UFT Welfare Fund Retiree Legal Plan
PREVENTIVE LAW GUIDE
A newsletter designed to help guide you through the legality of reality
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Medicaid Managed Care & long-term care services

By David Goldfarb, Esq.

Most retirees are familiar with managed care health insurance plans because of the health insurance plans they have as retirees. However, your retiree benefits do not generally cover long-term care services such as extended nursing home care and long-term home care services.

And if you have not purchased separate long-term care insurance, you will either privately pay for these services or be dependent upon a program such as Medicaid. In addition, many retirees have parents and relatives whose health care coverage includes some form of Medicaid. Medicare also has a very limited nursing home and home care benefit.

Medicaid (unlike Medicare) differs from state to state, and Medicaid coverage throughout the country is moving from the traditional fee-for-service model to a managed care model.

Medicaid Managed Care
Medicaid Managed Long-Term Services programs will impact the way care is delivered to seniors and people with disabilities across the nation. In New York state, as is the case with many states, there are different forms of Medicaid Managed Care. Federal law allows states to develop managed care plans as an alternative to fee-for-service Medicaid.

New York is expanding its Medicaid Managed Care Program – sometimes referred to as mainstream Medicaid Managed Care – to cover most Medicaid recipients.

Personal care services (home care) would no longer be excluded from the Medicaid managed care benefit package. Persons who otherwise are mandated to enroll in a Medicaid managed care plan and receive personal care services would have these services authorized by their managed care plan – known as the "carve-in" of personal care services.

In addition, New York is expanding its Managed Long-Term Care programs to provide, or arrange for, health and long-term care services that reimburse the provider on a capitated basis. This will soon be the mandatory form of delivery of home care services throughout the state.

Change to home care services
Many other states have also moved to managed care for the delivery of home care services. And in 2014 and 2015, New York will begin to phase in the inclusion of nursing home care into the managed long-term care program. This means that persons needing to enter a nursing home on Medicaid will have to utilize the services of one of Medicaid's managed care insurance companies.

There are also Medicaid managed care programs available now for somewhat higher income individuals and families. In New York, "Benchmark Medicaid Coverage" is the expanded coverage under the federal Affordable Care Act – based on Modified Adjusted Gross Income.

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This will eventually replace Family Health Plus in New York. The Benchmark Benefit is similar to the Medicaid Standard Coverage benefit but does not include long-term care services. This Benchmark Coverage will generally be available for individuals whose Modified Adjusted Gross Income is under 133% of the federal poverty line.

New dual eligible programs

In addition, 26 states (including New York) will be testing managed care programs for persons who have both Medicare and Medicaid under a pilot program called the Fully Integrated Duals Advantage (FIDA) program.

More than 9.6 million seniors and younger people with significant disabilities are dually eligible for both programs, and as many as two million of them may be included in the demonstration programs.

Dual eligible beneficiaries are among the poorest and sickest beneficiaries covered by either program and consequently account for a disproportionate share of spending in both programs.

Many states, including New York, are promoting the move to managed care as a good development, with better care coordination for the consumer at an overall lesser expense for the government.

However, many consumer advocates are concerned that managed care can lead to a lower standard of care in some instances. For example, a managed care provider may deny necessary services in an effort to save money or a consumer's long-term care provider such as a home care agency or nursing home may not be included in a managed care provider's network.

Some common questions

Below are common questions that can arise in the switch over from fee-for-service Medicaid to managed care:

1. Can the beneficiary select members of their care team?
2. What role does the beneficiary play in creating and approving a care plan?
3. How does a beneficiary exercise the right to self-direct their care?
4. What providers are covered by care continuity provisions and for how long?
5. What notice is required when a service is reduced or denied?
6. What information must a plan provide to a beneficiary during an appeal process?
7. Which long-term services must be provided?

Answers to these and other questions will be provided as the contracts between states and Managed Care Organizations become available.

Spousal impoverishment protections

Another development that will protect Medicaid recipients is that all states must extend certain income protections to spouses of Medicaid recipients of home and community-based services beginning in 2014.

