

2018 SMP/SHIP

NATIONAL CONFERENCE

August 20–23 • Chicago, IL

ACL Program Collaboration: Title III-
B Legal Services

Mike Klug, Sara Galvan, and Anne Smith

ACL Program Collaboration: Title III-B Legal Services

Mike Klug
Resource Center Consultant

August 22, 2018



Session Goals

- Identify Links between 4 ACL programs
 - SMP, SHIP, LTC Ombudsman, Title III-B Legal Services
 - Case Study Illustration
- Raise Awareness about Title III-B Legal Services
 - Who are they? What do they do?
 - How can SMPs, SHIPs and Title III-B providers work together?
- Resource Center Collaboration

An Illustration (Scene 1)

- A call from the Kentucky SMP Director (Nov. 2017)
 - Regional long-term care ombudsman referred a question to SMP about a nursing facility fraud.
 - SNF billed a beneficiary who has a MA plan
 - “Promissory Note” required at admission
 - Beneficiary’s daughter complained to the LTC ombudsman
 - Case dates to Oct. 2015 inpatient hospital stay

An Illustration (Scene 2)

- Reviewing the Documents (Nov. 2017)
 - Promissory note (self-pay agreement)
 - Beneficiary owed \$8,800.00
 - Hospital discharge summary
 - Orders for SNF transfer and physical therapy consult
 - Medications included prescription for Aricept
 - MA plan denial letter for SNF inpatient care
 - Billing statement shows MA plan paid for daily PT and OT on outpatient basis

An Illustration (Scene 3a)

- The MA plan's denial letter
 - "Care in a SNF is covered if you require daily skilled nursing or skilled therapy care, and this care can only be provided in a SNF."
 - "Your record shows you are better and now able to walk 250 feet with a walker."
 - The therapy you require can safely be received in a less intensive setting, for example, at home with home health care...."

An Illustration (scene 3b)

Your request was denied
We've denied the medical services/items listed below requested by you or your doctor:
Skilled Nursing Facility Services

Why did we deny your request?
We denied the medical services/items listed above because:
The record shows that you do not meet Medicare guidelines for care in a skilled nursing facility (SNF). Care in a SNF is covered if you require daily skilled nursing or daily skilled therapy care, and this care can only be provided in a SNF. Also, the skilled care must be reasonable in the amount and duration for the treatment of your illness or injury. Your medical records show that you were in the hospital with a breathing problem. Your record also shows that you are better and you are now able to walk over 250 feet with a walker. You are able to go from the bed to a chair with no help, and to take care of yourself with no help. The therapy you require can safely be received at a less intensive setting, for example, home with home health, in residential care, or home with close follow-up with your doctor.

If your doctor wants to talk about your case with a Humana doctor who reviews these requests, please have your doctor call Humana's Utilization Management department at 1-800-322-3758 (select option 2, and dial extension 1500081). Your doctor needs to call within five (5) calendar days of the date on this notice.

You have the right to appeal our decision
You have the right to ask Humana to review our decision by asking us for an appeal:

Appeal: Ask Humana for an appeal within 60 days of the date of this notice. We can give you more time if you have a good reason for missing the deadline.

If you want someone else to act for you
You can name a relative, friend, attorney, doctor, or someone else to act as your representative. If you want someone else to act for you, call us at: 1-800-457-4708 to learn how to name your representative. TTY users call Form CMS 1003-NMCP (Iss. 06/2013) CHS/HRVTE 10/04/2013 CMB Approval 0938-0829

10/12/2017 13:06 (FAX) P_011/020
10:11 AM 8/16/2018

The Practical Matter Test-1

- Medicare’s “Practical Matter” Test for SNF Coverage
 - As a “practical matter,” daily skilled services can be provided only in a SNF if they are not available on an outpatient basis in the area in which the individual resides or transportation to the closest facility would be:
 - An excessive physical hardship;
 - Less economical; or
 - Less efficient or effective than an inpatient institutional setting.

The Practical Matter Test-2

- The Key Consideration

- “The availability of capable and willing family or the feasibility of obtaining other assistance for the patient at home **should be considered**. Even though needed daily skilled services might be available on an outpatient or home care basis, as a practical matter, the care can be furnished only in the SNF if home care would be ineffective because the patient would have insufficient assistance at home to reside there safely.”

An Illustration (Scene 4)

- The Conference Call (Feb. 2018)
 - LTC ombudsman, local SHIP, SMP Director
 - Key take-away points
 - SNF refused to submit claim to Humana
 - Assisted living facility barred readmission
 - Beneficiary's daughter lives 2 hours away
 - Surprised by Practical Matter test's Key Consideration

An Illustration (Scenes 5 & 6)

- Referral to Kentucky SHIP (March 2018)
 - Reopen the case?
 - Grounds for reopening: error, no final determination, flawed notice
 - Standard filing procedure or CTM?
 - Input from CMS national liaison to SMP
 - SHIP Director files CTM complaint (April 2018)
 - Humana Complaint Unit called beneficiary's daughter; no response to written reopening request. (June 8, 2018)
- Referral to Medicare Ombudsman (June 22, 2018)

An Illustration (Conclusion)

- How does the story end?
 - Humana agreed to review the coverage denial
 - All documents resubmitted for July 3 delivery
 - Waiting for decision
 - What if Humana affirms original denial?
 - With a final (not DRAFT) determination, appeal to ALJ level
 - Referral to Title III-B Legal Services for Representation?
 - Resource Centers, NCLER will offer TA as needed

The Role of Title III-B Legal Services

Sarah Galvan, Staff Attorney
Justice in Aging

August 22, 2018

About Justice in Aging

Justice in Aging is a national organization that uses the power of law to fight senior poverty by securing access to affordable health care, economic security, and the courts for older adults with limited resources.

