

**GERIATRIC SERVICES
CAPACITY ASSESSMENT**

**DOMAIN 7 – FINANCIAL AND
LEGAL ISSUES**

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INTRODUCTION

Purpose

The Geriatric Services Capacity Assessment was developed to help health plans and health systems, including community providers, hospitals, and other health care delivery organizations, evaluate their current ability to meet the needs of geriatric adults and to identify strategic opportunities for improvement.

Geriatric-competent care focuses on providing care and support for maximum function and prevents or eliminates barriers to integrated, accessible care.

Serving Senior Medicare-Medicaid Enrollees

Medicaid provides health coverage to more than 4.6 million low-income seniors, nearly all of whom are also enrolled in Medicare. Medicaid also provides coverage to 3.7 million people with disabilities who are enrolled in Medicare. In total, 8.3 million people are enrolled in both Medicaid and Medicare, which accounts for more than 17 percent of all Medicaid enrollees. Many of these beneficiaries have complex care needs; they have a significant impairment in physical functioning (some difficulty with two or more activities of daily living) and/or severe impairment in cognitive functioning. Health organizations must adapt to adequately meet the needs of this growing vulnerable population.

Medicare-Medicaid Enrollee Population

- *59 percent are elderly*
- *Compared to other Medicare beneficiaries, Medicare-Medicaid enrollees have:*
 - *More chronic conditions*
 - *More cognitive and other functional limitations*
 - *Lower income*

How to Use This Tool

Inherent in geriatric-competent care is the need to engage the individual in defining their care goals and needs. Establishing geriatric-competent care within a health plan or health system affects all functional areas of the plan or system, from direct care delivery to contract and payment modifications to management systems to the inclusion of a full range of home- and community-based care options and supports. As such, all key functional areas in the organization should be represented in the completion of the Tool.

7 FINANCIAL AND LEGAL ISSUES

Consumer-centered care recognizes the importance of addressing non-health care challenges in consumers' daily lives that impact their overall well-being. Medicare-Medicaid eligibility is based on the consumer's age and/or disability status, and poverty level. Organizations with geriatric competency recognize the harmful effect that financial burdens may have on the older consumer and are able to be a resource-link for their consumers or facilitate the right person to help.

Organizations with high levels of geriatric care are also aware of the legal issues that Medicare-Medicaid enrollees encounter. Advanced directives are important at all stages of life, but are especially critical for the elderly and disabled. The same is true for power of attorney documents and advocacy assistance. Organizations with geriatric capacity are a key referral resource for consumers with legal needs, including living wills, powers of attorney, guardianships (also known as conservatorships in some states), and grievance disputes. Elder law attorneys can also be a valuable resource for information regarding pooled, disability, or special needs trusts that may pay for services and supports not funded by Medicare or Medicaid.

7.1 Financial and Environmental Support

Medicare and Medicaid pay for the majority of health care expenses for enrollees; however, the financial needs of the Medicare-Medicaid enrollee population are much broader in scope than just those related to health care goods and services. Additional financial supports are often needed to enhance quality of life and aspects of life that contribute to the well-being of the consumer. Although many of these supports are technically outside of the health care realm, an organization with high levels of geriatric capacity is a useful resource in connecting the consumer with external financial supports and services. Organizations with geriatric capacity assess financial well-being and refer the consumer to a professional (e.g., social worker, care manager) who can do a comprehensive assessment and ensure that all existing state and federal financial supports are being optimized. Programs such as the Supplemental Nutritional Assistance Program (SNAP), the Medicare Savings Program and state supplements may enable scarce dollars to be used for other types of services and supports and expand the capacity of the IPC to meet needs. Veteran's benefits and tax relief should also be explored. Social service professionals and care managers may also be aware of local and regional charitable foundations that provide specific types of material or financial assistance.

7.1.1 Is the IDT aware of resources or resource points of contact to assist consumers with transportation that is not medically related?

Non-medical transportation services are not covered by Medicare or Medicaid. However, safe and accessible transportation are important for older consumers' quality of life. For example, an older consumer may want to go to church or need to go grocery shopping. An organization with geriatric capacity is knowledgeable about transportation resources, including Area Agencies on Aging (AAAs) and other local contacts for free or low-cost senior transportation, e.g., city and state departments may offer programs with volunteer drivers to assist the elderly in the community with rides or with discounted or free public transportation coupons.

