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**National Senior Citizens Law Center**

Protecting the Rights of Low-Income Older Adults

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# Medicaid Managed Long-Term Services & Supports: Understanding Notices & Appeal Rights 101

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The top of the slide features a collage of five blue-tinted photographs of elderly individuals. On the left, the NSCLC logo is displayed in white, with the text 'National Senior Citizens Law Center' underneath. The collage includes a woman's face, two people in a room, a woman holding a small dog, an elderly man's face, and two women smiling together.

**NSCLC**  
National Senior Citizens Law Center

*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 those with limited income and resources, and access to the courts for all. For more information, visit our Web site at [www.NSCLC.org](http://www.NSCLC.org).*

# Webinar Series on “An Advocate’s Library”

- Thank you to
  - The Retirement Research Foundation
  - Atlantic Philanthropies

# Webinar Logistics

- All attendees are on mute
  - For technical questions, use chat box
  - For substantive questions, use questions box
- E-mail [trainings@nsclc.org](mailto:trainings@nsclc.org) if unable to access webinar
- Slides and recording will be at nsclc.org
- We will be answering questions at the end

An all too common story. . .



# Goal of today's presentation: MLTSS and Consumer Appeal Rights

- The Right to an MCO **Appeal** and/or State **Fair Hearing**
- The Right to a **Notice of Action**
- The Right to an **Individualized Explanation** about reason for the MCO Decision
- The Right to **Continuation of Services**

\*Procedural Due Process Rights\*

# The Dreaded Acronyms

CMS	Centers for Medicare and Medicaid Services
HCBS	Home and Community-Based Services
Long Term Care	LTC
LTSS	Long Term Services & Supports
MCO	Managed Care Organization
MLTSS	Managed Long term Services & Supports
NF	Nursing Facility
SNF	Skilled Nursing Facility



# Background: Medicaid Managed Long-Term Services & Supports

# MLTSS Basics

- October 2014 → 28 states
- Managed Care = “New” Delivery System for long-term services and supports
- MLTSS = Institutional Services **and** HCBS

# How Do States Implement Medicaid Managed LTSS?

## Medicaid Waiver Authority

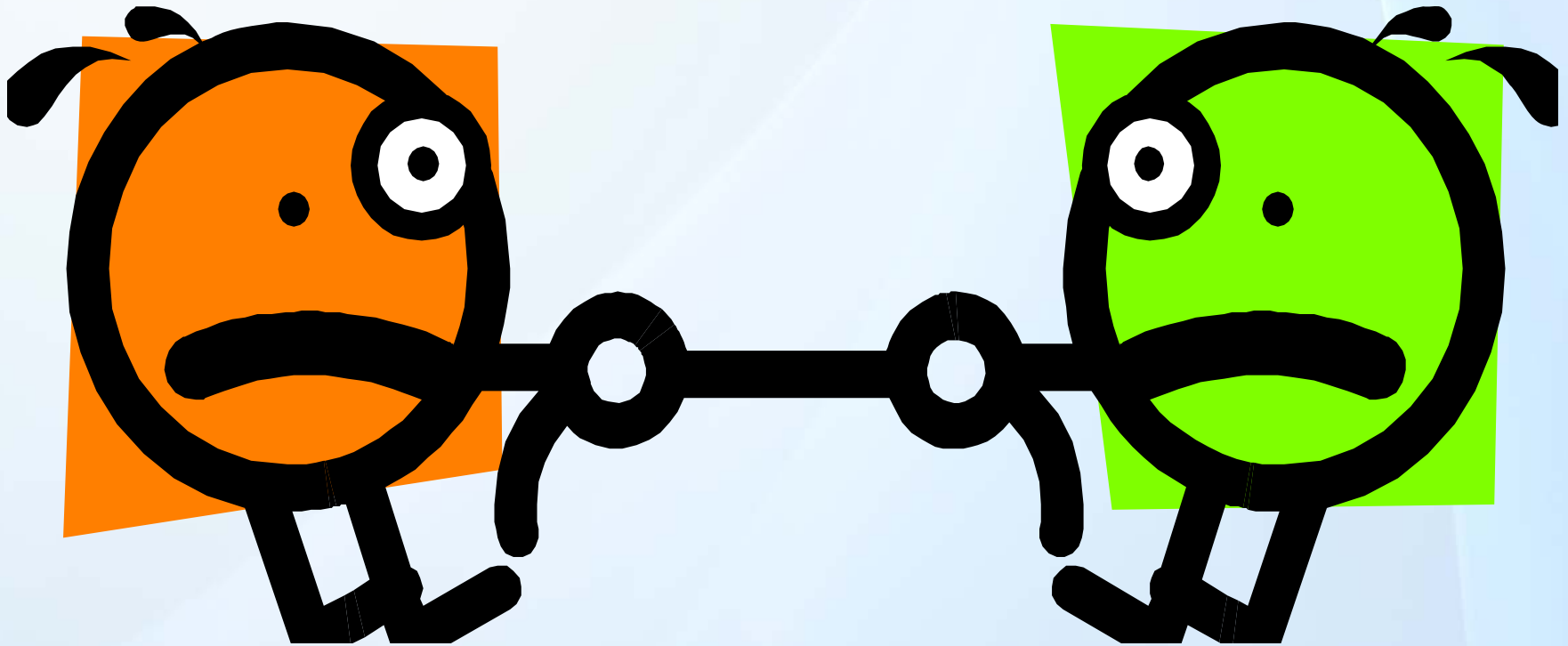
([www.Medicaid.gov](http://www.Medicaid.gov))

