



EIN NO: 55-0819817

David L. McGuffey, CELA* – Attorney
Marnie Dodd, LCSW – Elder Care Coordinator
Jan Hair – Elder Care Coordinator
Dave Hastey – Elder Care Coordinator
Jennifer Cohran – Elder Care Coordinator
Denise Y. Cox – Legal Secretary
Melinda Griffin – Administrative Assistant
**Certified Elder Law Attorney by the National Elder Law Foundation*

Getting Unpaid Medical Expenses Paid

July 8, 2009

Once nursing home Medicaid is approved, unpaid medical providers are often left holding the bag. A recent decision from the Fulton County Superior Court could change that. Judge Melvin Westmoreland recently held that Georgia Medicaid policy regarding incurred medical expenses (IMEs) violates federal law. The following is a summary of the decision, as well as an explanation concerning why this means medical bills can be paid.

For single individuals, the only available source from which unpaid medical bills can be satisfied is the patient's income. Ordinarily, income is all that is available because, once Medicaid eligibility is achieved, there are few assets remaining that could be used to pay outstanding medical bills because a Medicaid applicant must spend-down below \$2,000 to achieve eligibility. Unfortunately, Medicaid's budgeting rules require the nursing home resident to apply income toward the nursing home bill *unless* there is a qualifying IME. If there is a qualifying IME, then Medicaid pays a larger portion of the nursing home bill and the resident is allowed to keep some of his or her income to pay the outstanding medical bills.

So what is a qualifying IME? Section 2555 of the Medicaid Manual (ESSM § 2555) defines an IME as: "Medical expenses incurred by the [resident] that are not subject to payment by Medicaid or by other third parties." Qualifying IMEs can be deducted when Medicaid is calculating the resident's cost-share - the amount of income that must be applied toward the nursing home bill. Any income the Medicaid applicant is allowed to keep is applied toward the unpaid bills.

Qualifying IMEs include: health and dental insurance premiums; co-insurance and deductible payments not covered by Medicaid; amounts paid to nursing homes for bed holds; prescription drugs not covered under a Part D plan; Medicare Part D premiums, co-pays and deductibles; dental services; medical supplies; orthopedic services; physician services; prescribed over the counter drugs; psychiatric or psychological services. This list, taken from Section 2555, is not all inclusive.

The problem nursing home residents encounter is that Georgia Medicaid policy limits payment for qualifying IMEs to months when a vendor payment is made. In plain English, this means that Medicaid only pays for IMEs incurred after eligibility is established.

Example: Mrs. Jones incurred \$10,000 in medical bills in February. They remained unpaid when she was admitted to a nursing home in July. Although she was eligible for three months of retroactive Medicaid (covering April, May and June), her February bills were not covered by Medicaid. Section 2555 of the Georgia Medicaid manual indicates that the February bills cannot be paid from her income as IMEs because they were incurred during a month when no vendor payment was made.

In *Weldon v. Medows*, Superior Court of Fulton County, Georgia, Civil Action NO. 08-CV-154469 (April 30, 2009), a nursing home resident challenged Georgia Medicaid policy. Prior to filing suit, Ms. Weldon asked Medicaid to cover IMEs (in Ms. Weldon's case, the IMEs were unpaid nursing home bills) that she incurred prior to the date Medicaid eligibility was established. Medicaid refused to let her keep enough income to pay the outstanding medical bills. In her case she had an incentive to press the issue because the nursing home threatened to discharge her for non-payment. When Medicaid denied her request, she filed suit.

In her suit, Ms. Weldon sought a declaratory judgment holding that the Department's policy was illegal. After reviewing the pertinent law, the Court agreed with Ms. Weldon and declared the State's policy to be in violation of federal law. In short, Medicaid's illegal policy was unenforceable.

Although States are not required to participate in the Medicaid program, if they do participate, then they must comply with the federal Medicaid Act. Federal law indicates that States are *required* to take into account unpaid medical expenses and to reduce the patient liability amount (the income contributed toward the nursing home

bill) when calculating the resident's budget. "This allows the residents to pay their uncovered medical bills and to be able to stay in their nursing home placement. ... In light of the federal statute and regulation, the Centers for Medicare and Medicaid Services determined that states must allow medical expenses incurred both before and after Medicaid eligibility to be considered as incurred medical expenses and deductible from the patient liability cost of care."

The Court concluded that States can impose reasonable limits on the amount of IMEs. States cannot, however, completely disregard IMEs simply because no vendor payment was made during the month when the expense was incurred. Accordingly, the Department's policy was illegal and its enforcement was enjoined.

Example continued: Using the same facts stated above, the Weldon decision would allow Mrs. Jones to divert a portion of her income toward payment of the unpaid medical bills from February while Medicaid pays her nursing home bill. After her bills are paid, then substantially all of her income would again be paid toward the nursing home bill.

The *Elder Law Practice of David L. McGuffey* assists nursing home residents and their families in planning for, applying for and getting Medicaid benefits. This includes representing healthy spouses who are concerned about losing everything when their sick spouse is admitted to a nursing home. We also represent clients in contested Medicaid proceedings. If you are aware of a nursing home resident with outstanding and unpaid medical expenses, or who has other questions about Medicaid eligibility, we can help. Contact us at (706) 428-0888 for a free consultation.

The Elder Law Practice of David L. McGuffey is a member of the Life Care Planning Law Firm's Association. Mr. McGuffey is a Certified Elder Law Attorney, certified by the National Elder Law Foundation. Mr. McGuffey currently serves as Chair of the State Bar of Georgia's Elder Law Section, is a member of the National Academy of Elder Law Attorneys and is a member of the Special Needs Alliance.

The Elder Law Practice assists elders and special needs individuals in Georgia and Tennessee with a wide range of legal issues, including eligibility for Medicaid.