

Looking Out For Your Legal Rights®

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Derechos Legales*
La versión en
español la encontrará
al reverso.

How Will the Affordable Care Act (ACA) Impact You?

THE AFFORDABLE Care Act (ACA), commonly known as *Obamacare*, will change the way health care is delivered and received in New Jersey and across the country. The goal of the ACA is to reduce costs and improve the quality of care. It is also meant to guarantee more choice and provide for more accountability. The Act will have a significant effect on hospitals, doctors, and the patients they serve. Following is a summary of the major ways patients will be affected by the ACA.

The Affordable Care Act will change the way health care is delivered and received in New Jersey and across the country.

- **More people will have Medicaid coverage.** As a result of the ACA, Governor Christie has expanded Medicaid to include many more New Jersey residents. Most new enrollees will begin receiving services by January 1, 2014.
- **Insurance through the Health Insurance Exchange.** When the requirement to have health insurance takes full effect in 2014, you will be able to buy insurance through a *health insurance exchange* (a marketplace where rates and services are compared

Continued on page 2

support and funding to health centers across the state, including school-based health centers that provide primary care, dental care, and behavioral and other services.

- **Increased doctor control.** The ACA puts control back in the hands of physicians, instead of the insurance companies, so you will be more able to follow the advice of your physician without paying extra costs out of pocket.
- **Elimination of annual and lifetime limits.** Insurance companies will no longer be able to cap your coverage at a certain cost per year or over your lifetime.
- **Increased care in underserved communities.** The ACA creates new incentives for doctors, nurses, and physician assistants to work in certain underserved areas and with indigent-patient populations. This is done through payment increases for providers in certain areas and Medicaid reimbursement rates that match Medicare rates.
- **Better overall care.** Physicians and hospitals will be rewarded for improved patient health outcomes. For exam-



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ple, the ACA funded an initiative called *Partnership for Patients*, which brings doctors and nurses together to develop strategies to reduce preventable illnesses that spread in hospital facilities. So far in 2013, hospitals throughout the state have experienced a decrease in infection rates and other preventable problems, due to this federally funded initiative.

While the full impact of the ACA remains to be seen, there is no doubt that its effects will be far-reaching and life-changing for many Americans. □

By Stacey Bussel, Supervising Attorney, Legal Services of New Jersey's Legal Assistance to Medical Patients Project

FOR MORE INFORMATION

For more information about the Affordable Care Act and how it will impact you, visit the following websites:

- **Center for American Progress:** www.americanprogress.org
- **Center for Consumer Information and Insurance Oversight:** www.cms.gov/CCIIO
- **Study shows reduction in infections, other preventable problems, at N.J. hospitals:** www.nj.com/news/index.ssf/2013/05/reduction_in_infections_other.html

Personal Care Assistant Services for the Aged, Blind and Disabled

THIS ARTICLE is the first in a series about home and community-based services that are available through New Jersey's Medicaid Program. The focus is on benefits for low-income adults, age 65 or older, and disabled younger adults, even though there are also ways for other groups, such as children, to get this type of help.

What are Personal Care Assistants?

Personal Care Assistants (PCAs) provide personal care and perform household duties and health-related tasks in the home, under the supervision of a registered professional nurse. They follow a written plan of care that has been certified by a physician. You can arrange for services through a home health agency or a homemaker agency.

Examples of the types of activities a PCA can assist with are:

- Bathing, dressing, and toileting
- Grooming (for example, brushing your hair) and hygiene (brushing your teeth)
- Moving from your bed to a chair, or from your chair to a walker



Personal Care Assistants provide personal care and perform household duties and health-related tasks in the home.

- Walking, or using a walker or wheelchair
- Accompanying you to doctor's appointments
- Light housekeeping including sweeping, dusting, and changing bed linens
- Cleaning your kitchen and bathroom
- Laundry, in your home or at a laundromat
- Shopping and preparing meals
- Medications that can be self-administered

How do I know if I eligible for PCA services?

Personal care assistant services are meant to assist with long-term health care needs, not short-term needs for an acute illness. So you must first have a need for help with a chronic health care problem, or maintenance of a long-term condition.

