Financing Your Loved One's Skilled Nursing Care – Medicare vs. Medicaid

By Lauren E. Miller, Esq.

Many of us have experienced that moment of panic when we learn a parent, grandparent or other beloved elder is being rushed to the hospital after a fall. Once the frenzy of the immediate crisis passes, reality sets in. Our loved one is no longer safe to return home immediately and live on his or her own.

After an acute injury or illness, doctors often recommend rehabilitation through an extended stay at a skilled nursing facility. While this care might be necessary for our loved one's health and safety, these facilities can cost upwards of $400 per day. Families already feel stretched thin trying to facilitate the care of their loved one while maintaining their own responsibilities, careers and health. Because people today tend to live longer, children of elderly parents are often seniors themselves. For these reasons, it's important to understand the options for financing a stay in a skilled nursing facility before your loved one ever takes a tumble that lands him or her in the hospital.

Oftentimes, a stay at a skilled nursing facility can be financed through Medicare. Medicare is a federal health insurance program benefitting primarily those age 65 and older. Coverage is available for inpatient rehabilitation, skilled nursing care, home health care and outpatient therapies, subject to certain conditions. A common way to qualify for Medicare coverage of a stay in a skilled nursing facility is to be admitted after a Medicare-covered hospital stay of at least three nights. While Medicare may cover up to 100 days in the facility (per benefit period), it may cover less if at some point the determination is made that skilled care is no longer clinically necessary. Medicare covers the first 20 days in full but only partially covers the rest, with the patient being responsible for a daily co-payment.

Prior to 2013, many Medicare contractors were erroneously using the "Improvement Standard," which allowed Medicare to deny coverage if the individual was no longer making progress. However, in January 2013, the U.S. District Court in Vermont approved a settlement agreement in the case of *Jimmo v. Sebelius*, which clarified that "improvement" was not required for coverage. While Medicare covers only care it deems reasonable and necessary with respect to the individual's diagnosis or treatment, skilled care may be reasonable and necessary even if there is no expectation of improvement. The goal of the settlement was to make Medicare claims processing more consistent, and to ensure individuals receive the coverage to which they are entitled under the program. As a result of that settlement agreement, in February 2017 the federal court approved a Corrective Statement to be used by the Centers for Medicare and Medicaid Services, which prohibits the requirement of improvement as a prerequisite to coverage. It is now clear that coverage may be approved even if the treatment is expected only to prevent further deterioration or preserve current capabilities.

While up to 100 days of rehab in a skilled nursing facility might be sufficient to allow some individuals to return home safely, others require skilled nursing care on a permanent basis. Because of the high cost of this care, once Medicare benefits are exhausted, many people can finance their care for only months or weeks before running out of funds. In the absence of a robust long-term care insurance policy or substantial financial resources, many people turn to Medicaid to pay long-term care costs.

Medicaid (which in Massachusetts is referred to as MassHealth) is a program funded by state and federal dollars. A Medicaid applicant has to meet both clinical and financial eligibility requirements to be eligible for long-term care benefits under the program. Unlike Medicare, there is no limit to the number of days MassHealth will cover an individual's care in a skilled nursing facility. However, the application process has become progressively complicated and adversarial, and it can take a year or more to be approved for benefits. Because applicants are physically or mentally incapacitated at the time they need to apply for benefits, their children are typically the ones signing the application as power of attorney. For this reason, it is critical that a valid, current power of attorney has been executed prior to an individual's medical decline.

Once the application is approved, MassHealth often pays benefits retroactive to the date originally requested on the application. But those months in between, while the application is still pending, can be a stressful time for the families of the applicants, the nursing home and the applicants themselves.

In certain situations where our loved one wants to return home after a stay in a skilled nursing facility but still needs some level of care, there are MassHealth benefit programs that will provide services in a community setting. Over the years, Massachusetts has continued to develop and improve the availability of these community-based programs, particularly for those with low income.

For example, the Frail Elder Waiver program is available if the individual clinically qualifies for long-term care benefits and meets certain other eligibility criteria. An applicant's monthly income must be less than 300% of the federal poverty level, which sets the current income cap at $2205 per month. Under this program, MassHealth individuals can receive health care and perpetual support services in their home or other community living residences. The Program of All-Inclusive Care for the Elderly (known as the PACE Program) can similarly supplement the cost of care in the home and in certain assisted living facilities. Because these community programs offer benefits along a continuum of care, they can assist elders in fulfilling their goal of living in the community for as long as possible.

Ensuring that our loved ones receive the appropriate level of care after an illness or injury can be a daunting task. However, knowing the options to finance short-term skilled nursing care, long-term care and community-based care makes the experience more manageable.

Long-term care benefits, the Frail Elder Waiver, and the PACE Program are just three examples of the programs currently available under MassHealth. Because the Medicaid program's structure and funding are still changing and developing at both the state and federal levels, the landscape of future Medicaid coverage is yet to be determined. **FT**

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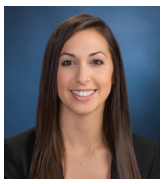

Lauren E. Miller, Esq.
P: 508.459.8044
F: 508.459.8344
E: lmiller@fletchertilton.com

Fletcher Tilton PC
Attorneys at law

FletcherTilton.com