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. $182,000/year
  - NYC: $200,000/year
  - Long Island: $200,000/year
- CT:
  - $167,000/year
- NJ:
  - $142,000/year

Cost of Home Care

- Approx. $25-$30/hour
- If receiving 8 hours of care per day, seven days a week
  - 87,360/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

Single Individual

- Income: $1,677.00/month + $20 "disregard
  If Nursing Home: $50
- Resources: $30,180.00 + Irrevocable Burial Trust Account

Couple in community

- Income: $2,268.00/month per couple
- Resources: $40,821.00/couple

Community Spouse

- Income: $3,715.50/month
- Resources:
  1. Minimum CSRA: $74,820.00
  2. Maximum CSRA: $148,620.00

What resources count toward the Medicaid Eligibility threshold of $30,180.00

- Checking accounts
- Savings accounts
- Mutual Funds
- Stocks/bonds
- Cash value of a whole life insurance policy
- Non-qualified annuities
- Real property other than homestead

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 up to the equity limit of $1,033,000

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

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 $1,697.00 per month.
- Medicaid will budget income as the following:
  - 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 $1,697, leaving a Medicaid surplus of **$1,328.00**. 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

Evaluations to receive care

- Effective May 16, 2022, upon approval for financial eligibility, you must by evaluated by the New York Independent Assessor (NYIA)
- Any individual in need of Community Based Long-Term Services and Support (CBLTSS) will need to call the NYIA helpline to begin the process of scheduling

- Step 1: Call 855-222-8350 (same number that is currently used to schedule what is known as the Conflict Free Evaluation or the CFE)
- A Customer Service Representative (CSR) will confirm that the caller has active Medicaid
  - If Medicaid is not active, the caller will need to follow up with their local Department of Social Services to obtain approval

- Step 2: Once the caller is confirmed to have active Medicaid, the CSR will need to schedule the following:
  - A) Community Health Assessment – conducted by a nurse assessor
  - B) Clinical Appointment – can be conducted by a M.D., Doctor of Osteopathy, Nurse Practitioner or a Physician's Assistant

The meetings can be conducted via Zoom video or in-person. The caller should indicate their preference

- If an individual needs an Immediate Needs Assessment, the local department of Social Services must complete an “Expedited /Immediate Need Assessment Request form” and then schedule a 3-way call with the Medicaid recipient and the New York Independent Assessor Operational Support Unit (OSU)

- The nurse assessor during the Initial Assessment (evaluation 1) will complete their assessment using the Uniform Assessment System (UAS) for New York.
- The Clinical Appointment (evaluation 2) will consist of :
  - An examination of the Medicaid recipient
  - Reviewing the UAS evaluation
  - Determining if the Medicaid recipient is self-directing or has a self-directing caregiver
  - Determining if the Medicaid recipient can safely receive CBLTSS at home, “based on their medical stability”

- At the completion of both the Initial Assessment and the Clinical Appointment, a written notice will be sent to the Medicaid recipient from the NYIA.
  - The written notice will inform the medicaid recipient of their “outcome” of the exams and of their eligibility for CBLTSS and their MLTC plan options
  - If it is determined that the Medicaid recipient cannot safely receive services in the community, they will be made aware of their right to a Fair Hearing

- The UAS and evaluation notes will be available to the MTLC plan for their review
- If the Medicaid recipient is Dual Eligible, meaning they have Medicare and Medicaid, they must choose an MLTC plan within 120 days OR one will be automatically assigned to him/her.
- The MLTC Plan selected by the Medicaid recipient will use the information posted on the UAS-NY to develop the plan of care

- If a Medicaid recipient is determined to need more than 12 hours of care, the recipient must be referred to the Independent Review Panel (IRP), which is run by New York Medicaid Choice
- The IRP will review whether the plan of care is “reasonable and appropriate” to maintain “health and safety in the home”
- The IRP may recommend changes, but NOT the specific number of hours recommended
- The MLTC Plan and/or local Department makes the final decision as they are not bound by the IRP

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.

Activities of Daily Living

- 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

Medicaid Eligibility

Look Back Period

- Medicaid Home Care
  - Currently no look back period
  - Effective *March 31, 2024 (as of this presentation)* there will be a phased-in 30 month look back period for any uncompensated transfers made 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. The regional rate in Westchester is $13,906.

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

Current Regional Rates for calculation of Penalty Period

- Northern Metropolitan $13,906
  - Dutchess
  - Orange
  - Putnam
  - Rockland
  - Sullivan
  - Ulster
  - Westchester
- Western $12,130
- Central $11,726
- Northeastern $12,744
- New York City $14,142
  - Bronx
  - Kings (Brooklyn)
  - New York (Manhattan)
  - Queens
  - Richmond
- Long Island $14,136
  - Nassau
  - Suffolk
- Rochester $13,421

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.

Example of Penalty Period

- Jane Smith is a resident of Westchester County
- She applies for nursing home Medicaid
  - Five-year Lookback period
  - Over past five years, she has gifted approximately $125,000 to her children and grandchildren
  - Potential penalty period of 8.98 months
    - 125,000 divided by regional rate of $13,906

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