# Managed Long-Term Services and Supports (LTSS) and Service Authorizations

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# Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

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# About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

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# About Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

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# Agenda

- Transitioning to Medicaid Managed Care
- Health Risk Assessments and LTSS Assessments
- Voluntary Assistance
- Expediting Start Date for HCBS
- Challenging Service Authorizations
- Managed Care Appeal Rights
- Payment through Member's Cost-Sharing

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# Introduction

- Growing popularity of Medicaid managed care generally and for long-term services and supports
- 24 states offer MLTSS in 2017 compared to 16 in 2012
- Serves 1.8 million individuals
- Over half require mandatory enrollment

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# Transitioning to Medicaid Managed Care: Consumer Rights

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# Informational Notices

- Notices help beneficiaries successfully navigate the transition to MLTSS.
- Federal rules require certain content:
  - Transition and enrollment
  - What managed care means
  - Timing
  - Services covered

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# Default Plan Assignment

- Default plan assignments, although not required, must take into account pre-existing relationships.
- Taking account of pre-existing relationships in default plan assignment is important for maintaining provider continuity.

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# Advocacy Tips

1. States have considerable discretion in shaping the content of their notices.
2. Beneficiary testing of draft notices is a key best practice that minimizes confusion.

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# Health Risk Assessments and LTSS Assessments

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# Health Risk Assessments

- Within 90 days of enrollment into the Medicaid plan, plans are to administer a health risk assessment.
- HRAs are intended to alert the plan to any major health issues.
- Can ask about additional issues like oral health, DME, and transportation.

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# Assessments for LTSS

- In addition to the HRA, federal regulations require plans to assess for LTSS needs among beneficiaries who would benefit from LTSS.
- From that LTSS assessment, the plan creates a treatment plan is required to review it annually.

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# Practice Tips

1. Plans may experience difficulty finding beneficiaries to administer the HRA.
   - Work with your local plans to create innovative outreach strategies.
2. Some services are particularly tricky.
   - Work with plan-specific LTSS liaisons to get clear information on networks and authorization processes.

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# Voluntary Assistance from Family and Friends

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# Service Planning Regulations for Medicaid HCBS

- Govern planning *process* and service *plan*.
- Process and plan should be “person-centered.”
- Beneficiary should lead process whenever possible.

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# Natural Supports

- Natural supports come from family and friends.
- Defined as “unpaid supports that are provided *voluntarily* to the individual in lieu of” Medicaid HCBS.

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# Forcing Personal Care from Family and Friends

- Some state laws forbid services for “caregiver convenience.”
- Or assessor may just assume that family member or friend should provide certain assistance.

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# Advocacy Needed

- Service planning rules supposedly were effective immediately, without transition period.
- Assessors and eligibility workers may be unfamiliar with service planning rules.

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# Need to Expedite Start Date for HCBS

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# Delayed Medicaid Coverage for HCBS

- Ordinarily Medicaid coverage can start up to three months prior to the application month.
  - Only for months in which the applicant met eligibility requirements.
- But for HCBS, coverage can start only after service plan has been approved.

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# Compare: Nursing Facility Resident and Assisted Living Resident

- Assume:
  - Meets eligibility requirements in September.
  - Applies in December.
  - Service plan completed in January.
- Coverage will start in September for nursing facility resident, but in January for assisted living resident.

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# Why the Discrepancy?

- HCBS defined in statute as being "provided pursuant to a written plan of care."
  - Counter-argument: But nursing facility care is provided "in accordance with a written plan of care."
- 6th Circuit upheld CMS's position, but other court may come to different conclusion.

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# Administrative Advocacy May Bear Fruit

- CMS's Olmstead Letter No. 3 (2000) gives state Medicaid programs the option to start HCBS coverage with provisional service plan.
- This could authorize HCBS as of the application date.

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# Challenging Service Allocations

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# Prepare Client for Assessment

- Client should not downplay her needs.
- Advisable to make a list of needed assistance, with realistic time estimates.

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# Get Copies of Internal Documents

- Plan may claim that documents are proprietary, but client has due process right to see how decisions are made.
- Push back against inaccurate assessments or algorithms.
  - For example, challenge time calculations; in real life, it takes time to move from task to task.

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# Managed Care Appeal Rights

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# Internal Plan Appeal

- Request must be made within 60 days.
- Plan must respond within 30 days, or 72 hours for expedited determinations.
  - Expedited if standard timeframes "could seriously jeopardize the enrollee's life, physical or mental health, or ability to attain, maintain, or regain maximum function."
- Additional 14 days if member requests, or for resident's best interests.

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# State Fair Hearing

- After internal appeal.
- Member must request within 120 days after notice of decision on internal appeal.

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# Aid Paid Pending

- Available if request made:
  - Before original authorization has ended, and
  - Within 10 days of notice or proposed effective date, whichever is later.
- Continued through state fair hearing if request made within 10 days of notice on internal appeal.
- Member bears financial risk to extent beneficiary has risk in state's fee-for-service program.

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# Payment through Member's Cost Sharing

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# Using Cost Sharing If Plan Refuses to Cover

- Medicaid allows for income deductions for maintenance needs of beneficiary, spouse, and family.
- Also a deduction for "[n]ecessary medical or remedial care recognized under State law but not covered under the State's Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses."

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# Recognized Under State Law, But Not Covered Under Medicaid

- *See In re* Brett, 93 A.2d 120 (Vt. 2014).
  - Services "not covered" if denied during service authorization.
  - Service authorization not equivalent to determination that services not medically necessary.

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# Conclusion

- Growth of Medicaid managed care and MLTSS means advocates must learn how to work with plans.
- Managed care introduces complexities to issues like service authorizations, assessments, payment, etc. but key consumer protections exist.
- Persistence of advocates pays off.

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# Additional Resources and Citations

- Eric Carlson, Justice in Aging, *Voluntary Means Voluntary: Coordinating Medicaid HCBS with Family Assistance* (May 2016).
- Rachel Gershon and Eric Carlson, Justice in Aging, *Medicaid Enrollees Put at Risk When State Medicaid Program Assume Support from Family Caregivers* (Oct. 2018).
- Contact Us:
  - Eric Carlson, ecarlson@justiceinaging.org
  - Denny Chan, dchan@justiceingaing.org

# Visit Our Website: NCLER.acl.gov

# Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

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