- ❖ 1915(b)(c) waiver approval documents
- ❖ 1115 waiver Special Terms and Conditions

## MCO Contracts

(NSCLC's "Details Matter! Advocate's Library")

# Caution: MLTSS Tug-of-War Service Plans v. Prior Authorization



# Advocacy Tip: MCO Contract Prior Authorization Language

## New Jersey Example:

**Contractor shall not deny benefits to require enrollees to go through the appeal process in an effort to forestall needed benefits.**

# The Right to an Appeal

# Due Process Clause of the U.S. Constitution

- ❖ Long recognized that Medicaid recipients have a **property interest** in Medicaid benefits
- ❖ **14<sup>th</sup> Amendment** of the U.S. Constitution
- ❖ ***Goldberg v. Kelly***, 397 U.S. 254 (1970)

# The Medicaid Act

- A **State Plan** must provide an opportunity for a fair hearing to any individual whose claim for Medicaid is denied or is not acted on with reasonable promptness
- **Federal Regulations:**
  - 42 C.F.R. § 431, Subpart E (Medicaid Fair Hearings)
  - 42 C.F.R. § 438, Subpart F (Managed Care)



# MCO Grievance System

## Three “Tracks” ???

- An MCO **Grievance** Process
- An MCO **Appeals** Process
- Access to the **State’s fair hearing** system

→ Dependent on whether or not the MCO decision or behavior = **Action**

# If the MCO decision = ACTION

Then the MLTSS consumer should access:

- The internal MCO Appeal process and/or
- The State's fair hearing system\*

Any matter other than action → Internal MCO Grievance

# What is an MCO action?

- The **Denial** or **Limited Authorization** of a requested service, including type or level of service
- The **Reduction, Suspension, or Termination** of previously authorized service
- The **failure to provide services** in a **timely manner**, as defined by the State

# Advocacy Tip: Protect Consumers During Transition and 1<sup>st</sup> Year

## Kansas Example:

- Continuity of Care: Prohibited Service Plan reductions during 90 day transition
- Require State review of all reductions during the 1<sup>st</sup> year

# A cautionary word about grievances. . .

- **Definition:**
  - An expression of dissatisfaction about any matter other than an action, as “action” is defined by the regulations
- **Possible Subjects for Grievances:**
  - Rudeness of a provider or failure to respect a consumer’s rights
  - Language access? Compliance with ADA?

# The Right to a Notice of Action

# What information must the MCO include in the Notice of Action?

- An **explanation of the action** the MCO has taken or intends to take
- The **reasons** for the action
- The specific **regulations** that support the action
- The right to an internal MCO **appeal**
- The right to request a state **fair hearing**, subject to possible exhaustion of MCO internal appeal rights
- The **procedures** for exercising these rights, including timeframes during which the consumer must take action
- The circumstances under which an **expedited appeal** is available
- The right to **continuation of benefits**, how to request continued benefits, and any potential obligation to re-pay

# Language and Format

- Written Notice
  - Available in prevalent non-English languages
  - Easily understood language and format
  - Available in alternative formats
- Oral Interpretation
  - Available free of charge in all languages



# Advocacy Tip: Standardized, mandatory form of Notice

## Important Issues:

- Reason for the action, including the regulatory support
- Understandable explanation of appeals and fair hearing tracks, including timeframes
- Language around continuation of service

# The Right to an Individualized Explanation about the Reason for the MCO Decision

# What constitutes an adequate “reason for the action?”

- Must include a **detailed individualized explanation** of the reason in terms **that are comprehensible**
- Must include the actual **assessment tool**
- Must include an **explanation of the change in functional capabilities** since the last service determination

# Advocacy & Practice Tip:

## Advocacy Tip:

Contractual requirement to provide assessment tool with notice.

## Practice Tip:

If notice is inadequate → Motion for SJ

# The Right to Continuation of Services

# General Medicaid Regulation: 42 CFR § 431.230:

- If notice is mailed at least 10 days before action and consumer requests hearing before date of action ≠ Termination
- But: Consumer may have to repay if the MCO or agency decision is upheld

# MCO Regulations: 42 CFR 438.420(b) and (c)

- Involve termination or reduction of previously authorized service
- Appeal or hearing must be filed timely
- Request for extension of benefits
- MLTSS consumer may have to repay

# Advocacy Tip: Continuation of Benefits

## Kansas Notice of Action Example:

- 33 days from date of mailing
- Appeal/Hearing Request = Aid-Paid-Pending
  - No requirement to repay absent fraud



# Resources at [www.nscclc.org](http://www.nscclc.org)

- “What’s in a Notice? How Notices of Action Protect Consumers in Medicaid Managed Long-Term Services and Supports”
- “Detail’s Matter! Advocate’s Library of Managed Long Term Services and Supports Contract Provisions”
- “Just Like Home: An Advocate’s Guide to State Transitions Under the New Medicaid HCBS Rule”

Questions?

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