Since 1972 we've focused our efforts primarily on populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

Older Americans Act & III-B Legal Assistance

- Older Americans Act (OAA) Title III-B
 - Directs area agencies on aging to award funds to legal assistance providers
 - OAA Legal Services Providers = III-B attorneys
- OAA calls for state legal services leadership through a Legal Assistance Developer (LAD)

Scope & Mission of III-B Legal Assistance

- Priority case types:
 - Income
 - Health care
 - Long-term care
 - Nutrition
 - Housing
 - Utilities
 - Protective services
 - Defense of guardianship
 - Abuse & neglect
 - Age discrimination
- Provided to those with the greatest social and economic need

Legal Needs of Older Adults

56% Had at least one legal problem in a year period

10% Had 6+ legal problems in a year period

Legal Services Advance Access to Justice & Safety Net Programs

- When legal services are available they can be life saving
- Too many older adults do not receive the legal help they need
 - Do not realize their problem has a legal solution
 - Unaware that they may be eligible for help

Legal Assistance & Medicare Beneficiaries

- Eligibility issues
- Improper billing
- Reviews & appeals of coverage determinations (Parts A, B, C, & D)
- Representation in:
 - Independent Review Entity
 - ALJ Hearings
 - Medicare Appeals Council
 - Federal District Court

Legal Assistance & Other Health-Related Matters

- Medicaid appeals
- Issues with dual eligibles
- Defending evictions from nursing homes & assisted living facilities
- Medicaid & transportation issues
- Long-term services & supports

Working Together

- Regular cross-training is recommended
 - Learn what your partners do, what their guidelines are, hours, etc.
 - Points of Contact are important for emergencies
- Develop referral systems
- Understanding possible concerns
 - Confidentiality
 - Avoiding Conflicts
 - Client's ability to consent–Capacity

Finding Your Local III-B Provider

- [Elder Care Locator](#)
- Area Agency on Aging
- [LawHelp](#) (by state)
- State Legal Assistance Developer
- Reach out to [NCLER!](#)

Visit Our New Website: [NCLER.acl.gov](https://ncler.acl.gov)

NATIONAL
CENTER ON
**LAW &
ELDER
RIGHTS**

Search for resources

Read practice tips

Sign up for the email list

Request a case consultation

Learn about upcoming trainings

ncler.acl.gov



Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

Legal Services for the Elderly Maine



Legal Services for the Elderly (LSE)

Our Mission

Providing older persons with ready access to free legal help when basic human needs are at stake:

- Personal safety
- Housing
- Income Maintenance
- Access to Healthcare
- Self-determination

Who we serve

- Any Maine citizen age 60 and over regardless of income
- Medicare beneficiaries no matter what their age

On the phone, in the office or in their home depending upon most cost effective approach.

Our Programs

- Toll-free Helpline: Information and assistance on the phone for less complicated legal issues such as public benefits, debt collection and tenant's rights issues
- Personal representation for complex issues such as MaineCare appeals, evictions, financial exploitation and elder abuse. Provided by attorneys and paralegals in Augusta, Bangor, Lewiston, Presque Isle and Scarborough.

LSE has 3 Medicare Advocacy programs funded entirely by restricted federal and/or state grant funding:

- Senior Medicare Patrol
- Services provided as part of the state's SHIP program
- Medicare Part D Appeals Unit

SMP and SHIP

The Senior Medicare Patrol and SHIP services provide elderly and disabled Maine residents with information and assistance on health insurance matters, in particular:

- Medicare
- MaineCare
- Prescription drugs

Medicare Part D Unit and Free Helpline

The Part D Unit and Helpline services are important statewide resources for Maine's Medicare and MaineCare beneficiaries looking for help understanding their:

- Health insurance options
- Rights and protections
- Remedies

The Process

- The Helpline conducts an intake (or provides SHIP services) on the same day someone calls, or when a caller leaves a message outside regular business hours, on the next day after their call.
- LSE's Medicare Rights Advocate, Medicare Part D Appeals Unit and the Helpline staff are available to provide in-depth and comprehensive MaineCare and Medicare counseling to Maine seniors.
- Callers who require legal assistance speak with an attorney within, on average, two to four business days after the intake interview.
- When appropriate, Helpline attorneys refer clients for extended representation from LSE's Staff attorneys when MaineCare or Medicare coverage has been denied, terminated or reduced.

The Result

Through the combined efforts of:

- Helpline
- Medicare Rights Advocate
- SMP statewide coordinator
- Medicare Part D Appeals Unit and
- Area Office Staff Attorneys

LSE is able to provide a full range of services on a statewide basis in the area of health care benefits and health care access.

Anne Smith
Maine SHIP
Legal Services for the
Elderly
(207) 621-0087 ext. 3102
asmith@mainelse.org

