Nuts & Bolts of Medicaid Planning

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Learning Objectives

- Medicaid eligibility (New York) and the misconceptions regarding the ability to age in place
- Asset protection strategies to qualify for Medicaid

The Cost of Long-Term Care

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. $25-35/hour

- If receiving 8 hours of care per day, seven days a week
- 72,800/year

Paying for Care

Private Pay

Long Term Care Insurance

Medicare – short term rehabilitation

Medicaid

Long-Term Care (LTC) Insurance

- Private LTC policies can provide financial assistance with home care or nursing home care.
- Newer hybrid policies combine LTC benefit with death benefit if the LTC benefit is not fully redeemed.
- NYS Partnership Policies are a way to combine private LTC insurance with later Medicaid coverage.
    - As of January 1, 2021, no partnership polices are available for purchase in NYS. This does not affect current, active insureds who are Partnership qualified. (See, https://nyspltc.health.ny.gov/ as of 6/25/24).

Issues with Long-Term Care Insurance

- Insurability of the applicant.
- Cost of premiums.
- Limits on coverage.

Medicare

- Medicare:
  - Eligibility: Most Seniors over age **65**.
- Coverage is Divided into Parts:
  - A: Hospital Care and Skilled Nursing Facilities
  - B: Medical Insurance
  - C: Medicare Advantage Plan
  - D: Prescriptions

Part A provides limited Nursing Home Benefits: 100 days

- Part A covers a skilled nursing facility up to 100 days if you have available days in your benefit period, your doctor determines you need rehabilitation, and the stay is not deemed purely "custodial."
- Days 1-20 fully paid.
- Potential for 80 more partially paid days at a skilled nursing facility, with a co-pay of $204 each day.
    - Prior to the Jimmo Settlement Agreement in January 2013, rehabilitation services were terminated if they were not leading to any "improvement."
    - The current standard under the Jimmo Settlement Agreement is to provide services to maintain function or prevent slow decline.
    - Coverage terminated if patient is deemed "recovered."
- After 100 days, you pay all costs of the skilled nursing facility.

CAUTION: Need qualifying hospital stay to trigger any nursing home coverage.

- To qualify, you must have spent at least three consecutive days as a hospital inpatient within 30 days of admission to a nursing home and need skilled nursing or therapy services.

Medicare Part B Coverage

- Medical services necessary to treat a disease or condition
- Clinical research
- Ambulance services
- Durable medical equipment
- Mental health
- Second opinions
- Limited outpatient prescriptions
- Preventive screenings and wellness visits

Very limited home care benefit (roughly 8 hours per week, post surgery, for wound or other skill needs, lasting 3-6 weeks in duration).

Medigap Supplemental Policies

- Helps pay for co-pays and defray deductibles relating to Medicare coverage.

- Does not provide any additional coverage for LTC services not covered by Medicare.

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

Each state has their own Medicaid rules and eligibility criteria

New York State Resource/Income Requirements for 65+, Blind Disabled

Single Individual - Home Care

Resource Level:

$32,396.00 + an Irrevocable Pre-Paid Funeral

Income "Level":
$1,800.00 per month

***utilize pooled income community Trust

Single Individual – Nursing Home

Resource Level:

$32,396.00 + an Irrevocable Pre-Paid Funeral

Income:

$50 Personal Needs Allowance

New York State Resource/Income Requirements for 65+, Blind Disabled

Couple – Home Care Medicaid

Resource Level:

$43,781.00 + an Irrevocable Pre-Paid Funeral

Income "Level":
$2,433.00 per month (combined gross income)

Couple – Nursing Home

Resource Level:

$32,396.00 EACH + an Irrevocable Pre-Paid Funeral

Income:

$50 EACH Personal Needs Allowance

New York State Resource/Income Requirements for 65+, Blind Disabled

Community Spouse Resource Allowance (CSRA):

Minimum = $74,820.00

Maximum = $157,920.00

The CSRA is to ensure that a community / well spouse can maintain a reasonable standard of living.

Income also known as the Community Spouse Monthly Income Allowance (CSMIA) or Minimum Monthly Maintenance Needs Allowance (MMMNA) = $3,948.00 / month

What Resources count….

Non-retirement monies including, but not limited to:

- Checking
- Savings
- Investments
- Mutual Funds
- Vacation home(s) and/or homestead greater than the 2025 equity limit
- Non-qualified annuities
- Stocks / bonds
- Cash value of a whole life insurance policy
  - Exception: Burial fund; The applicant and spouse may each have a burial fund. Up to $1,500 from the cash value of a whole life insurance can count toward same.

What sources of income count

- ****Always obtain the GROSS amount
- Social Security
- Pension
- IRA required minimum distribution
- Veteran's benefit
- Dividends / Interest
- Alimony
- Worker's compensation
- Exempt income:
- Holocaust Reparations

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

Medicaid Income Allowable Limit

Jane Doe has applied for community Medicaid and receives the following sources of income

- Social Security $1,700.00
- Pension $625.00
- IRA RMD $450.00
- Total: $2,775.00
- Medicaid allowable limit is $1,800.00
- Medicaid surplus $975.00

***Tax withholding

Confirm all supplemental insurance premiums as additional deductions.

Pooled Income Community Trust

- A trust operated by a non-profit organization.
- Allows the Medicaid recipient to shelter their excess income/surplus/spenddown.
- Without a pooled income trust, Medicaid recipient can pay their surplus to Medicaid in the "pay-in" program and/or submit medical bills that are equal are greater to their surplus amount.
- Misconception: "I am not eligible because I have too much income."

