

ELDER LAW UPDATE

Legislative, Regulatory & Public Policy Update
Changes to VA Pension



ANDERSON ELDER LAW

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MEDICARE UPDATE

Home Health Care Coming to Medicare Advantage, or is it?

Jimmo Settlement/Maintenance Medicare & Observational Status



MEDICAID UPDATE



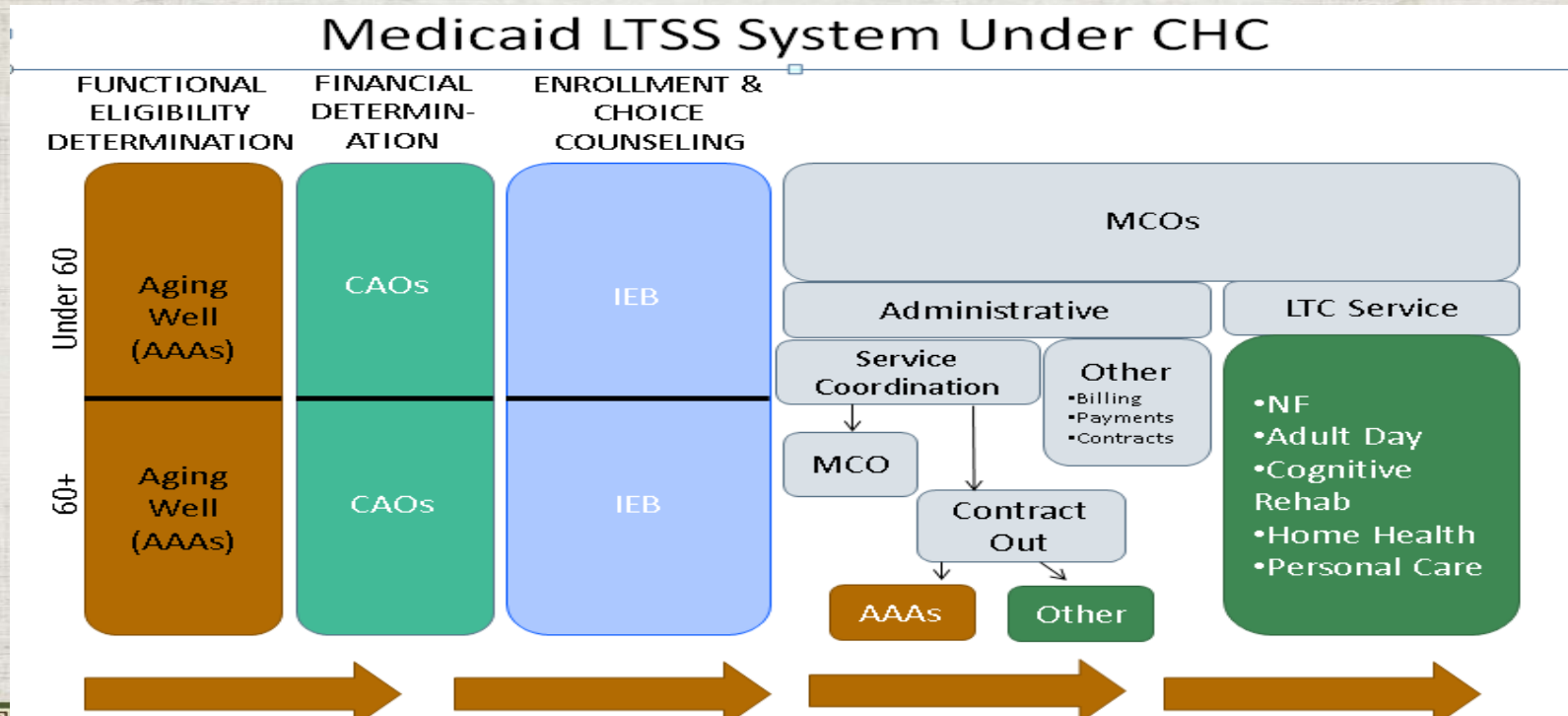
Managed Medicaid: CHC Rollout



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5/21/2017

Managed Medicaid: New Layers between PA & Consumers



MANAGED CARE ORGANIZATION (MCO)

- State Wide – 3 MCO's
 - Keystone First (also known as AmeriHealth Caritas)
 - PA Health & Wellness
 - UPMC Community Health Choices
- Each CHC is responsible to have
 - Network of providers
 - Held responsible for delivery of services
 - Measure & monitor how they are doing



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WHAT IF YOU ALSO RECEIVE MEDICARE?