These protections – known as "spousal impoverishment protections" – prevent one spouse from experiencing severe poverty when the other spouse has qualified for certain kinds of Medicaid coverage.

In the past, these protections only applied to spouses living in the community of individuals receiving nursing home care. The Affordable Care Act requires that the spouse of any person who is

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The big benefits of small claims

By Jacqueline Kelly, Esq.

Ladies and Gentlemen... allow me to introduce you to the wonderful world of Small Claims Court. You probably know that Small Claims Court exists and you may even be familiar with the basic fact that you cannot sue there for any amount larger than $5,000.

What you may not realize, however, is how easy it is to navigate and how cost effective it is to litigate there. Small Claims Court is extremely user friendly and an inexpensive way to have your case heard.

The most comprehensive and reliable information about Small Claims Court is contained in the New York State Unified Court System's packet entitled "A Guide to Small Claims in the NYS City, Town and Village Courts," which can be found at nycourts.gov.

The filing fee in Small Claims Court (SCC) is $20 (or less, depending on the amount of your claim). You do not need to hire a process server as the Clerk of the Court sends the Defendant(s) notification of the case.

Many SCCs have both day and evening sessions so you may not even have to take time off from work. Appearing in SCC is also relatively easy and stress free. You bring your proof with you – photographs, invoices, payment records, receipts, etc. The only strict requirement in SCC is if estimates are involved – you are required to produce two (2) independent estimates to establish your damages. You then simply tell your story and show your proof.

The SCC is an informal and relaxed setting. You do not have to know the Rules of Evidence or the Rules of Civil Procedure. You just tell your story. Of course, the Defendant gets to tell his or her story too but there is no pressure to act like a lawyer.

You may even request to be heard by an Arbitrator rather than a Judge – so long as your opponent agrees as well. Having your claim Arbitrated is efficient, quick and just as binding as a Judge's decision.

So the next time you find yourself monetarily damaged, don't let prohibitive litigation costs or fear of the unknown court system prevent you from seeking justice. Small Claims Court is a welcoming place for the legal do-it-yourselfers... and a yelling Judge Judy is nowhere in sight.

The process of purchasing a home

By Daniel J. DeRosso, Esq.

Initial clarity in contract drafting can help to avoid misunderstandings and undue delays when it comes time to closing the transaction of purchasing a home.

Keep in mind that the standard contract of sale provides that all "fixtures" are included in the purchase. In this instance, a "fixture" is generally defined as something that is not moveable, not moveable without significant effort, an integral part of the premises, and is not personal property.

This can include electrical outlets; switches; hard-wired lights; wiring; plumbing lines; toilet bowls; tubs, showers & sinks; appliances; boilers & furnaces; kitchen cabinetry & hardware; and central air conditioning or through-the-wall air conditioning units.

If the seller wants to exclude one of these items, it must be stated in the contract. The most common exclusion would be a light fixture or chandelier; the seller would then represent that the excluded fixture would be replaced with a "builder's fixture" so as to not leave open wiring.

But what about wall-mounted plasma televisions, surround-sound systems, outdoor stainless steel barbeques hooked up to gas lines, sectional couches, pianos, pool tables, or window treatments? These are considered personal property and are not fixtures.

If in doubt, the contract should clearly state that these items are excluded. If the seller does not want to be bothered moving an item such as a piano, the contract should clearly state that it will be left in the home.

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receiving Medicaid-funded long-term services and support, either in a nursing facility or at home, be allowed to keep a minimum amount of income and assets. Prior to this, states were only required to extend the protections to spouses of nursing facility residents.

When one spouse is in a nursing facility and the other remains at home, the two individuals are known as the "institutional spouse" and the "community spouse." Both spouses can now reside in the community and spousal impoverishment protections must still apply. Under this program, the spouse who is not using Medicaid community or nursing facility services is not required to use his or her income to pay for the care. The non-Medicaid spouse also has the right to a minimum monthly allowance in order to ensure a basic standard of living. The non-Medicaid spouse is also permitted to keep a larger amount of assets than would otherwise be allowed without the impoverishment protections.

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