

Sources of Legal Authority for Health Care Advocates

Public health care programs in New York State are governed by many different legal sources. Because most programs, including Medicaid, are federal in origin, governing law begins with federal statute and regulation. State statutes are often very prescriptive as well, defining key terms such as "medically necessary" and listing covered services. State regulations often amplify the explanations found in state statute, and prescribe due process requirements such as notice and fair hearings. Finally, the most specific guidance for a program's rules are often found in sub-regulatory materials such as the New York State Medicaid Plan, directives from key state agencies, and manuals for providers and county workers.

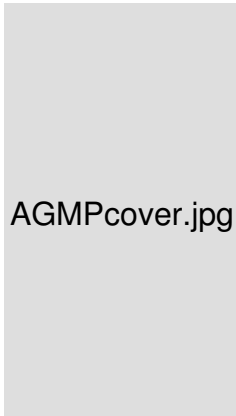
This article will provide you with citations to and explanations of some of the key sources of authority for New York State's public health insurance programs.

Citations for Medicaid home care programs are on this separate [NYS Medicaid Home Care Law & Cases](#) reference sheet.

HIGHLY **RECOMMENDED** **REFERENCE -** **National Health** **Law Program -** **Advocate's** **Guide to the** **Medicaid** **Program**

For nearly 40 years, advocates, policy makers, and others have relied on the [Advocate's Guide to the Medicaid Program](#) to assure that the Medicaid program is implemented as the law intends, and that eligible low-income people can access the services that the

program provides.



Released in June 2011 and NOW AVAILABLE, NHeLP's comprehensive updated Guide is available in hard copy, as well as by online membership, for the first time featuring brand new interactive web features, such as live updates and user forums.

This widely anticipated update incorporates provisions from the Patient Protection and Affordable Care Act (2010), the Children's Health Insurance Program Reauthorization Act (2009), and the Deficit Reduction Act (2005). The Guide covers Medicaid administration, eligibility, and services, drawing extensively from numerous sources: the United States Constitution,

the Medicaid Act, the Medicaid regulations, federal guidance documents, and federal and state court case law. Support for this guide was provided by a grant from the Robert Wood Johnson Foundation.

[Click here to order!](#)

I Federal Law, Regulations, and Policy Guidance

A. Federal Law and Regulations 42 U.S.C.Â§1396 et seq., 42 C.F.R. Â§430 et seq.

HANDY REFERENCE GUIDE to the FEDERAL MEDICAID STATUTE and REGULATIONS by MACPAC, updated APRIL 2022

These provisions establish the Medicaid program and authorize grants to States, which are given broad discretion in constructing their own Medicaid program. Each state must have a single state agency in charge of administering the program and a comprehensive, written state plan that describes the program and is approved by the federal government. The plan must be amended whenever necessary to reflect changes in federal or state law, and to reflect material changes in policy, organization or operation of the program.

Federal law requires all participating states to provide a minimum level of services, referred to as "mandatory services," to specified "mandatory" populations of low-income persons.

A. Mandatory populations are children, caretakers, and the elderly, blind and disabled.

B. Mandatory services are:

1. hospital services,
2. physician services,
3. laboratory services,
4. nursing home service (for those over 21).
5. For children, states must provide early and periodic screening and diagnostic services, as well as treatment for any conditions discovered. These services for children are referred to as EPSDT. See 42 CFR Â§441 Subpart B.

C. Services must be provided in an amount, duration and scope sufficient to achieve their

purpose.

D. Services must be furnished with reasonable promptness.

E. Services received by one mandatory group or geographic area must be comparable to what others receive.

F. Medicaid must be the payer of last resort and is payment in full.

G. **States must describe their Medicaid programs in formal State Medicaid Plans**, which are submitted to the federal Center for Medicare and Medicaid Services (CMS) for approval. Click here for New York's State Plan, posted as a result of Social Services Law Â§ 363-e, added by the Laws of 2011, chapter 59, part H Â§ 39, requiring that New York's Medicaid State Plan be available on DOH website

- Recently proposed and/or approved State Plan amendments are also available at: http://www.health.state.ny.us/regulations/state_plans/status/.

H. **WAIVERS** -- Federal law does allow states to experiment with new and different ways of structuring health care services for the low-income by proposing Section 1115 waivers to CMS for approval. Waiver documents are posted on the CMS website for each state.

B. FEDERAL SUB-REGULATORY GUIDANCE

- CMS publishes the State Medicaid Manual and issues
- "Dear State Medicaid Director" letters, which are sub-regulatory guidance to States on Medicaid.

