnesses
  - Make arguments without interference
  - Impartial hearing officer
  - Examine document and records to be used at the hearing, contents of case file
- Decision must explain right to request a state agency hearing or seek judicial review, to the extent that either is available

Continued Benefits

- Must continue benefits pending final hearing decision if hearing is requested w/in 10 days of action
  - When MCO appeal taken and beneficiary loses, must again request services continue pending fair hearing decision
  - Beneficiary can be required to pay for benefits if she/he ultimately loses

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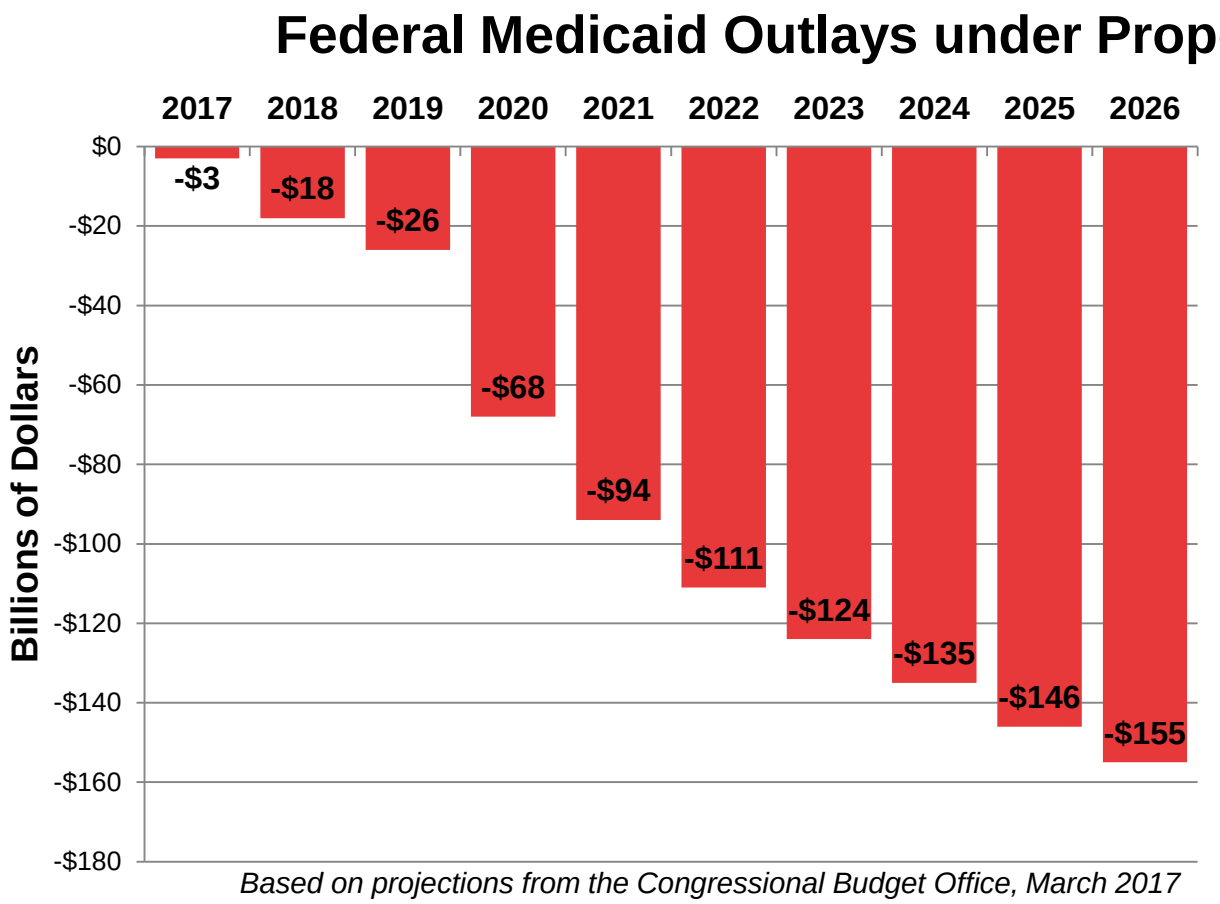
American Health Care Act: Impact



Based on projections from the Congressional Budget Office, March 2017

Total Reduction, 2017-2026

-$ 880 billion

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AHCA: Medicaid At Risk!

3-7-17 House Bill

- Per Capita Caps
- Eliminates E-FMAP after 2019 for new exp adults
- Eliminates Retroactive Eligibility
- Eliminates Hospital Presumptive Eligibility, PE for new adults
- Eliminates mandatory cov. of children (6-19) 100-138%
- Eliminates Essential Health Benefits

3-20-17 Mgrs Amendments

- Adds a 10 year Block Grant state option
  - Limited benefits
- No new state can expand with E-FMAP
- Adds work requirement state option for adult eligibility