MEDICARE PAYS FIRST, MEDICAID LAST!

YOU ARE A DUAL ELIGIBLE!



MEDICARE

TRADITIONAL/ORIGINAL MEDICARE VS. MEDICARE ADVANTAGE?

MCO WILL HAVE COMBO MEDICARE ADVANTAGE/MEDICAID.



MEDICAID ELIGIBILITY: ASSESSMENT #1 – NFCE?

IS THE APPLICANT NFCE – NURSING FACILITY CLINICALLY ELIGIBLE?

NEW TOOL: FUNCTIONAL ELIGIBILITY DETERMINATION (FED)



MEDICAID ELIGIBILITY: ASSESSMENT #2 – SERVICES NEEDED?

COMPREHENSIVE NEEDS ASSESSMENT BY MCO

USED TO DEVELOP A SERVICE PLAN



HOW TO JOIN CHC

IEB: INDEPENDENT ENROLLMENT BROKER
or
AUTO ENROLLMENT



HOW TO PICK A MCO

SELECTION OF MCO – PICK 1 OF THE 3

Network of providers (including PCP)

Approval for needed services

Service Provider Performance

Customer Service

Unique Offerings



MCO MUST PROVIDE WRITTEN CARE MANAGEMENT PLAN

**CARE MANAGEMENT – SET OF ACTIVITIES TO IMPROVE CARE AND REDUCE
NEED FOR MEDICAL SERVICES**

**COORDINATION OF CARE, ELIMINATION OF DUPLICATION, HELP TO MANAGE
HEALTH CONDITIONS**



**MCO MUST PROVIDE WRITTEN
PERSON-CENTERED SERVICE PLAN
(PCPS) FOR THOSE WHO NEED LTSS.**



MCO's MUST BUILD A NETWORK OF PROVIDERS

MUST YOU USE AN IN-NETWORK PROVIDER IF YOU HAVE MEDICARE?



CONTINUITY OF CARE

1/1/19 COMES, AND YOU ARE IN A NURSING HOME...



CONTINUITY OF CARE

1/1/19 COMES, AND YOU ARE RECEIVING
HOME AND COMMUNITY BASED SERVICES UNDER WAIVER



CONTINUITY OF CARE

HIRE & MANAGE MY DIRECT CARE WORKER?



COMPLAINTS, GRIEVANCES, AND FAIR HEARINGS

CARIE – AN ADVOCATES GUIDE TO COMMUNITY HEALTH CHOICES
MAY 2018



RESOURCES

- Are you covered under Medicare?
 - Do you have Traditional/Original Medicare?
 - Do you have Medicare Advantage?
- Who is your Primary Care Physician (PCP)?
- Who are your other providers?
 - What agencies provide services?
- Use Health Plan Comparison Chart
 - What extra benefits does this MCO provide?
- Contact Independent Enrollment Broker
- IEB
 - Compare MCO's
 - 1-844-824-3655
- APPRISE
 - Compare Medicare Options
 - 1-800-783-7067
- PARTICIPANT HOTLINE
 - 1-800-757-5042
- CARIE
- PA HEALTH LAW PROJECT



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VETERANS AID & ATTENDANCE UPDATE



U.S. DEPARTMENT OF VETERANS AFFAIRS

Health Care

Disability Compensation

Pension

Spouses, Dependents & Survivors

Memorial Benefits

Education & Training

Home Loans & Housing Related Assistance

Employment Services

Life Insurance



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ELIGIBILITY FOR PENSION UNLOCKS...

