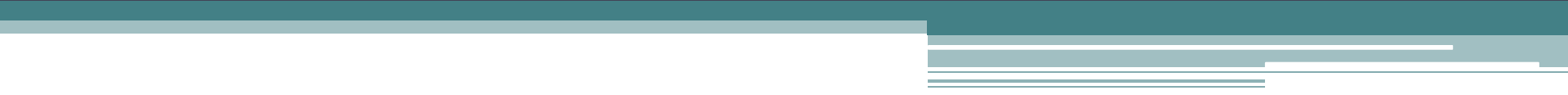


Do You Need Home Care? How to Obtain Benefits through the Medicaid Personal Care Program

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The Cost of Long Term Care and the Home Care Medicaid Program

Cost of Nursing Home Care

- NY:
 - Westchester: Approx. \$192,000/year
 - NYC: \$191,000/year
 - Long Island: \$191,000/year
- CT:
 - \$146,000/year
- NJ:
 - \$110,000/year

Cost of Home Care

- Approx. \$25/hour
- If receiving 8 hours of care per day, seven days a week
 - \$72,800/year

How Can I Limit the Cost of my Care?

- Medicaid Eligibility
- Long Term Care Insurance
 - (a) State Certified Policies
 - (b) Straight Long-Term Care Coverage
 - (c) Hybrid Policies
- Advanced Long Term Care Planning
 - Medicaid Asset Protection Trust

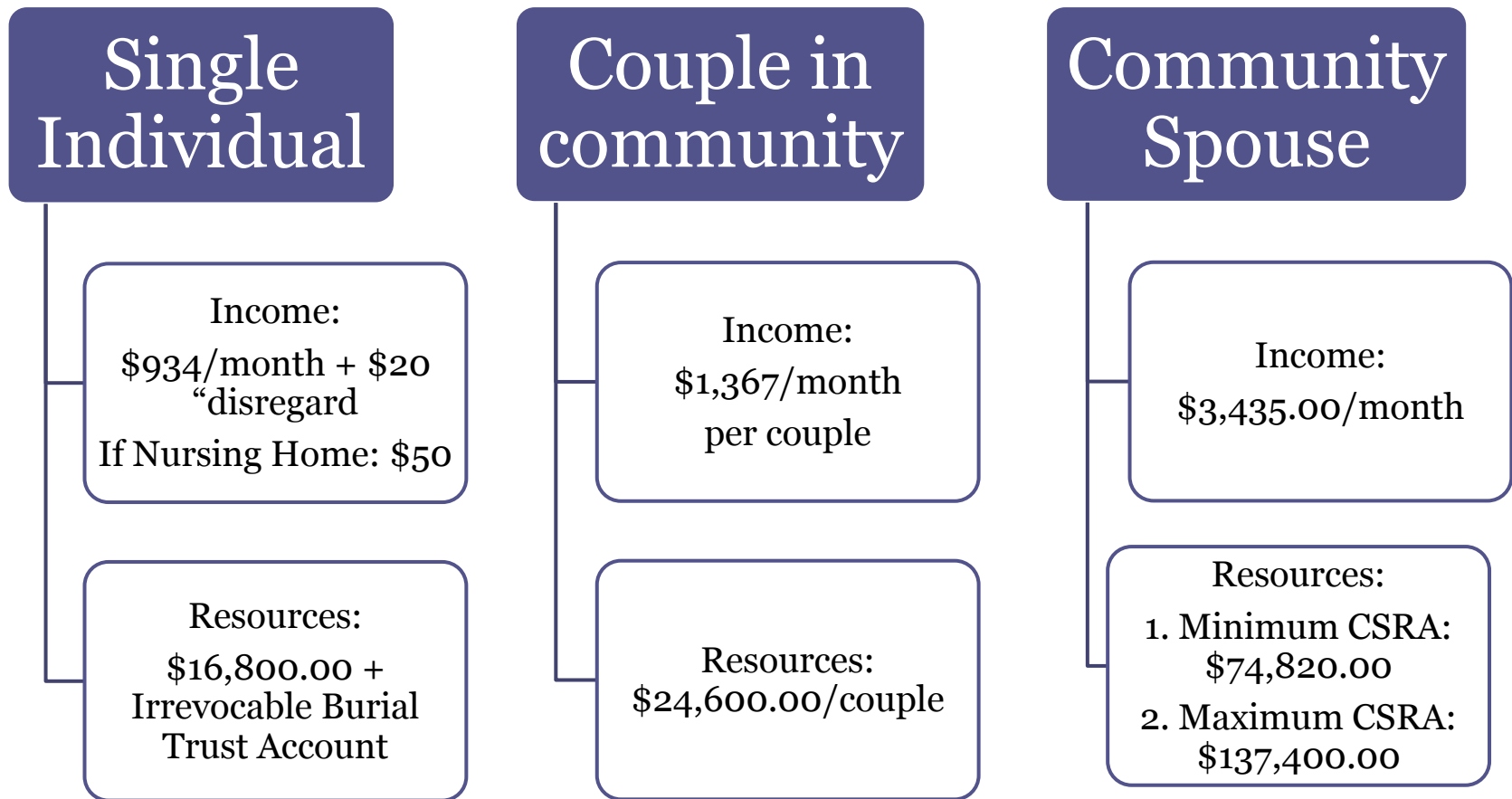
Medicaid Eligibility

Federal Requirements

- Must be a US citizen or permanent lawful resident
- Must be 65 or older or disabled as defined by state's Medicaid provision
- Must be a resident of the State and County where the application is filed

