

KENTUCKY LAW UPDATE



2025

ADVANCING THE PROFESSION THROUGH EDUCATION

**Alphabet Soup – From HCBS to MAGI
to ABI to MSP: An Overview of
Kentucky Medicaid Programs, Public
Benefits, and Possible Changes on
the Horizon**

1 CLE Credit

Sponsor: KBA Elder Law Section

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**ALPHABET SOUP – FROM HCBS TO MAGI TO ABI TO MSP
AN OVERVIEW OF KENTUCKY MEDICAID PROGRAMS AND POSSIBLE CHANGES
ON THE HORIZON**

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Along with the traditional cherry blossoms, the Spring of 2025 has brought to Washington, D.C. a heated discussion of Medicaid, its benefits, its costs, and the possible reforms for the program. Wrapped up in the Republican-backed “One Big Beautiful Bill Act” are some significant changes to a variety of Medicaid programs. To truly understand the implications, one must understand the many parts of Medicaid, what each part covers, and how one qualifies. Elder law attorneys often interface with the long-term care program but can touch on other portions as well when dealing with special-needs individuals. As a large portion of our population, the baby boomers, head toward their golden years, all Kentucky attorneys may find their clients and certainly their family members are enrolled in some version of this program. It’s time to get a good basic understanding of what all is involved.

I. HISTORY

Medicaid became law in 1965 and is governed by Title XIX of the Social Security Act.¹ It was designed as a joint venture between the federal government and state governments to provide medical assistance to the elderly, disabled, and financially needy. The enabling federal legislation provides an overall set of rules that govern the program. States are free to make modifications in their version of the program but cannot be more restrictive than the federal rules. To receive matching federal funds, the Medicaid program of the state was required to cover:

- Inpatient hospital services;
- Outpatient hospital services;
- Pregnancy-related services, including prenatal care and 60 days postpartum pregnancy-related services;
- Vaccines for children;
- Physician services;
- Nursing facility services for persons aged 21 or older;
- Family planning services and supplies;
- Rural health clinic services;
- Home health care for persons eligible for skilled nursing services;
- Laboratory and x-ray services;
- Pediatric and family nurse practitioner services;
- Nurse-midwife services;
- Federally qualified health center (FQHC) services, and ambulatory services of an FQHC that would be available in other settings; and

¹ <https://www.ssa.gov/policy/docs/statcomps/supplement/2015/medicaid.html#:~:text=Overview,similar%20size%20or%20geographic%20proximity.>

- Early and periodic screening, diagnostic, and treatment (EPSDT) services for children under age 21.²

There were many optional services that could receive matching funds, but it was not required that a state cover all of the optional services. In 1972, the program was expanded to provide Medicaid to all individuals eligible to receive Supplemental Security Income (SSI) – namely the elderly and disabled under 65 who are low-income.

Since 1972, several states have asked to expand their versions of the Medicaid medical insurance program. The requests to cover more individuals and in settings not contemplated by the original legislation are called “waivers.” States have requested waivers to allow Medicaid coverage of in-home care, care of adults with developmental disabilities, assisted living coverage, and acquired brain injuries for example.

In 1997, during the Clinton administration, the Children’s Health Insurance Program was passed (CHIP) on the federal level. This program provides health insurance to children who were not previously eligible under the normal Medicaid program. In 2014, the eligibility for Medicaid medical insurance was greatly expanded with the passage of the Affordable Care Act, which opened up eligibility to those with incomes up to 138 percent of the federal poverty limit in states that wished to participate. Forty states and Washington, D.C. have expanded Medicaid eligibility, including Kentucky.

As of December 2024, over 78 million Americans are enrolled in the Medicaid program. In Kentucky, 1.377 million are enrolled in Medicaid and approximately 132,000 of those individuals are children.³

II. KENTUCKY PROGRAMS

A. Kentucky Children’s Health Insurance Program (KCHIP)

The Kentucky Children’s Health Insurance Program (KCHIP) is Kentucky’s version of CHIP and applications can be made by eligible families through the KYNECT portal.⁴ To be eligible for the KCHIP program and free medical insurance for the children, the family must have an annual household income of less than 218 percent of the federal poverty level. The eligible individuals for KCHIP within the family are children under the age of 19, women who are currently pregnant, or those that have had a child within the past year.⁵ The gross income amount is now modified annual gross income or MAGI after changes made in the Affordable Care Act. For example, a family of four (two parents, two children) will have covered children under KCHIP if their gross

² See *Id.*

³ <https://www.kff.org/report-section/medicaid-enrollment-and-unwinding-tracker-enrollment-data/>.

