



Client Alert



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Georgia Superior Court Ruling to Help Nursing Homes with Outstanding Balances of Medicaid Residents

A recurring problem for nursing home is the amount of time that it takes a resident to become eligible for Medicaid benefits. Delays in the processing of a resident's Medicaid application may be the result of a lack of participation by a responsible family member or the inability of the resident or facility to access financial information required by the application. As a result of such delays, residents can incur outstanding nursing home balances prior to the approval of a Medicaid application. Moreover, because a Medicaid resident is required to contribute all but \$50 of his or her income per month toward the cost of the home's services, there is often no money available to pay toward an outstanding balance, which may subject residents to involuntary discharge proceedings based upon the failure to pay allowable fees.

A recent order by the Fulton County Superior Court, however, could lead the way for nursing homes to apply a Medicaid resident's current income to balances that were incurred prior to Medicaid approval. *See Weldon v. Medows*, Civil Action File No. 08-CV-154469 (Fulton County Superior Ct. April 30, 2009).

During the Medicaid application process, the local office of the Division of Family and Children Services reviews a resident's income to determine the amount available for contribution toward the cost of the resident's nursing care. This amount is often referred to as the "patient liability" or "cost share" portion. Pursuant to federal law, there are several deductions from a resident's income made in this calculation, such as a deduction for a "personal needs allowance" (presently \$50 in Georgia), as well a deduction for "incurred medical expenses" or "IMEs." IMEs include amounts that are incurred for medical or remedial care and not subject to payment by a third party. Typically, IMEs comprise Medicare and other health insurance premiums, deductibles, or coinsurance charges.

At present, state Medicaid policy provides that such expenses incurred prior to a determination that a nursing home resident is eligible for Medicaid may not be deducted from the calculation of the resident's available income. As noted, this policy leads to uncertainty and risk for a resident and the nursing facility, because the resident may have no means of paying the prior balance in this situation.

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In a recent decision by the Fulton County Superior Court, however, the court declared the state Medicaid program's current IME policy to be inconsistent with federal law and enjoined its enforcement. The case, styled *Weldon v. Medows*, was brought on behalf of two nursing facility residents who had unpaid balances for services provided prior to their becoming eligible for Medicaid, and therefore at risk of discharge for nonpayment of allowable fees.

The plaintiffs in *Weldon* had asked that their outstanding nursing home bills be considered IMEs and deducted from their Medicaid patient liability calculation. The residents' requests were denied pursuant § 2555 of the Georgia Department of Human Resources' Medicaid eligibility manual, which provides that "IMEs incurred in months for which no vendor payment is made are not deducted."

In ruling in favor of the plaintiffs, the Fulton County Superior Court found that the Center for Medicare and Medicaid Services ("CMS") has determined that states must allow medical expenses incurred both *before and after* Medicaid eligibility to be deducted from the calculation of a residents' available income. Further, the court noted that, although federal law allows states to impose reasonable limits on the amount of IMEs, it does not allow states completely to disregard IMEs simply because no Medicaid nursing facility payment was made in the month that such an expense was incurred. Thus, the court declared this aspect of the Georgia Medicaid program's IME policy to be in violation of federal law and enjoined its enforcement. The decision has not been appealed.

As a result of this decision, nursing home residents in Georgia who have been determined eligible for Medicaid should be allowed to use their present income to pay off nursing home balances incurred prior to eligibility. This ruling should benefit both residents and nursing homes by reducing the risk of discharge to residents and the uncertainty of payment to nursing homes.

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