

April 3, 2012

Chairman Steven Walsh, Committee on Health Care Financing  
Chairman Richard Moore, Committee on Health Care Financing  
Chairwoman Alice Wolf, Committee on Elder Affairs  
Chairwoman Patricia Jehlen, Committee on Elder Affairs

Dear Chairpersons Walsh, Moore, Wolf and Jehlen:

We are writing as representatives of the National Academy of Elder Law Attorneys Massachusetts Chapter to seek your help in resolving a serious problem for elders and their families. There are significant issues with the timely approval of MassHealth benefits by the Office of Medicaid. This is particularly a problem for individuals in nursing home long term care who often wait months for their MassHealth applications to be approved and the nursing home to be reimbursed for their care. Following is a fairly typical example of delay:

A nursing home resident filed an application for MassHealth long term care on September 9, 2011. On October 13th she received a notice of denial for failure to submit two items of verification. In fact both items had been previously submitted, one with the application and one with an information request from MassHealth. The two items were again submitted. On November 11<sup>th</sup> the application was processed as a community MassHealth application with a spend-down required. Although the case worker stated she had never received necessary information from the nursing home the facility had fax verification that the information was submitted two times previously. On January 25<sup>th</sup> in response to a phone call the case worker stated she was waiting for the information from the nursing home. The nursing home then sent the information for a third time. The resident was finally determined eligible almost 5 months after her application.

Unfortunately there are multiple stories of delay within the MassHealth system. This is so in spite of the fact that federal and state law and regulations require applications for benefits to be processed and a determination to be issued within 45 days of the receipt of the completed application form. 42 U.S.C. 1396a(a)(8), 42 C.F.R. 435.911(a)(2), 435.930, 130 C.M.R.516.004(A). If a determination of disability is received the time limit for final decision is 90 days. 42 C.F.R. 435.911(a)(1).

The delay problem is greater for nursing home applicants for a number of reasons. Applications for nursing home care require an assessment of an applicant's assets and an allocation of assets between an applicant and her community spouse. The documentation for assets can be labor intensive and require the submission of multiple pieces of paper to the MassHealth workers. It appears that verifications often back up after submission without being filed in the applicant's case file. This in turn can lead to incorrect denials for failure to submit verifications. It can also lead to a delayed date of approval for MassHealth benefits, which for nursing home residents can be very costly.

There are additional sources of delay in the long term care application process.

- Applicants must be screened for clinical eligibility by an ASAP nurse. These screens often are delayed due to the volume of screening requests.
- Making contact with MassHealth workers to request information can be difficult to impossible as fax numbers often do not work and phone numbers can be constantly busy.
- The required resubmission of verifications can result in an incorrectly delayed approval date or denial depending on the time frames of a particular case.
- Certain types of verifications such as trusts must be reviewed by MassHealth lawyers resulting in weeks to months of additional delay.
- Notices to applicants do not always contain the required information, e.g. the reasons for termination or denial are not clearly spelled out.
- It is often impossible to reach the case worker by telephone to discuss the application, review verifications and thereby resolve simple issues. To protect an applicant's rights, appeals must be requested on issues that should be resolved administratively without involving the Board of Hearings This in turn results in unnecessary resources being used to settle routine matters at the appeal hearing.
- Scheduling of appeal hearings usually take several months, and waiting for the appeal decision after the hearing is held can also take several months, even though federal and state regulations require that appeal decisions in most cases must be issued within 45 days of filing the hearing request. 130 C.M.R. 610.015(D).

All of these systemic problems weigh heavily on the families of applicants and recipients. Often families will pay out of pocket nursing home costs while applications are pending. In addition, delays in approving applications can result in the community spouse not receiving a timely decision as to her share of the marital assets. This effect is magnified when the community spouse needs to request additional resources to meet her costs of daily living. In order to retain an increased Community Spouse Resource Allowance the spouse must request a hearing. This is a standard procedure but the delays in scheduling hearings and issuing decisions can put a community spouse in serious financial jeopardy. Following is a typical case illustrating this situation.

A nursing home resident filed an application for long term care benefits on September 13, 2011. On November 14<sup>th</sup> he received a denial for "excess assets". On November 16<sup>th</sup> the applicant filed a hearing request for an increased Community Spouse Resource Allowance based on the community spouse's daily living expenses. Despite repeated calls from the spouse and the nursing home to ask that the hearing be scheduled promptly the Board of Hearings said they would schedule it when they could. In the meantime the nursing home was not being paid and the community spouse was not receiving her share of marital assets. As of January 31, 2012 no hearing had yet been scheduled.

There is no question that MassHealth employees have had their numbers significantly reduced and as a result are struggling with timely processing of applications. We understand this but are concerned about the effect of these delays on elderly and frail nursing home residents and their families. Advocates have raised the delay issue in meetings with MassHealth staff as well as Elder Affairs staff but the situation has not yet improved.

We are aware that litigation has been filed in other states to deal with the unreasonable delays in the Medicaid process. We would prefer to work with you and MassHealth to improve the situation and not divert scarce resources of all the parties in this direction. There are a number of ways that legislators could address delay issues. These could include for example, holding an oversight hearing on the situation, seeking more administrative funding to hire MassHealth workers or instituting a presumptive payment mechanism whenever eligibility determinations exceed 45 days. We would welcome the opportunity to discuss this further with you.