



**NAMISAP**

National Alliance of Medicare Set-Aside Professionals

# **Medicaid: The Other Secondary Payer Law**

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# Overview

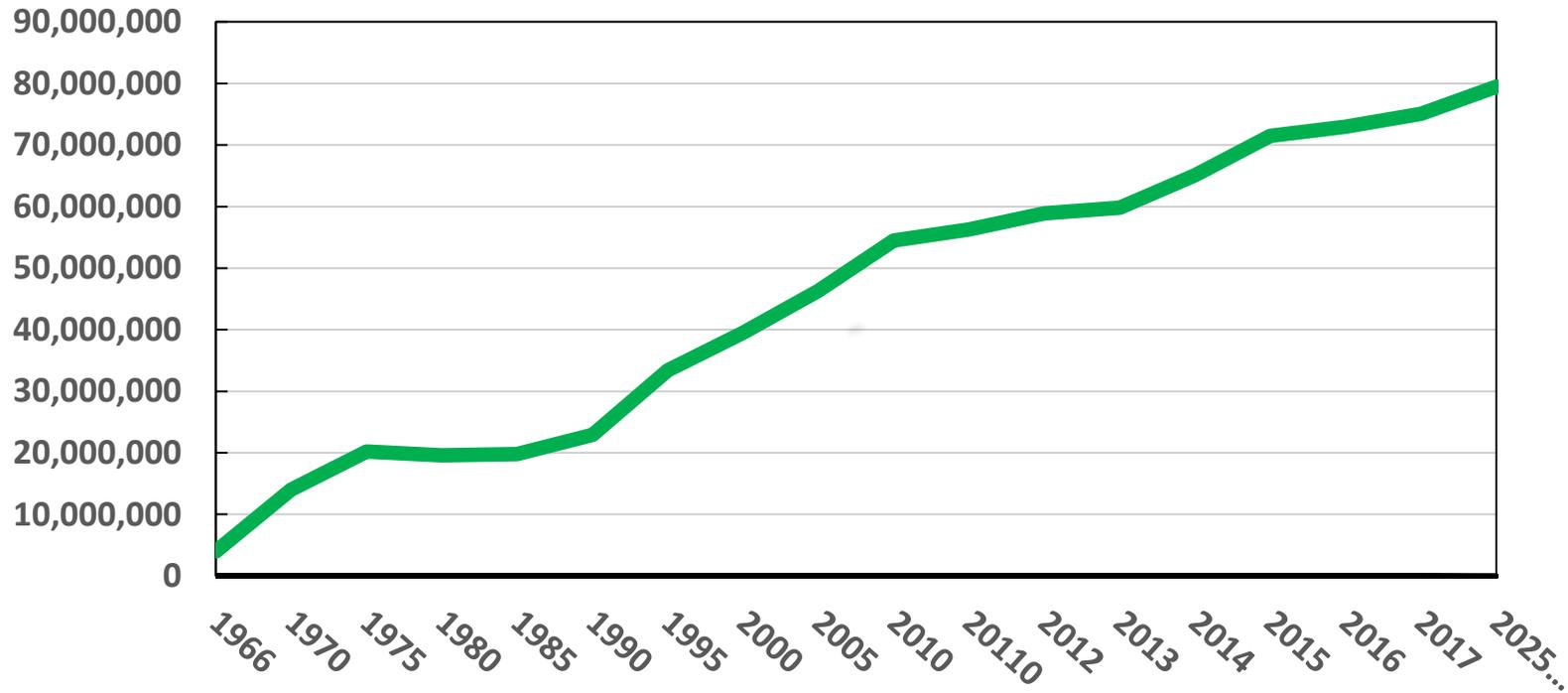
- A Brief history
- Statistics and Data
- Eligibility
- Recent/Relevant Cases
- What's Happening Now?

