



March 13, 2020

Via email to donna.frescatore@health.ny.gov

Dear Ms. Frescatore:

We would like to thank you for your tireless efforts on behalf of Medicaid beneficiaries in New York State during the COVID-19 emergency. Thanks to you and your dedicated staff, our New York State of Health (NYSOH) Marketplace is able to effectuate real-time enrollment of community (MAGI) applicants into Medicaid on a real-time basis. In addition, unlike most other states, we are able to provide real-time enrollment of immigrants into Emergency Medicaid, if their status precludes them from enrolling into the regular Medicaid program.

Our organizations would like to propose additional measures we believe would ensure that low- and moderate-income New Yorkers are enabled to secure and maintain comprehensive screening and treatment during the coronavirus crisis.

Specifically, we would ask you to consider the following recommendations, with DOH requesting a federal waiver if necessary:

Access to Testing and Treatment

- Establish a COVID-19 “diagnosis and treatment fund” to cover the cost of diagnosis and treatment of COVID-19 for those who are uninsured or underinsured, including all health care and home care workers. This fund would be particularly helpful for NYSOH enrollees who have deductibles and coinsurance that pose a barrier to accessing care.
- Promulgate guidance that clarifies that Emergency Medicaid will cover all costs and subsequent treatment of COVID-19 for low-income immigrants who are otherwise ineligible for Medicaid.
- Adopt presumptive Medicaid eligibility for those who are ineligible for on-line enrollment through the NYSOH (i.e. non-MAGI individuals) who are presenting for testing or treatment of COVID-19.

Managed Care Plans

- Issue a Temporary Moratorium on Reductions – Direct Medicaid managed care plans (including Managed Long Term Care plans) to halt any reductions or discontinuances of benefits and services including but not limited to home care hours and prescription drugs, supplies, and services for ongoing conditions.
 - Instruct Medicaid managed care plans (including Managed Long Term Care plans) not to implement pending reductions or discontinuances.
- Issue a Temporary Moratorium on Disenrollments – Direct plans to not disenroll members for reasons other than moving out of the service area (e.g. nonpayment of spend-down or being in the hospital for 45 days) and suspend MLTC disenrollments for long term nursing home stays

Medicaid Eligibility and Enrollment

- Streamline enrollment – Permit phone or online Medicaid enrollment for the Disabled, Aged, and Blind population who are ineligible for enrollment on the Marketplace, and waive documentation requirements.
- Spend-down recipients – Activate Medicaid for anyone found eligible with a spend-down so that they can enroll in an MLTC plan or access immediate need services, or if needed for testing or treatment for coronavirus.
- Suspend discontinuances – Do not initiate or implement Medicaid discontinuances, and restore Medicaid where a discontinuance effective on or after the date the State of Emergency was declared on March 7, 2020.
- Expand Automatic Recertification Policies – Consider expanding automatic recertification for individuals that are ineligible for the current automatic renewal process for as long as the public health emergency is ongoing. Allow automatic renewal for the Non-MAGI population.
- Advocate with OTDA for automatic Fair Hearing adjournments and no defaults.

Special Considerations for Home Care Recipients

Home care recipients are among the most vulnerable Medicaid recipients in New York State. Most if not all are particularly vulnerable to becoming seriously ill if infected with COVID-19. If the spread of the virus contributes to a shortage of personal care workers, many could be left without services or could be forced into nursing homes where the virus has had particularly deadly consequences. Although we make several specific suggestions below, we urge DOH to take all necessary actions including increasing rates, lifting network restrictions, and implementing broader coordination

among plans and agencies to prevent a crisis for home care workers and recipients. Our suggestions about how to keep these beneficiaries safely at home include the following:

