

# Challenges for Solo Agers and How to Resolve Them

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# Who are Solo Agers?

Solo Agers are older adults who:

- Live alone
- Are not married
- Are not in a committed relationship
- Do not have children
- Have children or family who live far away
- Are estranged from other family members



# Challenges for Solo Ager

## Loss of mental or physical capacity

- Routine actions, e.g., paying bills, insurance, tax returns
- Investments and other financial matters
- Legal matters – protection of assets, estate plan
- Medical care and long-term care
- Safe storage of important documents and passwords
- Elder Abuse

## Choosing Fiduciaries

- Power of Attorney
- Health Care Proxy
- Executor
- Trustee



# More Challenges for Solo Agers



## Aging in Place

- Physical accessibility
- Stairs
- Bathing and dressing
- Falls
- Other household injuries – burns, cuts, falling objects, fire

## Finding and Paying for Caregivers

- Ruinous expense of long-term care
- Adequacy of long-term care insurance, if a policy is owned

Planning for loss of mental or physical capacity is essential for most people, particularly solo agers.

**7 of 10** people over the age of 65 will need some kind of long-term care.

**4 of 10** people will need nursing home care.

A number of legal documents are either essential or recommended, so that solo agers are protected both now and in their later years



# Advance Directives



- Advance directives are documents you put in place ahead of time, that give authority to someone you trust (your “agent”) to act in situations where you are not able to act on your own behalf, or where you prefer to have your agent’s assistance.
- Incapacity can strike at any time. Making thoughtful and deliberate planning decisions will enable you to live your life with comfort and dignity.
- Common Types of Advance Directives:

## **Medical Advance Directives:**

Health Care Proxy

Living Will

## **Financial and Property Advance Directive:**

Power of Attorney

# FINDING AGENTS AND FIDUCIARIES

✓ **For the Health Care Proxy:**

Close friend

Geriatric Care Manager

Social Worker

Nurse

Faith Community

✓ **For the Power of Attorney, Trustee, Executor:**

Close friend

Daily Money Manager

Financial Advisor

Attorney or Paralegal

Accountant

Faith Community



# Health Care Proxy



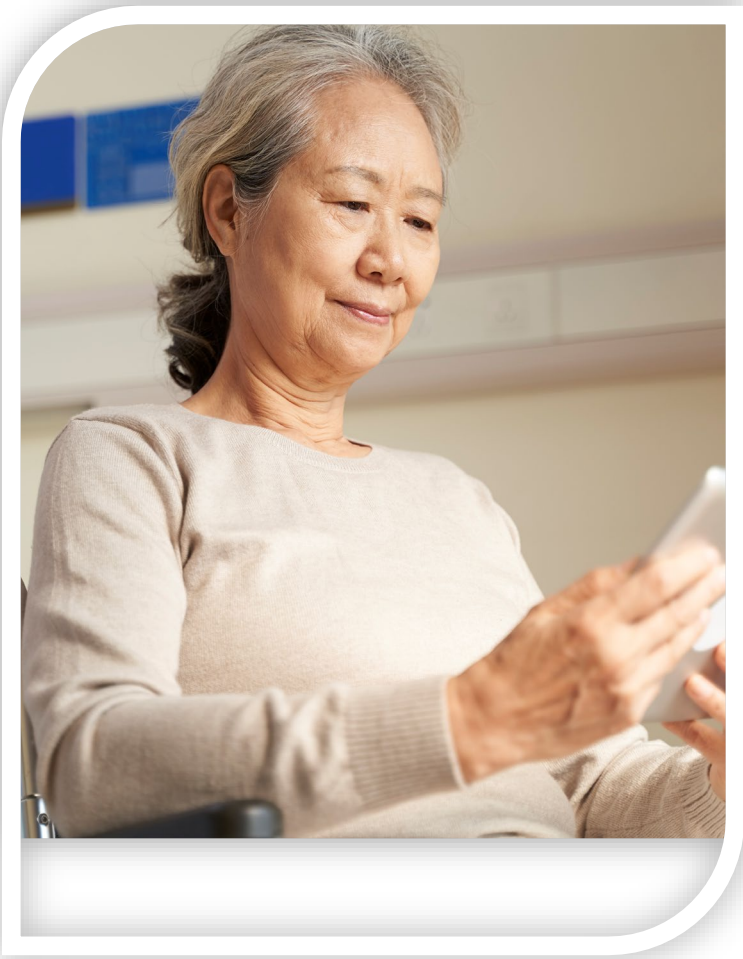
<https://www.health.ny.gov/publications/1430.pdf>

