

LKR Alert

No. 4 Vol. 1

April 5, 2001

Littman Krooks & Roth P.C.

Elder Law and Estate Planning

FILING FOR MEDICAID BENEFITS — PRELIMINARY APPLICATION ISSUES

The pile of paperwork required, as well as an often inefficient government processing system, can make filing an application for Medicaid an enormous project. When applying for Medicaid (or other public benefits), it is crucial for applicants to be well prepared and well versed in the legal implications of all information to be supplied in support of the application. Also, when the state or county office fails to meet a deadline or erroneously renders a disposition on an application, the applicant must be prepared to exercise his or her Constitutional and state statutory rights. Following is a sample list of Medicaid application issues that should be addressed to avoid unnecessary delays and denials.

1. **Selecting a Program** - Applicants for public benefits must decide for which program(s) they wish to apply. The choice of programs may depend on the applicant's living situation, age, physical condition, and financial status.

2. **Timeliness of Filing** - Although families have the opportunity to expedite their Medicaid eligibility through asset protection planning under the guidance of an elder law attorney, it is vitally important that applicants do not apply for Medicaid prematurely. Once an eligibility date is determined, an application generally must be submitted no more than 3 months subsequent to the eligibility date.

3. **Authorization to Apply** - In most cases, the applicant is unable to visit the welfare office to offer detailed information on his or her financial status. The law specifically provides that any adult member of the applicant's family, or any person acting in his behalf, including a relative, friend, other agency or institution shall have the right to apply on the applicant's behalf. (NYCRR § 350.3)

4. **Physical Criteria** - Qualifying for Medicaid involves not only financial criteria, but also physical requirements. For example, if applying for home care, applicants must demonstrate through a physical exam that they are unable to perform the activities of daily living, including feeding, dressing, bathing, toileting and continence. If an applicant is between the ages of 21 and 65, he or she must often prove a disability.

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5. **Intake Procedures** - Counties often differ with regard to their procedures for the intake of benefits applications. While some counties are more lenient as to what types of documents may be submitted by mail, the initial filing of a Medicaid application generally requires a face to face interview with a Medicaid caseworker. The major exception to this rule is for Medicaid applications submitted to the New York City Human Resources Administration on behalf of New York City residents, where no interview is required.

6. **Substantiating the Data** - The Medicaid application itself is several pages, and the answers to each question must be substantiated by legal or financial documentation, usually dating back as far as three years from the date of the application. However, in New York City home care cases, documentation dating back one month often suffices.

7. **Additional Documentation and County Variation** - In addition to personal and financial data, applicants who have been able to protect assets through planning may also need to submit additional supporting information to the welfare office. This information may often be complicated and must be clearly set forth to the presiding agency.

8. **Enforcing the Applicant's Rights** - Enforcing a client's rights may be done through a fair hearing, which is a formal proceeding before an administrative law judge. These hearings are often used to expedite the decision-making process of the county and state welfare agencies. Individuals who do not exercise their Federal and state rights to a prompt decision on their Medicaid applications might otherwise find themselves waiting for a year or longer to learn whether their nursing home bills, which have been accruing, will be covered by the benefits programs.

9. **Inaccessible Documentation** - Often, some pertinent documentation required to be filed on behalf of an applicant may not be available. It is important to establish which documentation is pertinent but need not be submitted at the application stage, thus shifting the burden to the agency to secure the missing documentation through a "collateral investigation."

10. **Follow-up** - In many cases, an application for benefits may be pending for several months, during which time the applicant, the applicant's family and the health care provider anxiously await a determination. As a result, it is good practice to maintain contact with the agency to compel an expeditious decision for the benefit of all parties involved.

Littman Krooks & Roth P.C. offers legal services in several areas of law, including Estate and Tax planning, Public Benefits, Medicaid, Health Care, Guardianship, Estate Administration/Probate, and Trusts and Estates. Our offices are located conveniently in Midtown Manhattan at 655 Third Avenue, and in White Plains, New York at 81 Main Street.

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