



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene

201 W. Preston Street • Baltimore, Maryland 21201

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – John M. Colmers, Secretary

JUL 02 2009

The Honorable Ulysses Currie
Chairman
Senate Budget and Taxation Committee
3 West Miller Senate Office Bldg.
Annapolis, MD 21401-1991

The Honorable Norman H. Conway
Chairman
House Appropriations Committee
121 House Office Bldg.
Annapolis, MD 21401-1991

The Honorable Thomas M. Middleton
Chairman
Senate Finance Committee
3 East Miller Senate Office Bldg.
Annapolis, MD 21401-1991

The Honorable Peter A. Hammen
Chairman
House Health and Government
Operations Committee
241 House Office Bldg.
Annapolis, MD 21401-1991

RE: SB 545 (Ch. 589 of the Acts of 2008) – Health Care Funds – Transfers and Disbursements

Dear Chairmen Currie, Middleton, Conway, and Hammen:

Section 4 of SB 545 (Ch. 589 of the Acts of 2008) required the Department of Health and Mental Hygiene to report to the Senate Finance Committee, the Senate Budget and Taxation Committee, the House Health and Government Operations Committee, and the House Appropriations Committee concerning the changes made to the nursing facility level of care standard. The information, which was due on November 1, 2008, was to include the number of additional individuals determined eligible for care as a result of the changes and the fiscal implications of the change. In November 2008, the Department reported to the committee members its early projections and indicated that more meaningful data was expected to be available July 1, 2009.

Background

In November 2007, the Court of Special Appeals decided the case of *Ida Brown v. DHMH*, in favor of an applicant to the Older Adults Waiver who had been denied eligibility. The Court decided that Maryland's medical eligibility standard was inconsistent with federal requirements. The standard applied to the Older Adults Waiver and other home and community-based services waiver programs, as well as Programs of All-Inclusive Care for the Elderly (PACE) and medical day care services, is linked to the medical eligibility standard for nursing homes, i.e., nursing facility level of care. Although the Department acknowledged that Maryland's standard for nursing facility level of care was more restrictive than that of most states, we appealed the decision because we believed that Maryland's standard was consistent with federal requirements.



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Notwithstanding the reasons for appealing the decision in *Ida Brown*, the Department decided to revisit its medical eligibility standard. On July 1, 2008, the Department changed its nursing facility level of care criteria to allow services to be covered for a broader range of individuals who have cognitive, functional, and behavioral needs. The transmittal describing the medical eligibility change is attached. In short, the new standard allows Maryland to serve more individuals both in nursing homes and in the community, therefore the Department's FY 2009 budget re-allocated \$17 million to serve more individuals due to the new nursing facility level of care standard. Funding for this re-allocation was realized through a reduction of nursing home reimbursement rates, though a portion of this amount would end up being paid to nursing facilities in the form of increased Medicaid days of care.

Additional Individuals Served

It was projected that the impact of the change in the level of care standard would be realized in the Program's payment of medical day care services and nursing facility services, since other home and community-based services waiver programs linked to nursing facility level of care are operating at their approved capacity.

As of July 1, 2008, 2,980 individuals were receiving services through the Medical Day Care Services Waiver. The most recent data available, as of May 31, 2009, indicate current enrollment is 3,499, an increase of 17.4 percent in eleven months. There has been a significant reduction in the number of medical day care participants denied medical eligibility at the time of annual recertification, dropping from 6.6 percent in FY 2008 to 2.1 percent during the equivalent period of FY 2009. Increased utilization of medical day care services is expected to increase Medicaid program expenditures by approximately \$5 million in FY 2009.

The increase may have been somewhat mitigated by the fact that, with implementation of the Medical Day Care Services Waiver on July 1, 2008, medical eligibility assessments are being completed by the Adult Evaluation and Review Services in the local health departments rather than by the medical day care providers. This change was implemented in order to ensure that the assessments were being performed reliably and objectively, consistent with the model approved by CMS for the Department's other home and community-based waivers.

If the trend continues, the waiver would reach capacity by the end of the next fiscal year with an impact of approximately \$15 million in FY 2010 and \$20 million annually in subsequent fiscal periods.

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The impact of the change in level of care for nursing facility services was projected to be small because individuals typically do not apply for institutional services unless they have a high level of need. The data show level of care denials totaled 190 (or 1.2% of applicants for nursing facility services) during the first eleven months of the fiscal year, compared with 324 denials during the equivalent period of FY 2008. The impact of this change, assuming the individuals approved received an average of 6 months of services during the fiscal year, is approximately \$5.1 million in FY 2009. No individuals were denied level of care at annual recertification during either fiscal period.

Although there is not a fiscal impact on these capped programs, it is worth noting that level of care denials were reduced significantly from FY 2008 to FY 2009 as follows:

- Older Adults Waiver applicant denials decreased from 15.8% to 6.6%. Recertification denials decreased from 3.0% to 0.4%.
- Living at Home Waiver applicant denials decreased from 19.6% to 5.6%. Recertification denials decreased from 2.5% to 1.5%.
- PACE applicant denials decreased from 33.3% to 21.0%. Recertification denials decreased from 4.0% to 0.0%.