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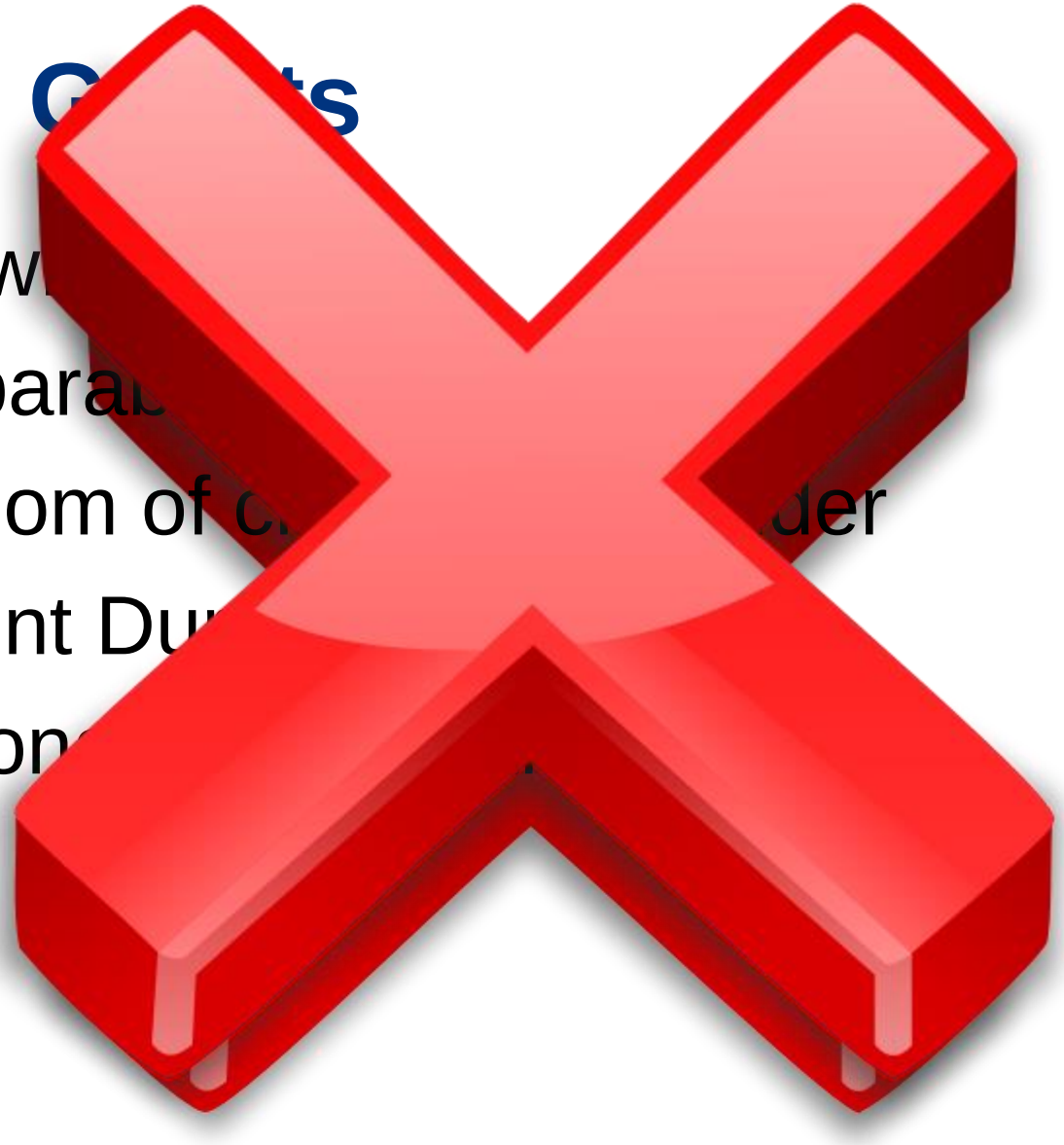
Block G ts

- Statew
- Comparat
- Freedom of c der
- Amount Du
- Reason



Deborah - North Carolina

Deborah is a grandmother who is a central part of her grandchildren's lives. She has multiple chronic health conditions such that she has limited mobility and tires very easily. She relies on in-home services to help with activities of daily living like bathing and cooking. However, the state made it harder to qualify for in-home services than it was to get the same services in a facility. Deborah was faced with either moving to a facility or risking her health and well-being by living at home without assistance. Deborah and other Medicaid recipients challenged the state's different eligibility requirements for the same service as a violation of comparability and other protections. They won a preliminary injunction in federal court, which led to improvements in access to in-home personal care services across the state.

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Key takeaways

- Medicaid is designed to ensure that low income and underserved persons can fully access needed medical assistance
- Constitutionally protected due process rights allow Medicaid enrollees to challenge unlawful denials of coverage and care
- Medicaid consumer protections, grievances, and appeals processes help improve quality and access to care
- 88% of enrollees are satisfied with their health coverage under the ACA's expansion of Medicaid to low income adults according to HHS
- Drastic funding cuts through per capita caps or block grants would undermine the Medicaid program and important consumer protections

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What you can do

- Contact your elected representatives
- Work with state coalitions
- Prepare fact sheets and other materials (NHeLP is here to help!)
- Story collection – Medicaid works!
- Mobilize, organize, resist!

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Now @ NHeLP

The president and his allies are pushing policies to trample the health rights of our most vulnerable. We need your help. **Share your stories** about the importance of health care coverage. Your stories will help us fight to protect health care for millions of Americans. And **join the effort** to #ProtectMedicaid and #SaveHealthCare.

- Click here to share your story about Medicaid and the ACA
- Comparta su historia con nosotros aquí!

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THANK YOU

Washington DC Office

1444 I Street NW, Suite 1105
Washington, DC 20005
ph: (202) 289-7661
fx: (202) 289-7724
nhelpdc@healthlaw.org

Los Angeles Office

3701 Wilshire Blvd, Suite #750
Los Angeles, CA 90010
ph: (310) 204-6010
fx: (213) 368-0774
nhelp@healthlaw.org

North Carolina Office

200 N. Greensboro St., Suite D-13
ph: (919) 968-6308
fx: (919) 968-8855
nhelpnc@healthlaw.org

www.healthlaw.org