Medicaid Waivers: What are these and how can I help my patients?

Presenter:  
Nicole Worsley Love  
Attorney, Public Benefits/Health Law team  
Texas RioGrande Legal Aid, Inc.  

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Participants will be able to:

- Describe the Medicaid waiver program, including Medically Dependent Children's Program and Community-Based Alternatives Program.
- Discuss the challenges and limits to waiver services.
- Compose effective letters requesting waivers for patients.
- Recognize impact of interventions by Texas RioGrande Legal Aid (TRLA) and Medical-Legal Assistance for Families (MLAF) to overturn denials of service.
- Review history of MLF and refer patients who qualify for legal aid services.

Disclosure

Nicole Love, J.D., has no relationships with commercial companies to disclose.

“[M]edicine and law work effectively together to reduce preventable illness.”

Hum and Faulker, Medical-legal partnerships: A new beginning to help Australian children in need, 2009; 17 JLM 105-118

Policy Supporting MLP

D-265, 018 Medical-Legal Partnerships to Improve Health and Well Being

AMA:
1. encourages physicians to develop medical-legal partnerships (MLPs) to help identify and resolve diverse legal issues that affect patients' health and well-being;
2. will work with physician groups and other key stakeholder organizations such as the American Bar Association and the Legal Services Corporation to: (a) educate physicians on the impact of unmet legal needs on health and well-being; (b) educate physicians on screening for such unmet legal needs in their patients; and (c) provide physicians, hospitals and health centers with information on establishing a Medical-Legal Partnership; and
3. will create a model medical-legal partnership agreement for physicians to utilize as guidance when entering into such an agreement. (BOT Rep. 15, A-1)

AAP Resolution Supporting MLP

Whereas the American Bar Association recently passed a resolution “That the American Bar Association encourages lawyers, law firms, legal services agencies, law schools and bar associations to form medical legal partnerships with hospitals, community health care providers and social service organizations to help identify and resolve diverse legal issues that affect patients’ health and well-being”, therefore be it

RESOLVED, that the Academy encourage closer and more frequent collaboration between legal service and medical professionals, and be it further

RESOLVED, that the Academy promote “medical legal partnerships,” in which lawyers work with members to identify and resolve legal issues affecting the health and well-being of children.

American Academy of Pediatrics
Resolution to the 2008 Annual Leadership Forum, December 2007
ABA Policy Supporting MLP

RESOLVED, That the American Bar Association encourages lawyers, law firms, legal service agencies, law schools and bar associations to develop medical-legal partnerships with hospitals, community-based health care providers, and social service organizations to help identify and resolve diverse legal issues that affect patients’ health and well-being.

Adopted by House of Delegates – August 2007

National MLP Movement

Medical legal partnerships help 54,000 children, elderly, veterans and patients with chronic illnesses every year.

Nationally, MLP programs are in:
- 125 Hospitals
- 123 Health centers
- 99 Legal aid agencies partnered with MLPs
- 36 Residency programs include MLP training
- 26 Medical schools include MLP education
- 34 Law schools include MLP education

MLAF’s Priority Areas (Legal)

Primary areas addressed:
- Housing
- Education
- Benefits (Medicaid, food stamps, Social Security, utilities assistance)
- Guardianship

Medicaid Basics

- Created by the Social Security Act in 1965
- Provides health care coverage for low-income persons who have no other way to pay for health care
- State administered vs. federally administered (like Medicare)
- Texas began participating in 1967
- Is entitlement if you are eligible

Who’s eligible?

- Low-income children
- Low-income pregnant women
- Low-income elderly
- Low-income disabled

Texas MLPs

Active Programs:
- San Antonio – First Program in Texas – Began October 2008
- Brownsville 10/2008
- El Paso 08/2009
- Dallas 06/2010
- Houston 06/2012
- Austin 09/2012
Must also:

- Be U.S. citizen or qualified alien
- TX resident
- Meet income and resource limits
- If qualify for SSI (Supplemental Security Income) or TANF (Temporary Assistance for Needy Families) programs, automatically eligible

What does Medicaid pay for?

- Doctor's visits
- Hospitalizations (in-patient and out-patient)
- Medications
- Durable medical equipment and supplies
- Labs
- Home health care services
- Medical transportation services
- Broad range of health care for children < 21

Some “Medicaid Numbers”

- 26% of Texas budget (as of 2011) and covers 4.57 million Texas (14% population)
- 33% TX Medicaid budget spent on children
- 77% TX Medicaid clients < age 21
- 47% of TX children on Medicaid or CHIP

- Texas Medicaid & CHIP in Perspective, 9th Ed., Texas Health and Human Services Commission, January 2013

Also covers Long-Term Care

- Medicaid covers expenses of institutional and nursing facility care (ICF’s)
- However, now patients can receive this care at home

How?

- Through Medicaid waivers!
- Allow the state flexibility in how it spends money to provide some long-term services to Medicaid-eligible disabled and elderly
- Means nursing home care and services are provided at home, which saves the state money and makes for happier and healthier patient
- Not an entitlement however

Waiver programs in Texas

- Several different waivers
- Offer different range of home and community-based services depending upon the waiver (outside of traditional Medicaid benefits)
- Different services, rules and funding amounts
- Can be waiting list up to 10 years

- Statistics on waiting lists can be found at http://www.dads.state.tx.us/services/interestlist/index.html
Waivers

- Community Based Alternatives (CBA)/Star+Plus
- Medically Dependent Children Program (MDCP)
- Home and Community-Based Services (HCS)
- Community Living Assistance and Support Services (CLASS)
- Deaf-Blind with Multiple Disabilities (DBMD)
- Texas Home Living (TxHmL)
- Youth Empowerment Services (YES)

Medically Dependent Children Program (MDCP)

- Provides community-based services to children and young adults under 21 as an alternative to residing in a nursing facility
- Services include:
  - Adaptive aids
  - Respite
  - Medical supplies
  - Minor home modifications
- Transition assistance services

Link: http://www.dads.state.tx.us/providers/MDCP/index.cfm

Home and Community-Based Services (HCS)

- Provides services to clients of any age who qualify for ICF/IID level of care but live in family home, own home, or any other community setting
- Services include:
  - Service coordination
  - Adaptive aids
  - Respite
  - Medications
  - Dental treatment
  - Minor home modifications
  - Skilled nursing
  - Specialized therapies (speech and language pathology, audiology, OT, PT, dietary, behavioral support, social work)

Home and Community-Based Services (HCS) - continued

- Called “Cadillac waiver”
- Waiting list is 8-10 years!

