

# *LK Alert*

February 26, 2003

## **Littman Krooks LLP**

**Elder Law and Medicaid**

### **CHANGES IN MEDICAID APPLICATION PROCEEDURE FOR THE ROCKLAND COUNTY DEPARTMENT OF SOCIAL SERVICES**

Effective immediately, the Rockland County Department of Social Services ("DSS") will no longer accept any requests for reconsideration following the denial of an individual's Medicaid application.

Former Policy: Following the denial of an individual's Medicaid application, DSS would have accepted a request for reconsideration (also known as a "reconsideration application") provided that DSS received the reconsideration application within 30 days of the application denial. Such a reconsideration application effectively preserved the applicant's right to the originally requested Medicaid pick-up date, provided that the applicant was otherwise eligible to receive Medicaid benefits as of that date.

For example, if the original application was submitted to DSS during October 2002, which would have preserved the applicant's right to a Medicaid pick-up date of July 1, 2002 (i.e., 3 months prior to the month of application) and the application was subsequently denied by DSS on January 1, 2003, the applicant would have had 30 days (i.e., until January 31, 2003) to submit a reconsideration application. Provided that the reconsideration application resulted in a determination of eligibility, the applicant would have been entitled to the July 1, 2002 pick-up date.

New Policy: DSS will no longer accept reconsideration applications. Instead, when the Medicaid application is denied, the applicant will need to reapply to DSS by submitting a new application. However, the new application will not effectively preserve the applicant's right to the originally requested Medicaid pick-up date. Instead, the applicant will be entitled to eligibility retroactive 3 months from the month of the new application, provided again that the applicant is otherwise eligible as of that date.

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In the example above, if the applicant submits a new application immediately following the denial (i.e., during January 2003), the earliest pick-up date to which the applicant would be entitled is October 1, 2002 (i.e., 3 months prior to the month of the new application). Thus, in this example, the change in DSS's policy resulted in the applicant losing 3 months of Medicaid eligibility (i.e., from July 1, 2002 through September 30, 2002).

New DSS Policy in Practice: The applicant should receive an initial 21 days following the submission of the application to provide DSS with the requested documentation. Thereafter, DSS generally will provide an extension of 9 days to provide same. However, provided that the applicant (or his/her representative) demonstrates "a bonafide attempt" to secure the required documentation, DSS generally will "work with" the applicant in processing the application. At this point, there is very little guidance regarding what constitutes "a bonafide attempt" or what it means to "work with" the applicant. However, clearly, any efforts to secure the required documentation should be made in writing (e.g., letters to family, banks, etc.) with copies provided to DSS, as evidence of the applicant's bonafide attempt.

LK Recommendation: We recommend that you identify as early as possible any cases where you believe that securing the required Medicaid documentation may be problematic (e.g., where the applicant lacks capacity and/or has uncooperative family members). In such cases, early referral to legal counsel provides the greatest possibility of success in addressing these issues. For example, where the applicant lacks capacity, legal counsel could (in appropriate cases) commence a guardianship proceeding on behalf of the applicant in order to secure the appointment of a guardian with the authority to secure and provide DSS with the documentation needed to establish the applicant's Medicaid eligibility.

Fair Hearing Note: This DSS policy change does not affect the right of an applicant to request a fair hearing in order to challenge any DSS determination (e.g., Notice of Denial). The fair hearing must be requested within 60 days of any such determination.

Other Medicaid Districts: Presently, this policy applies only to applications before the Rockland County Department of Social Services. However, it is possible that in the future other counties may follow suit. We ask that you kindly notify our office if you encounter any such policy change with any other Medicaid districts.

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