**Medicaid Home Care, Times have Changed**

By Brian Andrew Tully, JD, CELA

Over the past year we have seen a major shift in the way home care is provided to those who are on Medicaid. The New York State Department of Health has now made it mandatory for individuals to join a Managed Long Term Care Plan if they have both Medicaid and Medicare, need home care, adult day health care, or other long term care for more that 120 days, and are 21 years of age or older. Managed Long Term Care Plans provide services and support to people with long-lasting health problems or disabilities. In the past, home care services were administered by the Department of Social Services. A Nurse from the Department of Social Services would assess the individual’s needs and determine the amount of hours for care. Once hours were determined, an individual would contract with a Home Care agency approved by Medicaid and start receiving services. Now, Managed Care Plans will be administering and approving the amount of home care hours needed. Each plan has its own group of home care agencies, professionals and providers. A person-centered Plan of Care is supposed to be developed. An individual will be assigned a Care Manager who will then assist in developing a Plan of Care that should meet the individual’s specific needs. All Plans will provide Medicaid home care and other community long term care services that can include nursing home care, transportation to medical appointments, durable medical equipment, adult day health and social model day care, physical, occupational, speech or other therapies if indicated. Some Plans also provide Medicare services, including doctor and office visits. If you join a plan that covers Medicare health services, then you must get your care from that Plan’s doctors and medical specialists. It is important to note that you are not required to join a plan that covers Medicare services. You can choose to keep your current Medicare or other health insurance.

In Nassau and Suffolk County there are currently 14 Medicaid Managed Care Providers (MLTC) that provide home care benefits. In addition, there are 5 Medicaid Advantage Plus providers that, in addition to providing and managing the home care services, will also manage one’s Medicare benefits, and 1 Pace Provider that provides homecare services and manages one’s Medicare benefits mostly in day centers and clinics. For a complete list of providers please visit <http://nymedicaidchoice.com/choose/find-long-term-care-plan>.

With so many choices, picking a plan can be quite a daunting task for an individual and family. Helping families navigate this maze will now be a new and important task for any client centered Elder Law firm and it is therefore important to help families establish clear expectations of what they can expect from their initial contact with Managed Care Providers, the assessment process and how to best deal with grievances if a client or family is unhappy with the current care being provided.

With regard to the initial contact, Managed Care Providers are only allowed to screen out potential enrollment with regard to establishing residence in the plan’s approved area, or the plans specific age requirements. In addition, a Managed Care Provider should not engage in any communication that infers the plan could impose limitations on provision of services, or requires specific conditions of family or informal supports. A plan cannot obligate informal caregivers to provide backup assistance for care. A Managed Care Provider should never use a phone or web-based inquiry to substitute for an actual assessment. Since continuity of care is a major concern for many individuals wanting to keep their current aide and home care agency, it is also important to note that all Managed Care Providers are required through March 1, 2014 to contract with all the home care agencies that have contracts with the local Department of Social Services. If a Managed Care Provider does not have a contract with vendor home care agency, a client/family member should ask the Managed Care Provider to contract with that vendor. A Managed Care Provider that refuses to allow the client to keep their aide should call the state to file a complaint. Individuals can file a complaint with the Department of Health at 866-712-7197. (Office of Health Insurance Programs Managed Long Term Care Policy 13.04 and 13.10).

It is important for families to know that the Managed Care Providers are competing for business. Clients and families should feel empowered to know that they can shop the market. They should demand full disclosure and feel satisfied that all their questions have been answered. Families should insist on a Written Plan of Care before signing any Enrollment Agreement and families should not feel pressured to sign up on the spot.

The initial assessment of the applicant will be completed by a Nurse. Despite the use of the same tool, a computer generated assessment called the Uniform Assessment System of New York (UAS-NY), the amount of care provided can vary from Plan to Plan. The UAS-NY will collect demographic information, diagnosis, living arrangements, and functional abilities. Depending how one answers each question, this assessment will ultimately lead to the determination of the amount of hours in an individual’s written Plan of Care. Therefore, it is important to schedule the assessment when a family member or experienced advocate is present. This individual should be able to speak to the functional abilities of the applicant. Generally the UAS-NY will look to how an individual performs tasks over a 3 day time frame. If an individual is feeling particularly good that day it is extremely important that they share with the nurse how they have been functioninong over a period of time.

