

## Health Access Issues for Seniors

*Notes from Western Massachusetts Community Health Access meeting  
Friday, February 4, Jones Library, Amherst MA.*

**Special Guests:** *Deborah Marchand*, Elder Law specialist and Managing Attorney, Western Mass. Legal Services (WMLS) Pittsfield office, and *Paula Almgren*, Elder Law Attorney at McCormick, Murtagh, Marcus, and Almgren in Great Barrington.

*Paula Almgren* specializes in elder law at the private law firm of McCormick, Murtagh, Marcus, and Almgren in Great Barrington. She helps seniors and their families with a wide range of issues

*Deborah Marchand* of Western Mass. Legal Services explained that the agency most often becomes involved when seniors or their advocates request hearings or appeals because they have been denied services or have been terminated from a coverage program. Because WMLS has limited resources, advocates often begin the first steps in grievance procedures. WMLS steps in when advocates “hit a brick wall” and can go no farther.

### Questions and Answers

#### **1. How do the Virtual Gateway and changes in FreeCare affect people over age 65? Must elders complete an MBR?**

Things are in a state of transition. Medical facilities are still training on the Virtual Gateway, the web-based program required for electronic submission of MBRs (MassHealth Member Benefit Request forms). As of October 1, 2004, people *under* age 65 applying for Free Care should be completing MBRs. After training on the Virtual Gateway, facilities have 60 days to transition patients to the new MBR system, *but patients age 65 or older are an exception*. Their records are in a different computer system, PACES, and their transition to computerized MBRs will occur at a *later* date. At present, elders are using the old paper Free Care applications.

#### **2: Will people over age 65 applying for Free Care ever be required to apply through Mass Health?**

Eventually, yes. This will happen in approximately another year. At present, people age 65 or older are *not* required to apply through MassHealth.

#### **3: If elders must eventually apply for Free Care through MassHealth, will they have to complete the entire MassHealth application? If so, could this put them in danger of an eventual estate recovery action?**

*Discussion revealed that there is little clarity about how future applications through the Virtual Gateway will impact seniors in light of the asset test. In answer to a query from Community Partners, Attorney Vicky Pulos of Massachusetts Law Reform Institute confirmed that there is no estate recovery for Free Care received during one's lifetime.*

#### **4: What is Community-Based Medicaid (CBM)?**

**NOTE:** *This information provides a sketch of a helpful but complex program that is relatively unknown. This information is NOT complete or comprehensive. Anyone seeking to assist clients should contact the National Academy of Elder Law Attorneys (NAELA) at [www.naela.org](http://www.naela.org) for a referral.*

Community-Based Medicaid serves financially and medically eligible seniors at home or in assisted living communities. With married couples, the program allows an ill spouse to remain at home and receive community-based Medicaid by transferring all countable assets to a well spouse without penalty. A spousal waiver must be completed and sent to the Division of Medical Assistance along with the Medicaid application. While CBM is available to elders in assisted living and at home, the program is *not* available to elders living in nursing homes.

**5: What services does Community-Based Medicaid provide?**

Community-Based Medicaid provides basic health insurance, prescription drug coverage, hospitalization, ambulance service, and personal care assistance at home.

**6: How do people apply for Community-Based Medicaid?**

An elder law attorney can help people apply.

**7. How does long-term care insurance affect assets?**

The premise behind long-term care insurance is that these policies prevent Medicaid from recovering against the home of one who received Medicaid benefits (“estate recovery.”) Elders who have used their policies for home health care must enter the nursing home with two years of coverage remaining on their policies to avoid estate recovery of assets. (The National Academy of Elder Law is fighting this.)

**8. What assets are exempt under Medicaid?**

- One’s home can *always* be transferred to the healthy spouse without penalty. Equally important, not doing so prior to the ill spouse’s death can severely impact the surviving spouse. While an ill spouse can qualify for Medicaid and maintain home ownership, the state can place a lien on that home upon the elder’s death, then sell the property to recoup benefits paid. There are other ways to protect your home.
- One automobile valued at \$4500 or less, unless it’s used to reach medical care. CBM applications request information regarding the vehicle’s value. Kelly Blue Book can provide an estimate: <http://kbb.com>.
- Irrevocable prepaid funeral and burial expenses are exempt. “Bank burial accounts” of up to \$1500 can be opened jointly with another person and listed under the elder’s social security number. Instructions are to pay the monies to the other account holder upon the elder’s death.
- A life insurance policy whose face value totals \$1,500 or less is exempt.
- Assets can also be reduced by spending money on needed home repairs and improvements, or pre-paying fixed expenses such as gas, electric, oil bills, or insurance, etc.

