



NSCLC

National Senior Citizens Law Center

Protecting the Rights of Low-Income Older Adults

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Managed Long-Term Services & Supports:

What does it really mean for consumers?

Gwen Orłowski, Senior Staff Attorney



The National Senior Citizens Law Center is a non-profit organization whose principal mission is to protect the rights of low-income older adults. Through advocacy, litigation, and the education and counseling of local advocates, we seek to ensure the health and economic security of those with limited income and resources, and access to the courts for all. For more information, visit our Web site at www.NSCLC.org.

The New Jersey Experience

- Overview of the Process: Transitioning from FFS long-term care services to MLTSS
- New Jersey's § 1115 Demonstration Waiver - The Comprehensive Medicaid Waiver and MLTSS
- 4 Areas of Advocacy:
 - Having a seat at the table
 - MCO contracts
 - Assessments/Plans of Care
 - Ensuring Due Process: Notices, Appeals, Fair Hearings

New Jersey: Transition from FFS to MLTSS

- In his February 2011 Budget Address, Governor Christie announced major changes to NJ's Medicaid program, including:
 - Moving ABD and Duals into managed care
 - Moving certain FFS carve-outs into managed care (e.g. PCA and Adult Medical Day Services)
 - Applying to CMS for a “global waiver” to reform Medicaid, with cost savings > \$250 million

New Jersey: Transition from FFS to MLTSS

- Spring 2011: Preliminary calls with stakeholders
- May 2011: Concept Paper submitted to CMS
- Summer 2011: Stakeholder meetings
- September 2011: Comprehensive Waiver (CMS) proposal submitted to CMS
- Spring 2012: Steering Committee and Workgroup meetings
- October 1, 2012: CMS issued Special Terms and Conditions (STCs) approving CMW

New Jersey: CMW and MLTSS

- Consolidate NJ's § 1915(b) and § 1915(c) waivers under a single waiver authority
- Streamline eligibility requirements
- Create “no wrong door” access
- Expand HCBS to Medically Needy individuals
- Integrate physical health, LTSS & behavioral health
- Transition all LTC services (including state plan, institutional and waiver services) to managed care
- Anticipated state-wide rollout: July 1, 2014

New Jersey: Advocacy Issues Having a Seat at the Table ?

- The Governor's announcement caught us by surprise.
- What advocacy tools did we already have in place?
 - CMS/Medicaid Advocates Group
 - MAAC/LTC Advisory Committee
 - Naturally existing coalitions (e.g. Legal Services, AARP, ARC of NJ, NJBA/Elder and Disability Section, Ombudsman's Office and others)

New Jersey: Advocacy Issues Having a Seat at the Table ?

- **Planning Period: Prior to Submission to CMS**
 - State held several general listening sessions/
stakeholder meetings
 - Advocates were in the midst of dealing with role-out of § 1915(b) waivers for certain services, ABD, duals and waiver participants and spikes in terminations of services
 - We spent time digesting and reacting to the Concept Paper (e.g. dual component of the Concept Paper was not consistent with CMS dual demonstration)
 - Chaotic!

New Jersey: Advocacy Issues Having a Seat at the Table ?

- Approval Process: From Submission to STCs
 - CMW application without budget neutrality released September 9, 2011 (160 pages)
 - CMS presented state with over 100 questions
 - FOIA/OPRA request made to CMS and State to no avail
 - LSNJ sent out two advocacy letters to CMS with follow-up conversations, inviting other advocates to participate
 - Steering Committee and 4 Workgroups convened
 - Dominated by MCOs
 - Little opportunity for meaningful consumer advocate input

New Jersey: Advocacy Issues Having a Seat at the Table ?

- Post Approval: 10/1/2012 through present
 - Formal stakeholder input, especially from consumers and consumer advocates, nearly non-existent
 - Virtually no access to contract negotiation or proposed language
 - MCOs have more direct contact with state and to the extent they are willing/allowed to share information, have been a good source of current information
 - Opportunities to ask hard, substantive questions – extremely limited by state

New Jersey: Advocacy Issues Having a Seat at the Table ?

