Medicaid & MSP: Must apply for Social Security and Enroll in Medicare

Medicaid applicants and recipients can be required to pursue potentially available income, including Social Security, as a condition of receiving Medicaid, and also to apply for Medicare. (42 CFR 435.608; 18 NYCRR sec. 360-2.3 (c)(1); Medical Assistance Resource Guide [MARG] pp. 488-489.)

Contents of this article:

1. Must apply for Medicare - New requirements November 2017

NYS and NYC Directives and Alerts - Oct. 2017 - 2018 and new Outreach Program Aug. 2018-19

In Oct. 2017, NYS DOH issued 17 OHIP ADM-01: "Medicare Enrollment at Age 65" (PDF) (Click here for html version and attachments). This ADM further implements NY Social Services Law Sec.366(2)(b)(1) which states: "Any person who is eligible for, or reasonably appears to meet the criteria of eligibility for, benefits under title XVIII of the federal social security act [Medicare] shall be required to apply for and fully utilize such benefits in accordance with this chapter." Also see NYS DOH Medicaid Reference Guide (MRG) page 415.

The ADM **requires for the first time certain Medicaid applicants and beneficiaries to submit proof that they applied to enroll in Medicare** - for new applicants at the time of application, or at the time of renewal, for current recipients. New applicants and people receiving renewals in NYC will receive this insert in their application or renewal package.

In December 2017, NYC HRA issued this Medicaid Alert implementing the State ADM in NYC. On January 10, 2018, NYC HRA issued a CORRECTED Medicaid Alert revising the notices sent in December 2017 (See below).

From November 2017 - Feb. 2018, the State directed local Medicaid offices to discontinue Medicaid of recipients who, after receiving a notice telling them that they had to apply for

Medicare, did not submit proof that they had enrolled in Medicare, or that their Medicare enrollment was rejected, After threatened litigation by Legal Services NYC, Medicaid coverage was restored for **all 2,204 NYC Medicaid recipients** whose Medicaid coverage had been terminated in March 2018 because they did not respond to these notices. These events and the mailing to over 30,000 Medicaid recipients that led to the advocacy resulting in the restoration of services is described more below.

August 2018 NEW OUTREACH PROGRAM - In August 2018, the State contracted with a statewide network of non-profit "Facilitated Enrollers" (FE) to conduct outreach to assist consumers in meeting the requirement to apply for Medicare as a condition of Medicaid eligibility, This was announced in 2019 LCM-01 - Outreach to Assist Medicaid Recipients with Applying for Medicare

- Attachment I - 19 OHIP/LCM-1 - **Listing of Facilitated Enrollers**
- Attachment II - 19 OHIP/LCM-1 - "Apply Today" Postcard (PDF)
- Attachment III - 19 OHIP/LCM-1 - Standard Protocol for Local District and Facilitated Enroller (PDF)
- Attachment IV - 19 OHIP/LCM-1 - Proof of Medicare Application Transmittal & Confirmation Receipt Form (PDF)

Under the 2019 LCM-01, " Each month, **the State identifies recipients who will be turning age 65 within the next three months**, or, **who have been diagnosed with ESR**D, and sends a letter informing the individuals about Medicare benefits. The letter advises the individual how to apply for Medicare, that it is a condition of Medicaid eligibility to apply for Medicare, and that the Medicaid program may pay or reimburse the cost of the Medicare premiums." Since August 2018, the Department has forwarded the monthly listing of identified individuals to the FE agencies. The FEs contact the individuals by phone, using approved scripted language, when a valid phone number is provided, and by mail using an approved postcard (Attachment II) when a phone number is not available or when the individual cannot be reached by phone. Each agency will add their contact information to the postcard.

The LCM places the responsibility on the FE to submit proof of the application to the local Medicaid district. This is a departure from the earlier policy, which put the burden solely on the Medicaid recipient to navigate the Medicare enrollment process, or demonstrate that they were not eligible for Medicare. Over 2200 NYC recipients had Medicaid discontinued because they could not navigate this process alone.

