

Changes to Medicaid in the 2011 New York State Budget

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Finding a way to pay for Long-Term Care is an obstacle faced by many seniors and individuals with disabilities. Currently individuals are faced with limited options: private long term care insurance, paying privately, or government programs such as Medicare and Medicaid. The fact is many seniors do not have sufficient funds to pay privately for long-term care and often cannot qualify for or afford to pay for long-term care insurance. The costs of long-term care are escalating, with the average cost for a nursing home in the Capital Region averaging \$10,000 per month. Medicare provides very limited coverage for nursing home care, covering only up to 100 days in a skilled nursing facility. As a result many seniors rely on Medicaid to pay for their long term care costs, after they have spent all of their resources down to the Medicaid qualifying level of \$13,800.



Yet Medicaid is not just a program to pay for long-term care costs of the elderly. Medicaid is also a health insurance program for low-income and individuals with disabilities. Spending on Medicaid has been on the rise in New York State, and Medicaid spending is expected to account for approximately 26% of New York State's overall budget for the 2010-2011 fiscal year. Faced with New York's fiscal crisis, Governor Cuomo appointed a Medicaid Redesign Team, consisting of professional members of the healthcare and long-term care community, to review Medicaid spending and suggest reductions in Medicaid spending. On February 24, 2011 the Medicaid Redesign Team presented a report to Governor Cuomo that contained 79 recommendations to redesign the Medicaid program in New York State. The majority of these recommendations were adopted in the 2011-2012 New York State budget, seeking to create \$2.8 billion in savings to the Medicaid program.

This month's issue of *Thinking About Tomorrow* examines the ways in which the proposed cuts affect long term care for seniors and individuals with disabilities.

Proposals That Did Not Make it Into the Budget

Some of the proposals of the Medicaid Redesign Team that would have adversely affected individuals did not make their way into the final budget. These include increase of the lookback period for Community Medicaid to 60 months, elimination of the spousal/parental refusal for Community Medicaid, and increases in Co-Pays for Medicaid, Family Health Plus and Child Health Plus.

However many provisions that will have an adverse impact on consumers did make their way into the budget, some of which are examined in more detail below.

Expansion of Estate Recovery Provisions

Currently, if a Medicaid recipient dies and has a probate estate, Medicaid will be entitled to recovery from the estate for amounts spent on the recipient's care. A probate estate includes assets held in the individual's name, but does not include assets held in trust, a life estate in real estate, and assets held jointly with a survivor. Under the proposed law, all of these assets would now be subject to recovery by Medicaid at the Medicaid recipient's death. The effect of changing the estate recovery rules would mean that many individuals who planned to protect their assets using trusts or life estates would no

longer have that protection for their assets if they receive Medicaid services.

In order to implement the new statute, the Commissioner of the NYS Department of Health is tasked with writing regulations to define terms and provide direction on what assets are recoverable and how the State will go about the recovery. The new regulations will be effective as of the date the regulations are published. Pierro Law Group partner Lou Pierro is working on behalf of the NYS Bar Association, and has recently met with State officials to help provide input into the new rules, which are due out in early May.

Limits on Services

New rules will limit the amount of occupational therapy, physical therapy and speech therapy/pathology for Medicaid recipients to 20 visits per year. Medicaid recipients will also face restrictions on certain classes of prescription drugs, nutritional or dietary supplements and prescription footwear. Nursing homes will no longer be paid a “bed hold” fee for patients who temporarily go to the hospital.

Changes to Home Care Programs

Limitations will be placed on the amount of hours of care approved for consumers under the Personal Care Services program, by limiting Level 1 personal care services to 8 hours per week. In addition, extensive changes in reimbursements to Medicaid Certified Home Health Agency (“CHAA”) services were included in the budget proposal. This has resulted in many agencies limiting or changing the amount of hours of care they provide to Medicaid consumers.

Managed Long-Term Care Program

It will now be mandatory for any individual over the age of 21 who is expected to need home and community based services for more than 120 days to enroll in a managed long-term care program. Before this provision can take effect, a federal waiver needs to be obtained so it is not likely this provision will be put into effect in 2011. The budget also includes a proposal for mandatory managed care enrollment for Medicaid recipients not utilizing long-term care services.

Changes to EPIC Program

The EPIC program, a program that provides assistance with drug costs for low income individuals, will be limited to individuals with income below \$23,000 per year (individuals) and \$29,000 per year (couples). To be eligible for EPIC, an individual must be enrolled in the Medicare Part D program. The EPIC program will no longer pay for drug costs during the Medicare Part D deductible period, the initial coverage period or the catastrophic coverage period. EPIC will only pay for drug costs during the “doughnut hole” period under Medicare Part D.

Global Cap on Medicaid Spending

There is a new proposed cap of \$15.3 billion annually on NYS Department of Health Medicaid expenditures. If the cap is exceeded, automatic reductions will be triggered in Medicaid spending uniformly across all categories. Future growth in Medicaid spending is limited to the 10 year rolling Medical CPI, which is currently 4%.

Conclusion

The effect of these proposals is to drastically change the way individuals can access Medicaid to pay for long-term care costs. We are constantly monitoring the status of the proposals and how they will effect Long-Term Care Planning. If you would like to schedule a meeting to discuss how changes might impact planning for a client, family member or loved one, please contact us 518-459-2100, 212-661-2480, toll-free 866-951-PLAN or through the contact us form on our website at www.pierrolaw.com.

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