

Net Available Monthly Income Collection Regulatory Waiver Proposal

Purpose: To obtain waivers of those aspects of the federal regulations at 42 CFR §§ 435.725 and 435.832 requiring nursing homes and managed care organizations (MCOs) in New York to collect patient income that is applied to the cost of care.

Background: New York State is a participant in the Medicaid Program, Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.), which provides federal financial assistance to states that choose to pay certain medical expenses of the needy. Under 42 U.S.C. § 1396a and relevant New York State requirements, institutionalized nursing home residents who are aged, blind or disabled and are categorically eligible for Medicaid or are considered medically needy must contribute a portion of their income towards the cost of their care. For purposes of this paper – and consistent with terminology used in New York State’s Medical Assistance program – this recipient liability amount is known as “Net Available Monthly Income” (NAMI). Based on information collected from 460 of the 615 Nursing Homes throughout the state approximately 700 million dollars of NAMI was applied to the cost of medical care for Medicaid recipients residing in nursing homes during calendar year 2012.

In New York, the single state agency responsible for administering the Medicaid program is the New York State Department of Health (NYSDOH). Local departments of social services (LDSSs) operated by counties and the City of New York are currently responsible for making eligibility determinations and for certain other Medicaid administrative functions. However, New York’s lawmakers have authorized a multi-year plan under which the State will gradually assume responsibility for the functions of the LDSSs including Medicaid eligibility determinations.

A recipient who is considered to be institutionalized in “permanent absence status” (i.e., not intending to return to his/her home in the community) is subject to Medicaid chronic care eligibility budgeting rules, effective as of the first of the month of institutionalization. An institutionalized individual's eligibility for Medicaid and the amount of his/her income applied to the cost of his/her medical care are determined by making certain deductions from his/her available monthly income specified in law (e.g., income disregards, personal needs allowance, etc.). Special rules and definitions relative to income budgeting are applied to institutionalized individuals who have community spouses and are seeking Medicaid coverage.

Federal regulations at 42 CFR § 435.725 (“categorically needy” recipients) and 42 CFR § 435.832 (“medically needy” recipients) require that the state’s Medicaid agency reduce its payments to institutions for services provided to institutionalized recipients by the amount that remains (i.e., the NAMI) after deducting income disregards and other required amounts from the individual's total income. New York’s Medicaid fee-for-service payments to nursing homes and premium payments to Medicaid managed care organizations (MCOs) reflect this payment offset. In effect, this offset places responsibility for collecting the NAMI amounts with each of the nursing homes and the MCOs rather than with the State Medicaid agency, local governments or the Federal government.

Under proposed amendments to New York’s Medicaid Section 1115 demonstration waiver, entitled the “Partnership Plan” (Project No. 11-W00114/2), the State is seeking authority to transition the nursing home benefit and permanently placed nursing home population into

Medicaid managed care. As a result, MCOs are likely to take on a greater role in the future with respect to collection of NAMI amounts for their enrollees.

Uncollectible NAMI Amounts: At present, nursing homes in New York State bear primary responsibility for collecting NAMI amounts from Medicaid recipients. Typical sources of this income include Social Security benefits, private pension payments and retirement account distributions. Nursing homes oftentimes have difficulty collecting the full NAMI amounts owed to them due to delays in obtaining Medicaid eligibility determinations, inadequate and/or untimely information on changes in income, refusals to pay by recipients and/or families and other factors. These facilities do not have the authority to directly collect funds or maintain control over Social Security benefits. If recipients/family members are noncompliant or refuse to hand over funds, a facility does not hold the power to collect them directly.

In some cases, nursing homes will pursue the amounts owed through legal proceedings, but in many if not most instances the individual uncollectible NAMIs are not sufficient in amount to justify the legal expenses associated with pursuing them. As a result, these uncollectable amounts must be written off as bad debts and – together with associated legal fees that are expended and delays in cash flow – place a significant financial burden on the facilities.

The NYSDOH and provider associations recently collaborated to develop and administer a brief written survey of nursing homes throughout the State to quantify the magnitude of uncollected NAMI amounts and the primary reasons for collection issues. See Attachment A for a copy of the survey document and instructions. The survey results capture data from calendar year 2012, and include unduplicated responses from 438 facilities comprising approximately 70 percent of all nursing homes in the state and representing nearly all of the State's counties. Overall, an estimated total of \$76.3 million of NAMI funds went uncollected during 2012, representing approximately 11.1 percent of the total NAMI liability.

