

So What If We Are All Getting Older?

Legal and Policy Issues in Aging

By: Roger Manus
Director, Senior Law Clinic
Campbell University, School of Law



Demographic Context (aka "Silver Tsunami")

of adults over 65 will increase by 67% 2015-2035
of adults over 85 will increase by 102% 2015-2035
By 2019, more North Carolinians age 60 and over than 0-17
Already true in
 87 of 100 counties
 Most rural counties
Rural areas have biggest need and fewest resources

2

Social Security Financing

Trust Funds will remain solvent through 2033-34
If no changes,
25% reduction in each recipient's monthly check in 2034 likely
Possible Remedies
- Raise the taxable maximum to cover 90% of payroll
- Progressive price indexation of benefits
- (i.e. reduce the growth of initial benefits for workers who had higher earnings)
- Others

3

Government Supports for Health

Medicare

Medicaid

SHIP

ACA

Other

4

Medicare Finances

Will remain solvent through 2029

(last year's projection was 2028)

5

Medicaid Overview

Federal – State Partnership

Most beneficiaries not elderly

Most Medicaid funding goes for aged and disabled

6

N.C. Medicaid Changes

Session Law 2015 – 245 set in motion

From fee-for-service to managed care

Launch in 2019

Will affect health care of 2,000,000 North Carolinians

7

North Carolina recognized for exemplary Medicaid program
but some weaknesses

Changes will address weaknesses

8

Some Key Features

- Integrated health care
- Tie payment to value by
 - Using managed care approach with monthly capitated payments
 - Encourage Prepaid Health Plans (PHPs) to
 - Quickly adopt Value Based Payment (VBP) arrangements with providers, and
 - Show measurable year to year health improvements from their baseline
- Improve capacity in rural areas
- Recognize social determinants of health
 - Acknowledges, but does not address except to
 - Screen for
 - "leverage existing investments"
 - "identify gaps and opportunities"
 - An example of addressing social determinants:
deliver meals to beneficiaries discharged from hospital who need food assistance as part of their recovery
- Encourage evidence-based strategies

9

Limited Exceptions to Mandatory Enrollment in New N.C. Medicaid Managed Care System

Excluded by legislation:

- Beneficiaries dually eligible (for Medicaid and Medicare)
- PACE beneficiaries
- Medically needy beneficiaries
- Others

10

Groups For Whom DHHS Proposes 4-Year Delay in Mandatory Enrollment:

- Dually eligible – 245,000 (61% use institutional care)
- Medicaid only beneficiaries with long stay (over 90 days) in nursing homes – 2000
- CAP/DA non-dual waiver beneficiaries – 1500
- DHHS proposes shorter delays for 2 other groups
- Will require legislation

11

Federal Medicaid Changes

If Medicaid gets significant funding reductions, and block granted as part of ACA repeal everything will change

- If not, Federal changes via administrative actions
 - Section 1115 waivers
 - Sub-Regulatory Guidance
 - e.g. Letters to State Medicaid Directors

12

Workforce

Access to Geriatricians

Access to Nurses

Access to Paraprofessionals

13

Geriatrician Shortage

216 in practice in 2014

373 more needed in 2014

14

Nurse Shortage

By 2020, half of today's nurses will be at traditional retirement age

Nurse Licensure Compact (HB 550, 2017) allows nurses from any other compact state to practice in N.C. without additional licensing requirements

Fewer than 1% of RNs are certified in gerontology

15

Access to Paraprofessionals

Personal Care Aides and Home Health Aides are among fastest-growing occupations. Demand expected to increase by 49% in 2010-2022

Looming severe shortage

Population of older Americans is increasing much faster

- Than the population of women aged 25-44 (the typical direct care worker), and
- Than the population of potential family caregivers

Exacerbated by low compensation

N.C. Medicaid reimbursement rate for aides reduced several years ago

In 2017, was raised to \$15.60/hr, effective 1/1/18

16

Long-Term Services and Supports

Location Choice

“Aging in Place”

75% of older adults intend to live in their current home for the rest of their lives

17

N.C. Ranks 38th per LTCSS Score Card

18

Government Funded Long-Term Supports and Services

Current institutional long-term care programs

- Nursing Homes
- Adult Care Homes
- Emergency Preparedness

19

Adult Care Homes

1241 in N.C.*

Average age of residents is 59*

*N.C. Public Press

20

Moving Away From Institutional Bias

Medicaid and Long-Term Supports and Services

Role – Pays over half of cost

History

- Katie Beckett
- Use of Medicaid in adult care homes in N.C.