# HISTORY OF MEDICAID

- Enacted in 1965 at the same time as Medicare
- Federal funding to States to manage their own programs
- Basic standards set by Feds, States allowed to expand at their discretion
- Initial eligibility determined based upon welfare status
  - Changes began in the mid 1980's
  - Ceased in the mid- 1990's with welfare reform

# TOTAL ENROLLEES BY YEAR

## 1966- 2025 (projected)

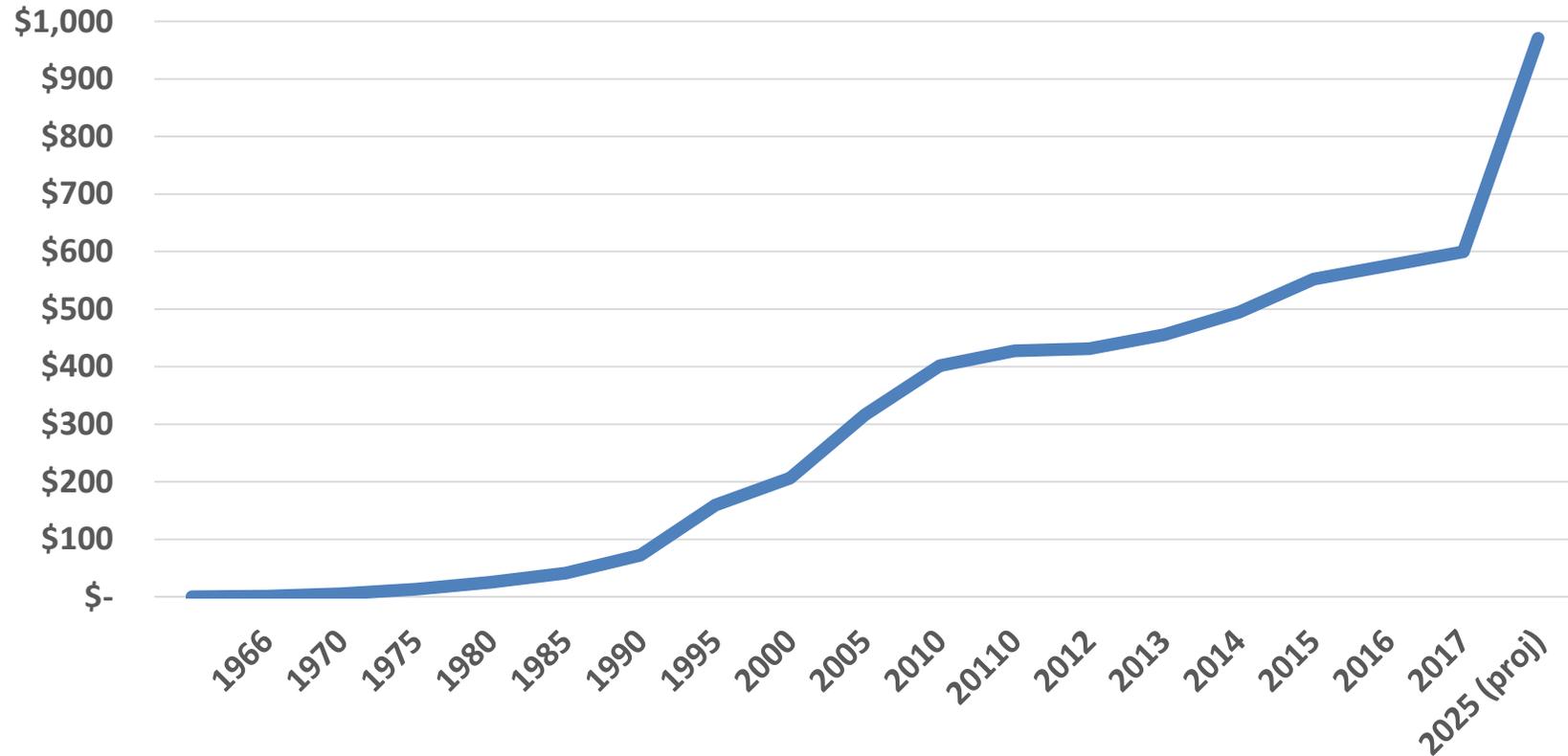


# CURRENT ENROLLEE INFORMATION

- Single largest health care plan in the U.S.
- Approximately 1 of 5 people
- 2017-Total of 74,000,000 enrollees
- Lowest state: Wyoming 10% of population
- Highest state: West Virginia 29% of population