**9: Can elders entering a nursing home protect their assets for their healthy spouse?**

Yes. This is always possible if one spouse is healthy and the other requires full-time nursing care.

**10: How does Community-Based Medicaid cover a personal care assistant (PCA)? Can all participants have a PCA?**

There must first be a determination that a PCA is medically necessary. Upon approval, the family hires, manages, and supervises the PCA. MassHealth pays a salary of \$10.70/hour, withholding taxes and worker’s compensation.

**11: How do elders meet PCA deductibles under Community-Based Medicaid? Will elders be able to receive services if they cannot meet their deductibles?**

Elders cannot receive services unless they meet their deductibles. There are several ways to meet the deductible:

- Submit receipts of all medically related bills paid within the current six-month period;
- Submit unpaid bills accrued prior to the current six month period;
- Open charge accounts for health-related expenses and submit receipts over time. (Example: A pharmacy may allow charging the rental of medically necessary equipment.)

Many elders have difficulty spending enough money to meet deductibles. Consider all possible expenses. However, implementing these strategies can be challenging without the help of an attorney or an advocate. It's often useful to involve adult children.

**12: Approximately 3,200 elder, disabled immigrants on MassHealth Essential recently received questionnaires asking about their sponsors. How will their MassHealth eligibility be affected and what legal assistance is available?**

The questionnaires affect the approximately 3200 elder, disabled immigrants whose sponsors completed "Form I864" when recipients entered the USA. Those immigrants will retain their eligibility for MassHealth Essential only if their sponsor's family income is less than 200% FPL. Approximately 1200 people returned their questionnaires with information about their sponsors. Only elders losing eligibility hear back from MassHealth; there is no feedback when eligibility remains intact. WMLS encourages calls and will refer people to appropriate resources. MassHealth does allow some exceptions, particularly in cases where elders cannot locate sponsors or fear their sponsors. WMLS can directly assist these cases. Legal service agencies are advocating for a second mailing to prevent possible benefit terminations for those who did not respond.

**13: Are there any legal advocacy coalitions for elders?**

Massachusetts legal services agencies have a statewide elder legal coalition that meets monthly. This coalition is not a community resource, but it does work internally to advocate for elders. Questions and information for the coalition can be communicated by contacting the closest Massachusetts Legal Services office. More information is available on the web site at [www.masslegalhelp.org](http://www.masslegalhelp.org)

**14. Who is eligible to receive services from WMLS?**

People under age 60 must be at 125% of the Federal Poverty Level to qualify for WMLS services; there is somewhat greater flexibility for those over 65. However, the agency does consider basic needs when determining how to prioritize cases, and clients with higher income levels may be referred to private attorneys.

**15. Where are WMLS offices located?**

WMLS has offices in Northampton, Pittsfield and Springfield. The Massachusetts Justice Project also provides advice and initial screening for the other three offices. Deborah suggested that when calling WMLS, people mention that they have been referred by Community Partners and want to speak with an elder law attorney.

Northampton Office – 20 Hampton Ave., Ste. 100, Northampton 01060 / 413-584-4034 or  
413-774-3747 / FAX 413-585-0418

Pittsfield Office – 152 North St., E-155, Pittsfield 01201 / 413-499-1950 or  
413-664-4531

FAX 413-448-2715  
Springfield Office – 127 State St., Springfield 01103 / 413-781-7814 or 413-536-2420  
FAX 413-746-3221 / TTY 800-639-1109  
Mass. Justice Project – 57 Suffolk St., Suite 401, Holyoke 01040 / 413-533-2660

More info is available on their web site:

[www.masslegalhelp.org/perl/user.cgi?rm=program\\_details&program=WMLS%2F](http://www.masslegalhelp.org/perl/user.cgi?rm=program_details&program=WMLS%2F)

#### **16. How can we find an elder law attorney in other communities?**

For people who want to locate elder law attorneys in their own communities, Paula Almgren, who practices in Great Barrington, recommended checking the free listings on the web site of the National Academy of Elder Law Attorneys (NAELA) at [www.naela.org](http://www.naela.org). NAELA is an excellent resource and very involved in legislative advocacy. WMLS also provides referrals. While they are looking for help, clients are advised to contact at least three attorneys about rates, and to observe how comfortable it might be to work together. It is also useful to speak with others who have used elder law attorneys.