7.1.2 Is the IDT aware of resources or points of contact for resources to assist geriatric consumers with housing and utilities?

Organizations with geriatric capacity ensure that staff are knowledgeable or have formal contact with a person or entity knowledgeable about housing and utilities assistance available to consumers. Examples of housing and utilities resources include:

- US Department of Housing and Urban Development (HUD)
 - Section 202 Supportive Housing for the Elderly
 - Section 231 Mortgage Insurance for the Elderly
 - Housing Choice Vouchers (rental assistance)
- US Department of Agriculture (USDA)
 - Section 504 Rural Housing Repair and Rehabilitation Grants
 - Section 502 Rural Housing Loans
 - Section 521 Rural Rental Assistance
- Low Income Home Energy Assistance Program (LIHEAP)

Information about housing, utilities, pest management, pet care and other housing/environment related issues may be accessed through state and local AAAs, ADRCs, Certified Professional Geriatric Care Managers, and others. Information about tax credits and tax relief programs may be available from the tax assessor.

7.1.3 Is the IDT aware of resources or points of contact to assist consumers with meals or nutritional supplements?

Organizations with geriatric capacity ensure that staff are knowledgeable or have formal contact with a person or entity knowledgeable about food and nutrition resources for consumers with low or fixed incomes. Examples include

- Commodity Supplemental Food Program
- Senior Farmers' Market Nutrition Program (SFMNP)
- Community-based organizations funded through government grants and private donations to provide congregate and home-delivered meals (e.g., Meals on Wheels and Senior Centers)
- Food banks

7.1.4 Is the IDT aware of resources to assist older consumers with other services, supports, and incidentals that are generally not covered by Medicare, Medicaid, and other Home and Community Based Services (HCBS)?

This category includes activities such as assistance with housekeeping, grocery shopping, yard work and other light maintenance tasks at a consumer's residence. Organizations with high levels of geriatric capacity have staff aware of, or have a contact person that knows of resources to assist with the older adults' daily needs that are in addition to medical care. These types of resources may be found through AAAs/ADRCs, Certified Professional Geriatric Care Managers, Geriatric Social Workers, local faith-based organizations, and by contacting the local 2-1-1 call center.¹

7.1.5 Is the IDT aware of condition-specific resources that may assist older consumers and their caregivers to meet their financial needs?

The IDT should also be aware of resources for consumers and caregivers to help cover costs of care that fall outside of traditional medical costs.^{2,3} Examples include:

¹ 2-1-1 provides free and confidential information and referral for help with food, housing, employment, health care, counseling, and more. www.211us.org

² National Institute on Aging: Legal, Financial, and Health Care Planning Documents. <https://www.nia.nih.gov/alzheimers/publication/legal-and-financial-planning-people-alzheimers-disease-fact-sheet#legal>

³ Alzheimer's Association: Money Matters. http://www.alz.org/national/documents/brochure_moneymatters.pdf

- Claiming the “Child and Dependent Care Credit” on the federal income tax return
- Workplace flexible spending account (FSA) to pay for out-of-pocket medical expenses and dependent care expenses with pretax dollars
- Many states have additional tax deductions or tax credits to provide financial relief to caregivers

Other resources to help caregivers make financial decisions are also available, including a series of free booklets produced by the Consumer Financial Protection Bureau, “Managing Someone Else’s Money.”⁴

⁴ Consumer Financial Protection Bureau: Managing Someone Else’s Money.
<http://www.consumerfinance.gov/blog/managing-someone-elses-money/>

7.2 Legal Issues

7.2.1 Guardianship and Incapacity Determination⁵

7.2.1.1 Does the IDT understand the legal process for determining if a consumer is incapacitated and requesting the appointment of a guardian?

Guardianship (also known as conservatorship in some states) definitions and regulations vary by state and situation. In general, a guardian (or conservator) of the person possesses some or all power over the consumer's personal affairs (health and welfare). A guardian of the estate possesses some or all power with regard to the consumer's personal property. Due to the seriousness of losing one's individual rights when declared incapacitated, guardianships are considered an option of last resort and require that a court first deem an individual incapacitated. This determination is not clear-cut, as an individual may have periods of lucidity between periods of confusion. The court must take into account the individual's functional capability in a variety of settings. Voluntary or temporary conservatorship may be useful in some circumstances.