# TOTAL SPEND BY YEAR

1966-2025 (projected)



# ANNUAL SPEND

- \$553,500,000,000 in 2017
- Total Spend Federal and State
- Increase over 2016 by about 2%
- Estimated 6.4% annual increase
- Projected to be \$970B by 2025

# MEDICAID FINANCING

- Financed jointly by Federal and state Governments
- Feds match state spending (no limits)
- Match rate varies by state
- Federal Medical Assistance Percentage (FMAP) ranges from 50% to 80%

# MEDICAID INCOME ELIGIBILITY -2018

- Unearned Income:
  - Individuals \$755/month
  - Couples \$1,123/month
- Earned Income:
  - Individuals \$1,555/month
  - Couples \$2,291/month

# MEDICAID ELIGIBILITY

- SSI Recipients
- Qualified Pregnant Women and Children
- Low Income Families (e.g. <200% FPL, or \$41,000 for family of 3)
- Dual Eligibility (Medicare and Medicaid)
  - Medicare Parts A & B
- Home and Community Based Groups
- Foster Children

# Medicaid Secondary Payer: Who is a liable 3<sup>rd</sup> party?

- Medicaid is a payer of last resort
- **Any** source of payment for medical services or items can be considered primary:
  - Auto Carriers
  - General Liability
  - Workers' Compensation Insurance
  - Health insurers
  - Self-insured entities
  - Group health plans
  - Third Party Administrators
  - Medicare
  - Managed Care Organizations
  - TPOCs (i.e. settlement, judgement, awards or other payments)
  - Statutory or contractual obligations that create liable primary payers

# Are WCMOSA funds a “resource” for determining eligibility for Medicaid?

- Williford v. North Carolina DHHS and North Carolina Division of Medical Assistance (Court of Appeals of North Carolina, Nov 15, 2016).
- Holding- WCMOSA is NOT a countable resource for purposes of determining petitioner’s eligibility for Medicaid because the settlement agreement imposes legal restrictions on the use of the WCMOSA funds
- Impact of this decision

## **Is Medicaid entitled to recover from portion of the settlement earmarked for past AND future medical expenses?**

- Gianinna Gallardo v. Elizabeth Dudek, Secretary of Florida Agency for Health Care Administration, (USDC ND Tallahassee Division, April 18, 2017).
- Holding- By the Medicaid Act's plain language, it prohibits ACA from satisfying its lien from anything but a Medicaid recipient's recovery for past medical expenses.
- Federal law prohibits state agencies from seeking reimbursement of past Medicaid payments from portions of a recipient's recovery that represents future medical expenses.

# Major Medicaid Case Law

- **Arkansas DHHS v. Ahlborn (SCOTUS May 1, 2006)**
  - Holding: Federal Medicaid law limits the amount that a state Medicaid plan can recover for reimbursement from a third party. Federal law does not authorize the state to assert a lien on an individual's settlement in an amount greater than what is set aside for medical expenses.
- **WOS v. E.M.A (SCOTUS March 20, 2013)**
  - Holding: The anti-lien provision of the federal Medicaid statute pre-empts state statutes that attempt to arbitrarily determine that amount they may recover. ( i.e. - North Carolina's statutory presumption that one-third of a settlement received by a Medicaid beneficiary is attributable to medical expenses and therefore recoverable by the Department is not permissible and is preempted by federal law to the extent it would allow the state to recover part of a Medicaid beneficiary's settlement that is not designated for medical expenses)
- **Robinett v Shelby County Healthcare Corp (7/13/18)-8<sup>th</sup> Circuit**
  - Holding: Federal and state Medicaid laws do not bar direct Medicaid beneficiary billing as long as Medicaid is not billed first.

# States that impose some sort of obligation on carriers to report information to Medicaid:

Rhode Island

Minnesota

District of Columbia

Pennsylvania

Vermont

Georgia

Hawaii

West Virginia

Wisconsin

## What's Happening Now?

- About 13 states are pursuing Medicaid reporting statutes now (WV just had a bill to implement this but the governor vetoed it)
- PA now has a web portal to manage claims as of July 2018
- Rhode Island is still the only state with an "Intercept" reporting system

**QUESTIONS?**