You must also be eligible for Medicaid. If you are an older adult or a younger adult with a disability, you may be eligible for Medicaid if you meet the following eligibility criteria:

- You are a citizen or a qualified alien. In order to be a qualified alien, a lawful permanent resident must have that status for five years.
- You are a resident of New Jersey.
- You are 65 or older, blind, or disabled. If you have been approved for Social Security Disability, you will automatically meet this requirement. If you have not applied for disability through Social

Security, the State Medicaid Review Board will make its own determination. But if you have been denied Social Security Disability, they will assume that Social Security was correct in their decision, and will not consider your request until 12 months have passed from your Social Security Disability denial.

- You are financially eligible, either because you are eligible for SSI, or because your income is less than or equal to 100% of the Federal Poverty Level (\$958 per month in 2013) and you have \$4,000 or less in resources.

Once you have been approved for Medicaid, you will need a physician to certify in writing that you need assistance with at least one personal care task (for example, bathing or dressing) before you can be authorized for PCA services. The authorization process is discussed more fully below.

How do I apply for PCA services?

PCA is a *managed care* service, which means you need authorization from your Medicaid Managed Care Organization (MCO) before you can begin receiving PCA services. Each MCO uses a slightly different procedure, so you should call your MCO to find out exactly what you need to do to apply for PCA services. Telephone numbers for the four MCOs are:

- Amerigroup: 1-800-600-4441
- Horizon NJ Health:
1-877-765-4325
- United Healthcare Community Plan: 1-800-701-0710
- Health First NJ: 1-888-464-4365



Once you have been approved for Medicaid, you will need a physician to certify in writing that you need assistance with at least one personal care task before you can be authorized for PCA services.

Generally, the best way to begin is by asking your primary care physician to request the appropriate forms from your MCO. The doctor can then complete the forms and fax them back. You may be assigned a *case manager* or a *care manager*, who will help you choose an agency in your network. You can also look online for an agency in your network if you have access to the Internet.

Once a home health or homemaker agency has been identified, either a representative of the MCO or a nurse from the agency will schedule an appointment with you to conduct a face-to-face assessment. Based upon this assessment, your MCO will decide how many PCA hours a week you should receive. This process is called a *Prior Authorization*, or PA. PCA hours are limited to a maximum of 40 hours per week. **Note:** In extraordinary circumstances, you may be entitled to receive more hours with special approvals.

What should I know about the evaluation with the nurse?

The nurse who comes to your house to conduct the face-to-face assessment



The nurse will evaluate your needs in 10 areas and assign a number to each one, signifying how much help you need in that area.

will be using a screening tool called the PCA Assessment Tool. He or she will use this assessment tool to evaluate your needs in 10 areas and assign a number to each one, signifying how much help you need in that area. It's important that you tell the nurse about all of your limitations and care needs. Sometimes people are hesitant to talk about personal, intimate care needs. It can feel embarrassing to talk to someone you've only just met. But in order to get the care you need, the nurse needs an accurate and complete understanding of your abilities in each of the 10 areas. You may want to consider asking a family member or other supportive person to be with you during the assessment if that person can help better explain your needs and limitations.

Assessment Areas

Below are the 10 areas that will be assessed by the nurse during his or her assessment. Each one will be assigned a "score" ranging from zero to three, and at the end, those numbers will be added together. The total equals the number of hours of PCA they believe you need.

1. Your living situation, including the level of support that is available to you from other people in your life
2. Your mental status, including your ability to provide direction to others about your needs
3. Your ability to move around without assistance;
4. Your ability to transfer yourself, for example, from a bed to a chair;
5. Your ability to feed yourself;
6. Your ability to bathe yourself;
7. Your ability to use the toilet without assistance;
8. Your ability to dress and groom yourself; and
9. Your ability to shop and do laundry.
10. Lastly, the nurse will estimate how soon they think you might need to move into a nursing home (30 days, 6 to 12 months, or greater than 12 months).

For a more detailed description of these 10 categories, visit the web version of this article on our website, www.lsnjlaw.org.

How many hours of PCA services will I receive?

After the nurse conducts the face-to-face assessment using the PCA Assessment Tool described above, the nurse will add up your "score" in each of the areas, and the total will be how many hours of care you should receive.

