New York's Medicaid Eligibility Requirements for Long Term Care

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Learning Objectives:

- Understand the Medicaid eligibility criteria, the Medicaid application process, and recent changes in the law as it relates to Medicaid.
- Understanding the important estate planning documents one should have to age in place.

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

Medicaid Eligibility

Look Back Period

- 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
    - Transfers made “other than to qualify for Medicaid”

- 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

Current Regional Rates for Calculation of Penalty Period

- Northern Metropolitan $14,165
  - Dutchess
  - Orange
  - Putnam
  - Rockland
  - Sullivan
  - Ulster
  - Westchester
- Western $12,241
- Central $12,196
- Northeastern $123,235
- New York City $14,273
  - Bronx
  - Kings (Brooklyn)
  - New York (Manhattan)
  - Queens
  - Richmond
- Long Island $14,668
  - Nassau
  - Suffolk
- Rochester $14,419

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
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

The Primary Residence

- For Medicaid eligibility purposes, one's primary home does not count towards Medicaid's asset limit.
- The Medicaid applicant must live in the home, or have a spouse, minor child, or child of any age who is permanently blind or disabled who lives there

Intent to Return Home

- "Intent to Return" protects a Nursing Home Medicaid beneficiary's primary home as an exempt asset.
  - This intent means that if a senior's condition improves and nursing home care is no longer required, the individual intends to move back home.
  - This means their stay in the nursing home is considered temporary and their home maintains its exempt status as the individual's principal residence.
  - Even if it is unlikely the individual will be able to return home, Intent to Return is generally still valid and preserves the exempt status of one's home.

Intent to Return Home
Medicaid Lien

- An Intent to Return protects one's home from Medicaid's asset limit; it does not protect the home from Estate Recovery.
- A lien cannot be placed on the home if the Medicaid beneficiary has one of the following family members living in the home:
  - Spouse
  - Minor Child (under 21 years old)
  - Permanently Blind Child or Disabled Child
  - Sibling who has equity interest in the home and lived there at least 1 year immediately prior to the Medicaid beneficiary's nursing home admission

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.
- Once the home care Medicaid lookback period goes into effect, 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

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.

Irrevocable Medicaid Asset Protection Trust

- Benefits:
  - 5 years after transfer occurs property and assets are protected for Nursing Home Medicaid eligibility purposes
  - 2 and ½ years after transfer occurs property and assets are protected for Home Care Medicaid eligibility purposes (once penalty period for Home Care Medicaid Applications is implemented)
  - 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

Medicaid Asset Protection Trusts

- Detriments
  - The transfer is a taxable gift of a future interest
  - No annual exclusion is available
  - If a limited power of appointment is retained, the gift to the trust is incomplete
  - The assets are still includible in the Grantor's taxable estate
  - Planning should be considered early- when one is healthy and not likely to need long term care at home or in nursing home.

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.

Revocable Living Trusts and Probate Avoidance

- A **Revocable Living Trust** is a trust made while the person establishing the trust (the Grantor) is still alive for their benefit during their life.
- Most commonly used to:
  - Avoid probate
  - Quickly transfer assets to a beneficiary
- A **Revocable Living Trust** allows you to make changes to the trust and continue to control and receive benefit from the assets held by the trust during your lifetime.
- A revocable trust directs how the trust assets are distributed to your beneficiaries after your death.
- Assets held in a trust are "non-probate" assets and may avoid an estate administration or probate proceeding after death of the Grantor.

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