21

**HCBS* Waiver Programs
Fund Various Types of Services**

- Adult day care
- Personal care
- Caregiver respite services
- Other

for Medicaid beneficiaries who would otherwise be institutionalized at greater expense

*Home and Community Based Services

22

HCBS Medicaid Waiver Programs in N.C.

- CAP/DA
- CAP/Choice
 - Consumer driven – hire own workers directly
- “Money follows the Person”
 - Helps person leave (instead of avoid) institution

Cost effective
Long wait lists

23

**PACE
Program for All-Inclusive Care for the Elderly**

- Managed care
- Uses both Medicaid and Medicare Funds
- Comprehensive services
- 2017 Budget Bill requires efficacy study

24

Additional Federal Efforts to Minimize Institutional Bias in Medicaid

- ACA increased flexibility in use of Medicaid
- Incentive Programs
- CMS Guidance Letters
e.g. re compliance with Omstead decision

25

Result of Efforts to Move Away From Medicaid Institutional Bias

- Institutional services consume 70% of Medicaid's LTSS spending, BUT
 - Less in N.C.
 - Half recipients of Medicaid LTSS spending live in Community (in U.S.)

26

Moving Away From Institutional Bias in State funding

State-County Special Assistance in Home

2017 Budget Bill allows DHHS to raise 15% cap

27

Home and Community Block Grant

- Rooted in Older Americans Act
 - Targets "most needy"
- Funds critical services to keep older adults healthy and independent
 - Meals
 - Job Training
 - Senior Centers
 - Caregiver Support
 - Transportation
 - Health Promotion
 - Benefits Enrollment

28

HCBG Funding and Wait List

- 1) Funding (\$62 M)
 - a) Federal (about half)
 - b) State
 - i. Flat since 2011 despite population growth and inflation
 - ii. Except cut 2014
 - iii. But cut restored thereafter through non-recurring appropriations
 - c) Counties and/or providers must add 10% match
- 2) Wait List – 10,000

29

United Way N.C. 211 Community Resource Line

- Information and referral service
- Single portal to access any government social or health service
- Is contracted to include specialized information re LTSS – "No Wrong Door Initiative"
- State funding to:
 - Provide technical assistance (2016)
 - Boost capability in rural counties (2017)

30

**Freedom from Abuse,
Neglect and Exploitation**

31

**Current System of Adult
Protective Services (APS)**

73% APS service recipients over age 60
12% live in a facility
5% abuse
12% exploitation
69% neglect
 66% of neglect is self-neglect
 24% of neglect is caretaker neglect

32

**Most Frequent Service
Needs of APS Beneficiaries**

Placement
Medical or health care
In-home aide services
Legal / surrogate decision maker
Money management
Mental health

33

Challenges Faced by APS System

- 1) Increasing complexity of cases (esp. re financial exploitation)
- 2) Funding
 - a) 78% from counties
 - b) Federal Funding
 - Has not increased to fulfill the promise of Elder Justice Act
 - Is currently threatened with elimination
 - c) APS reports have increased by 69% in last 8 years, while funding has not
- 3) No mandated training or caseload limits for APS social workers
- 4) Limited resources to provide adequate services to victims
- 5) Severe underreporting

34

Appropriate Use of Guardianship

➤Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

- Establishes rules for:
 - Transferring guardianship from one state to another
 - States to recognize other states' guardianship orders
 - A process for establishing guardianship jurisdiction

35

Guardians Ad Litem

Conflicting Duties

36

Mediations in Guardianship Proceedings

Need

Seldom used

Few qualified mediators

Pilot project to remedy

37

Corporate Guardians

6 of 12 have recently gone out of business,
so funding increased in 2017 budget bill

Consider need for entities with focused expertise in

- Mental Illness
- Substance abuse

38

Monitoring Guardians

Mostly reactive instead of proactive

39

Rethinking Guardianship Task Force

40

Alternatives to Guardianship

➤ Power of Attorney

- Uniform Power of Attorney Act (SB 569:2017)

Addresses questions not addressed by current statute

- e.g.
- What if agents in disagreement?
 - What if agent abuses power and steals from my bank account?

- New Statutory Form

Effective January 1, 2018

41

Supported Decision-Making

42

Learning More

Joint subcommittee on aging may be appointed by Joint Legislative Oversight Committee on Health and Human Services

To study and issue final report by November 1, 2018 re

- Service needs
- How to best address

43

Other Sources of Information

National Council on Aging (www.ncoa.org)

Commission on Law and Aging
(www.americanbar.org/groups/law_aging.html)

Senior Citizens Handbook from N.C. Bar Association
NCBA Elder and Special Needs Law Section

44