⁴ https://kynect.ky.gov/benefits/s/medicaid-kchip-program?language=en_US.

⁵ <https://kidshealth.ky.gov/Pages/index.aspx>.

monthly income is less than \$5,668 per month. For further regulations and the enabling legislation, see [KRS 205.6485](#) and [907 KAR 4:020](#).

B. Kentucky Medicaid with Supplemental Security Income (SSI) Eligibility

In all states, individuals who are eligible for the federal benefit Supplemental Security Income (SSI) are automatically eligible for Medicaid medical insurance provided by the state of their residence. To be eligible for SSI, a person must be aged (age 65 or older), blind, or disabled. In addition, they must meet federal income and asset limits. The most an individual can receive is \$967 for an individual and \$1,450 for a couple per month. When an applicant has income, earned or unearned, the income they received offsets the potential benefits above with a small deduction of each kind of income. For a more detailed explanation of this calculation, see <https://www.ssa.gov/ssi/text-income-ussi.htm>. It is important to note that if any family support is provided in the form of rent assistance or a place to live, this is called “in-kind support and maintenance” and can reduce SSI by one third.

Assets are commonly called “resources” in the SSI and Medicaid world. To be eligible for SSI, which automatically qualifies one for Medicaid, you have to have less than \$2,000 in resources as an individual or \$3,000 as a couple. Resources include anything that can be converted into cash and used for food and shelter. This will include cash, checking accounts, savings accounts, CDs, retirement accounts, brokerage, cash surrender value of life insurance, and bonds among other things. A home is not a countable resource, along with an automobile and prepaid funeral arrangements that are irrevocably assigned to a funeral home or burial expenses. Detailed requirements for the program are available in the Social Security Program Operations Manual or POMS. See <https://secure.ssa.gov/apps10/poms.nsf/suubchapterlist!openview&restricttocategory=05011>. For a detailed discussion of resources and the exclusions, see POMS SI 0110.

SSI is most often awarded to those who are disabled, but whose disability began after the age of 22.⁶ These individuals did not work the 40 quarters needed to qualify for typical retirement, survivors, and disability insurance benefits.

A common issue with SSI is the influx of resources due to a recovery from an accident (personal injury settlement), inheritance, or the conversion of an exempt resource to a countable one (sale of a home). Elder law attorneys will often draft a special needs trust for those under age 65 to hold such assets and allow the individual to continue to receive their SSI and Medicaid. The state, however, will have a right to recovery from the trust up to the amount of benefits received by the individual.

To apply for SSI, an individual must make the application with a Social Security Office. Once SSI is awarded, enrollment in Medicaid will be automatic. Eligibility for these

⁶ Those whose disability began prior to age 22 and had a parent eligible for Social Security Retirement, Survivors and Disability Insurance (RSDI) are eligible to draw off that parent and will receive a higher benefit than an SSI recipient.

programs must be redetermined every one to six years.⁷ If there are changes to income or assets, these changes have to be reported within 10 days. If a person gives away resources to become eligible or to remain eligible, they can be ineligible for up to 36 months (amount given away divided by the benefit amount).⁸

C. Medicaid through the Affordable Care Act

For those individuals that do not meet the requirements for SSI or do not meet the requirements for Medicaid as aged, blind, or disabled, they can get Medicaid eligibility through the expanded eligibility afforded by the Affordable Care Act if they are low-income individuals or families. The eligibility for the Kentucky Medicaid program through the expanded Affordable Care Act eligibility criteria allows for persons with income of up to 138 percent of the federal poverty level to be eligible for free medical insurance. Those with more than 138 percent but less than 400 percent of the federal poverty level can qualify for subsidies for their qualified health plan premium through KYNECT. This can reduce the premium for a qualified health plan substantially. Approximately 488,000 Kentuckians received Medicaid through the Medicaid expansion. Another 75,000 receive subsidies for medical insurance through the exchange.⁹ This is the benefit that is most likely to be affected by proposed changes in the legislation pending in May 2025.

