



## Empowerment Through Education

*The Long Island Senior Education Council is a not-for-profit 501(c)3 learning and resource organization. Life is complicated enough. LISEC is proud to assist you in answering questions about New Laws, Changing Trends and Long Term Care Options.*

Walking into the building you cannot help but notice the people crowded around you waiting for their number to be called. It feels like you are transported to another world, but it is only the Department of Social Services building on Wireless Boulevard in Hauppauge. For Medicaid Fair Hearings, you must sign in at window 4 and wait for your number to be called. If you are denied nursing home Medicaid for your elderly parent or spouse, this is where you or your representative may have to go to argue against a Medicaid denial.

As Patti G. had found out recently, it is an intimidating experience. "I am just trying to take care of my dad who has been residing in a nursing home for a year while we are attempting to get him Medicaid," she says in a stressed tone. The first social service caseworker had neglected Patti's father's case for four months before Medicaid even started working on the application submitted April 1, 2011. After repeated attempts to find an update status, a social service's caseworker finally called in the later part of July, only to say that she is just starting to put the paperwork together. The caseworker continues to reveal that she is in the middle of a nasty divorce which seems to indicate her state of mind. In mid August, Patti's case is referred to a new case worker, and this where the fun begins.

Why is knowing about this case so important to anyone filing a nursing home Medicaid application, because it speaks volumes about what may be happening at The Department of Social Services and to caregivers that are greatly affected by unrealistic rules to gather information for loved ones.

"I did my best to gather all the information requested of me." Patti says, "but there was information regarding bank accounts from banks no longer in business, or deposits my dad did on his own that I could not get information about. Then there was a catastrophic policy my dad had taken out that took about a month to get processed." Patti has 10 days (NOT business days) to get the information after it is requested. Caseworkers have discretion in granting extensions and if you are initially denied Medicaid, as Patti found out, they also can use their discretion to grant reconsiderations which are only considered a courtesy on the caseworker's behalf. The caseworker has the discretion to grant a courtesy to extend the time needed to dig into five years of monthly bank statements, deposit slips, cancelled checks, tax returns and any other financial record within the five year "look-back" period.

If you cannot access certain records, you are suppose to call the caseworker or supervisor and notify them in writing as Patti did or ask for a conference or Fair Hearing. Unfortunately, that may not help either. If you are denied Medicaid, a Medicaid Fair Hearing is scheduled only upon your request and then you only have 60 days from the denial to schedule it. In the meantime, you have to file another new application and if you cannot access your loved ones records in that time, your loved one can ultimately be denied Medicaid.

How is this considered a crisis? The bottom line is that if enough Medicaid applications are denied for even a few months, saving the state and county thousands of dollars, the nursing home has to come up with the money it already spent on the patient. In a short time, we may hear of nursing homes not being able to continue operation, especially in light of new Obama-care regulations and higher expenses for facilities.

## MEDICAID FAIR HEARING CRISIS

Filing Medicaid applications for a loved one can be stressful and costly. You need to know your rights... and reality.

Of course, situations like Patti G's of having to wait four months before Social Services even opened her file and then being denied Medicaid for the months they neglected the case may be isolated. Or is it?

Mr. C needed to file for nursing home Medicaid for his beloved wife, Mary. His social service's caseworker kept asking for information about bank accounts that Mr. C said he never had. His application was also denied and a Fair Hearing was requested. After repeatedly asking the caseworker for the source of where she came up with the erroneous account numbers, she explained to Mr. C's representative that she couldn't go through the 3000 pieces of paper Mr. C had already filed. After months of searching, it was brought the caseworkers attention that one account number she questioned was actually a federal identification number from one of Mr. C's banks. The other account number she questioned, never existed and Mr. C had to get a letter from the bank to say as much. The stress of searching for information that had no bearing on the case, the expense of having to go to a Fair Hearing are born by the caregiver or patient. At Mr. C's Fair Hearing for his wife, he was informed that the denial was dismissed and the case is still on-going. "A phone call would have been nice," Mr. C said, "I had to travel a distance so early in the morning which is not easy in my senior years and had to pay for someone to represent me for nothing. Meanwhile the nursing home has not been paid in months for services they rendered to my wife. It just is not fair." After the canceled Fair Hearing, Mr. C received another "Pending Letter" requesting much of the same information that was previously sent. The postage expense increases a great deal with the amount of paper being forward with each response letter.

### Simple Facts You should Know: *By the Numbers*

The number of Medicaid recipients are expected to increase by at least 1 million this year in New York and that number will continue to increase.

The number of caregivers who will need to file for Medicaid for their elderly parents will increase dramatically as the number of Americans entering retirement age is expected to nearly double by 2030, according to the U.S. Department of Health and Human Services' Administration on Aging.

The number of Medicaid denials and Fair Hearings are increasing and will continue to rise as more people are expected to apply for Medicaid.

The number of Alzheimer's and dementia patients are expected increase with more women than men being affected according the Alzheimer's Association. This means more women are likely to end up on Medicaid in nursing homes than men.

### *The Medicaid Process is Confusing and Time Consuming*

Considering the number of people that will need to apply for Medicaid, it becomes necessary to arm yourself with knowledge. Attorney fees can be prohibitive and Medicaid does not make information easy to understand. How many more people that have to suffer the experience's of Patti G or Mr. C have likely increased even as you read this.

## Medicaid- The Basics

If you or your loved one needs long term care...