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

New York Independent Assessor

Step 1: Call 855-222-8350

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
- You cannot schedule any assessments until financially approved for Medicaid

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

Managed Long Term Care (MLTC)

The Uniform Assessment System (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

Exclusions to MLTC enrollment:

- Home hospice
- OPWDD
- Traumatic Brain Injury waiver
- Nursing Home Transition and Diversion Waiver

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

- Big change effective 9/1/2025

New ADL Scores

No Diagnosis of Dementia / Alzheimer's

- Minimum of need for assistance with THREE activities of daily living
- Eliminates "Level I" Services – stand alone housekeeping (up to 8 hours / week)

Diagnosis of Dementia / Alzheimer's

- Supervisory assistance with TWO activities of daily living
- Must have a Doctor complete a DOH Form 5821

Consumer Directed Personal Assistance Program (CDPAP) - PPL

- Public Partnerships, LLC ("PPL") – Statewide fiscal intermediary for the CDPAP program
- Caregivers do not need a certificate or license to continue with CDPAP
- Registration can be done 1) over the phone; 2) online; 3) with a CDPAP facilitator or at a 4) registration session
- The initial deadline was for all consumers and workers in CDPAP to transition to PPL by March 28, 2025
- The minimum wage for PAs in the 5 boroughs is $20.10
- The minimum wage for PAs in Nassau / Suffolk and Westchester is $19.50
- Any other county is $18.10

Medicaid Eligibility
Look Back Period

- Medicaid Home Care
  - Currently no look back period
  - In the future (timing currently unknown), there will likely be a phased-in 30 month look back period 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.
  - Presumption is uncompensated transfer was made for the "purposes of qualifying for Medicaid eligibility"

Penalty Period

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
  - Penalty period commences when the individual is in a facility and otherwise eligible for Medicaid

Medicaid Eligibility
Exempt/Non-Exempt Transfers

EXEMPT TRANSFERS

- Transfers to a spouse
- Transfers to a blind or disabled child (of any age)
- Transfers made for fair market value and/or Transfers made "exclusively" for a purpose other than qualifying for Medicaid

NON-EXEMPT TRANSFERS

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

Exempt transfers of the HOME

The home equity limitation for 2025 is $1,097,000.00

The equity limitation does not apply if there is a spouse or a minor, blind or disabled child living in the home.

The following are exempt transfers of the primary residence:

1. Transfer to the spouse
2. Transfer to a disabled, blind or minor child
3. Transfers to a caretaker child (adult caregiver who resided in the home at least two years prior to institutionalization)
4. Transfers to a sibling with an equity interest in the property and who resided in the home for one year prior to institutionalization

Current Regional Rates for calculation of Penalty Period

- Northern Metropolitan $14,569
  - Dutchess
  - Orange
  - Putnam
  - Rockland
  - Sullivan
  - Ulster
  - Westchester
- Western $12,842
- Central $13,042
- Northeastern $13,916
- New York City $14,582
  - Bronx
  - Kings (Brooklyn)
  - New York (Manhattan)
  - Queens
  - Richmond
- Long Island $14,914
  - Nassau
  - Suffolk
- Rochester $15,127

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

John Smith

John Smith is currently in a nursing home. He is a Westchester county resident and is widowed with 2 children.

Medicare has ceased to cover the cost of his care.

Mr. Smith owns the following assets:

Chase checking account	$45,000.00
Chase IRA	$725,000.00
TD savings account	$200,000.00
Total:	$970,000.00

Is Mr. Smith eligible for Medicaid?

John Smith – Crisis Plan

- NO…..Mr. Smith is not financially eligible for Medicaid as he owns more than $32,396 in non-retirement assets.
- His IRA is exempt for Medicaid eligibility
  - Practice tip – confirm IRA has named primary and contingent beneficiaries.
  - Obtain the required minimum distribution (some counties use Maximized)
  - Confirm whether client has tax withholding from IRA distribution

Other information needed for Medicaid crisis plan (gift/note plan)

- Private daily rate at nursing home (once all forms of insurance exhaust)
- Gross income
- Health insurance premium deductions
- Have any assets been gifted in past 5 years?

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.

John Smith has three options:

1. Private pay for his room and board and “spend down” his non-retirement assets until he becomes financially eligible for Medicaid.
2. Transfer his assets more than the financial eligibility threshold, wherein he would receive a penalty period of 14.59 months [212,604.00 / 14,569] .
3. A gift / note plan. If $106,000 was gifted and thereby sheltered from Medicaid, a penalty period of only 7 months would occur. The remaining $106,000 PLUS John’s income would be used to private pay the facility during the 7-month penalty.

Revocable Living Trusts and Probate Avoidance

A **Revocable Living Trust** is a trust made while the person establishing the trust (the Grantor or Settlor) is still alive for their benefit during their life and for which they can be the Trustee.

- 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.

Irrevocable Medicaid Asset Protection Trust

An **Irrevocable Trust** is a trust made while the person establishing the trust (the Grantor or Settlor) is still alive, but the assets titled to the Trust cannot be used directly and/or indirectly for their benefit.

You and/or your spouse cannot be the Trustee of an Irrevocable Trust.

An Irrevocable trust directs how the trust assets are distributed to your beneficiaries after your death and like a Revocable Living Trust, assets held in a trust are "non-probate" assets and may avoid an estate administration or probate proceeding after death of the Grantor.

Five years and a day after the assets have been transferred to an Irrevocable Trust, they are "protected" for Nursing Home Medicaid

Question & Answer

Contact me anytime!

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