D. Medicare Savings Plan – Qualified Medicare Beneficiaries (QMB)

While not Medicaid insurance, Medicaid does offer additional benefits to *Medicare* beneficiaries that have resources below \$9,660 for a single individual and \$14,470 for a couple. Remember, in this situation, Medicare is the person's medical insurance but Medicaid is helping with the costs associated with Medicare. If a single person has a monthly income less than \$1,325 (\$1,783 for a couple), Medicaid will pay the person's Medicare Part A and Part B premiums and all Medicare co-insurance and deductibles. All income and assets limitations here are current as of 2025.

E. Medicare Savings Plan – Specified Low-Income Beneficiaries (SLMB)

Similar to QMB, SLMB pays a person's Medicare Part B premium if their income is less than \$1,585 per month for an individual or \$2,135 for a couple. This benefit does not cover co-pays, co-insurance or deductibles. Resource requirements are the same as QMB.

⁷ <https://www.ssa.gov/ssi/text-redets-ussi.htm>.

⁸ <https://www.ssa.gov/ssi/text-eligibility-ussi.htm>.

⁹ [https://kypolicy.org/affordable-care-act-has-helped-make-insurance-affordable-for-a-decade-but-will-get-more-expensive-if-congress-doesnt-act/#:~:text=for%20Economic%20Policy-,Affordable%20Care%20Act%20Has%20Helped%20Make%20Insurance%20Affordable%20for%20a,if%20Congress%20Doesn't%20Act&text=The%20Affordable%20Care%20Act%20\(ACA,that%20come%20with%20marketplace%20plans](https://kypolicy.org/affordable-care-act-has-helped-make-insurance-affordable-for-a-decade-but-will-get-more-expensive-if-congress-doesnt-act/#:~:text=for%20Economic%20Policy-,Affordable%20Care%20Act%20Has%20Helped%20Make%20Insurance%20Affordable%20for%20a,if%20Congress%20Doesn't%20Act&text=The%20Affordable%20Care%20Act%20(ACA,that%20come%20with%20marketplace%20plans).

F. Medicare Savings Plan – Qualified Individuals (QI)

QI also pays Medicare Part B premiums when an individual has a monthly income of less than \$1,781 per person or \$2,400 for a couple. Again, the assets or resource requirements are the same as QMB and SLMB.

G. Medicare Savings Plan – Qualified Disabled Working Individuals (QDWI)

Medicare Part A premiums get paid by QDWI when the working individual's income (with some disregards) is less than \$5,302 or a couple's is less than \$7,135 per month.¹⁰ Again, the resource requirements are the same as the other Medicare Savings Programs above.

H. Spend down Medicaid

"Spend down" Medicaid is not a different program, but instead a separate way to get to Medicaid eligibility for those that exceed the income limit (typically \$217) but meet all other requirements. The spend down program allows individuals to use their medical expenses to reduce their income. This Medicaid eligibility is time-limited and is determined a quarter at a time.¹¹

I. Medicaid- Long-Term Care Program – Nursing Home Benefit

While long-term care Medicaid enrollees were only 6 percent of nationwide enrollees, the amounts paid for them accounted for 37 percent of national Medicaid expenditures.¹² This includes those receiving services at home and in the nursing home setting. There are no Medicaid benefits for assisted living in Kentucky. We will cover the nursing home eligibility requirements first and then each potential waiver benefit.

In Kentucky, to be eligible for Medicaid to cover the cost of nursing home care, an individual must meet medical and financial requirements. The federal requirements for Medicaid can be found in [42 U.S.C. §1396p](#) and [42 U.S.C. §1396r-5](#). The Kentucky requirements are found in [907 KAR Chapter 20](#). Generally, to be eligible the individual must need skilled nursing care (assistance with at least two of six activities of daily living), need that care long-term (more than 30 days) and be in a Medicaid certified bed. The most challenging portion of meeting these requirements is often the Medicaid certified bed requirement. These beds can be hard to get when needed.