Medicaid Eligibility Example

New York State Resource/Income Requirements



What resources count toward the Medicaid Eligibility threshold of \$16,800

- Checking accounts
- Savings accounts
- Mutual Funds
- Stocks/bonds
- Cash value of a whole life insurance policy
- Non-qualified annuities
- Retirement accounts, if not yet in pay status (individual under age 72)

What resources do NOT count...

- Retirement accounts, if in “pay status”
 - The required minimum distribution is being taken
 - Includes IRAs, 403(b)s, 401(k)s
- Term life insurance
- One vehicle, if in use
- Pre-paid funeral agreement
- Burial Plot
- Homestead (equity up to \$955,000)

Calculation of Medicaid surplus income

- A Medicaid recipient is determined to have a “spenddown” or a “surplus” if their income is above the countable threshold of \$954 per month.
- Medicaid will budget income based on the following (non-exhaustive list):
 - Social Security
 - Pension
 - Retirement required distributions
 - Dividends/interest
 - Trust income
 - VA benefits
 - Worker’s compensation
 - Alimony
 - Annuity payout

Surplus income example

- John Smith receives the following sources of income:
 - Social Security = \$1,600
 - Pension = \$425.00
 - IRA distribution = \$12,000/annual or \$1,000
 - Total income = \$3,025.00
 - He is allowed to retain \$954, leaving a Medicaid surplus of **\$2,071**. Said money can then be sheltered in a pooled income community trust
 - Additional deductions = health insurance premium deductions
 - ***Tax withholding is not a countable deduction

Medicaid Eligibility

Spousal Refusal

- Creates Medicaid eligibility in an individual needing Medicaid covered services, either in the community or institution
- Allows "community spouse" to retain resources and income above the levels ordinarily permitted to an unmarried individual without impacting eligibility of the spouse applying for Medicaid

Evaluations to receive care

- Upon approval for financial eligibility, you must complete two evaluations to receive care.
 - Part 1: Conflict Free Evaluation – purpose is for a nurse to determine you require at least 120 days of community based long term care services
 - Run by New York Medicaid Choice
 - Does not determine the number of hours
 - Review activities of daily living (ADL)
 - Evaluation is valid for 75 days

- **Part 2: Managed Long-Term Care (MLTC) eval.**
 - Evaluation can only occur after the Conflict Free Evaluation has occurred and you have passed.
 - This evaluation will determine number of hours/plan of care.
 - Important to have a family member present to advocate for the need for assistance with activities of daily living
 - Enrollment paperwork must be submitted by the 19th of the month for services to commence the 1st of the following month

- Once enrolled with an MLTC – you have 90 days to change plans for any reason
- After 90 days, you are “locked in” for 9 months
- You can then only change plans for “good cause”
- Not always a “good idea” to change plans
 - Must be aware of unintended consequences

Sample list of MLTC Providers

- AgeWell New York
- ArchCare Community Life
- Centers Plan for Healthy Living
- Evercare Choice
- Fidelis Care at Home
- Hamaspik Choice, Inc.
- HomeFirst
- Integra MLTC, Inc.
- Montefiore Diamond Care
- Prime Health Choice LLC
- RiverSpring at Home
- Senior Health Partners
- Senior Whole Health of New York MLTC
- VNSNY Choice
- WellCare Advocate MLTC

Activities of Daily Living (ADL)

- Bathing
- Personal Hygiene
- Walking
- Dressing
- Transfer to toilet
- Toilet use/incontinence & care
- Eating
- Bed mobility
- Level II Personal Care Tasks (18 NYCRR 505.14(a)):
 - Administration of medications
 - Preparation of meals due to modified diet
 - Routine skin care
 - Changing of simple dressings

Activities of Daily Living

- If you need ANY assistance with an activity of daily living for 120+ days, you can enroll in a Managed Long-Term Care (MLTC) provider.
- Level 1 housekeeping will no longer be a Medicaid personal care service

Consumer-Directed Personal Assistance Program (CDPAP)

- Statewide Medicaid program that allows the "consumer" to have more control in the process.
- The consumer is responsible for hiring, training and firing of an aide as opposed to a home care vendor or agency selecting the care.
 - A family member, other than a spouse, can be paid to provide care to the family member on Medicaid.
 - CDPAP aides can perform skilled needs, which a home care attendant cannot.