According to the survey results, two categories accounted for nearly 75 percent of all uncollected NAMI amounts: (1) non-compliance and refusal to pay/funds otherwise spent; and (2) eligibility lag:

- The “non-compliance and refusal to pay/funds otherwise spent” category includes NAMI funds that were not collected due to either a refusal of the individual or family members to pay, or to the funds having been spent elsewhere. More specific examples in this category include inability to pay because the recipient was using the funds to maintain his/her home in the community; resident refusal to pay the full requested NAMI amount; refusal of the recipient's family to turn over the funds due to them having been spent within the community; and recipient's family members/other responsible parties deliberately misappropriating the funds for their own personal use.
- The “eligibility lag” category refers to NAMI funds that were not collected due to a time lag in the Medicaid eligibility acceptance period. At the time that a facility was made aware of the NAMI amount to collect, the money was no longer available to be collected. More specifically, a facility may have waited one or more months for chronic care eligibility to be determined and for receipt of the Medicaid budget letter from the responsible LDSS. The budget letter identifies the relevant NAMI amount(s) to collect. In the intervening period, NAMI funds were otherwise spent and were unavailable for collection.

By effectively turning hundreds of providers and MCOs into the Medicaid system's bill collectors, the current NAMI collection system imposes tremendous added administrative/fiscal/legal costs on these organizations and has diffused the collection efforts. Moreover, MCOs and nursing homes often do not have the capacity or leverage needed to be effective bill collectors.

Proposal: With waivers to the Federal regulations at 42 CFR §§ 435.725 and 435.832 obtained through amendments to the State's Section 1115 Partnership Plan Waiver, the State or its designee will assume the financial and organizational responsibility to distribute NAMI information and collect NAMI funds from Medicaid recipients enrolled in Medicaid MCOs as well as those receiving their benefits under the fee-for-service program. The State's NAMI collection efforts will leverage the collective resources of NYSDOH, the New York State Office of the Medicaid Inspector General (OMIG) and potentially the Office of the New York State Attorney General.

For purposes of this proposal, the State's premium payments to MCOs and fee-for-service remittances to nursing homes will no longer reflect an offset for budgeted NAMI amounts. As NAMI amounts are collected by the State, the Federal share of these amounts will be credited back to the Federal government. Any NAMI amounts that are deemed uncollectable will effectively be borne by the State and Federal governments and allocated based on the State share percentage/Federal Medical Assistance Percentage (FMAP), respectively. Uncollectible NAMI amounts could potentially be pursued through liens and Medicaid estate recovery activities.

The NYSDOH is proposing that this transition of collection responsibility be authorized through an amendment to the 1115 Partnership Plan Waiver in accordance with waiver amendments aimed at transitioning the nursing home benefit and population from the fee-for-service program to Medicaid managed care.

Benefits of Proposal: This proposal will create significant benefits for the State, the Federal Government, MCOs, nursing homes and recipients, including the following:

- Centralizing this function across Medicaid will create significant economies of scale. Instead of having over 600 nursing homes and over 50 MCOs individually attempting to collect NAMI amounts, the State or its designee will be responsible for all collection activities.
- The State's greater official standing and ability to obtain collections – including the possibility of mandating how the payment is made (e.g., direct pay) – is expected to result in reduced uncollectible NAMI amounts. This will address one of the major reasons for non-collection as discussed above, namely “non-compliance and refusal to pay/funds otherwise spent.”
- State assumption of this function is consistent with its takeover of administrative responsibility from the LDSSs. Placing responsibility with the same unit of government for eligibility determination and NAMI collection will create synergy and address the other major reason for non-collection, namely “eligibility lag,” by giving the State greater control over timing and process.
- MCOs will realize administrative cost savings. Administrative costs are built into the monthly premiums that are equally shared by the State and Federal governments.
- Nursing homes will realize reduced administrative costs and bad debt expenses. This will more effectively position these providers for new administrative demands associated with the transition to Medicaid managed care.

- The reduced financial pressure on nursing homes and MCOs will help to stabilize the overall health care delivery system throughout the State.
- State assumption of this function will greatly simplify the contracting, claiming and payment processes between nursing homes and Medicaid MCOs.
- From a State and Federal perspective, no longer having to offset NAMI amounts from payments made to nursing homes and MCOs will enhance the level of precision of Medicaid rate setting and payment determination.
- Transferring this responsibility to the State will obviate the need for resident account audits currently conducted by OMIG through a contracted agency, the cost of which is shared by the State and Federal governments.
- Relieved of the responsibility for collecting these amounts, nursing homes and MCOs will have opportunities to develop even more positive relationships with recipients and their families.
- A shift of NAMI collection responsibility may better enable the State – working with CMS – to appropriately determine how resident funds could be applied to support the individual’s return to the community or other less restrictive setting if appropriate and desirable to the individual and his/her family.
- Stronger enforcement of collections would send an important message to the public that the State considers the responsibility for meeting these obligations an important one.