¹⁰ <https://www.chfs.ky.gov/agencies/dms/MAPForms/MAP16.pdf>.

¹¹ <https://www.chfs.ky.gov/agencies/dms/dpo/epb/Pages/enroll.aspx#:~:text=The%20spenddown%20program%20provides%20time,prior%20to%20the%20application%20month.>

¹² <https://www.kff.org/medicaid/issue-brief/how-many-people-use-medicaid-long-term-services-and-supports-and-how-much-does-medicaid-spend-on-those-people/>.

Financially, a single person is eligible for Medicaid long-term care assistance when they have less than \$2,000 in countable resources. For this benefit, retirement accounts, prepaid irrevocable funeral plans, and an automobile capable of transporting the individual for medical treatment are not countable. All other assets are countable. The home gets an exclusion for the first six months a person is in nursing care but becomes countable after that point.

The eligibility for married couples is computed differently. In a situation where one is in the nursing home and the other is not (the community spouse), a home of any value is considered an exempt resource, along with all retirement accounts, a vehicle of any value and half of all other countable resources with a cap of \$157,920 (2025 value). There is also a floor on the half of \$31,584 (2025 value). This calculation is called the Community Spouse Resource Allowance (CSRA).

All assets over the CSRA have to be “spent down.” “Spend down” in this context means that the money has to be spent in some way on that couple. It cannot be given away. Medicaid has a transferred resource factor. In Kentucky, for every \$316.88 that someone has given away in the five years prior to asking for benefits, Medicaid coverage will be denied for one day.¹³ This calculation includes *any* transfers for less than fair market value, such as selling assets for less than market price. The “I didn’t give it away. I sold it to him for \$1” defense does not work. This period of disqualification or penalty period does not even begin to run until the individual is in the nursing home and otherwise eligible for Medicaid if not for having made the gift.

In addition to the asset or resource requirement, an individual must also meet the income requirements for long-term care Medicaid. The institutionalized individual must have an income less than \$2,901 per month (2025). If their income exceeds this amount, the applicant can set up a qualified income trust (QIT) or Miller trust to hold any income over that amount to be eligible. Requirements for a qualified income trust (QIT) can be found in [907 KAR 20:030](#).

Once Medicaid eligibility is established, the individual must pay their income to the nursing facility each month. That amount is typically their gross income minus health insurance premiums minus a \$60 personal needs allowance. This is called their “patient liability.” The rest of the Medicaid reimbursement rate is paid by the Medicaid program. The average rate of Medicaid reimbursement to long-term care facilities for 2025 is around \$10,000 per month but varies from facility to facility. If the individual is married and their spouse has an income of less than \$2,555 (2025), then some of the institutionalized individual’s income may be paid to the community spouse. This is called the Minimum Monthly Maintenance Needs Allowance (MMMNA).

J. Long-term Care Medicaid – Home and Community-Based Waiver (HCBS)

Kentucky does allow Medicaid long-term care services and supports to be provided in the home instead of the nursing home. The home and community-based program

¹³ <https://www.chfs.ky.gov/agencies/dCBS/dfs/Documents/OMVOLIVA.pdf>.

provides non-medical personal care to individuals who meet the same skilled nursing requirements as those in the nursing home. This includes adult day care, attendant services, home-delivered meals, and respite care. The financial requirements are the same as the institutional benefit with the exception of the required patient liability. The only amount owed for patient liability is any amount of income over \$2,901/month minus health insurance premiums. The \$2,901 is the personal needs allowance for those on the HCBS program.¹⁴ This waiver has a waitlist of approximately six months to a year.

Participant Directed Services (PDS) is available with this waiver. PDS allows the Medicaid recipient to hire their own caregivers. While it sounds like an attractive option, the requirements for the Medicaid recipient who uses PDS are onerous. They must:

- “Work with assigned support brokers/service advisors to develop individual service plans that include support spending and emergency backup plans.
- Hire, train, schedule and terminate employees as necessary.
- Follow the person-centered service plan (AKA plan of care) and spending plan.
- Meet any patient liability obligations as determined by the Department for Community Based Services.
- Choose an authorized representative, if needed or desired.
- Submit paperwork correctly and timely.
- Follow PDS policies, procedures, guidelines, and administrative regulations.”¹⁵

Due to the demands, PDS has become less and less popular among elder law clients.