Physician's Order

- Personal and CDPAP services will need to be prescribed by a "qualified independent physician selected or approved by the Department of Health."
- *We are awaiting a formalized start date.*
- Numerous concerns -
 - Delays in applying for services due to not being able to utilize your own physician
 - Independent physician will not have familiar knowledge of your medical condition

Standardized task-based assessment tool

- New standardized task-based assessment tool was scheduled to be used to calculate hours for a plan of care BY April 1, 2021
- Currently the MLTC uses their own tasking tool to determine the number of hours
- New "tool" will be evidence based - No formal directive that said standardized task-based assessment tool is in use.
- By October 1, 2022, an independent assessor will be utilized to determine authorization of personal care and CDPAP cases

Medicaid Eligibility

Look Back Period

- Medicaid Home Care
 - Currently no look back period
 - As of now, the implementation of a lookback period on home care Medicaid will commence April 1, 2022. We are awaiting a formal directive as to the official start date.
 - Upon implementation, the look back will be phased in each month until it caps out at 30 months.
 - The look back period will be for any uncompensated transfers made on or after October 1, 2020.
- Medicaid Nursing Home: 60 month look back period (5 years)
 - If uncompensated transfers were made during look back period, an application for Medicaid should not be filed without first speaking to any attorney.
 - Can appeal imposition of penalty period at a Medicaid Fair Hearing

- Penalty period created by non-exempt and uncompensated transfers of assets
- Triggers ineligibility period
 - Period is determined by dividing value of gift by the average cost of nursing home care per month in county where Medicaid applicant resides
 - The average cost is known as a regional rate

Medicaid Eligibility

Exempt/Non-Exempt Transfers

Exempt Transfers

- Transfers to a spouse
- Transfers to a blind or disabled child
- Transfers to a caretaker child
- Transfers to a sibling with an equity interest in the property

Non-Exempt Transfers

- Gifts to family members or friends for purposes of Medicaid eligibility
- Transfers of property for less than fair market value

Medicaid Eligibility

Medicaid Crisis Plan

- Allows for sheltering of approximately 40% to 50% of a single applicant's assets from the cost of the care where an applicant is ineligible and needs immediate nursing home care.
- Effective April 1, 2022, medicaid crisis plan's will be utilized for home care Medicaid eligibility.
- Combines Gifting + Special Promissory Note and/or Annuity (loan)
 - Loaned funds are used to pay for applicants care during the period of ineligibility
 - Gifted funds are protected by end of period of ineligibility

Current Regional Rates for calculation of Penalty Period

- Northern Metropolitan \$13,399
 - Dutchess
 - Orange
 - Putnam
 - Rockland
 - Sullivan
 - Ulster
 - Westchester
- Western \$11,884
- Central \$11,328
- Northeastern \$12,560
- New York City \$13,415
 - Bronx
 - Kings (Brooklyn)
 - New York (Manhattan)
 - Queens
 - Richmond
- Long Island \$14,012
 - Nassau
 - Suffolk
- Rochester \$13,376

- Applicant lives in Westchester County
- Gifted approximately \$100,000 to children
- Penalty would be 7.46 months
 - 100,000 divided by the regional rate of 13,399

When will the penalty commence?

- Social Services Law §366 subd. 5 (e) (5) provides that "The period of ineligibility shall begin...the first day the otherwise eligible individual is receiving services for which medical assistance coverage would be available based on an approved application for such care but for..." the transfer penalty.

Elimination of Asset Test

- Pursuant to Governor Hochul's proposed budget, if passed, and approved by the Federal Government, there would NO asset test for Community and/or Institutional Medicaid, effective January 1, 2023
- There would also be an increase in the income limits; 138% of the Federal Poverty Line
 - \$954 would go to \$1,563

Irrevocable Medicaid Asset Protection Trust

- **Benefits:**
 - 5 years after transfer occurs property and assets are protected for Nursing Home Medicaid eligibility purposes
 - 2 and 1/2 years after transfer occurs property and assets are protected for Home Care Medicaid eligibility purposes
 - The transfer allows the transferee to receive the premises with a stepped up cost basis upon the death of the transferor, through the reservation of the life estate to the grantor
 - Allows property to be sold during transferor's lifetime without income tax consequences
 - The personal residence exclusion of \$250,000 if single, or \$500,000 if married, is still available

Durable Power of Attorney

- **What is it?**
 - A Durable Power of Attorney (POA) is a document that allows an individual appointed as agent to handle the principal's financial affairs in the event the principal is unable to handle them his or herself.
- **Why do I need one?**
 - If you are unable to handle your own finances, due to accident, illness, etc.
 - family may not be able to access your assets.
 - bills may not get paid.
 - Other legal actions may not be able to be taken in a timely manner.
 - Without a valid POA an Article 81 Guardianship proceeding may need to be commenced.
- **How does it work?**
 - It authorizes an agent to act on the principal's behalf in some or all legal matters:
 - Sign documents and make contractual commitments on principal's behalf regarding real estate, etc..
 - Make financial transactions from your accounts.
 - May be initiated upon signing the POA, or at such time that you become incapable of doing such things for yourself. (springing Powers of Attorney are *not* recommended)
 - Principal may name a relative or anyone that you trust.

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