7.2.1.1 Are there protocols in place to ensure continuity of care for the consumer in the event that a guardian is appointed?

An organization with geriatric capacity familiarizes staff with protocols that will ensure that consumers do not suffer interruptions in care should a guardian be appointed. Protocols may include verification of court documents as well as the guardian's identity, and an in-person meeting to discuss the IPC with the guardian.

7.2.2 Ombudsman

An ombudsman is an individual who assists consumers in resolving problems they may have with their health care payers, skilled and residential nursing homes, and assisted living facilities. An ombudsman is a neutral party who works with the consumer, the organization or facility, and the provider (as appropriate) to resolve individual consumer complaints, grievances, appeals, and inquiries. Ombudsman programs vary by state.

7.2.2.1 Is the IDT able to help consumers connect with their ombudsman to resolve problems with their payer or long-term care facility?

An organization with geriatric capacity is aware of and is able to refer older consumers to their local ombudsmen in order to resolve the consumers' concerns in a timely manner.

⁵ By definition, to be incapacitated means to lack the mental or physical capacity to sufficiently care for person and property whether temporarily, intermittently or permanently. The term is often used interchangeably with the word "incompetent," although the former traditionally describes medical status while the latter is a legal finding. However, most states use the term "legally incapacitated" to describe someone who is unable to meet basic requirements to preserve physical health and safety. Excerpt from: Maier, K. Legally Incapacitated vs. Legal Incompetent. Demand Media. Retrieved from <http://info.legalzoom.com/legally-incapacitated-vs-legally-incompetent-21238.html>

7.2.3 Advance Directives

An advance directive is a legal document that goes into effect only if the consumer is incapacitated and unable to speak for him- or herself. There are two elements in an advance care directive—a living will and a durable power of attorney for health care. Additionally, some states also have statutes that allow for a durable power of attorney for mental health care which may also be referenced as a Psychiatric Advance Directive (PAD).^{6,7} Those directives allow a power of attorney to make decisions about mental health treatment without requiring determination of incapacity.

7.2.3.1 Does IDT staff know whom to contact or refer the older consumer to, for assistance with a living will, durable power of attorney for health care, and/or durable power of attorney for mental health care?

Organizations with high levels of geriatric capacity have staff with knowledge of advance directives, as well as the ability to direct the consumer on how to obtain guidance and legal advice when completing the following items:

- Living will: a written document that specifies the end-of-life care the consumer wishes to receive.
- Durable power of attorney for health care: a legal document naming the consumer's health care proxy. This proxy will make the consumer's medical decisions should the consumer be unable to do so. A power of attorney does not override the wishes of a consumer who is able to manage their own affairs.
- Durable power of attorney for mental health care: a legal document naming the consumer's mental health care proxy. If a licensed practitioner (some states specify a psychiatrist or psychologist) deems the consumer incapable of giving informed consent, the proxy will make decisions about mental health care.

7.2.3.2 Does the IDT know how to assess the appropriate time to institute a living will, durable power of attorney for health care, or durable power of attorney for mental health care?

Licensed medical practitioners adhere to their medical training when following directives in a living will and gauging the appropriate time to defer care decisions to a power of attorney for health or mental health care. Staff at non-clinical organizations with geriatric capacity may have

⁶ A Psychiatric Advance Directive (PAD) is a legal document written by a competent person who lives with a mental illness. It describes the person's mental health treatment preferences, and/or names an agent to make treatment decisions for the individual, should he or she become unable to make such decisions due to psychiatric illness. Excerpt from: National Alliance on Mental Illness. Policy Topics. Psychiatric Advance Directives: An Overview. Retrieved from http://www.nami.org/Template.cfm?Section=Issue_Spotlights&template=/ContentManagement/ContentDisplay.cfm&ContentID=137779

⁷ Mental health advance directives are similar to the more commonly used directives for end-of-life medical decisions. An individual must be competent to execute a mental health advance directive, and the directive must clearly express the patient's wishes. Once directives are executed, steps must be taken to ensure compliance, including adequate dissemination to providers, and to ensure that proxy decisions are consistent with the patient's treatment preferences. Excerpt from: Substance Abuse and Mental Health Services Administration (SAMHSA). Homelessness Resource Center. Advance Directives for Mental Health Treatment.

protocols in place that direct the process of connecting the consumer to the appropriate medical or mental health assessment, if conditions make it likely that a proxy for health care decision-making is necessary.