K. Long-term Care Medicaid – Michelle P. Waiver

Michelle P. Waiver provides long-term care services and supports for intellectual or developmental disabilities to allow those individuals to live as independently as possible. These services can include behavioral supports, day training, environmental and minor home adaptation, personal care and respite. The financial requirements are the same as the Medicaid requirements for the HCBS waiver; however if the individual lives with family members, the family’s countable income can affect eligibility.¹⁶ The waitlist for this waiver is around 10 years. PDS is available with this waiver.

¹⁴ <https://www.chfs.ky.gov/agencies/dms/dca/Pages/hcb-waiver.aspx>.

¹⁵ <https://www.chfs.ky.gov/agencies/dail/Pages/pds.aspx#:~:text=Provider%20choice%20gives%20members%20greater,waiting%20list%20for%20this%20waiver.>

¹⁶ <https://www.chfs.ky.gov/agencies/dms/dca/pages/mpw.aspx>.

L. Long-term Care Medicaid – Acquired Brain Injury Waiver (ABI)

This waiver is available to those individuals who have an acquired brain injury and can benefit from intensive rehabilitative services with the hopes they can reenter the community and function independently. Recipients receive adult day training, companion or community living supports, individual and group counseling, environmental and minor home modifications, respite, and supervised residential care. The financial requirements are the same as HCBS. PDS is available with this waiver.

M. Long-term Care Medicaid – Acquired Brain Injury Long Term Care Waiver (ABI LTC)

This waiver is for those with acquired brain injuries that reached a plateau in their rehabilitation and require services to live safely in the community. The services provided by this waiver are the same as those available through the ABI waiver.¹⁷ The financial requirements are the same as other waivers.¹⁸ PDS is available with this waiver.

N. Long-term Care Medicaid – Supports for Community Living (SLC)

This waiver provides assistance to those with intellectual or developmental disabilities to help them live in the community as independently as their condition permits. The services they can receive are environmental accessibility adaptation, vehicle adaptation, personal assistance, positive behavior supports, and residential support services. The financial requirements are the same as those for the other Medicaid long-term care programs. The wait for this waiver is approximately 10 years, similar to the Michelle P. Waiver. PDS is available with this waiver.

O. Long-term Care Medicaid – Model II Waiver

This waiver provides services to individuals that are ventilator dependent 12 hours or more per day and wish to live in the community. In addition to the Medicaid financial requirements, the individual must have a permanent tracheostomy, require 24-hours per day nursing care, and have a strong family support system including both a primary and backup caregiver. If a ventilator-dependent person can meet these requirements, Medicaid will pay for up to 16 hours a day of private duty nursing.

III. POTENTIAL MEDICAID CHANGES

At the time of the drafting of these materials, Congress is debating changes to Medicaid that will have profound effects on these programs. Whether a person considers these changes to be positive or negative may depend on your political affiliation and view toward needs-based programs, deficits, and the state/federal funding dynamic. The House of Representatives has

¹⁷ <https://www.chfs.ky.gov/agencies/dms/dca/Pages/abi.aspx>.

¹⁸ <https://www.chfs.ky.gov/agencies/dms/dca/Pages/abi.aspx>.

passed the One Big Beautiful Bill Act or OBBA. In this legislation, the following changes to Medicaid are proposed:

- A. Medicaid spending would be reduced by \$700 million. This will be significant for all states that have a high number of residents on Medicaid. Kentucky is one of these states.
- B. A work requirement would be added to those who are receiving Medicaid through the Medicaid expansion Affordable Care Act. Those receiving Medicaid through that benefit would have to prove they are working 80 hours per month unless exempt due to disability, school, or caregiving responsibilities. Opponents of this provision allege that the requirements of remaining certified eligible for the program (recertifications every six months) will result in millions losing coverage.¹⁹
- C. Requires states to impose per service fee requirements (co-pays) on those participating in the Medicaid Affordable Care Act program that have income that is 100-138 percent of the federal poverty level. Some services are exempted.
- D. Reduces the federal funding match for those states that provide services to illegal immigrants, including children.
- E. Reduces retroactive coverage possible for those that were eligible from three months to one month. This will be devastating for nursing homes and their residents who are often seeking retroactive coverage.
- F. Changes provider taxes that states may charge medical providers (hospitals, nursing homes). States often charge these taxes and then use those collected funds to fund the states' share of Medicaid funding required in the federal/state funding split. If states are no longer able to do this, this will result in a significant new financial burden on the states.
- G. Eliminates the Biden-era requirements that nursing facilities maintain certain staffing ratios.
- H. Limits home-equity limits for long-term care Medicaid eligibility to \$1 million but allows states to develop different rules for homes on farms.²⁰

