

PACAH Webinar

COVID-19, the Impact on Medicaid and Medicare: Navigating and Overcoming the Challenges



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Presenters

John N. Kennedy, Esq.

Ben Glatfelter, Esquire

Casey L. Slotter, Esquire

Kennedy, PC Law Offices

(877) 833-7100, ext. 102

jkennedy@kennedypc.net

www.kennedypc.net

Overview

- Effect of COVID-19 Emergency on Medicaid (MA) Eligibility
 - MA Redeterminations
 - Applications
 - MA Pending
 - Appeal of MA Denials
 - Administrative (BHA) Hearings
 - Stimulus Payments, Home Maintenance Deductions, and MA-103s

Overview

- Medicare Changes
- The Effects on PA Courts:
 - The effects on civil lawsuits and other litigation.
 - The effects on guardianship proceedings
 - Standard Guardianships
 - Emergency Guardianships

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 -HMD

- Home Maintenance Deduction
 - CAO will not terminate this deduction from the resident's patient pay obligation during the emergency period.
 - Previously limited to six months.

MA-Impact of Stimulus Payments

- Federal Trade Commission: Payments are not to be considered “resources” to a Medicaid eligible resident.
- DHS Policy Clarification:
 - These payments are excluded as income and excluded as a resource when determining eligibility.
 - Fair consideration also does not apply to these payments when determining eligibility.

MA Applications

- Online
- Fax
- Mail
- Email

Depends on the local CAO.

MA Applications-MA 103

- Form MA 103 is not required through the duration of the emergency.
- If all other documentation supplied to process the application except the MA 103, the CAO will call the facility to verify the admission date.
- The CAO does not need to request a hard copy of the MA 103.

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 on the retroactivity date 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-Incapacity

- Policy Clarification from DHS:
- Can the CAO authorize MA if the applicant cannot obtain financial documentation due to incapacity?

MA Pending-Incapacity

- If the applicant's representative states financial documentation cannot be provided because the applicant is incapacitated or that guardianship cannot be obtained during the COVID-19 emergency, the CAO should request verification of incapacity or that guardianship proceedings will begin after the emergency ends.

MA Pending-Incapacity

- Verification can be a letter from an attorney or a physician's signed statement.
- Then, CAO will send a request for the Bureau of Policy to review the record through the policy clarification submission process.

MA Pending-Direct Express

- Direct Express accounts are only used to deposit Federal Benefits (such as SSI or Retirement, Survivors and Disability Income).
- The CAO can take self-attestation of the account balance if the applicant is unable to reach Direct Express.

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

- Legal arguments if fully contested hearing on the merits.
- 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

- Importance of attempts and documentation:
 - Notification of Dispute.
 - Extension of deadlines from the Bureau of Hearings & Appeals?

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, and/or
 - An extension of deadline from the BHA *and/or* the CAO.

CMS Waivers & Flexibilities

- Updated July 9, 2020
- <https://www.cms.gov/files/document/covid-long-term-care-facilities.pdf>

Qualified Hospital Stay Waiver

- Waiver of 3 day prior hospitalization for coverage of a SNF stay for those who experience dislocations or are otherwise affected by COVID-19.
- All beneficiaries qualify, regardless of whether they have SNF benefit days remaining.
- Do NOT need to verify individual cases.

SNF Benefit Period Waiver

For certain beneficiaries who exhausted SNF benefits, the waiver authorizes renewed SNF coverage without first having to start and complete a 60-day “wellness period”.

This waiver will apply ONLY for those beneficiaries who have been delayed or prevented by the emergency itself from commencing or completing the 60-day “wellness period” that would have occurred under normal circumstances.

Criteria & Required Documentation

- A resident's ongoing skilled care is considered to be emergency-related *unless* it is altogether unaffected by the COVID-19 emergency itself (that is, the beneficiary is receiving the very same course of treatment as if the emergency had never occurred).
- Compare the course of treatment that the beneficiary has actually received to what would have been furnished *absent* the emergency. Unless the two are exactly the same, the provider would determine that the treatment has been affected by – and, therefore, is related to – the emergency.

Billing Instructions for QHS & Benefit Period Waivers

- On July 1, 2020, revised instructions to readmit the beneficiary on day 101 to start the SNF benefit period waiver.
- <https://www.cms.gov/files/document/se20011.pdf>

Other Waivers & Flexibilities

- Medicare appeals in Fee for Service, Medicare Advantage & Part D
- Cost Reporting Due Dates
- Medicare Telehealth

Medicare Coverage of COVID-19 Testing for Nursing Home Residents

- Starting on July 6, 2020, and for the duration of the public health emergency, Original Medicare and Medicare Advantage plans will cover diagnostic COVID-19 lab tests.
- Tests that are considered non-diagnostic are not covered.

Effects on PA Courts

- Effective June 1, 2020, the general, statewide judicial emergency was lifted
- Individual counties may continue to exercise emergency powers
- No consistency among counties across the Commonwealth as to Court rules, filing procedures and the extent to which emergency powers exercised

Effects on PA Courts

- PA Supreme Court empowered individual counties to:
 - Limit in-person access and proceedings;
 - Suspend statewide rules that restrict the use of advanced communication technologies;
 - Suspend certain state-wide rules regarding court filing procedures; and
 - Suspend jury trials until they can be conducted safely.

Effects on PA Courts

- Guardianships
 - Hearing procedures vary by county
 - In-person?
 - Telephone?
 - Video?
 - Delayed scheduling until Facilities open to allow for visitation of Court-appointed attorney?
- Civil Litigation
 - Statute of limitations NOT tolled
 - Delays in service of process
 - Likely delay for any jury trials

Effects on PA Courts

- What to do?
 - Continue filing guardianship petitions whenever a guardian is needed
 - Expect delays
 - Consider emergency guardianship petition if “irreparable harm” could occur before permanent guardianship hearing is held
 - Continue to pursue collection actions
 - Do not miss statute of limitations deadlines

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 and/or request for an extension.



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