- **Other Than pension**
 - Free Inpatient Care
 - Free Outpatient Care
 - Eligible for Burial Benefits
 - Prescription Benefit
 - VA Hospital and Pharmacy
 - VA Facilities (Hospitals, Ambulatory Care, Community Based Outpatient Clinics, Vet Centers, Nursing Homes, Residential Treatment Programs)
- **Monthly Aid & Attendance Pension Amounts**
 - Veterans with no Dependents \$1,830/month
 - Veterans with 1 Dependent \$2,169/month
 - Widow or Widower with no dependents \$1,176/month



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WHO IS ELIGIBLE - NO CHANGE

- Veteran or Surviving Widow/Widower that:
 - Served at least 1 day during active war time
 - Served 90 consecutive days on active duty
 - After 1980, requirement is for 2 years of service
 - Received a Discharge (other than dishonorable)
 - Permanent and Total Disability
 - Insufficient Assets
 - Limited Income
- Submits a signed application



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BRIGHT LINE FOR ASSET TEST

- Old way
 - income shortfall, life expectancy...
- New way
 - CSRA – Assets up to \$123,600
 - But wait, income and UME factor into Assets!



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HOW EXACTLY IS NET WORTH CALCULATED?

- All countable assets + (annual gross income – allowable net UME)
- Example:
 - \$100,000 countable assets, plus
 - \$30,000 *[gross income of \$50,000 less UME (after 5% deduction) of \$20,000]*

\$130,000

What are the 2018 UME deductions? Depends on category!

Single Vet	\$659
Vet with 1 Dependent	\$863
Surviving Spouse	\$442



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BRIGHT LINE FOR ASSET TEST

- Assets beyond the CSRA are excess resources.
- Gifts from assets up to \$123,600 do not cause transfer penalties. (Stay tuned...)
- Other limited exempt assets
 - Family transportation vehicles & personal items
 - Prepaid burials & burial plots
 - Primary residence (up to 2 acres). (Stay tuned...)



DEFINITIVE TREATMENT FOR PRIMARY RESIDENCE

- Exempt and not countable asset, subject to:
 - Lot size of 2 acres
- Issue: House sold on 12/1/18 for \$200,000
 - Conversion of exempt asset to a countable asset.
 - Unless reinvested by end of calendar year 2018.
- Issue: Countable real estate subject to mortgage?
- Issue: Parent lives with child and house is empty...
- Issue: If the home is rented, the net amount would be countable income for IVAP (Income for VA Purposes)



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LOOK-BACK PERIOD FOR 36 MONTHS

- 36 Month Look-Back
 - When does Look-Back begin?
 - What is VA looking for during past 36 months: treatment of covered assets
 - What is a covered assets?
 - Those that are in excess of the CSRA.
 - Recall what's a CSRA under Medicaid?
 - Recall what is the CSRA (Net Worth Limit) in 2018? \$123,600
- What types of treatment may result in a period of non-eligibility?
 - Transfers for less than FMV (sale, gift or exchange)
 - Transfers into trusts or purchase of annuities (stay tuned).



IMPOSITION OF TRANSFER PENALTY

- Maximum 5 year limit on the transfer penalty
- Use one divisor each calendar year: Vet with one dependent. -- 2018 - \$2,169
- When does penalty begin?
- Can you cure the transfer penalty?
- Documentation needed?



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DEFINITION OF UME (UNREIMBURSED MEDICAL EXPENSES)

- Prior law: No statutory definition of medical expenses!
- **New Definition: Health Care Providers**
 - Can be a licensed individual (ex., MD, PA, NP, Psychologist, Chiropractor, RN, LPN, or OT, etc.); or
 - A Nursing Assistant or Home Health Aide who is supervised by a licensed health care provider.
- **New Definition: Medical Expenses**
 - Those that are medically necessary; that improve a disabled individual's functioning; or that prevent, slow, or ease an individual's functional decline.
 - Examples: OTC drugs, vitamins, supplements (prescribed by medical professional), incontinence supplies, service animals with vet care, mileage to and from doctors/hospitals, dental, eye and hearing, plus more.
- **New Definition: ADL's vs. IADL's**
 - ADL's include assistance with eating, bathing, dressing/undressing, toileting, incontinence care, transfer in-out of bed, ***and assistance with ambulation within the home.***
 - IADL's include assistance using telephone, shopping, preparing meals, housekeeping, laundry, medication reminders, transportation, etc.