Note: Right now, all four MCOs are using a PCA Assessment Tool that has a maximum potential score of 25 hours of PCA services. Since you are actually entitled by law to receive *up to 40 hours* of PCA services, the assessing nurse has the option of writing in their opinion if they feel you need more than 25 hours per

Prior Authorizations are time-limited, and you will be reassessed periodically (perhaps every six months).

week. They also need to include an explanation that justifies the number of hours they believe you need, up to a maximum of 40. His or her written comments are then reviewed by the MCO, which makes the final determination.

Once the number of PCA hours has been determined, the home health or homemaker agency will usually let you know, but you should also get the PA in writing from the MCO.

Can I choose when I want to have those services?

Once you know the number of PCA hours you have been approved to receive, you will then work with the agency to come up with a schedule that works for you. Many people benefit from having an aide in the morning to help them get the day started, and in the late after-

noon, to help with dinner at the end of the day. It can sometimes be difficult to get help during the evening and weekend hours.

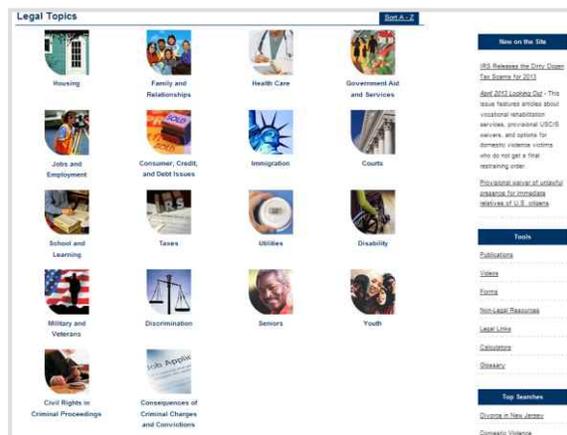
Does the authorization expire?

Prior Authorizations are time-limited, and you will be reassessed periodically (perhaps every six months). If you have a change of circumstances and believe your hours should be adjusted, you can request a new assessment at any time. For example, if you had a hospitalization, upon returning home, you may want to request a new assessment because you may need more help. □

A future article will cover your rights if you were denied PCA services, if you believe you need more hours than your MCO approved, or if your hours are decreased or terminated.

By Gwen Orlowski, Senior Attorney, Legal Services of New Jersey

You can find ***Looking Out For Your Legal Rights*** on our website, www.lsnjlaw.org. You can also find ***Looking Out*** articles in text format on www.lsnjlaw.org.



EXPUNGEMENT: What Types of Drug Convictions Qualify?

MANY PEOPLE with criminal records were arrested or convicted for drug-related offenses, from simple possession to sale and distribution. These offenses are commonly referred to as CDS (controlled dangerous substance) offenses. This article gives you guidance as to which CDS convictions can be expunged from your criminal record.

Categories of Convictions

- ***Sale, Distribution, or Possession with Intent to Sell—First or Second Degree.*** The sale, distribution, and possession with the intent to sell CDS in the first or second degree is *not* expungeable. However, many other categories of CDS offenses may be expunged.
- ***Sale, Distribution, or Possession with Intent to Sell—Third or Fourth Degree.*** Many indictable convictions for CDS fall into this category. Sale or distribution of CDS, of any kind, may be expunged if it is an offense of the third or fourth degree, but only if the court



Sale, distribution and possession with intent to sell drugs [CDS]—third or fourth degree—may be expunged if the court finds it in the “public interest.”

finds that expungement is in the *public interest*, giving due consideration to the *nature of the offense* and the applicant’s *character and conduct* since the conviction.

To determine the *nature of the offense*, the court may review the details and circumstances of your offense including its definition, grade, and elements. Courts may also consider undisputed or proven facts about the crime and its commission including details about what you did, how you acted, and the harm caused by the offense. You will be required to submit pre-sentence reports, plea agreements, and trial and sentencing transcripts, if available. The court may also consider related charges that were dismissed, as long as the underlying facts are substantiated or undisputed. *The court may not, however, consider unproven claims or allegations.* The state must present evidence if it claims that there are “contested” facts which are not of record.

To evaluate *character and conduct* since the conviction, the court may consider just about anything that shows (or does not show) that you have rehabilitated from their conviction, including:

- Behavior and performance during incarceration, parole or probation;
- Family and community ties;
- Education and vocation;
- Satisfaction of fines and other legal obligations;
- Distance from the criminal element (physical, mental); and
- Rehabilitation.