- Direct Medicaid managed care plans (including Managed Long Term Care plans) to suspend the six-month in-person reassessments. Direct plans to continue to conduct assessments on new requests for services, requests for increased services, and where there is an indication of a change in condition that may require an increase. Where technology is available, permit use of telehealth for assessments.
- Instruct Medicaid managed care plans (including Managed Long Term Care plans) to allow clients to convert adult day care hours to personal care hours upon request
- Instruct Medicaid managed care plans (including Managed Long Term Care plans) to authorize temporary increases in home care hours to allow for personal care aides or CDPAP personal assistants to provide additional services due to coronavirus prevention (e.g. more time to do errands that home care recipient would otherwise do; additional time for cleaning of home or personal hygiene of recipient)
- Instruct Medicaid managed care plans (including Managed Long Term Care plans) to authorize the provision of additional hygiene and cleaning supplies to all personal care and CDPAP recipients
- Enrollment in MLTC plans – In the interest of limiting exposure with multiple nursing visits for the enrollment assessments, auto-enroll individuals who have been deemed eligible for Managed Long Term Care through a conflict-free assessment into an MLTC plan. Use the NYMC CFEEC assessment as the basis for establishing the service plan, instructing the NYMC nurses to recommend the plan based on their assessment. This will obviate the need for a plan nurse to do the pre-enrollment assessment and post-enrollment assessment.

Other

- Ensure that all nursing home residents have phone access.
- Provide information about contingency plans that are in place if DOH or plans are significantly understaffed and facing increased demand over the phone.

Thank you again for your leadership and dedication to New York's Medicaid program. We would appreciate the opportunity to speak with you or your staff to discuss implementing these and other proposals and will make ourselves available at your convenience. We wish you and your staff good health during this difficult time.

Sincerely,

Rebecca Antar Novick, Director, Health Law Unit, The Legal Aid Society

Valerie Bogart, Director, Evelyn Frank Legal Resources Program, New York Legal Assistance Group

Elisabeth Benjamin, Vice President, Health Initiatives, Community Service Society of NY

Lara Kassel, Coordinator, Medicaid Matters New York

Fred Riccardi, President, Medicare Rights Center

Paula Arboleda, Deputy Director, Public Benefits & LGBTQ Advocacy, Bronx Legal Services

Amanda Gallipeau, Health Law Manager, Empire Justice Center

cc:

Lisa Sbrana

Lana Earle

Jonathan Bick

Gabrielle Armenia

Danielle Holahan

From: Valerie Bogart
Sent: Monday, March 16, 2020 2:24 PM
To: (NYS DEPT. OF HEALTH);
Subject: RE: Letter from health advocates

Greetings -

Since we sent you a letter last Friday, we've become aware of some CMS guidance that lends support to some of our requests and also raises some additional areas where flexibility is needed in this emergency.

1. [COVID-19 FAQs for State Medicaid and CHIP Agencies](#) (Mar. 12, 2020)
2. Medicaid and CHIP Flexibilities and Authorities in the Event of a Disaster (August 2018) ("CMS Disaster Guidance")
<https://www.medicaid.gov/state-resource-center/downloads/mac-learning-collaboratives/medicaid-chip-inventory.pdf>

Types of flexibility supported by above guidance that we requested in letter --

1. **Suspending discontinuances and expand automatic renewals** are authorized by this recently updated CMS guidance -- [COVID-19 FAQs for State Medicaid and CHIP Agencies](#) (Mar. 12, 2020) -- where the public health emergency prevents timely submission and processing of Medicaid renewals. "In such cases, **the state must continue to furnish Medicaid to eligible beneficiaries until they are determined ineligible.**" 42 CFR 435.930. See Q&A No. B.3 in the FAQ, which further states that a state plan amendment is not needed. As Manatt LLP recently said in its bulletin, [State Medicaid and CHIP Strategies to Respond to the COVID-19 Public Health Crisis](#), "under current Medicaid regulatory authority states can temporarily delay renewal processing in emergency situations. This potential action may be necessary to maintain continuity of coverage in the face of a potential surge in new application volume as consumers increasingly seek health coverage in response to the unfolding public health crisis, and with diminished agency capacity to process applications and renewals." The [Manatt bulletin](#) further states, "**Coverage for the Uninsured.** Separate and apart from the need to respond to diminished workforce capacity, states may consider suspending renewal processing to minimize churn and ensure continuity of health coverage during the public health emergency."