A legal document that authorizes someone you appoint (your “Health Care Agent”) to make decisions regarding your health and medical needs, but only if you lack the capacity to express your own decisions.

In New York, you may appoint only one agent to act. It is prudent to appoint an alternate agent to act in case your primary agent becomes unavailable.

It is critical for your health care agent to understand your wishes concerning your medical and health care, as it is your agent’s duty to express your wishes for you when you cannot do so for yourself.

Upon your loss of capacity or inability to act, this document allows your agent to make medical decisions you would have made if you had capacity.



# NYS Living Will

## Attractive in concept, can be challenging to apply in practice.

Here are excerpts from the NYS standard form (emphasis supplied):

I direct my attending physician to withhold or withdraw treatment that merely prolongs my dying, if I should be in an incurable or irreversible mental or physical condition with no reasonable expectation of recovery, including but not limited to: (a) a terminal condition; (b) a permanently unconscious condition; or (c) a minimally conscious condition in which I am permanently unable to make decisions or express my wishes. . . .

I feel especially strongly about the following forms of treatment:

- I do not want cardiac resuscitation.
- I do not want mechanical respiration.
- I do not want artificial nutrition and hydration.
- I do not want antibiotics. . . .

I intend my instructions to be carried out, unless I have rescinded them in a new writing or by clearly indicating that I have changed my mind.

Signed \_\_\_\_\_

# NY Statutory Power of Attorney

A legal document that authorizes someone you appoint (your “Agent”) to act on your behalf regarding your property, investments, insurance, taxes, and other business, personal, or financial matters.

In New York, you may appoint one or more Agents to act jointly or separately.

Agents are legally required to act according to your instructions. If there are no instructions, the Agent must always act in your best interest.

If you lose the capacity to act on your own behalf, this document will be vital for managing your financial affairs and obtaining long-term care if needed.

A Power of Attorney can be broad in scope or narrowly tailored, so that it reflects the powers you wish to give to your Agent.



## Examples of actions that require a Power of Attorney

When a person needs services, lacks capacity, and cannot afford the cost of care

- Create or amend a trust and fund it.
- Transfer ownership of financial assets.
- Obtain the documents needed for a Medicaid application and sign the application on behalf of the principal.
- Hire and pay aides
- Transfer a home (sign a deed or arrange for transfer of co-op shares).
- Access bank statements and bank accounts
- Arrange for admission to an Assisted Living residence or a Nursing Home



When the principal needs, or might need, long-term care, the Agent typically requires a broad scope of authority in order to protect the interests of the principal.



# Guardianship When is it necessary?

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## **Mental Hygiene Law § 81.02**

**Power to appoint a guardian of the person and/or property;  
standard for appointment.**

- “(a) The court may appoint a guardian for a person if the court determines:
1. that the appointment is necessary to provide for the personal needs of that person, including food, clothing, shelter, health care, or safety and/or to manage the property and financial affairs of that person; and
  2. that the person agrees to the appointment, or is incapacitated . . . .”



# Guardianship (cont'd)

The determination of whether the alleged incapacitated person (the “AIP”) is actually incapacitated can time-consuming, frustrating, and expensive.

The AIP pays court fees, court evaluator fees, witness fees, and attorney’s fees.

The Court chooses your Guardian.

You don’t need a Guardian if you have a Power of Attorney and a Health Care Proxy.

You choose your own Agents.

## I have Medicare. Doesn't it cover all my health care?

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Medicare is medical insurance (hospital, doctors, etc.)

