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## **Medicaid Payment for Assisted Living Residents Have a Right to Return After Hospitalization**

### **The Problem: An Example**

Ms. Jackson has lived in an assisted living facility for two years. Because she has little income, her assisted living care is covered by Medicaid, with payment by Ms. Jackson for room and board, and for a portion of the charge for services.

She develops an infection that requires a hospitalization. After 10 days, she is ready to return to the assisted living facility, but the facility will not accept her back. The facility's administrator explains that the facility has not been paid by Medicaid during the resident's absence, and so Mrs. Jackson has lost her room. At the same time, the hospital tells her that she cannot stay any longer. On short notice, the hospital discharge planner is unable to find space in another Medicaid-certified assisted living facility, and instead sends her to a mediocre nursing facility. Ms. Jackson remains in the nursing facility indefinitely.

### **Discussion**

*Summary: Unfortunately, many Medicaid-funded assisted living residents find themselves in a housing crisis after even a short hospital stay. States generally do not offer retainer payments, and neither federal nor state law explicitly protect a resident's right to return after a hospitalization.*

State Medicaid programs increasingly pay for care provided in an assisted living facility, as an alternative to nursing facility care. The most common mechanism is payment through a Medicaid home and community-based services waiver.

From a resident's point of view, one downside of choosing an assisted living facility instead of a nursing home is the lack of resident rights that are provided in nursing homes by the Nursing Home Reform Law. For nursing homes, a state Medicaid program has explicit authorization to pay for a room hold and, even if a state does not pay for room holds, federal law guarantees that a Medicaid-eligible resident can return to the facility's next available room. This readmission right is an efficient



protection, as the Medicaid-eligible resident benefits by being readmitted, and the facility merely gives the resident the right to the first available vacancy.

By contrast, federal Medicaid waiver law does not explicitly authorize payment for room holds or grant an assisted living resident any right to return. Furthermore, state assisted living laws generally do not give a resident—whether Medicaid-covered or not—any explicit right to hold a bed or return to a facility.

Despite these statutory omissions, there is federal Medicaid guidance that gives states authority to address room hold issues. The guidance authorizes Medicaid-funded “retainer payments” that are meant to retain a provider of waiver-funded services when the Medicaid beneficiary is hospitalized. The duration of the retainer payments cannot “exceed the lesser of 30 consecutive days or the number of days for which the State authorizes a payment for ‘bedhold’ in nursing facilities.”<sup>1</sup>

A state Medicaid program could use these retainer payments to pay an assisted living facility during a resident’s absence, but in practice very few states do so. Most federal and state officials seem to be unaware of the possibility of Medicaid-funded retainer payments, based on inquiries made by the study. Only a few states, including Georgia, Illinois, Montana, and Washington, make retainer payments in assisted living.

## Recommendations

There are several ways to rectify these problems.

- The federal Centers for Medicare and Medicaid Services should issue guidance stating explicitly that Medicaid-funded retainer payments are available for Medicaid-covered assisted living services. In turn, state Medicaid programs should authorize retainer payments for assisted living up to the maximum allowed by the federal guidance.
- In addition, state licensure laws should be clarified to establish that a room is held for a temporarily absent resident when the resident has paid the room and board charge for the days in question, even if payment for services has not been made for those days. For Medicaid-covered residents, a retainer payment from the Medicaid program is helpful for facility operations and finances but, with or without a retainer payment, a resident should be able to hold a room by paying at least the room and board charge for the days in question.
- Federal law should establish a duty by Medicaid-certified assisted living facilities to readmit temporarily-absent Medicaid-eligible residents to the next available unit, even if the resident’s absence has exceeded the number of days for which the state can make a retainer payment, and the resident has not paid the room and board rate

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1 HCFA, Olmstead Update No. 3, Attachment 3-c (July 25, 2000).



for the days during which she has been hospitalized. A similar right of readmission is extended to nursing home residents by the federal Nursing Home Reform Law.

- Room holds and readmission rights should apply regardless of the reason for the absence—whether an assisted living resident has been hospitalized, or has been absent from the assisted living facility for a family visit or some other reason. If assisted living services truly are to be considered “home or community-based,” a resident should be able to leave the facility for a few days or weeks without being subject to eviction.

### **How the Recommendations Would Affect Mrs. Jackson**

Ms. Jackson’s state would revise its assisted living licensure regulations to confirm that a resident’s bed is held as long as the resident has made the appropriate payment for the days in question. In the case of a resident paying privately, this payment would be the amount authorized by the admission agreement. In the case of a resident whose stay is reimbursed through Medicaid, this payment would be the room and board allocation.

Also, the state would authorize Medicaid retainer payments for when Medicaid-covered assisted living residents are hospitalized. Under the authorization, the payments can be made for up to 14 days, which we will assume (for the sake of this example) is the maximum amount of time the state Medicaid program would pay for a bed hold in a nursing facility.

Then, when Ms. Jackson is hospitalized for 10 days, the assisted living facility is paid for both room and board (from Ms. Jackson), and services (from Medicaid, with possible contributions from Ms. Jackson). Her assisted living unit is waiting for her when she is discharged from the hospital.

### **Next Steps**

NSCLC looks forward to working with those in federal and state government and with advocates to address the challenges facing Medicaid-eligible assisted residents. For more information on the practices discussed here or information about the situation in a particular state, contact NSCLC attorneys Eric Carlson, [ecarlson@nslc.org](mailto:ecarlson@nslc.org), or Gene Coffey, [gcoffey@nslc.org](mailto:gcoffey@nslc.org).

The National Senior Citizens Law Center is a non-profit organization whose principal mission is to protect the rights of low-income older adults. Through advocacy, litigation and the education and counseling of local advocates, we seek to ensure the health and economic security of older adults with limited income and resources, and access to the courts for all.



## **The Assisted Living Policy Issue Brief Series**

The National Senior Citizens Law Center (NSCLC) recently undertook an extensive study of federal and state Medicaid policies towards assisted living, with a focus on how those policies impact the lives of assisted living residents.<sup>1</sup> The study and the development of this policy issue brief were supported by The Commonwealth Fund, a national, private foundation based in New York City that supports independent research on health care issues and makes grants to improve health care practice and policy. The views presented here are those of the author and not necessarily those of The Commonwealth Fund, its directors, officers, or staff.

Policy recommendations resulting from the study are laid out in a series of policy issue briefs that are being released by NSCLC from Fall 2010 through Spring 2011. Each of these policy issue briefs discusses problems with the status quo, and makes recommendations for change.

This is the second in the policy issue brief series. This policy issue brief examines how public policies can protect a resident's ability to return to an assisted living facility following a hospitalization. A companion white paper discusses the same issues with more detail from the study findings.

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1 The research included a survey of respondents in the 37 states that pay for assisted living service through a Medicaid Home and Community-Based Services waiver, as well as more in-depth research of policies and practices in five of those states: Arkansas, New Jersey, Oregon, Texas, and Washington. The research was conducted in cooperation with the University of California at San Francisco. This paper, however, is written by the National Senior Citizens Law Center, which is solely responsible for the findings, opinions, and recommendations expressed herein.