If you have questions or need more information about the subjects covered in this report, please contact Anne Hubbard, Director of Governmental Affairs, at (410) 767-6481.

Sincerely,



John M. Colmers
Secretary

Attachment

cc: John Folkemer
Susan Tucker
Mark Leeds
Anne Hubbard
Sarah Albert, MSAR# 7331



Maryland Department of Health and Mental Hygiene

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MARYLAND MEDICAL ASSISTANCE PROGRAM

Nursing Home Transmittal No. 213

Hospital Transmittal No. 200

Medical Day Care Transmittal No. 61

July 1, 2008

TO: Nursing Home Administrators
Hospital Administrators
Medical Day Care Centers

FROM: *Susan J. Tucker*
Susan J. Tucker, Executive Director
Office of Health Services

NOTE: Please ensure that appropriate staff members in your organization are informed of the contents of this transmittal.

RE: Medical Eligibility for Nursing Facility Level of Care

The Maryland Medical Assistance Program is issuing this transmittal to describe the medical eligibility criteria used to determine the need for nursing facility services (NFS). This transmittal replaces Nursing Home Transmittal No. 135.

In order to receive Medicaid benefits for services in a nursing facility or through the Living at Home Waiver, Older Adults Waiver, Medical Day Care Waiver, or other service requiring the need for a nursing facility level of care,¹ an individual must meet certain medical eligibility criteria. The bases for these criteria are set forth in both federal and State regulations. In interpreting these regulatory criteria, the Program will use the following guidelines. Nursing facility services are services provided to individuals who, because of their mental or physical condition, require 1) skilled nursing care and related services, 2) rehabilitation services, or 3) on a regular basis, health-related services above the level of room and board. These services are not intended to supplant services that are provided by a hospital, IMD, or ICF/MR.

¹ Including the Model Waiver for Disabled Children and the Waiver for Adults with Traumatic Brain Injury, for which individuals may also qualify if they are medically eligible for special hospital services, and the Programs of All-Inclusive Care for the Elderly (PACE).

Skilled Nursing Services and Rehabilitation Services

An individual meets the medical eligibility requirements for NFS if a skilled nursing service or rehabilitation service is required on a daily basis.² Skilled nursing services and rehabilitation services are those ordered by a physician, and requiring the skills of technical or professional personnel such as registered nurses, licensed practical nurses, physical therapists, occupational therapists, and speech pathologists or audiologists on a daily basis. These services include, but are not limited to, the following:

1. Suctioning, not including routine oral-pharyngeal suctioning;
2. IV Therapy;
3. Pressure ulcer care for Stage 3 or 4 ulcers or wound care for surgical wounds/open lesions with one or more skin treatments (including pressure-relieving bed, nutrition or hydration intervention, application of dressing and/or medications);
4. Enteral or parenteral feeding with 26 percent or more of total calories or 500cc or more per day fluid intake via tube;
5. Ventilator care or other complex respiratory services, excluding aerosol therapy, spirometry, postural drainage or routine continuous oxygen usage;
6. Extensive physical therapy or training for restoration – not maintenance – of physical functioning, including walking, transferring, swallowing, eating, dressing and grooming; and,
7. Other services described in 42 CFR §§409.31 through 409.35.

Health-Related Services Above the Level of Room and Board

Individuals not requiring skilled nursing services or rehabilitation services may be determined medically eligible for NFS if they require, on a regular basis, health-related services above the level of room and board. These services are described as follows:

1. Care of an individual who requires hands-on assistance to adequately and safely perform two or more activities of daily living (ADLs)³ as a result of a current medical condition or disability; or
2. Supervision of an individual's performance of two or more ADLs for an individual with cognitive deficits, as indicated by a score of 15 or less on the Folstein Mini-Mental Status Evaluation, and who is in need of assistance with at least three instrumental activities of daily living (IADLs)⁴; or
3. Supervision of an individual's performance of two or more ADLs combined with the need for supervision/redirection for an individual exhibiting at least two of the

² For purposes of determining the frequency of skilled nursing or rehabilitation services, "daily" is defined as 5 to 7 days per week.

³ For purposes of this transmittal, ADLs consist of bathing, dressing, mobility, toileting/continence, and eating.

⁴ For purposes of this transmittal, IADLs consist of telephone use, money management, housekeeping, and medication management.

following behavior problems: wandering several times a day, hallucinations/delusions at least weekly, aggressive/abusive behavior several times a week, disruptive/socially inappropriate behavior several times a week, and/or self-injurious behavior several times a month.

Individuals who do not demonstrate the clinical need for health-related services described above may submit additional information for clinical review to demonstrate eligibility under the applicable federal and State regulations.

Questions regarding issues discussed in this transmittal should be directed to the Staff Specialist for the Nursing Home Program at 410-767-1736.

cc: Adult Evaluation and Review Services
Area Agencies on Aging
Hopkins ElderPlus
KePRO
League for Excellence in Adult Daycare
Maryland Association of Adult Day Services
Maryland Department of Aging
Mental Hygiene Administration
Nursing Home Liaison Committee
The Coordinating Center