The court may also consider whether your conviction has created barriers in your life and, if applicable, your character and conduct prior to the conviction.

Possession with Intent to Distribute

Generally, possession of CDS with the *intent to distribute*—any degree—can be expunged. The State might object to your expungement, however, if it believes that the crime you committed was part of a drug operation involving the *sale* of CDS, and you were an “accomplice” to that scheme (even if you were not personally involved in a sale). Here, the court may look at the circumstances of the offense, which tend to show that a sale was actually intended, such as the presence of cash or weapons. Therefore, in order to expunge a conviction for possession with intent to distribute, you may need to establish through trial transcripts, pre-sentence reports, or other evidence that the offense did not involve an intended sale of CDS.

Sale, Distribution, or Possession with the Intent to Sell Small Amounts of Marijuana and Hashish

Sale, distribution, and possession with intent to distribute less than 25 grams of marijuana or less than five grams of hashish can be expunged. In this case, you have the burden to prove the amount of CDS involved in your case. Amounts can be found on the judg-

ment of conviction, plea transcript, or other arrest and sentencing documents.

Possession

Convictions for possession of CDS, drug paraphernalia, and “simple possession” can be expunged.

Conspiracy

Convictions for *conspiracy* to possess, distribute, or sell CDS may also be eligible for expungement.

Conclusion

While this article is intended to provide you with general guidance, you should discuss your case with an attorney or trained specialist who will consider the facts of your case, the context of your entire criminal record history, and your satisfaction of the sentencing requirements.

Prisoner Reentry Project (PREP)

If your income is low, you may qualify for legal help from Legal Services of New Jersey’s Prisoner Reentry Project (PREP). PREP provides assistance in civil matters to eligible inmates and those with criminal records to help their successful transition back into society. You may call our statewide, toll-free legal hotline at 1-888-LSNJ-LAW (1-888-576-5529) Monday through Friday, 8:00 a.m.-5:30.p.m. You may also apply online at www.lsnjlawhotline.org. 

By Akil S. Roper, Supervising Attorney, Legal Services of New Jersey’s Prisoner Reentry Project

Cuáles Son Sus Derechos Legales

Junio 2013

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La ley de Cuidado de Salud Asequible (ACA), comúnmente conocida como *Obamacare*, cambiará la forma en que se brinda y se recibe la asistencia médica en Nueva Jersey y en todo el país.

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Flip issue over for the
English edition of
*Looking Out for Your
Legal Rights.*

¿Cómo le va a afectar a usted la ley de Cuidado de Salud Asequible (por sus siglas en inglés ACA)?

LA LEY DE Cuidado de Salud Asequible (ACA), comúnmente conocida como *Obamacare*, cambiará la forma en que se brinda y se recibe la asistencia médica en Nueva Jersey y en todo el país. El objetivo de la ley ACA es el de reducir los costos y mejorar la calidad de los servicios. También tiene la intención de brindar más opciones y de exigir más responsabilidad. La ley tendrá un gran efecto en los hospitales, los médicos y en los pacientes a quienes estos atienden. A continuación encontrará un

continúa en la página 2

El boletín de educación jurídica para los habitantes de Nueva Jersey

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resumen de las formas más sobresalientes en las que la ley ACA afectará a los pacientes.

- **Más personas estarán cubiertas por el Medicaid.** A consecuencia de la ley ACA, el Gobernador Christie ha expandido el programa *Medicaid* para que incluya a muchos más habitantes de Nueva Jersey. La mayoría de los nuevos beneficiarios empezarán a recibir servicios antes del 1 de enero de 2014.
- **El seguro por medio del mercado de seguros médicos.** Cuando en el 2014, el requisito de tener un seguro médico, entre en pleno efecto, si usted no tiene una póliza por medio de su empleador y no llena los requisitos del *Medicaid*, podrá comprar uno en un *mercado de seguro médico* (un mercado es donde se comparan los costos y los servicios).
- **La eliminación de exclusiones a causa de afecciones preexistentes.** Si usted o su dependiente tiene una afección médica preexistente, tal como el cáncer, diabetes del tipo I o autismo,



Los médicos y los hospitales serán recompensados por los mejoramientos en la salud de los pacientes.

las compañías de seguros ya no podrán cobrarle una prima más cara, limitarles los servicios ni negarle una cobertura.