**Your ASSETS may be at risk.**

January 2012 Asset Limits: \$14,250 Individual / \$20,850 couple

**Your INCOME may be at risk.**

Home care monthly Income Limits:  
\$792+ \$20 individual / \$1,159 + \$20 couple

Well Spouse Limitations:

\$113,640 Assets / \$2,841 Monthly Income

Types of Medicaid:

\* Community Care—Home Care,

\* Lombardi Home Care and Long Term Care Nursing Home Care

*Your Assets & Income may be at risk if you or your spouse needs long term care. Plan in advance, your options are limited the longer you wait.*

Patti G's case did go to a Fair Hearing. The case was ultimately denied because a Fair Hearing date was requested a week late as Patti was not advised that a previously requested reconsideration was denied. Patti comments, "We asked why the Supervisor or caseworker did not contact us to let us know that a reconsideration was not approved and why the first caseworker took four months to look at the case. They replied that they did not know the reasons. At the Fair Hearing, it just seemed like the Suffolk County Social Service's representative was coached by the New York State Administrative Law Judge. I think they should call it an Unfair Hearing." Patti's next option is to use what little funds her dad has left to file an appeal of the denial in court. The nursing home can put the past due account into collections and what happens after that keeps Patti up at night. "My dad is a WW II Veteran and he would be horrified that he needed a government handout," Patti continues, "and to think this is how the government treats its taxpaying seniors, it is disheartening." As the Administrative Law Judge pointed out, "it is not about morality, it is about the law."

This is where attorneys can make a lot of money in filing Medicaid applications. In a casual conversation with one caregiver, it was revealed that she paid over \$20,000 for an attorney to file for nursing home Medicaid for her parent. She went on to say, "It is ironic that it could cost thousands of dollars to file a Medicaid application for a poor person."

As the future promises to have increased numbers of people affected by having to apply for Medicaid for aging parents or spouses, you can do something about it. Call your county legislator, senators and congressmen to have your voice heard. Changes must be made to make the Medicaid process fair for the taxpayers who pay for it. Suffolk County Legislator, Tom Cilmi, agrees, "This is a classic example of out of control bureaucracy brought about by multiple layers of government all putting their two cents in, while competing interests pull from different directions and elected representatives add to the problem with legislation and rhetoric and allow the red tape and confusion to continue because it's too difficult to deal with. The end result is a program which is inefficient, marginally effective and very expensive. Unfortunately, the truly needy and the taxpayers end up on the short end of the stick."

**Your Rights when applying for Medicaid, Informal Conferences or Fair Hearings can be found at the New York State website:**

[http://www.health.ny.gov/health\\_care/medicaid](http://www.health.ny.gov/health_care/medicaid)

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However, LISEC can provide research information and resources that may help you to make informed decisions.

## SIGN ALL DOCUMENTS AS P.O.A.

When a loved one enters a nursing home, signing the application as the "Responsible Party" can be costly. However as Wendy K. Goidel, Esq., practicing in Melville, NY points out, "If you are the caregiver non-spouse acting only as an agent and everything you sign has the initials P.O.A. for Power of Attorney after your name, then you should not be responsible."

If the facility accepts Medicare and/or Medicaid the federal Nursing Home Reform law prohibits it from requiring guarantee of payment from any non-spouse. "The agent must use the patients funds to satisfy medical bills," Wendy continues to say, "but Medicaid and or the nursing home can still make your life difficult and the representative may still have to hire an attorney. The process is unfortunately too complicated."

## Spousal Refusal, can a spouse refuse to pay?

Currently a spousal refusal clause may be able to shield the well (community) spouse from becoming impoverished. Couples whose assets exceed the \$113,640 threshold can use this or similar wording:

"On the basis of New York Social Service law, section 366(3)(a), I understand that it is my spouse's right to obtain Medicaid even though I find it necessary to refuse to contribute my own funds toward his/her care."

A letter stating a spousal refusal clause **must be filed at the same time** you file the Medicaid application. And while it may offer some protection today, a few counties are already trying to sue the well spouse. The future of the spousal refusal right could evaporate entirely as government fiscal policies change.

## Pre-needs and Pooled Income Trusts

Other options you may consider if you need Medicaid include a Pre-needs Trust or a Pooled-Income Trust. A Pre-needs Trust is basically a funeral escrow account. Eric Buehler of Overton Funeral Home in Islip says, "it is easy to open and you don't have to worry about losing your money when the time comes to use these funds as the money is held in a savings account."

A Pooled Income Trust is joining a charity when there is a need for home care and the patient has too much income. By joining a Pooled Income Trust, such as NYSARC, you give the charity your "overage" income that would have otherwise went to Medicaid. To be able to afford staying in your home, the charity then pays expenses like your rent or utilities directly. The best part of these Trusts is they can be utilized without an attorney.

## Steps To Avoiding A Crisis

- ◆ You can help yourself if you do not procrastinate. Medicaid has a five year "look-back" period so you need to prepare for how your health may change five years from now. Make sure you have legal documents like your Power of Attorney, Health Care Proxy and a Will.
- ◆ Save all financial records: Bank and brokerage account monthly statements as well deposit slips and canceled checks and Tax records, including 1099's which are required.
- ◆ Have annual "Support Team" meetings with your family representatives. Also work with a Certified Financial Planner™ who understands Medicare & Medicaid so assets are not spent on unnecessary legal fees.
- ◆ Make a difference and get involved. Call your elected officials who make Medicaid laws and tell them changes are needed!

*Written by Merri P. Ciano, CFP® Founder of the Long Island Senior Education Council*