

ENSURING MEDICAID COVERAGE DURING THE COVID-19 EMERGENCY

New York has been the epicenter of the COVID-19 pandemic, and long-term care providers within the state have seen the very worst of what the disease can do. As medical personnel try heroically to safeguard the health of their institutionalized residents, financial personnel in skilled nursing facilities across the state are hard at work bringing in critically important Medicaid reimbursement.

This article will review how changes made at all levels of government have minimized roadblocks to securing and preserving Medicaid coverage for nursing home residents. It also offers practice tips throughout to help the reader navigate the Medicaid system during this unprecedented time.

APPLYING FOR MEDICAID

Establishing eligibility for long term Medicaid coverage is not for the faint of heart. The process can be painstakingly exhaustive, endlessly frustrating, and frequently protracted. But what is it like in the age of the coronavirus?

The Application: The Access NY and Supplement A must both still be completed in their entirety; however, a nursing home representative can now submit the application on the resident's behalf and simply note "COVID-19" on the provider's submission form (i.e., DOH-5147/MAP-3044).

- *Practice Tip 1:* Providers should promptly submit Medicaid applications for new admissions. There is no benefit to deferring the submission of an application to compile documentation, and these waivers can end at any time.
- *Practice Tip 2:* For the duration of the COVID-19 Emergency, applications to New York City's Human Resources Administration (HRA) must be submitted electronically via EDITS or faxed to (917) 639-0735.

Eligibility Criteria: During the COVID-19 emergency an applicant or his/her authorized representative (e.g., POA, guardian) need only attest to meeting all Medicaid eligibility criteria, except for identity and immigration status. Documentation proving that the financial criteria are met will not be required, and the local Department of Social Services ("LCDSS") will not request such documentation off the Asset Verification System or Resource Verification Indicator. While the applicant's immigration status and identity must still be documented, if securing the documentation is not possible due to COVID-19, the LCDSS must use other data sources to attempt to verify the applicant's status before affording the applicant an opportunity to provide the documentation.

- *Practice Tip 3:* If the LCDSS does issue a deferral or a Request for Information, and the documentation is unavailable, the attestation of eligibility should be submitted in response with a request for an immediate pick up.
- *Practice Tip 4:* Since undocumented coverage conferred during the COVID-19 emergency will only be conditional and subject to eventual discontinuance, traditional efforts taken to document the Medicaid eligibility of long-term residents should continue in full force.

Other Benefits: While Medicaid remains the payor of last resort, the requirement that an applicant/recipient apply for all other potential benefits (e.g., Social Security, private disability insurance, Veterans Benefits) before he or she can qualify for medical assistance has been suspended.

Pre-Qualifications: In many instances, pre-authorization requirements and proving medical necessity have been suspended, as has the 3-day prior hospitalization requirement that applies to Medicare-covered admissions into skilled nursing facilities.

Incapacitated Applicants: Since most New York courts have been closed except for emergency applications, new procedures must be followed to secure conditional coverage for incapacitated nursing home residents who are too impaired to attest to their Medicaid eligibility. Most LCDSS will accept a copy of the proposed guardianship pleading along with an attorney attestation explaining the delay in filing the action with the court.

- *Practice Tip 5:* Do not wait for the courts to reopen to file Medicaid applications for incapacitated residents who will need a guardian to access their income, resources and/or personal records.
- *Practice Tip 6:* Facilities should apply for representative payee with Social Security Administration because if Medicaid is approved based on a to-be-filed guardianship, LCDSS is likely to still budget the resident's Social Security benefits as NAMI.

PRESERVING MEDICAID COVERAGE

Providers get a respite in that no active Medicaid case as of March 18, 2020 will be discontinued for failure to renew or provide documentation through at least June of this year (subject to extensions and subsequent directives). Further, any case closed after March 18, 2020 will be re-opened and restored to ensure no gap in coverage.

- *Practice Tip 7:* Any discontinuance, loss or downgrade in coverage should be immediately appealed with a Fair Hearing request along with a request for Aid to Continue so coverage is preserved for the duration of the appeal.
- *Practice Tip 8:* In addition to requesting a New York State Fair Hearing, a request should also be sent to the LCDSS asking for coverage to be retroactively restored.

In terms of recertification, coverage renewals will be extended for an additional twelve (12) months, and excess resource cases will be extended for an additional six (6) months. Medicaid coverage conferred pending guardianship will also be extended, regardless of the status of the guardianship proceeding, as will existing authorizations through the end of the public health emergency.

- *Practice Tip 9:* Providers need to confirm in writing to private Medicaid preparers and attorneys that they are relying on these professionals to document the resident's eligibility during this conditional approval period so coverage is not lost on recertification.

- *Practice Tip 10:* Residents who had and then lose Medicaid coverage may be entitled to important due process protections founded in constitutional law that may assist in securing continued reimbursement on such a resident's account.

APPEALING MEDICAID DENIALS

The most important change surrounding Medicaid appeals is that the strictly enforced sixty (60) day deadline for appealing an adverse determination is extended to ninety (90) days from the date of the notice for the duration of the COVID-19 emergency.

Another important change impacts those recipients who receive Medicaid through a managed care plan. In those cases, a Fair Hearing can be requested a mere one day after filing the required Plan Appeal. If the deadline for requesting a Fair Hearing falls between March 1, 2020 and the end of the public health emergency, managed care plan members are allowed up to 120 additional days to request their hearing.

- *Practice Tip 11:* Both the state Office of Temporary and Disability Assistance (OTDA) and the LCDSS are liberally adjourning Fair Hearings. While in-person hearings are still being held on a limited basis, both video and telephone hearings are also available upon request.

COVID-19 Stimulus Checks

Many nursing home residents qualify for federal stimulus checks from the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020. These checks are being issued in amounts up to \$1,200.00 for single adult tax filers and \$2,400.00 for married couples filing jointly.

According to guidelines issued by the federal government and NYS Department of Health, the stimulus payments are not countable as income for Medicaid eligibility purposes. The funds are also excluded as a countable resource for 12 months following receipt, and should not impact the calculation of NAMI for post-eligibility budgeting purposes.

- *Practice Tip 12:* Where possible, residents should be discouraged from retaining the stimulus funds for over a year because the funds will then become countable. Also, if any issues arise, the best practice is to contact the LCDSS and reference General Information System GIS 20 MA/05 for clarification.

Conclusion

We are in uncertain times. While this article hopefully allays some fears and concerns, there are sure to be questions and bumps in the road as we move forward. As with everything else we are dealing with, both personal and professional, we are in this pandemic together and together we will find our way through the challenges.

The material included in this article is intended to be informational, and the content should not be interpreted as legal advice. Prepared by Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara, Wolf and Carone, LLP.