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Medicare covers rehabilitation (**up to** 100 days)

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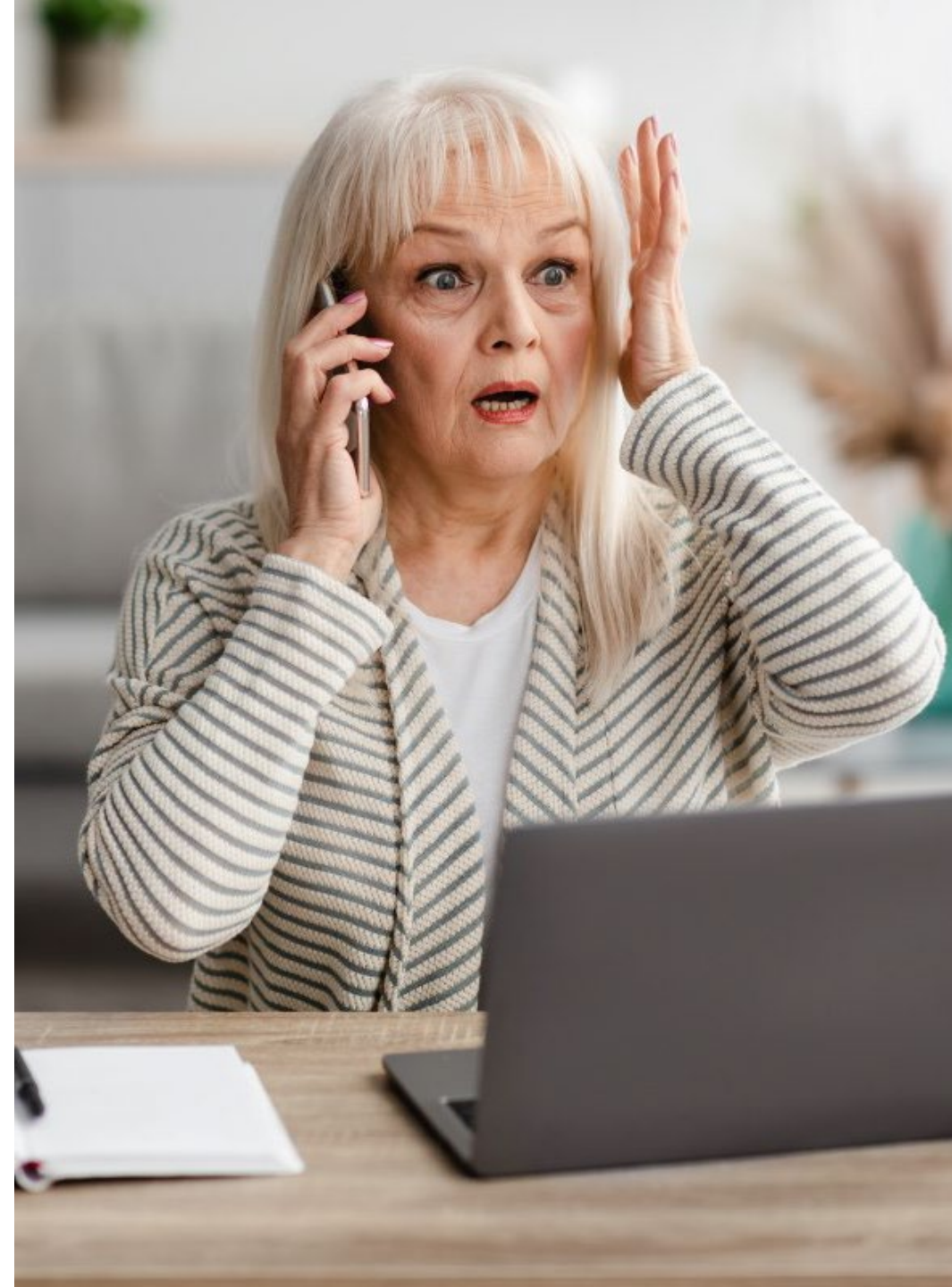
Supplemental plans cover Copays and Prescription Drugs

