

# Paying for Long Term Care

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# Costs of Long Term Care

- ▶ Long term care is very expensive. Most people cannot afford to privately pay for long term care services for very long.
- ▶ Downstate, nursing home costs vary from \$340 per day in the Northern Metropolitan area to \$390 per day in Long Island, which is approximately \$124,100 per year in the Northern Metropolitan area to \$142,350 per year in Long Island. It is estimated that persons in nursing homes stay for less than 2½ years on average.
- ▶ Home health care is also expensive. The average cost of home health care is \$22 per hour. Assuming 20 hours of care per week, this represents average home health care costs throughout the State are over \$22,000 per year.

# Medicare

- Non-means tested
  - Requires work history
- Has deductibles and co-payments
- Covers rehabilitative stays in a nursing home
  - 100 days maximum (20 days w/o co-pay; \$176 per day in 2020 for days 80-100.)
- Covers home care with rehabilitative component
  - Certified Home Health Agency (CHHA)
  - Provide Skilled Care and Rehabilitation
  - Limited hours

# Home Care Options

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- Licensed Home Care Services Agency (LHCSA)
  - Generally privately paid. The average is \$22 hourly.
  - Can be covered through Long Term Care Insurance.
  
- Medicaid Programs:
  - Managed Long Term Care (MLTC)
  - Personal Care
  - Consumer-Directed Personal Assistance
  - Adult Day care services
  - PACE (All inclusive care)
  - Nursing home transition and diversion

# What are Activities of Daily Living (ADLs)?

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- ▶ ADL's are generally considered to be the following:
  - Eating
  - Bathing
  - Getting dressed
  - Toileting
  - Transferring
  - Continence

Currently, long term care insurance usually requires assistance with two Activities of Daily Living (ADLs) to authorize care. Medicaid currently has no requirement and has been based on medically necessary services. The new proposal would require assistance with more than 2 ADLs or, if there is a diagnosis of dementia, more than one ADL to receive MLTC. (Effective October 2020, but likely to be pushed back to April 2021).

New regulations are proposed to incorporate these as requirements for Medicaid, as well as a new assessment tool, with assessments to be performed annually and an independent panel to look at cases with over 12 hours per day in care.

# Residential Options

- **Assisted Living Facilities** - mostly private pay. ALP facilities are covered by Medicaid.
- **Adult homes** (Independent Living) – may use Medicaid to pay for home care aides. Room and board is private pay.
- **Continuing Care Retirement Communities** – All inclusive, private pay.
- **Skilled Nursing Facility** – Private pay, Medicare, and Medicaid.

# Long Term Care Insurance

- ▶ Long Term Care Insurance may be able to cover some of the costs of home health care, assisted living or nursing home.
- ▶ They can provide reimbursement for out of pocket, pay providers directly, or provide a fixed payment
- ▶ Usually there is an “elimination period” of 90 days.
- ▶ Premiums are based on age and health.
- ▶ Look for “inflation riders” and premium waivers.
- ▶ NYS offers a tax credit for some qualified policies.

# New York State Partnership for Long Term Care



- Starting in 1993, providers began offering policies under this New York State approved program which allowed people to protect assets.
- After the benefits paid under the program are exhausted, e.g., after 5 years of home care or 3 years of nursing home care, then the policy holder will receive Medicaid automatically, regardless of their assets (total protection) or up to a certain amount (dollar for dollar).
- Income must still be paid to the nursing home.
- Portability is limited to participating states which have similar programs.

# Medicaid – Financial Eligibility

- Means tested – with income and resource limits
- Covers nursing home, adult day care and home care
- Income limit is \$875 in 2020 and \$1,284 for a couple with a \$20 unearned income exclusion.
- For Managed Long Term Care, a non-applying spouse can retain up to \$3,216 per month in income, and the applying spouse can keep \$409.
- Income in excess of the standard will not make a person ineligible; however, the excess income (known as “surplus” or “spenddown”) must be spent on medical or home care expenses before Medicaid will pay.
- The income surplus may be paid into a Pooled Community Trust and then used for non-medical needs.

# Medicaid

- Resource limit is \$15,750, \$23,010 for a family of two.
- For MLTC and nursing home coverage, a “community spouse” can keep up to \$ 128,640 in assets.
- If a non-applying spouse’s assets would make the applying person ineligible, the spouse can refuse to provide support and the applicant will be approved for Medicaid based upon his or her individual assets. This works for home care and nursing home care. The Medicaid agency can sue for spousal support contributions.

