

PHCA Webinar
COVID-19, the Courts, and Medicaid
Eligibility: Navigating and Overcoming the
Challenges



May 21, 2020
2:00 p.m. to 3:00 p.m.

Presenters

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Overview

- Effect of COVID-10 Emergency on Medicaid (MA) Eligibility
 - MA Redeterminations
 - Applications
 - MA Pending
 - Appeal of MA Denials
 - Administrative (BHA) Hearings
 - Level of Care Denials
 - Impact of Resident Stimulus Payments
 - Other Medical Expense

Overview

- The Effects on PA Courts:
 - The effects on civil lawsuits and other litigation.
 - The effects on guardianship proceedings
 - Emergency guardianships
 - Will hearings be held in-person or electronically?

MA Redeterminations

- For renewals requested and/or due on or after March 18, 2020, CAO's will not 'close' any MA LTC case other than for the following:
 - An individual no longer resides in PA;
 - An individual requests their benefits be closed;
 - An individual has passed away; or
 - A lawful residing non-citizen turns 21 and pregnant women at the end of the postpartum period.

MA Redeterminations

So what to do with any CAO requests for documents in support of an annual renewal?

- If you can provide the requested information to the CAO, do so.
- If it cannot be provided due to the COVID-19 crisis, apprise the CAO. Also, apprise the CAO of the steps taken to obtain the information needed and that additional steps are not possible due to the COVID-19 crisis.

MA Redeterminations

- CAO should then maintain the client's MA-LTC eligibility until the month that the emergency ends.
- The CAOs should not be discontinuing benefits at this point.
- **Recommendation:** Respond to the requests if possible. Otherwise, apprise the CAO why you cannot.

MA Applications

- Online
- Fax
- Mail
- Email

Depends on the local CAO.

MA Applications

- **Recommendation:** Facilities should still file MA applications if resident/family member cannot or will not.
- Preserve the MA eligibility retroactivity date.
- No changes due to COVID-19.

MA Pending

Due to the COVID-19 emergency, CAOs are operating under a different standard:

“Flexibilities in timeliness and verification standards are being utilized.”

Recommendation: Utilize this standard at hearing or in discussions with CAO.

MA Pending

- Some facilities are reporting delays in processing the applications, others state some of the applications are being processed more quickly.
- Delays could be due to differing CAO work arrangements.
- Delays could also be due to the ‘flexibility’ standard used to assist providers generally.
- For example, delays could be due for failure of banks to respond to subpoenas in a timely manner and CAO providing more time to obtain verifications.

MA Pending

- Reports of delays in obtaining the actual PA-162 (MA approval) once CAO confirms eligibility.
- Work with CAO supervisors to facilitate email of the PA-162s.

Administrative (BHA) Appeals

- Appeal deadline extended from 30 days to 90 days.
- **Recommendation:** Consider filing the appeal within 30 days anyway.

Administrative (BHA) Appeals

- Verifications may be difficult to get for a myriad of reasons:
 - Bank slow or no response;
 - Inability of family members to meet with residents or assist in the process.
- **Recommendation:** Make the attempts to obtain verifications and document those attempts.

Administrative (BHA) Appeals

- Examples of attempts:
 - BHA subpoenas;
 - Correspondence to banks, pensions, life insurance companies;
 - Correspondence to family members;
 - Resident communications;
 - Asset searches.

Administrative (BHA) Appeals

- Importance of attempts and documentation:
 - New CAO ‘flexibility’ standard.
 - Common law doctrine of ‘impossibility of performance.’

Administrative (BHA) Appeals

- Importance of attempts and documentation:
 - State Regs:
 - In certain situations, it may be impossible to secure substantiation. If so, the CAO will make a reasonable decision based on certain factors.
 - An applicant may not be denied for lack of verifications if he/she has cooperated in the verification attempt.

Hearings

- Bureau of Hearings & Appeals (“BHA”) was only closed for a short time period.
- Everything can be done over the phone/email/fax.
- Hearings were cancelled during the period it was closed.
- **Recommendation:** Correspond with BHA requesting the cancelled hearings be rescheduled.

Hearings

- Prior discussion on documentation of attempts to obtain verifications.

Hearings

- Stipulation Deadlines and Notifications of Dispute
- Case example
 - Facility entered into a stipulation at the BHA hearing on March 11, 2020, agreeing to provide the verifications by March 25. On March 19, the shut down was ordered in PA. On March 24, we filed a request for an extension of time due to the COVID-19 pandemic. No response from the BHA. On April 29, we filed a Notification of Dispute, with supporting legal arguments, challenging the stipulation deadlines. On May 15, the BHA issued an Amended Order extending the deadlines by 120 days.

Hearings

- Stipulation Deadlines and Notifications of Dispute
- **Recommendation:** Document all steps taken during the verification process, and if eventually a stipulation is entered into and the verifications cannot be obtained by the deadline, consider filing a Notification of Dispute.