With the current changing landscape of Medicaid and Home Care it is also important to note that the current care services have not changed despite rumors to the contrary. There has been no change in the amount or types of services under Managed Long Term Care (MLTC) versus the traditional Personal Care or Certified Home Health Care Agency programs. For example, if a person was medically appropriate for 24 hour care (even if this care requires two 12 hour shifts) then a person should still be able to receive this level of care. A Managed Care Provider, when assessing for hours must provide adequate hours to ensure safe performance of an individual’s activities of daily living. If an individual cannot direct their own care, a person can still be eligible for services if someone else can direct that care. That person need not live with the person receiving services as per the NYS Department of Health Office of Health Insurance-Guidelines for the Provision of Personal Care Services in Managed Care.

A Managed Care Provider cannot enroll an applicant until they have been approved for Community Medicaid services. If a Managed Care Provider has enrolled an applicant before the 20th of the Month, services will begin the next month. Any services approved after the 20th of the month will be delayed an additional month. Services always begin the first of a month. It is important to note that any applicant already receiving Community based Medicaid services from the Department of Social Services through the Personal Care Aide Program or the Long-Term Home Health Program (Lombardi) must continue to receive their current services for at least 90 days or until a care assessment has been completed, whichever is later (Office of Health Insurance Programs Managed Long Term Care Policy 13.13)

Once services are in place, if an individual receiving care is not happy with their services, there are steps one can take. First, they can change Managed Care Providers. This can be done once a month. It is important to stress once again, that an applicant should get in writing the Plan of Care to be provided by the new Managed Care Provider prior to disenrolling in any plan. Furthermore, if an individual is unhappy with the care being provided they can also file a grievance. A grievance is a complaint that can be made directly with the Managed Care Provider about the quality of care, services or treatment received or about communications with the plan.   To file a **grievance** one can write, call or appear in person. The Grievance process is written in the Managed Care Provider’s handbook.

If one is unhappy with a Managed Care Provider’s decision to deny, reduce, or end services, an individual has the right to ***appeal***.  The first step is to make an **internal appeal** to the Plan.  It is important to make this internal appeal as soon as possible, preferably within 10 days of receiving notice and no longer than 45 days. If requested within 10 days of receiving notice, an individual can continue to receive the current care in place by stating that they wish to have their “**aid to continue”** during the internal appeal process. If they are not satisfied with the plan’s internal appeal decision, one can ask for a ***Fair Hearing***.  At a Fair Hearing, also known as an administrative hearing, an individual or advocate can explain to an Administrative Law Judge, assigned by the State Department of Health, why the plan’s decision is wrong. A decision will then be made by the Administrative Law Judge. During this process, there should be no reduction in services. A request for a Fair Hearing can be made by phone, fax, in writing or online.

By mail:

New York State Office of Temporary and Disability Assistance  
Office of Administrative Hearings  
P.O. Box 1930  
Albany, NY 12201-1930

By Phone: 1 (800) 342-3334

Online: <http://otda.ny.gov/hearings/forms/request.pdf>

An individual can also make a separate complaint to the New York State Department of Health’s Bureau of Managed Long Term Care. Their phone number is 1-866-712-7197

In Conclusion, these changing times with regard to how Community Medicaid services are now being delivered will require a tremendous amount of public education, advocacy and intervention on the part of families and elder care professionals. Elder Law Attorneys on the frontline assisting and preparing Medicaid applications for their clients need to not only guide their clients through this confusing maze, but also insure that their clients are getting the best services available to them.

Brian Andrew Tully, JD, CELA is the founding partner of Tully & Winkelman, P.C. You can learn more about him and his elder law firm at [www.elderlaw.pro](http://www.elderlaw.pro) or by calling (631) 424-2800.