Link: http://www.dads.state.tx.us/providers/HCS/index.cfm

Community Living Assistance and Support Services (CLASS)

- For persons with developmental disabilities other than mental retardation (alt. to institutional care)
- Age of onset of disability must be prior to age 22 and must have significant impairment in 3 major life activity areas

Community Living Assistance and Support Services (CLASS) – cont.

Services include:

- Adult day care
- Medical Supplies
- Case management
- Medications
- Dental Services
- Adaptive Aids
- Skilled nursing
- Minor home mods
- Specialized therapies
  (speech and language pathology, audiology, OT, PT, dietary, and behavioral support)

Link: http://www.dads.state.tx.us/providers/CLASS/index.cfm
Deaf-Blind with Multiple Disabilities (DB-MD)

- Provides services for persons of any age who are legally blind, have a chronic and severe hearing impairment, or who have a condition that leads to deaf-blindness AND a 3rd disability resulting in impairment to independent functioning.
- Is alternative to institutional care and services include attendant care, case management, medications, adaptive aids, behavioral support, dental txs, nursing, specialized therapies, orientation and mobility, and assisted living.
Link: http://www.dads.state.tx.us/providers/DBMD/index.cfm

Texas Home Living Waiver (TxHmL)

- Provides selected services and supports for people of all ages with intellectual and developmental disabilities who live in their family's home or their own homes
- Onset of disability must be before age 22
- IQ must be below 69 or below 75 with a related condition (impacting 3 major life activities)
- Services include case management, adaptive aids, audiology, ST, OT, PT, dietary services, behavioral support, dental tx, skilled nursing, respite
Link: http://www.dads.state.tx.us/providers/TxHmL/

Youth Empowerment Services (YES)

- Allows for more flexible funding of intensive services for children and adolescents with severe emotional disturbances and their families.
- Currently only available in Bexar, Travis and Tarrant Counties (still a pilot program)
- Can only service up to 300 youth between ages 3-18
- Services include respite, adaptive aids and supports, family supports, non-med transportation, specialized psychiatric observation, and professional services
Link: http://www.dshs.state.tx.us/mhss/yes/

Details

- Once enrolled, a service plan and a budget are developed depending upon assessment of level of need.
- Total cost of services cannot exceed the budgetary cap.
- All waivers have different caps based on what it would cost to serve the individual in an institution (should be equal to or less than).
- Services are then provided through an MCO and through a home health care agency.

KEY = “Medical Necessity”

- Condition that is of sufficient seriousness that the patient's needs exceed the routine care that may be given by an untrained person; AND
- Requires nurses’ supervision, assessment, planning and intervention that is available only in an institutional or community-based program that is an alternative to an institutional setting
AND...

And the nursing services:

1) are ordered by and remain under the supervision of a physician;
2) are dependent upon the person's documented medical, physical and/or functional disorders, conditions, or impairments;
3) require the skills of a registered or licensed vocational nurse;
4) are provided either directly by or under the supervision of licensed nurses in an institution or community-based alternative;
5) are required on a regular basis.

- 40 Texas Administrative Code §19.2401
Difference between “Custodial Care” and “Licensed Nurse Needs”

- Custodial care: Care given by nurses’ aides or lay caregivers that provide safety and/or assistance with activities of daily living such as: bathing, toileting, eating, dressing and ambulation/mobility.
- Licensed nurse needs: skills provided by licensed nursing personnel to assess, plan, supervise, and provide treatment on a regular basis.

How medical necessity decision is made

TMHP (“claims adjusting” agency) nurse reviews assessments and determines whether or not there is medical necessity.

If he/she finds, then services/benefits are approved

if not found, then usually more information/documentation is asked for from physician.

Approves OR Denies

If denied, patient has right to appeal (go to a “fair hearing”).

Reductions/terminations/denials

- Reduction v. termination
- Increase in occurrences due to budgetary issues
- NOT A DEATH BLOW
- Right to due process/fair hearing

Timeline to be aware of:
- appeal within 10 days of notice to continue receiving current benefits
- appeals deadline: 90 days of notice
So, how can I help my patients?

- Describe in detail medical symptoms and needs in your medical records; make sure all dx’s are there.
- Work with your patient/home health care agency on his/her plan—order in writing the services, supplies, or therapies that are needed.

If any of the following calls or sends letters, REPLY! QUICKLY:

- TMHP (Texas Medicaid & Healthcare Partnership, claims processing agency for Texas Medicaid)
- DADS (Department of Aging and Disability Services, agency regulating long-term care services) OR
- MCO (Managed Care Organization, e.g., Superior, United)
- If you believe reassessment is needed before the annual deadline, ask for one! Make the family aware they can ask for one.
- Write a medical necessity letter for your patient (see handout).

Letter is important

There is a “presumption in favor of the medical judgment of the attending physician in determining the medical necessity of treatment.”

- Weaver v. Reagan, 886 F.2d 194, 200 (8th Cir. 1989).