7.2.4. Health Insurance Portability and Accountability Act

Although many aspects of HIPAA are important to an organization with high levels of geriatric capacity, this section highlights components that deal most directly with consumer interaction, which is Title II.⁸ Title II regulates privacy and security of individuals' Protected Health Information, the use and dissemination of electronic health care records, and programs to rights and protections, including controls over how their information is used and disclosed, the right to examine and obtain a copy of their health records, and the right to request corrections.⁹ Ensuring strong privacy protections is critical to maintaining consumers' trust: an integral part of being competent in geriatric care.

7.2.4.1 Are IDT staff knowledgeable about HIPAA Title II regulations regarding consumer PHI?

Organizations with high levels of geriatric capacity have IDT staff that are well informed about HIPAA privacy and security regulations. Staff understand their responsibility to adhere to the regulations and do not break this confidentiality. IDT staff follow organization protocols to prevent the unauthorized release of consumers' PHI and understand processes to report and correct any privacy violations.

7.2.4.2 Do IDT staff honor and facilitate the release of PHI to the consumer?

The HIPAA Privacy Rule allows use and disclosure of information for treatment and other purposes with appropriate protections.⁹ Geriatric-competent IDT staff are aware of these circumstances, are able to inform consumers of their rights to their health information, the consumer's right to release information to family and other designated individuals, and are able to take the necessary steps to provide the information to consumers. Staff have Release of Health Information and Release of Medical Records documents available for the consumer to complete. State laws may also include additional protections for PHI related to psychiatric diagnosis and treatment and/or HIV/AIDS.

⁸ Title I of the Health Insurance Portability and Accountability Act (HIPAA) regulates health care access, portability, and renewability.

⁹ U.S. Department of Health and Human Services. HIPAA Privacy Rule and Sharing Information Related to Mental Health. <http://www.hhs.gov/ocr/privacy/hipaa/understanding/special/publichealth/index.html>

APPENDIX A: REFERENCES AND RESOURCES

Included in this appendix are references that were utilized and consulted during the development of this Tool or augment the information contained in the assessment tool. References are links to government websites, resources provided by professional organizations, or publications in academic journals. The references are divided by domain for ease of use.

Introduction

- **Slow medicine:**
http://www.nytimes.com/2008/02/26/health/views/26books.html?_r=1&
- **Geriatric Competencies:**
<http://www.pogoe.org/gwiz>
- **Geriatrics Competent Care Webinar Series:**
http://www.resourcesforintegratedcare.com/Geriatrics_Compentent_Care_Webinar_series

7. Financial and Legal Issues

- **Advance Care Planning:**
http://www.nia.nih.gov/sites/default/files/advance_care_planning_tipsheet_0.pdf
- **Medicare Beneficiary Ombudsman:**
<http://www.medicare.gov/Pubs/pdf/11173.pdf>
- **End-of-Life Decisions:**
http://www.caringinfo.org/files/public/brochures/End-of-Life_Decisions.pdf
- **Guardianship:**
http://www.guardianship.org/reports/Guardianship_of_the_Elderly.pdf
- **Elderly Housing:**
<http://www.gao.gov/new.items/d05174.pdf>
- **Health Information Privacy:**
<http://www.hhs.gov/ocr/privacy/>
- **HIPAA:**
<http://www.cms.gov/Regulations-and-Guidance/HIPAA-Administrative-Simplification/HIPAAGenInfo/index.html?redirect=/HIPAAGenInfo/>
- **National Institute on Aging: Legal, Financial, and Health Care Planning Documents.**
<https://www.nia.nih.gov/alzheimers/publication/legal-and-financial-planning-people-alzheimers-disease-fact-sheet#legal>
- **Alzheimer's Association: Money Matters.**
http://www.alz.org/national/documents/brochure_moneymatters.pdf
- **Consumer Financial Protection Bureau: Managing Someone Else's Money.**
<http://www.consumerfinance.gov/blog/managing-someone-elses-money/>

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This document represents one domain of an eight-part self-assessment tool. To access additional domains, or to see the tool as a whole, please visit:

<https://www.resourcesforintegratedcare.com/>. We also welcome any feedback to RIC@Lewin.com.