Also see CMS DISASTER GUIDANCE Section A3 on Redeterminations (p. 9) and Adverse Actions (p. 20)

2. **Moratorium on reductions of home care and other managed care services**, and suspension of the requirement that MLTC members be reassessed twice annually – see [COVID-19 FAQ For States –](#), "Under Medicaid managed care, states may develop the specific standards and criteria that best meet the needs of their program, including

accelerated or relaxed requirements during times of emergency. Federal law does not prohibit or limit states from requiring managed care plans to temporarily suspend prior authorization requirements, extend prior authorizations through the termination of the emergency declaration, and expedite processing of new prior authorizations with flexibility in documentation (e.g., physician signatures).”

See CMS Disaster Guidance p. 22, with authority to “require managed care plans to extend prior authorizations through the termination of the emergency declaration” and temporarily suspend prior authorization requirements.

The [Manatt bulletin](#) supported these provisions with the goal to “**Ensure Timely Access to Health Care Services**. In an effort to ensure that individuals who are sick receive timely health care, states should also consider suspending existing prior authorization or utilization management policies that may impede access... States may also require Medicaid and CHIP managed care plans to extend existing prior authorizations for services like home care, oxygen, etc. in the event of disruption to prior authorization activities. Such a modification requires an administrative directive to plans. ..”

3. **Presumptive Eligibility** – see CMS Disaster Guidance p. 8 citing 42 CFR Sec. 435 Subpart L
4. **Simplify applications and verification** – CMS Disaster Guidance p. 11-12 (allowing self-attestation and post-enrollment verification, including self-attestation of resources (this could be for those seeking long term care who now are not allowed to attest) and of medical expenses incurred to meet spenddown

We ask you to consider these additional temporary changes not listed in our letter but authorized in the [CMS Disaster Guidance](#) –

- a. MANAGED CARE AND MLTC:
 - i. Waive EXHAUSTION requirement for managed care/MLTC (p. 21) and extend time limits to file appeals
 - ii. Temporarily suspend out of network requirements (p. 23)
 - iii. Temporarily suspend prior authorization requirements and extend prior authorizations thru emergency (p. 23)
- b. NURSING HOME:
 - i. Suspension of transfer of asset rules for nursing home eligibility (p. 7)
 - ii. State excused from reducing payment to nursing home by amount of the NAMI (p. 14)
- c. Temporarily delay acting on certain changes in circumstances affecting Medicaid eligibility (p. 10)

- d. Establish 12 month continuous eligibility for children or adults (p. 10) (not sure if this is solely MAGI, which of course we have or if it can be non-MAGI as well)
- e. Suspend or Modify application of copayments (we know they have been waived for testing for the coronavirus but this does raise an issue of targeting copayments based on a particular diagnosis, which is not permitted under comparability rules, so all copayments for lab tests and other services for which waived for COVID19 should be waived)(p. 14-15)
- f. AUTHORIZATIONS – Suspend prior authorization for fee for service, and extend authorization periods – which would include IMMEDIATE NEED personal care and CDPAP (p. 18) and other services requiring prior auth. –
 - i. WAIVE requirement for physician’s order for these services, as required for Immediate need or for PCS/CDPAP for people excluded from managed care or MLTC. We have already heard of individuals unable to see a physician to complete a Physician’s order (M11q)
- g. HOME CARE AIDES shortage and CDPAP – with limited availability because of virus:

Family members and friends will need expedited enrollment as CDPAP personal assistants when the scheduled aides are unavailable. The Guidance at page 24-25 allows temporarily waiving and streamlining some requirements like waiving criminal background checks, which are impediments.

We appreciate your considering these requests in this difficult time.

Valerie Bogart

Director, Evelyn Frank Legal Resources Program

Pronouns (She/Her/Hers)

7 Hanover Square | New York, NY 10004

t: 212.613.5047 | f: 212.714.7450

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INTAKE CONTACTS: tel 212.613.7310 or eflrp@nylag.org

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