II. State Law and Regulation

NY Medicaid is actually a conglomeration or patchwork of different public health programs, each governed by different state statutes, regulations, as follows:

A. State Medicaid Law and Regulation

Termed Medical Assistance by state statute, often referred to as "Regular Medicaid")

Regular Medicaid is available in New York to children, caretaker adults and the elderly and disabled, as well as single adults and childless couples (at lower income levels). Regular Medicaid is described in New York's State Plan and codified at N.Y. Soc. Serv. L. Â§Â§ 122, 131, 363- 369-1;

Regulations issued by the NYS Department of Health at 18 N.Y.C.R.R. Â§ 360, Part 505. Regular Medicaid does provide retroactive coverage.

The health care services clients can access under Regular Medicaid go well beyond the minimum services required of all states. The types of services NY Medicaid covers include:

- a. Hospitalization
- b. Out-patient care at community clinics as well as hospitals
- c. Mental health care
- d. Dental care
- e. Physical therapy
- f. Diagnostic tests
- g. Home care services, including personal care
- h. Durable medical equipment, and
- i. Pharmacy.

For a more detailed listing, see NY Soc. Serv. L. Â§365-a(3).

Most clients must receive Medicaid services through a managed care plan. For information on Mandatory Medicaid Managed Care, see Section II of Empire Justice Center's training outline, "Medicaid 201: Accessing Care." This outline will be posted on nyhealthaccess.org and empirejustice.org as soon as updates are completed.

[Click here for New York's State Medicaid Plan](#) - filed with CMS.

FAIR HEARINGS - Regulations at 18 NYCRR Part 358. See more [here](#).

Medicaid MANAGED CARE & MLTC - APPEALS - see [here](#).

B. State Sub-Regulatory Guidance

A. Administrative directives governing these programs are posted on the NYS DOH Library of Official Documents at http://www.health.state.ny.us/health_care/medicaid/publications/. This site is back to 1996, and omits LCMs (Local Commissioners' Memoranda).

For directives before 1996, and many LCMs, see <http://onlineresources.wnylc.net/pb/default.asp>

NY's State Administrative Procedures Act (SAPA) provides that not less than once each year, every agency shall submit to the Secretary of State for publication in the State Register a list of all Guidance Documents on which the agency currently relies [SAPA, section 202-e(1)]. However, an agency may be exempted from compliance with the requirements of SAPA section 202-e(1) if the agency has published on its website the full text of all Guidance Documents on which it currently relies [SAPA, section 202-e(2)]. OH is one of the agencies that opts for the online publishing - you'll find it at: <http://www.nyhealth.gov/guidance/index.htm>

Clicking on "Medicaid" and then "ADM and GIS Messages" does still list this ADM (for a comparison of OTDA's publication in the NY Register, see: <http://www.dos.state.ny.us/info/register/2011/jan5/pdfs/guidancedocs.pdf> (this info courtesy of Jim Murphy, Legal Services of Central New York)

B. Other valuable sources of state policy for local district implementation of the Medicaid program are available on the NYSDOH website at: http://www.health.state.ny.us/health_care/medicaid/reference/index.htm. These include:

- a) The Medicaid Reference Guide (MRG)
- b) The Medicaid Update (policy bulletins for Medicaid providers regarding billing, etc.)
- c) Medicaid Provider manuals - Posted on eMedNY website
- d) Reference guides for various Medicaid programs --

Traumatic Brain Injury Program Manual

Care at Home: A Handbook for Parents

- e) Medicaid Home & Community Based Waiver programs - see links here to NYS info about TBI, NHTD and other waivers

C. Fair Hearing Decisions - have precedential value under stare decisis principles. *Charles A. Field Delivery Service v. Roberts*, 66 N.Y.2d 516, 495 N.Y.S.2d 111 (1985); *Long v. Perales*, 568 N.Y.S.2d 657 (2d Dept. 1991) Fair hearing decisions issued since Nov. 1, 2010 are now online in an archive at <http://www.otda.ny.gov/oah/FHArchive.asp>. Earlier decisions have been posted for many years on an ad hoc basis by advocates on the WNYLC Online Resources Center in a searchable database. Registration is required but is free. Additionally, there are several listings of fair hearing decisions by topic:

Medicaid Home Care Decisions (courtesy of Selfhelp Community Services)

Digests of Fair Hearing (FH) Decisions on Tolling statutes of limitations, notice requirements, and some substantive issues etc. (See other articles on Website on Fair Hearings in NYS maintained by Gene Doyle, POOR)

C. Local NYC Guidance

While the New York State Dept. of Health is the "single state agency" designated by the State to administer Medicaid in NYS, and responsible for all regulations, policies and procedures, each local "district" also issues policies and procedures. In New York City, Medicaid is administered by the NYC Human Resources Administration.