The LCM does not say whether Medicaid will be discontinued for anyone who did not apply for Medicare after the FE contacted them and offered help in applying. This remains to be seen. If a client receives a notice that Medicaid is being discontinued because they did not apply for Medicare, a**sk for a Fair Hearing right away and contact an organization in WHERE TO GET HELP below.**

Background - Initial DOH Policy led to Discontinuance of Medicaid in

March 2018 for over 2200 of about 30,000 Medicaid Recipients age 65+ who did not respond to letters send in late 2017 telling them they had to enroll in Medicare.

From November - February 2018, about **30,000** Medicaid recipients over age 65 who do not have Medicare received letters that they must return proof of application for or enrollment in Medicare to their local Dept. of Social Services, in order to retain Medicaid. The letters were sent only to people in the community, not nursing homes. Those in nursing homes will need to submit proof that they applied to enroll in Medicare with their annual renewals. After the first batch of letters were sent to NYC recipients in December 2017, a corrected notice was sent on January 6, 2018, after the State recognized errors in the first letters, including the fact that no address or return envelope was included in the letter to submit proof of Medicare application. Those who did not respond received Notices of Intent to Discontinue Medicaid effective March 6, 2018.

MARCH 13, 2018 - After â â â advocacy by Legal Services NYC, including a threat of litigation, the State DOH agreed **to restore Medicaid coverage to all 2,204 NYC Medicaid recipients** who had coverage terminated on March 6, 2018 because they did not respond. The rest of the letters were delayed after consumer advocates requested that the State revise these letters, to include information on the right to request an extension of time and how to do so (see MAP 3062c Request for Extension or call Medicaid Helpline 1-888-692-6116.), the right to request help with applying for Medicare as a reasonable accommodation of disability, assurance that notice is translated into the recipient's primary language.

The notices were mailed to Medicaid recipients who are:

1. **age 65+** and
2. **Do not have EITHER Medicare Part A *or* Part B** (which means they likely do not receive Social Security benefits, since Medicare is automatic for people age 65+ receiving Social Security)(They either don't receive Social Security because they did not do enough covered work for insured status or because of immigration status),
3. **Are US Citizens or have been Permanent Resident Aliens (have a "green card") for 5+ years.**

NOTE about immigration status: PRUCOL immigrants were excluded from this mailing, since they are not eligible for Medicare. However, some immigrants may not be PRUCOL but are still not Lawful Permanent Residents. They may have legal immigration status to qualify for Medicaid, but are not eligible for Medicare. According to HRA, they must still apply for Medicare even though they will be denied based on their immigration status. HRA maintains that only the SSA can determine eligibility for Medicare, not HRA.

4. **Have incomes below the Medicare Savings Program SLIMB level** (120% Federal Poverty Level)
   2017 ($1206 singles / $1624 couple) 2018 ($1214 singles/ $1646 Couple)

NOTE about income: If income is above 100% FPL (2018 $1012 single $1372 couple) but below SLIMB, the recipient will not be eligible for premium-free Part A. They should apply for Part B and "conditional" Part A, known as the "Part A Buy-In Program." In this program, enrollment in Part A is conditioned on being approved for QMB by DSS/HRA. (QMB is one of the 3 Medicare Savings Programs). Since they won't be approved for QMB, they will not be enrolled in Part A for free, and the conditional enrollment in Part A will not go through. This way they will not be billed for the high Part A premium ($422 in 2018). They will still be eligible for Medicaid.

5. SSI RECIPIENTS age 65+ should NOT be receiving these notices! If they are it is a mistake. They should automatically be enrolled in Medicare behind the scenes by the State through the "Buy-In" Agreement between NYS and the federal CMS. Call one of the contacts below in Where to Get Help.

