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Medicaid Payment for Assisted Living Requiring Families to Supplement Medicaid Payment

The Problem: An Example

Assume that in 2010 Mr. Ng lived in a Medicaid-certified assisted living facility in Florida. Under relevant law, his very limited income was supplemented by the Supplemental Security Income (SSI) program (including a State Supplemental Payment) to a total of \$752.40. Of that amount, he was allowed to retain \$54 as a personal needs allowance. He was required to pay the remainder—\$698.40—to the assisted living facility to cover room and board. The facility received additional payments from the Medicaid program for services provided to Mr. Ng.

However, the facility administrator told Mr. Ng's family that, because the facility considered the authorized payments for room, board, and services to be too low, the facility would only allow Mr. Ng to remain if his family made a "contribution" of an extra \$200 per month. And, he told the family to keep such payments quiet.

Family members paid the extra amount because they felt that they had no choice. Unfortunately for Mr. Ng, the payment likely would include the \$54 that was meant to be reserved for his personal needs. Otherwise, if the family could not afford the "contribution," Mr. Ng would have to move to another, perhaps less desirable facility.

Discussion

Subject to eligibility standards, the Medicaid and SSI programs assist low-income residents in paying for assisted living care. As a condition of Medicaid certification, an assisted living facility agrees to accept Medicaid-authorized rates (including Medicaid-authorized payment from the resident) as payment in full.

Not infrequently, however, assisted living facilities attempt to obtain payment above and beyond that authorized by Medicaid and/or SSI, claiming that the authorized payment amounts are insufficient. In most cases, the extra payments are solicited from residents' family and friends.



These facility practices deprive residents of the full benefit of their Medicaid eligibility: under federal Medicaid law, Medicaid-certified providers are required to accept Medicaid-authorized amounts as payment in full. In addition, family payments can lead to termination or reduction of residents' eligibility for Medicaid and SSI, since the payments may be counted by those programs as income to the resident. This is why facilities seeking supplementation often claim that payments are contributions or gifts, to keep the payments under the table from the perspective of the public benefits programs.

Federal and state policies should be revised both to protect residents and their families from this type of exploitation, and to preserve the integrity of the Medicaid and SSI programs. Supplemental payments from family and friends should generally be prohibited, with an exception only if payment is for an item and service not covered by the Medicaid or SSI programs. In addition, states should set reasonable allocations for room and board costs, and pay appropriate Medicaid rates for assisted living services.

Recommendations

Facility charges for room and board should be limited to the amounts authorized by the Medicaid and SSI programs. Under Medicaid and SSI, a resident's available income consists only of minimal allocations for room, board, and personal needs. Without an explicit limit on room and board charges, a resident might be forced to expend some or all of the personal needs allowance for room and board. In Mr. Ng's scenario, the facility should be required to accept \$698.40 as payment in full for room and board.

Facilities should not be allowed to request or accept supplemental payments for services. When a public benefits program makes a payment designated for a service provider, the program requires the provider to accept the specified amount as payment in full. It is unsustainable and unfair to a facility, resident and resident's family to have a model that assumes ad hoc payments from family members. Medicaid waivers aim to provide a cost-effective alternative to a nursing home and for the sake of fairness the resident's financial obligation should be fixed.

In Mr. Ng's situation, the facility should not be allowed to seek supplemental payments from his family. The facility would be obligated to provide room, board and Medicaid-covered services in exchange for Mr. Ng paying \$698.40 for room and board, and the state paying the Medicaid-reimbursement rate for the services provided to Mr. Ng.

State allocations for room and board should be based on reasonable facility room and board costs. Most states' room and board allocations are not based on the costs of providing room and board, but instead on federal SSI levels. Nothing about the SSI rate assures its adequacy to cover assisted living room and board costs along with the resident's personal needs allowance.



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, or Gene Coffey, 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.¹ 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 this study are laid out in a series of policy issue briefs that will be 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 third paper in the policy issue brief series. This policy issue brief examines how public policies can protect assisted living residents when facilities attempt to charge low-income residents excessive amounts, or require families to pay on top of Medicaid-authorized payments. A companion white paper discusses the same issues with more detail from the study findings.

¹ The research included a survey of respondents in the 37 states that pay for assisted living services 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.