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DEFINITION OF UME (UNREIMBURSED MEDICAL EXPENSES)

- **New Definition of Custodial Care (Sec. 3.272(b)(4)) – is regular assistance:**
 - With 2 or more ADL's (*to include ambulation*); or
 - Supervision because an individual with a physical, mental, developmental, or ***cognitive disorder*** requires care or assistance on a regular basis to protect the individual from hazards or dangers incident to his or her daily environment
- **Issue: Can an adult family member be paid under a Personal Service Contract to care for the claimant?**
 - Yes, if need custodial care
 - The final rule in Sec. 3.278(b)(7) does not require these persons to be licensed health care providers.



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DEFINITION OF UME (UNREIMBURSED MEDICAL EXPENSES)

- **New Definition: Nursing Home vs. Care facility**
 - Nursing Home - Extended care facility which is licensed to by state to provide skilled or intermediate-level nursing care, a nursing home care unit is a state VA home, or a DVA NH unit.
 - Care facility other than a NH: Facility in which a disabled individual receives health care or custodial care (such as AL, IL, ADC, or PC)
 - Must be licensed if required by State or county regulations, and
 - ***Must be staffed 24 hours per day with care providers who may or may not be licensed health providers.***
- **Issue: Independent Living Residences – Is the monthly expense an UME?**
 - **Fast Letter**
 - **Comment, not change?**



GAO POLICY RESULT: PURCHASE OF ANNUITY

- Purchase of an annuity that produces income:
 - Creates a transfer penalty.
 - Creates income that must be spent as part IVAP calculations
- Unless the result of fraud or unfair business practices creates a transfer for less than FMV, even though funds are returned over length of annuity.



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GAO POLICY RESULT: TRANSFER TO A TRUST

- Transfer into a trust cause transfer penalties
 - Limited exceptions for child is not capable of self-support AND Vet or spouse will not benefit.
- Living Trust?
- Transfer of RE (with less than 2 acres) into a Trust.
Is there a transfer penalty?



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EFFECTIVE DATE

10/18/2018

**Transfers prior to this date are not going to
cause a transfer penalty.**



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LINDA M. ANDERSON, JD, LL.M., CELA, VA ACCREDITED

- Linda is 1 of approximately 50 Certified Elder Law Attorneys in Pennsylvania, and has her Masters in Taxation from Villanova.
- Serves as the President of the Pennsylvania Association of Elder Law Attorneys (PAELA); received the 2012 PAELA Member of the Year Award.
- Invited member of the American College of Trust and Estate Counsel (ACTEC).
- Invited member of the Special Needs Alliance and is a member of the Association of Life Care Planning Law Firms.
- Selected by her peers as a “Super Lawyer” since 2009.
- Received Martindale Hubbell’s prestigious “AV” rating.
- Linda is a past Chair of the Elder Law Section of the Pennsylvania Bar Association (April, 2009) and continues to serve on the Elder Law Section Council.
- Serves as a co-chair of the Delaware County Bar Association, Elder Law Committee.
- Accredited attorney with the Department of Veteran Affairs.

OTHER STAFF MEMBERS

The staff members of Anderson Elder Law are highly trained and experienced in the specialized areas of Elder Law which include long-term care and special needs planning, as well as estate and trust planning and administration. But, more importantly our staff includes many members with significant life experiences related to our practice areas. These shared experiences are the foundation for our commitment to provide the highest quality legal services to protect our clients’ self-determination, family, and resources.



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