Level of Care Denials

- Applicant for MA is deemed not medically or clinically eligible due to only COVID-19 diagnosis by Area Agency on Aging. Since the resident is not clinically eligible, cannot even get to the stage of determining financial eligibility.
- **Recommendation:** Appeal the clinical level of care denial.

Impact of Stimulus Payments

- Federal Trade Commission Payments stated the payments are not to be considered “resources” to a Medicaid eligible resident.
- PA stated the Federal Pandemic Unemployment Assistance payments are not income to Medicaid eligible persons.

Other Medical Expense

- The MCOs appear to be disallowing a nursing home debt incurred prior to becoming MA eligible as an permissible “OME,” which can be paid with current patient pay.
- Seems inconsistent with prior Ops Memo.
- Still working on seeing if a resolution is possible with DHS and/or the MCOs.

Effects on PA Courts

- 3/16/20 Order: PA Supreme Court declares a general, statewide judicial emergency through April 14, 2020.
- 3/18/20 Order:
 - PA Supreme Court closes PA Courts as to non-essential functions through April 3, 2020.
 - All time calculations and deadlines suspended through April 3, 2020.
 - “Essential functions” include (1) Emergency petitions for guardianship; and (2) Emergency equity civil matters (injunctions and stays).
 - Evictions and ejectments prohibited through April 3, 2020.

Effects on PA Courts

- 3/24/20 Order: addition to essential functions: commencement of civil action, by *praecipe* for a writ of summons, for purposes of tolling a statute of limitations.
- 4/1/20 Order:
 - Statewide judicial emergency and closing of courts to the public for non-essential functions extended through April 30, 2020.
 - President Judges of county Courts of Common Pleas authorized to declare local judicial emergencies through May 31, 2020.
 - Time calculations and filing deadlines suspended through April 30, 2020.
 - The Court urges local Court use “advanced communication technology”: any communication equipment that is used as a link between parties in physically separate locations, and includes, but is not limited to: systems providing for two-way simultaneous communication of images and sound...
 - Bar on evictions and ejectments extended through April 30, 2020.

Effects on PA Courts

- 4/28/20 Order:
 - Beginning May 4, 2020, unless extended by a local Court's Order, the Pennsylvania Supreme Court Ordered Pennsylvania courts generally open to conduct all court business.
 - However, all in-person access and proceedings shall be strictly limited.
 - Local Courts may extend local judicial emergencies through June 1, 2020 without supporting reasoning. They may extend local judicial emergencies past June 1, 2020 if they provide supporting reasoning.
 - To the extent that hearings and conferences can be held in the presence of counsel only, the PA Supreme Court directed local courts to permit the parties' physical presence to be excused.

Effects on PA Courts

- 4/28/20 Order (continued):
 - The PA Supreme Court encourages local courts to decide matters “on the papers” or to conduct court proceedings through the use of advanced communication technologies, to the extent that constitutional requirements can be satisfied.
 - No proceedings should be delayed solely on account of the public health crisis that could reasonably be conducted using available advanced communication technologies.
 - Time calculations and filing deadlines suspended through May 11, 2020.
 - Evictions and ejectments barred through May 11, 2020.

Permanent Guardianships

- When the Court shutdown first began, Courts postponed holding permanent guardianship hearings and stated they would later reschedule the hearings.
- That was status quo through April 2020: permanent guardianship hearings have not been held since the shutdown began in March.
- Within the last few weeks, Courts have begun to reschedule guardianship hearings. Within the next two weeks, it is likely the Courts will reschedule many permanent guardianship hearings and more promptly schedule hearings for newly filed petitions.
- The local Courts will most likely hold permanent guardianship hearings (1) by videoconference for all participants; or (2) hold in-person hearings, but only require the attorneys attend in person. If a Court only requires attorneys attend in person, the Court will permit physicians and facility representatives to participate in the hearings by videoconference.

Emergency Guardianships

- As an “essential/critical function,” emergency guardianships have been available throughout the Court shutdown.
- The local Courts have and will hold emergency guardianship hearings (1) by videoconference for all participants; or (2) hold in-person hearings, but only require the attorneys attend in person.

Recommendations

- Respond to the requests if possible. Otherwise, apprise the CAO why you cannot.
- Facilities should still file MA applications if resident/family member cannot or will not.
- Utilize the new ‘flexibility’ standard at hearing or in discussions with CAO.
- Consider filing the appeal within 30 days even though you have 90.
- Make the attempts to obtain verifications and document those attempts.

Recommendations

- Correspond with BHA requesting the cancelled hearings be rescheduled.
- Document all steps taken during the verification process, and if eventually a stipulation is entered into and the verifications cannot be obtained by the deadline, consider filing a Notification of Dispute.
- Appeal the clinical level of care denial.



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