Summary: For all of the reasons stated above, the NYSDOH respectfully requests that CMS authorize the State or its designee to assume the financial and organizational responsibility to distribute NAMI information and collect NAMI funds from Medicaid recipients enrolled in Medicaid MCOs as well as those receiving their benefits under the fee-for-service program.

Attachment

Dear Administrator:

The State and Nursing Home Associations have collaborated in developing a survey to collect information regarding Net Available Monthly Income (NAMI). This information will be used to help the State construct a proposal regarding the state's takeover of the collection of NAMI that will be submitted to the Centers for Medicare and Medicaid Services for approval. The State's proposed takeover of NAMI collection would relieve the nursing homes of this responsibility as well as align the State's initiative to centralize the enrollment process.

We would appreciate your assistance with the completion of the survey which is accessible through the link provided below. The attached instructions document is included to guide survey completion by providing both descriptions and examples of outstanding fund classifications. The survey responses will be used for informational purposes only as described above.

Survey link: <https://www.surveymonkey.com/s/DW83VKM>

Survey Responses will be due by Friday, January 17th.

Thank you for your participation,

New York State Department of Health

Uncollectable NAMI

The Department of Health and provider associations are working collaboratively to collect information related to Net Available Monthly Income (NAMI). New York State is interested in using this information to advance its current proposal for the state to assume responsibility for collecting NAMI. We appreciate your assistance in providing information requested below.

Please note that all individual responses to this survey will remain confidential and only aggregate data will be shared with outside parties.

Please complete a separate survey for each licensed nursing facility. The deadline to complete the survey is January 21.

*** 1. Please provide the following information:**

Respondent Name:	<input type="text"/>
Facility Name:	<input type="text"/>
Opert #:	<input type="text"/>
Facility County:	<input type="text"/>
E-mail:	<input type="text"/>
Telephone:	<input type="text"/>

*** 2. What local social services district (i.e., county or NYC HRA) is responsible for the greatest number of Medicaid recipients in your facility?**

*** 3. What was the estimated total annual dollar value of NAMI you were supposed to collect for your facility for calendar year 2012?**

*** 4. What was the estimated total annual dollar value of uncollected NAMI for calendar year 2012?**

*** 5. In your estimation, what percentage of your annual uncollected NAMI is attributable to each factor below (your responses should add to 100).**

5/1/2014

Uncollectable NAMI Survey

Eligibility Lag

Noncompliance - Legal

Noncompliance - Pension

Noncompliance - Refusal to
Pay/Funds Otherwise Spent

6. Please provide any necessary comments below:

Done

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SURVEY ON UNCOLLECTIBLE NAMI

QUESTION #5: OUTSTANDING NAMI REASONS- DEFINITIONS

Eligibility Lag:

This refers to NAMI that was not collected because there was a lag in the eligibility acceptance period. At the time the facility was made aware of the NAMI amount, the money was no longer available to be collected.

Examples of this can include (but are not limited to):

- The facility waiting one or more months until the Medicaid Budget Letter was received. By this time the NAMI funds were already spent.

Noncompliance Legal:

This refers to any instance where various legal factors did not allow the Nursing Home to collect the full budgeted NAMI.

Examples of this can include (but are not limited to):

- Any garnishment of income (IRS, child support, etc.) that is not an allowable deduction from monthly income when establishing the NAMI amount.
- Guardianship fees that have not been reduced from the budgeted NAMI amount.
- Lien on estate situations in which the facility placed a lien on a deceased resident's estate to recover the amount of uncollected NAMI, however Medicaid's lien took precedence, leaving the facility with nothing to collect.

Noncompliance Pension:

This refers to the pension portion of the NAMI that was not collected for various reasons.

Examples of this can include (but are not limited to):

- Incapacitated residents without a guardian, who cannot redirect their pension check to come to the facility.
- Pension plans that refuse to change the direct deposit or mailing address of the pension check.

Noncompliance- Refusal to Pay/ Funds Otherwise Spent

This refers to NAMI that was not collected because there was some type of refusal to pay or the funds were otherwise spent.

Examples of this can include (but are not limited to):

- Resident cannot pay because he/she is using the funds to upkeep his/her home in the community.
- Resident refuses to pay the facility the full NAMI amount.
- Resident's family cannot pay, because they are using the money in the community.
- Resident's family (or any responsible party) deliberately misappropriating funds for their own personal use.