# Medicaid

- Transfers create ineligibility for **nursing home** coverage, called a penalty period
- Financial “Lookback” is 3 months for home care
- Financial “Lookback” is 60 months for nursing home care
- Penalties begin on the date of application
- Annuities, Promissory Notes, and Mortgages may be transfers
- Limit on home equity for home care (\$893,000) per person. If spouse or minor or disabled children are living in residence, it is exempt from the limit.

# Transfers

- What is a transfer penalty?
  - Uncompensated transfers (not for fair market value) or gifts, create a period of ineligibility for Medicaid coverage in a nursing home.
  - Does not currently apply to community Medicaid or MLTC, but will start April 2021.
  - Establishing an irrevocable living trust is a transfer; however, after five years, the assets are not counted.

# Home Care Lookback

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- ▶ There is a new “Lookback” period of 30 months for home care Medicaid. Prior to this there was only a lookback period for nursing home Medicaid.
- ▶ This is effective October 2020, although the way the law is currently written, it will affect transfers occurring up to two and a half years before 2020. The Department of Health has indicated that it would only apply to transfers after October 1, 2020.
- ▶ New home care applications will have to submit up to 30 months (2.5 years) worth of financial records, and, if any gifts or transfers for less than fair market value are made, a penalty period will be imposed, with no Medicaid coverage during the penalty.
- ▶ The Department of Health has indicated that the effective date for requiring the lookback on applications will be pushed to April 1, 2021 in response to the continued threat of Covid-19.

## Lookback period for nursing home coverage

- Financial documentation for the past 60 months must be submitted on the date of the application.
- For transfers to a trust, 60 months must be submitted.
- All transfers are subject to a five year lookback.
- Generally, all transactions over \$2,000 will be reviewed.

# Penalty Period

- The penalty period starts on the date that a person is applying for Medicaid and “otherwise eligible for coverage”
- Otherwise eligible means
  - In a nursing home OR receiving long term care that could otherwise be covered by Medicaid.
  - Less than \$15,750 in assets
  - Medicare and other insurance policies are exhausted or insufficient to pay for care

# Example – Transfer penalty

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1. \$128,050 was transferred (gifted) in May 2021.
2. Westchester's regional rate is \$12,805, so the penalty is \$128,050 divided by \$12,805 = 10 month penalty period.
3. Individual has no more assets, needs care and applies for Medicaid in November 2021. The lookback period is October 2020 to October 2021 (13 Months) for home care or October 2016 to October 2021 for nursing home care (60 months). Because a transfer occurred during the lookback, a penalty is assessed.
4. Penalty starts November 1, 2021 and ends August 31, 2022.
5. Person is eligible for Medicaid coverage on September 1, 2022.

# Not all transfers are penalized

- You can transfer your homestead to
  - Spouse
  - Disabled child of any age
  - Caretaker child living in the homestead for two years prior to institutionalization
  - Sibling with equity interest living in homestead for one year before institutionalization
  
- For other transfers
  - Transfers to a spouse will not incur a penalty period
  - Also, a transfer to another or to a trust for the “sole benefit” of the spouse
  - Transfers for the sole benefit of a disabled child are exempt
  - The transfer can also be to a trust for the sole benefit of a disabled child, or
  - To a Supplemental Needs Trust or trust for the sole benefit of any disabled individual under age 65.
  - To a pooled trust operated by a not-for profit entity, if under 65.

## Not all transfers are penalized (continued)

- Transfers for fair market value do not create a penalty, for example, arms-length transactions
- Transfers exclusively for a purpose other than to qualify for Medicaid (hard to prove)
- Personal Services Contracts may, in certain instances, be considered transfers for fair market value

## Home Equity (Home Care cases)

- If the equity value of the home exceeds \$893,000, the excess is considered available
- Does not apply if the home is occupied by a spouse, or a minor or disabled child
- For jointly owned property, each individual owner is presumed to own an equal share, and will be entitled to the \$893,000 exemption
- Home equity can be reduced with use of a reverse mortgage or home equity loan

# Where to Get More Information

- ❖ **Social Security Administration** <http://www.ssa.gov/>
- ❖ **Medicare** <http://www.medicare.gov/>
- ❖ **Centers for Medicare and Medicaid Services** <http://www.cms.hhs.gov/>
- ❖ **New York State Department of Health** <http://www.health.state.ny.us/>
- ❖ **Westchester Dept. of Social Services** <http://www.westchestergov.com/social/>
- ❖ **Westchester Dept. of Senior Programs and Services** <http://www.westchestergov.com/aging/>
- ❖ **Information on Medicaid, Medicaid and other programs** <http://wnylc.com/health/>