All sources predict that the proposed changes to Medicaid in the OBBA will result in the loss of benefits for millions of Americans. For this reason, there is significant resistance in the Senate on both sides of the aisle. This author is hopeful that we will have more clarity at the time of the taping of the presentation.

¹⁹ <https://www.cnn.com/2025/05/23/what-medicaid-snap-cuts-in-house-republican-bill-mean-for-benefits.html>.

²⁰ <https://www.kff.org/tracking-the-medicaid-provisions-in-the-2025-budget-bill/>.

IV. CONCLUSION

While Medicaid is a complex program, it is hoped that this will serve as a guide to the basic programs and their requirements. It is likely a program that will undergo future changes, as budget battles are inevitable with a program of its magnitude. It is important that all practitioners who encounter these programs stay on top of the changes and learn to be reactive, as needed. Consultation with an elder law attorney or one who practices in the world of Social Security may be warranted. Having a trusted attorney in these areas available is wise.

FOR YOUR INFORMATION ...

The Kentucky Law Update: Continuing Legal Education for All Kentucky Lawyers

The Supreme Court of Kentucky established the Kentucky Law Update Program as an element of the minimum continuing legal education system adopted by Kentucky attorneys in 1984. The KLU program is now offered in a hybrid format. The 2025 Kentucky Law Update is presented as a one-day, in-person program at nine different locations across the state. The 2025 On-Demand Kentucky Law Update is available virtually on the Kentucky Bar Association website from September 1st until December 31st. These two programs combined offer every Kentucky attorney the opportunity to meet the 12 credit CLE requirement, including the 2 ethics credit requirement **close to home and at no cost!** Judges can also earn continuing judicial education credits through the Kentucky Law Update.

This program was designed as a service to all Kentucky attorneys regardless of experience level. It is supported by membership dues and is, therefore, every member's program. The program is a survey of current issues, court decisions, ethical opinions, legislative and rule changes, and other legal topics of general interest that Kentucky practitioners encounter daily. As such, the program serves both the general practitioner and those who limit their practice to specific areas of law. The Kentucky Law Update program is not intended to be an in-depth analysis of a particular topic. It is designed to alert the lawyers of Kentucky to changes in the law and rules of practice that impact the day-to-day practice of law.

About the Written Materials and Presentations

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CLE and Ethics Credit

The one-day, in-person 2025 Kentucky Law Update program is accredited for 6 CLE credits, including 2 ethics credits. The 2025 On-Demand Kentucky Law Update is accredited for 9.25 CLE credits, including 3 ethics credits. One credit is awarded for each 60 minutes of actual instruction, as noted on the agendas provided on the KBA website.

The Kentucky Bar Association's 2025 Kentucky Law Update programs are accredited CLE activities in numerous other jurisdictions. Credit categories and credit calculations vary from state to state. CLE reporting information for other states will be provided at the registration desk at the in-person programs. The out-of-state information for the on-demand sessions will be available on the program website.

Kentucky judges: don't forget you can claim CJE credit for attending this program.

REMEMBER: Reporting attendance credits is now done online. Visit the Kentucky Bar Association [website](#) for reporting information. The activity numbers for the in-person and on-demand programs are listed on the corresponding agendas and must be used to report credits through the Member CLE Portal.

Evaluations

The 2025 Kentucky Law Update is *your* program, and your input *is* valued and needed. Links to the program evaluations for the live, in-person programs will be provided to all registrants via email. A link for the on-demand evaluation will be located on the program webpage. Please take a few minutes to complete the evaluation. We appreciate your assistance in improving this program.

Kentucky Bar Association

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