- **Why does it matter for consumers?**
 - Dual Roles: Advocacy and Education
 - Knowledge is power – we needed to learn to talk the language of MLTSS
 - Relationship Building, both with State and MCOs
 - Consumers and advocates who work with consumers have a unique perspective on how policies play out on the ground
- **Going Forward: CMS requires stakeholder participation through several advisory groups**

New Jersey: Advocacy Issues

The Contract

- K is the document which holds MCOs accountable
- BUT: CMS/State say that K is proprietary during negotiations; public thereafter
- With the exception of draft language on care management, advocates in NJ have not seen the contract
- In August, we learned through MCOs that the draft K was 540+ pages of amendments to the current K, but with no rate setting provisions

New Jersey: Advocacy Issues

The Contract

- Areas of Concern:
 - Choice: Institution vs. HCBS (cost analysis)
 - Plan of Care: Services = Participant's Need (assessment process)
 - Person-Centered, conflict-free care coordination
 - Appeals: Notices and Continued Benefits
 - Network Adequacy
 - Readiness Reviews
 - Quality Measures
 - Capitated Rates: Blended, Modified Blended, Risk Adj.

New Jersey: Advocacy Issues

The Contract

- Why does it matter to consumers?
 - K sets forth MCO performance standards (e.g. assessment tool used, in-home visits from care coordinators) – they define the relationship between the state and the MCO and the consumer and the MCO
- Going Forward:
 - Contracts are amended regularly
 - We can learn from other states
 - By asking hard questions, advocates were able to help convince the State to delay implementation

New Jersey: Advocacy Issues Assessment & Plan of Care

- Assessments:
 - Eligibility vs. Service Needs
 - Uniform, reliable (consistent), valid (measures what it aims to measure) and evidence-based
 - What domains are looked at? (e.g. ADLs, IADLs, informal supports, cognition, health status, participant's goals and preferences)
 - Who administers the assessment?
 - Clear, accurate notices with fair hearing rights

New Jersey: Advocacy Issues Assessment & Plan of Care

- Plan of Care:
 - Transition Issues
 - Continuity of Care until MCO does care assessment
 - Access to Case File including old NF LoC assessments, service needs assessments, plans of care
 - Appeal rights
(reductions/suspensions/denials/terminations)
 - Loss of care managers to MCOs during period directly before transition

New Jersey: Advocacy Issues Assessment & Plan of Care

- Why does this matter to consumers?
 - Heart of the matter: In my experience, PCA or home care assistance is the singular most important factor for people who choose to remain in their own homes
- Going forward:
 - Empower consumers and advocates to understand the assessment process and history
 - Need for evidence-based, person-centered, individualized assessment instruments

New Jersey: Advocacy Issues

Appeals and Due Process

- Dual appeal tracks:
 - Managed Care Track (including expedited process)
 - Medicaid Fair Hearing Track
- Notices do not comply with due process
 - Lack clear, detailed, individualized reasons
 - Not written in easily understood language/format
 - Right to continued benefits is hidden in dense, multi-paged letter with no clear way to exercise right
- Confusion over what is appealable action

New Jersey: Advocacy Issues

Appeals and Due Process

- The bureaucracy of the MCO poses a greater barrier to exercising due process rights than the state bureaucracy
 - Too many numbers to call
 - Routing difficulties
 - Poorly trained customer service reps
 - No “there” there – no one is accountable
 - Bifurcation of systems: LTC division, D-SNP Medicare division, appeals division
- Cut backs in funding limit access to Legal Services

New Jersey: Advocacy Issues Appeals and Due Process

- What does this mean for consumers?
 - Services are reduced or terminated without ensuring the Constitutional due process protections are afforded to consumers
 - Consumers have difficulty navigating systems themselves and there are few opportunities for legal representation
- Going forward:
 - Ensuring Ks contain necessary provisions with requirements for standardized notices
 - Consumer Education and FH materials