- **Una ampliación en la cobertura para los dependientes.** Ahora se les permitirá a los jóvenes y a los niños saludables permanecer inscritos en la póliza del seguro particular de los padres hasta que cumplan los 26 años de edad.
- **El registro electrónico de datos.** Los pacientes tendrán más acceso a sus historiales médicos, lo cual les facilitará el compartir dichos registros con otros especialistas.

Cuáles Son Sus Derechos Legales

Con respecto a *Looking Out*

Looking Out for Your Legal Rights® es publicada 10 veces al año por los Servicios Legales de Nueva Jersey. Si usted es un cliente de los Servicios Legales, puede obtener una copia en la oficina de Servicios Legales de su localidad. También puede leer *Looking Out* en nuestro sitio Web www.lsnj.org/espanol/selfhelp.htm.

Suscripciones

La suscripción cuesta \$20 dólares por año.

Números atrasados

Puede ver números atrasados en www.lsnj.org/espanol/selfhelp.htm.

Cambio de Dirección

Si se muda, envíenos su nueva dirección y una copia de la etiqueta pegada al ultimo ejemplar de *Looking Out*.

Comentarios

Si tiene alguna sugerencia o comentario con respecto a *Looking Out*, nos gustaría oírlo. Envíe toda correspondencia a:

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Este boletín de noticias es sólo una información general. Si tiene un problema jurídico, usted debería ver a un abogado.

Una parte del costo de esta publicación se cubrió con la ayuda proporcionada por el fondo IOLTA del colegio de abogados de Nueva Jersey.

- **Una extensión en los servicios para el cuidado médico preventivo.** A los planes médicos se les exigirá cubrir los servicios preventivos que se recomienden, sin ningún costo adicional al paciente. Los ejemplos de estos servicios incluyen las colonoscopias, mamogramas y visitas anuales para el bienestar de las personas de la tercera edad, inscritas en el Medicare.
 - **La eliminación del vacío en la cobertura del Medicare.** La ley ACA cerrará la brecha que existe en la cobertura del Medicare Parte D respecto a los medicamentos recetados. En la actualidad, los pacientes ya están ahorrándose un 50% o más en la compra de muchos medicamentos de marca.
 - **Un aumento en los fondos destinados para los centros médicos.** La ley ACA proporcionará un aumento en el apoyo y los fondos para los centros médicos en todo el estado, inclusive los que tienen base en las escuelas que proporcionan atención primaria, cuidado dental, y conductual, al igual que otros servicios.
 - **Un aumento en el control por parte del médico.** Los límites de la ley ACA devuelven el control a las manos de los médicos, en vez de dejarlo en las manos de las compañías de seguros, así que a usted le será más fácil seguir el consejo de su médico sin tener que pagar de su propio bolsillo ningún recargo adicional.
 - **La eliminación de los límites anuales y vitalicios.** Las compañías de seguros ya no podrán imponer un límite anual o de por vida en la cobertura.
 - **Un aumento en el cuidado prestado a las comunidades desatendidas.** La ley ACA crea nuevos estímulos para los médicos, enfermeras y ayudantes a trabajar en ciertas áreas desatendidas y con poblaciones de pacientes indigentes. Esto se hace por medio de aumentos en los pagos a los proveedores en ciertas áreas y en las tasas de reembolsos hechos por Medicaid para que se nivelen con las tasas del Medicare.
 - **Un mejoramiento en la atención en general.** Los médicos y los hospitales serán recompensados por los mejoramientos en la salud de los pacientes. Por ejemplo, la ley ACA financió una iniciativa llamada Asociación en favor del paciente, *en inglés Partnership for Patients*, que agrupa a médicos y a enfermeras para desarrollar estrategias destinadas a la reducción de enfermedades que se esparcen en las instalaciones hospitalarias. Hasta hoy, en el 2013, los hospitales en todo el estado han experimentado una disminución en las tasas de infección y otros problemas evitables, debido a esta iniciativa financiada por el gobierno federal.
- Mientras el impacto completo de la ley ACA está por verse, no queda duda que sus efectos serán de gran alcance y cambiarán la vida de muchos estadounidenses. 

Este artículo fue traducido del inglés por Al Moreno, coordinador del servicio lingüístico en LSNJ.