WHERE TO GET HELP

- Call the **Medicare Rights Center** at 1-800-333-4114. See their **Tip Shee**t
- **If client receives/received home care** through a Medicaid managed care or MLTC plan and is losing or lost Medicaid because of Medicare enrollment, they can call ICAN - OMBUDSPROGRAM FOR FIDA & MLTC Phone: 844-614-8800 TTY Relay Service: 711 Website: icannys.org ican@cssny.org
- In **New York City, call the Legal Service NYC Access Line** at **917-661-4500**, especially if Medicaid coverage is inactive because of not meeting the Medicare enrollment requirement.
- Get help from your local legal services program - see www.lawhelpNY.org or

Advocacy Tips

The **Medicare Rights Center created a Tip Shee**t which explains this enrollment effort and provides helpful information on Medicare enrollment for those with Medicaid and no parts of Medicare. The Tip Sheet explains how they can enroll in Medicare without having to pay a premium.

- Some recipients can enroll in premium-free Medicare Part A and Part B -- these are those who are Qualified Medicare Beneficiiaries, (QMB) with incomes under 100% FPL. See MRC fact sheet on how to enroll in free Medicare Part A through the "Part A Buy-In Program." Also see the SSA POMS on QMBs and Part A.
- Others do not qualify for free Part A, but can enroll in Part B without a premium. These are SLIMB's - a Medicare Savings Program for people whose income is between 100 FPL - 120% FPL.
- Clients going to the SSA to apply for Medicare should bring the notice from DSS/HRA requiring them to apply, and bring the Medicare Rights Center **Tip Shee**t to help explain to the SSA why they are applying for Medicare. Don't forget they need only APPLY for Medicare - and show proof that they applied to HRA/DSS.

â Recommended Follow-Up for Consumers Newly Enrolled in Medicare:

Consumers newly enrolled in Medicare may need additional help with the transition:

- counseling on their Medicare Part D (prescription drug) coverage options - help select a plan that covers all of her drugs, rather than wait to be auto-assigned randomly to a plan that may not cover her drugs; also see Part D info
- if client was in a Medicaid "mainstream" managed care plan, she will now be disenrolled from that plan once she has Medicare. She will need counseling on whether to enroll in a Medicare Advantage plan or whether to use Original Medicare and enroll in a Part D plan; and
- For those consumers who received Medicaid home care through a Medicaid managed care plan (MCO), ensure they are transferred from their Managed care plan to an MLTC plan without a disruption in their personal care services.
- See Medicare Rights Center info for people new to Medicare.

2. Must apply for Social Security and other "Potentially available income"

This means entitlement benefits like annuities, pensions, retirement and disability benefits, veterans benefits and unemployment compensation. It does NOT include cash support. (MARG p. 561; 99 ADM-05)

The NYS Department of Health recently clarified in GIS 13 MA/005 - Buy-In for Individuals with Medicare who have not applied for Social Security Retirement Benefits [PDF] that this requirement to pursue potentially available income applies to Medicare Savings Program (MSP) applicants/recipients who are eligible for Social Security retirement benefits. These individuals cannot delay enrollment in Social Security and still qualify for MSP. This rule affects some people who would otherwise prefer to delay receipt of Social Security until after age 66 since the amount of the benefit increases for every year of delay until age 70. But one doesn't have that option if one wants Medicaid or an MSP.

EXCEPTION announced Oct. 2016: If the client is working full-time, they do NOT have to apply for Social Security benefits at age 62 or later. This was announced in GIS 16 MA/012, "Applying for Entitlement Benefits," which states, "When an A/R is still working full time, districts must not require the A/R to apply for Social Security Retirement benefits."

Enrolling in a pooled supplemental needs trust is an option to reduce countable income to qualify for Medicaid and/or MSP (re MSP see See Fair Hearing No. 4399513P (Nassau Co., Jan. 31, 2006)(available in WNYLC Online Resource Center, Fair Hearing Database, free registration required) .

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