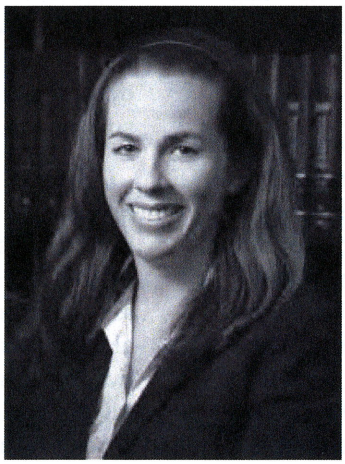
Securing Medicaid Benefits for Those With an Immediate Need

By Deidre M. Baker

Remaining safely in the community for as long as possible is a goal for most, if not all, seniors. In order to achieve this goal, many seniors and their families look to Medicaid to provide home health aides to assist the senior with his or her activities of daily living. These home care services are often called personal care services (PCS). Personal care services are defined as assistance of a personal care aide with nutritional, environmental support, and personal care functions. "Such services must be essential to the maintenance of the patient's health and safety in his or her own home" ordered by the attending physician, based on an assessment of the patient's needs and of the appropriateness and cost-effectiveness" of services.[1]



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While the Medicaid program and its services allow many individuals to stay in the community, the program has its drawbacks. People who apply for Medicaid in order to finance home care services often face delays in the application process, as well as facilitating services once the application is approved. The application and approval process was further complicated with the introduction of Managed Long Term Care (MLTC), which now requires the applicant be evaluated through the Conflict Free Evaluation and Enrollment Center (CFEEC), run by New York Medicaid Choice, before a referral can be made to a MLTC.

The time between submitting an application seeking long-term care services and the start of the services can drag on for several months. This delay is problematic for Medicaid applicants in the community as services are not administered until the application has been approved, and an assessment to determine if the applicant is in need of home care has been conducted. This is in contrast to Medicaid applicants in a nursing home since skilled nursing facilities routinely provide services while the applicant is "Medicaid pending." Unfortunately, many families lack the financial resources to privately pay for home care while the Medicaid application is pending.

"Immediate Need" Procedures Address Medicaid Delays

Consumer advocates have long been concerned about the delay in receiving home care services through the Medicaid program. As a result, a lawsuit was filed in 2007 regarding the delay in receiving personal care services, and is still pending today.[2] The suit asserts that when there is an "immediate need" for home care services, Medicaid services must be authorized while a Medicaid application is pending. The lawsuit focuses on Medicaid personal care services, and was brought before the transition to Managed Long Term Care. Since the lawsuit was filed, the legislature has repeatedly amended the state law upon which the lawsuit is based, most recently in April 2015.[3]

On April 1, 2015 New York enacted a law that addressed the long delays in the home care Medicaid context. The law requires the State Medicaid agency to set up procedures for Medicaid applications to be processed and approved in seven calendar days if there is an "immediate need" for PCS or services through the Consumer Directed Personal Assistance Program (CDPAP).[4] After requesting and fielding comments from the public, it took the State over a year to set up and implement these new procedures. In July, 2016, the New York State Department of Health issued an Administrative Directive setting forth the requirements and procedures for expedited Medicaid eligibility determinations for New York Medicaid applicants/recipients who have an "immediate need" for PCS or services through CDPAP.[5]

CDPAP is a Medicaid program in New York State that provides an alternative way of receiving home care services, where the consumer has more control over who provides the care and how it is provided. The consumer can hire almost anyone, including any family members, except his or her spouse. A special benefit of CDPAP is that CDPAP aides may perform "skilled" care that otherwise may only be performed by a nurse; these services cannot be performed by a typical home health aide under the Medicaid program.

How to Apply for Medicaid if There Is an Immediate Need for Personal Care or Consumer-Directed Services

Before the local Department of Social Services will determine if an individual has an immediate need for home care services, the applicant must meet the following conditions: (1) have an immediate need for Personal Care or Consumer Directed Personal Assistance Services;

(2) have no informal caregivers who are able or willing to provide personal care services; (3) have no home care agency providing needed assistance; (4) does not have third party insurance or Medicare benefits available to pay for needed assistance; and (5) does not have adaptive or specialized equipment or supplies in use to meet the need for assistance, or has adaptive or specialized equipment or supplies that cannot meet the need for assistance.[6]

An applicant must indicate that he or she meets these conditions by completing the OHIP-0103, "Immediate Need for Personal Care Service/Consumer Directed Personal Care Services: Informational Notice and Attestation Form." In addition, the Human Resources Administration developed a transmittal form that was intended to facilitate the requests for immediate need by consumers. The transmittal form must be accompanied by the other required documentation, which varies depending on whether the consumer is already a Medicaid recipient, needs to upgrade his or her Medicaid benefits to include long term care services, or is a first time applicant. The varying requirements are documented on the transmittal form.[7]

In addition to the Attestation of Immediate Need, all applicants must submit either a Medical Request for Home Care[8] or a physician's order outlining the need for home care, as well as an Authorization for Release of Health Information Pursuant to HIPAAA[9]. The authorization is needed so individuals other than the consumer can contact Medicaid regarding the application. As a practice tip, a detailed cover letter should also be submitted, including an explanation of the immediate need and a list of all documents submitted.

If the consumer is already a Medicaid recipient, but he or she is now seeking community based long term care, a completed Access NY Supplement A[10] detailing the consumer's resources must be submitted. Consumers without active Medicaid benefits must submit a completed Access NY Insurance Application in addition to the Access NY Supplement A. It is recommended that all documents submitted to the local Medicaid office be done via certified mail in order to receive proof of receipt.

Procedures Once the Medicaid Application Has Been Submitted

The Immediate Need Request packages are time stamped in order to establish the date received by the Local Department of Social Services (LDSS); the expedited processing begins the first calendar day after receipt of all the necessary documents; this is referred to as day one.[11] Within four calendar days after receipt of the package, the Home Care Services Program (HCSP) will review the documents to determine if the application is complete. If the review determines that the package is incomplete, a written notice will be sent to the applicant outlining what documentation is missing and provide a due date for submission.

Within seven days of receiving a complete Medicaid application, the local Medicaid office must reach a determination as to eligibility for Medicaid benefits. Within twelve days of receiving a complete Medicaid application and determining that the applicant is eligible for Medicaid, the local Medicaid office must conduct a social and nursing assessment of the client, determine if the applicant is eligible for personal care or consumer directed services, authorize the services, and notify the applicant the services authorized.[12]

Once the services have been authorized, the Medicaid office must assign the case to either a Medicaid agency or a CDPAP fiscal intermediary and arrange for the services to be provided "as expeditiously as possible."[13] After the home care services have been in place for 120 days, the consumer will receive a notice from New York Medicaid Choice detailing the requirements for enrolling in a MLTC.

Endnotes

1. 18 NYCRR 505.14(a
2. *Konstantinov v. Daines*, 2014 NY SlipOp 30657.
3. NY Soc. Serv. L. § 366-a(12).
4. *Id.*
5. 16 OHIP/ADM-02—Immediate Need for Personal Care Services and Consumer Directed Personal Assistance Services.
6. *Id.*
7. Human Resources Administration, Department of Social Services, HCSP-3052(E), *Immediate Need Transmittal to the Home Care Services Program.*
8. HCSP-M11q.
9. OCA-960.
10. DOH-4495A.
11. MICSA Medicaid Alert: *Immediate Need for Personal Care or Consumer Directed Personal Assistance Services* (October 19, 2016).
12. *Id.*
13. 16 OHIP/ADM-02.