See Medicaid Alerts (policy bulletins) issued by HRA. HRA publishes these alerts on the MAP Authorized Resource Center (MARC) website that requires registration. See the website for trainings for organizations that want to become "authorized submitters" of applications and renewals.

See NYC HRA Medicaid contacts here.

Other articles focused on Medicaid in NYC can be found here.

D. Programs That are Part of NYS Medicaid Serving Certain Populations

1. Emergency Medicaid - Emergency Medicaid covers treatment for emergency medical conditions for undocumented immigrants and non-citizen, non-immigrants, as long as they satisfy all other eligibility requirements for Medicaid. Residency becomes an issue for those here on temporary visas. Emergency Medicaid does provide retroactive coverage.

An emergency medical condition is narrowly defined as a condition that, after sudden onset, has acute and severe symptoms which if left untreated could place the applicant's health in jeopardy. See N.Y. Soc. Servs. L. Â§ 122(1)(e); 00 OMM/ADM-9 and 04 OMM/ADM-7. See Emergency Medicaid in New York State and Cancer Treatment under Emergency Medicaid

2. The Family Planning Benefit Program (FPBP) was created as part of the 1115 waiver that also created the FHPlus program in New York. FPBP provides family planning services, including birth control and emergency contraception, to women of child-bearing age up to 200% of the federal poverty level. Other health services may be covered as well, when related to family planning decisions. FPBP is codified at N.Y. Soc. Serv. L. Â§ 366(1)(a)(11).

3. The Medicaid Buy-In Program for Working People with Disabilities (MBI-WPD) - The MBI-WPD program provides full Medicaid coverage to people with disabilities who are working, at incomes levels significantly above the income level for Regular Medicaid. The MBI-WPD program is codified at N.Y. Soc. Serv. L. Â§366(1)(a)(12). MBI-WPD does provide retroactive coverage. Implementation of the program remains problematic at the county level, despite numerous administrative directives from the State Department of Health to the local social services districts. See more here

4. The Medicaid Cancer Treatment Program (MCTP) - In order to be eligible for this program, clients must be in need of treatment for breast, cervical, colorectal or prostate cancer, and must have been screened by agencies participating in the New York State Cancer Services Program. For a list of participating local organizations, check the NYSDOH website Cancer Services Program Community Programs List

5. Medicaid Home Care -- Citations for Medicaid home care programs are on this separate NYS Medicaid Home Care Law & Cases reference sheet. and in these articles about the various types of home care.

E. Public Health Insurance Programs Other than Medicaid

1. Child Health Plus (CHPlus)

CHP is a sliding scale premium program for children who are over-income for regular Medicaid. CHPlus is codified at N.Y. Pub. Health L. Â§2510 et seq. Eligibility is determined by health plans under contract with NYSDOH. Services are provided through managed care plans only and do not include long term care. CHP does not provide retroactive coverage.

2. **Essential Plan (EP)** - NYS's program that exercises an option under the Affordable Care Act to establish a "Basic Health Program). 42 U.S.C. 18051, 45 C.F.R. 156.420. These programs are for people under 65 with income above the Medicaid limit. Originally the income limit was 200% FPL and will be going up to 250% FPL in 2024. The EP is designed to reduce health care costs for lower income people for whom enrolling in a Qualified Health Plan on the NYS of Health would be expensive.

Also the EP allows NYS to obtain a federal subsidy to provide health care to legal immigrants who are "PRUCOL" - many PRUCOL immigrants switch from Medicaid to the Essential Plan because it is partly federally funded. See this article about PRUCOL Medicaid.

Federal law requires BHPs to cover "essential health benefits." 42 USC 18022.

Essential Plan: NY Soc. Serv. L. Sec. 369-gg

3. **Medicare Savings Programs (MSP)** - this catch-all term refers to Medicare subsidy programs that can be received separately from Medicaid. In 2023, the number of MSP programs was reduced from 3 to 1.

- QMB is for those who may also want Medicaid, since the income limit for both Medicaid and QMB is now 138% FPL. Since QMB has no asset limit, some people may want QMB only.
- QI-1 is only for those who do not have or want Medicaid. Income limit is 186% of FPL.

Both QMB and QI-1 pay their Medicare Part B premiums. Only QMB also pays other cost-sharing obligations. See, N.Y. Soc. Serv. L. Â§367-a(3)(a), (b) and (d).

Both MSPs also automatically qualify recipients for the Medicare Part D Low Income Subsidy, which significantly reduces out-of-pocket costs for prescription drugs. Two of the three MSPs can provide retroactive coverage - only QMB does not.

For State directives and more info see [Medicare Savings Programs in New York](#)

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