

Medicaid and the Intersection of Federal and State Law: ICPC and ICAMA

Interstate compacts are contracts between states setting forth measures and guidelines that all signatories to the compact agree to follow. States pass what is known as enabling legislation in their respective state legislatures which permit them to become signatories to such a compact. This process makes interstate compacts state law. Both The Interstate Compact on the Placement of Children (ICPC) and the Interstate Compact on Adoption and Medical Assistance (ICAMA) are interstate compacts, and are, therefore, state law.

Compacts are agreements between two or more states that have the force and effect of statutory law. States develop and enter into compacts to establish a formal, legal relationship to address a common concern that crosses state boundaries. Compacts obligate states to the provisions of the compact just as a contract would bind an individual or corporation in a business deal. Since WWII, more than 150 compacts have been created.

The ICPC is the law that allows states to place children across state lines. It is state statute in all 50 states, the District of Columbia and the Virgin Islands. The purpose of ICPC is to ensure children are placed with safe and suitable resource families or institutions, and ensure the placement continues to be safe and suitable by allowing states to agree to provide supervision of the placement. ICPC sets forth certain procedures to be followed when placing children in : (1) foster care, including foster homes, group homes, residential treatment facilities and institutions, (2) placement with a parent or relative when a state court, state child welfare agency, or other agency guardian is making the placement, (3) preliminary adoptive placements, and (4) in certain kinds of confinement of juveniles who have been adjudicated delinquent. Placement of children not in state custody by an enumerated relative is excluded from the compact.

The ICAMA established regulations to coordinate the interstate delivery of services to adopted special needs children. First established in 1986, ICAMA began with nine member states and at present count 46 states and the District of Columbia are members. The Compact provides the framework for formal interstate cooperation needed to effectuate the Adoption Assistance and Child Welfare Act of 1980 which established the federal adoption assistance program under Title IV-E of the Social Security Act. The law directs states to protect the interests of children receiving Title IV-E adoption assistance in interstate situations and to assist and encourage interstate agreements to achieve this purpose. The Interstate Compact on Adoption and Medical Assistance was created to meet this directive. ICAMA is designed to prevent and overcome barriers to interstate adoptions and the interstate receipt of services to adopted special needs children. The Compact is a contract between state members agreeing to process cases in an efficient manner, using uniform forms and procedures. Members of the ICAMA agree to accept other member states' determination of adoption and medical assistance eligibility, both state and federal, at face value and agree to not "look behind" another state's determination of eligibility. Children are not eligible for the ICAMA. The ICAMA is a compact whose guidelines apply to state action. Children qualify for adoption assistance and eligibility criteria that qualify a child for adoption assistance is specific to the child and do not include considerations of state action, to include alleged ICPC or ICAMA violations.

In an interstate case, once a child is determined eligible for adoption assistance by a member state, whether state *or* federal, other member states must accept this determination. If the child is determined to be Title IV-E eligible, the child's state of residence must provide Medicaid. If the child is determined to be state adoption assistance eligible, the resident state must provide Medicaid if that state extends COBRA reciprocity to the sending state. Most states provide COBRA reciprocity to all states, so most children are able to receive Medicaid through their new state of residence.

Due to the fact that Medicaid is received through a child's state of residence, Medicaid moves with the child and the new state of residence is looked to to provide Medicaid. And, in most instances, the new state must provide Medicaid. There is no ICPC enforcement measure or "penalty" provision in state-to-state disputes-meaning, in most cases, a state allegedly violates the ICPC by sending a child into a state without the ICPC approval of the placement from the receiving state. In these instances, some receiving states have declined to provide preadoptive placement supervision. However, the ICPC, as currently written, has no enforcement measures outside of litigation and the only venue for litigation between two states as opposing parties is the United States Supreme Court.

The ICPC and the ICAMA have little intersection outside case transfers and their documentation (in a preadoptive placement, the ICPC approval should be received before the ICAMA transfer occurs) and no intersection in regards to alleged violations of either compact. Both the ICPC and the ICAMA are state law. Medicaid is federal law. Because Medicaid is federal law, it supercedes state law, including ICPC.

As a general rule, state law is secondary to federal law, unless Congress designates otherwise. Put simply, federal law trumps state law. The ICPC and the ICAMA are state law. Medicaid is federal law. Therefore, states cannot, for any reason, withhold Medicaid benefits for which a child is otherwise eligible. The reason for this regarding Title XIX (Medicaid) of the Social Security Act (SSA) begins with the Constitution. *Article VI, Clause 2*, of the United States Constitution states: *This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.*

Known as the Supremacy Clause, the Supreme Court interpreted the doctrine to include acts of Congress because, as a body of American government, it acts "under the Authority of the United States". The Court declared this to mean, "the States have no power...to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government...". Under the Supremacy Clause, when Congress legislates pursuant to its delegated powers, federal law supercedes conflicting state law. The Court ruled that the Supremacy Clause power was implied when states accept federal money as in the instance of funding received through the SSA. Under the Social Security Act of 1935 (*49 Stat. 620, 42 U.S.C. Sec. 301 et seq.*), Congress created numerous programs

effective in the States which enacted complying state legislation to join the system. State participation in the programs is voluntary and no State is compelled to enact legislation complying with the requirements of federal law. If a State chooses to participate and accept federal dollars under any SSA program, the State brings itself under the Supremacy Clause of the Constitution and its power to nullify state legislation and policy contrary to federal requirements. The reason states cannot deny or delay Medicaid benefits to an otherwise eligible child stems from the application of the Supremacy Clause to acts of Congress- to include Title IV-E of the SSA.

In an act of Congress, the foster care and adoption assistance programs were created through its passage of Sections 472 and 473, respectively, of Title IV-E of the Social Security Act. As a part of the SSA, acceptance of federal funding under the Act for Title IV-E programming obligates state compliance with the federal eligibility laws and requirements of the Act. The Act requires recipients of Title IV-E foster care and adoption assistance to be mandatory eligible for Medicaid. This, in turn, obligates the states who participate in the Medicaid program to provide Medicaid to Title IV-E eligible children. The Centers for Medicare and Medicaid Services (CMS) is the federal agency designated to work in partnership with the States to administer Medicaid. CMS states, "To be eligible for Federal funds, States are required to provide Medicaid coverage for most individuals who receive federally assisted income maintenance payments, as well as for related groups not receiving cash payments." An example of a mandatory Medicaid eligibility group is recipients of adoption assistance and foster care under Title IV-E of the SSA.

The Child Welfare Policy Manual issued by the U.S. Department of Health and Human Services' Children's Bureau, addresses Title IV-E recipient's mandatory Medicaid eligibility in the following: *Section 473 (b) of the Social Security Act clearly establishes that a child receiving foster care maintenance payments or adoption assistance payments is treated as a child who is a recipient of Aid to Families with Dependent Children (AFDC). In addition, section 2171 of the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) subsequently amended section 1902 (a)(10)(A) to specifically require eligibility for Title XIX (Medicaid) services for "all individuals receiving aid or assistance under any plan of the State approved under...part A or part E of Title IV".* Consequently, to the extent that the State has a Title XIX program, children covered by Title IV-E are statutorily eligible.

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