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**Medicare does not cover  
long-term care**

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**“23 percent of all adults – and 45 percent of those 65 or older –  
incorrectly believe that Medicare will cover [their long-term care]” *The  
New York Times*, 6-8-2025**



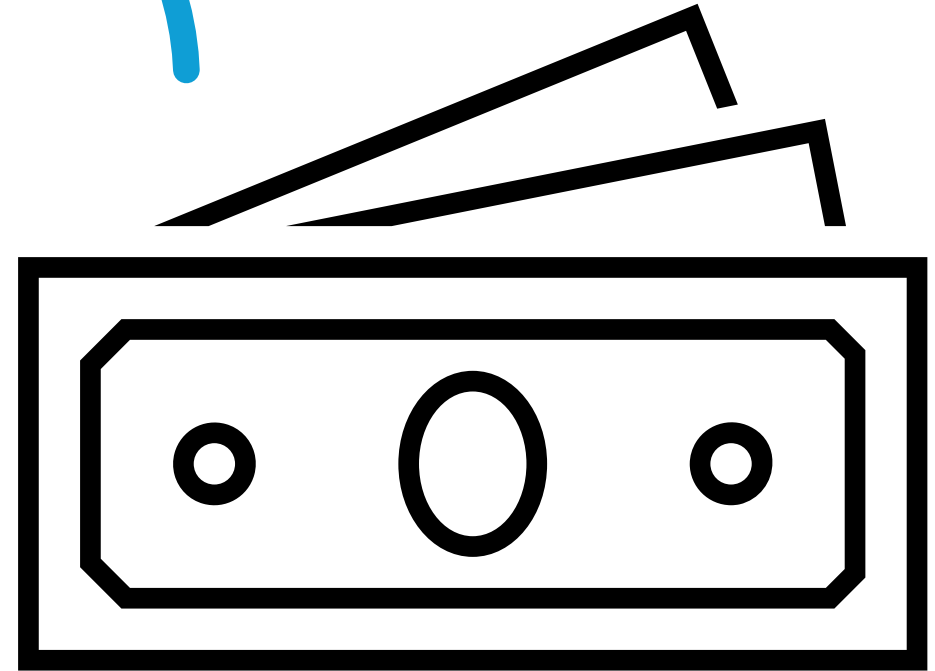
# Who pays for long-term care?

Private Pay (you / your children)

Long-Term Care Insurance

Medicaid

NOT Medicare



# New York's Medicaid Program

- Medicaid is a federal / state partnership, administered by the states under state law.
- New York's program is the best in the U.S., by far.
- Medicaid covers home care, adult day care, assisted living care, nursing home care, medical care, plus many special programs.
- There is no such thing as a "Medicaid facility" – virtually all providers are privately owned, and they are required to provide the same care to all.



# New York has two main categories of Medicaid services

Community Medicaid	Institutional Medicaid
Home Care (Including CDPAP)	Care in a Nursing Home
Adult Day Care	Physical and Occupational Therapy
Assisted Living (ALP)	Hospital and Medical Care
Programs for special needs, e.g., Traumatic Brain Injury	Prescription Drugs
Nursing Home Transition Diversion Program (NHTD)	
PT and OT, Hospital and Medical Care, Prescription Drugs	



## Community Medicaid Eligibility (Home Care and Other Programs)



Medicaid Eligibility is based on **resources**. (\$33,038)



**Income** is NOT a factor of eligibility but is limited once receiving Medicaid to \$1,836 per month. If greater:

- (a) contribute balance to cost of care, or
- (b) deposit balance in a **Pooled Income Trust**



There is no “look back” for Community Medicaid Services. A 2 ½ year look back was enacted in 2020, but it was never implemented.

# Nursing Home Medicaid Eligibility



Medicaid Eligibility is based on **resources**. (\$33,038)



**Income** is NOT a factor of eligibility, but all income except \$50 is must be paid to the nursing home (this is called the “NAMI,” or Net Available Monthly Income).

However, the “Community Spouse” is entitled to a share of the institutionalized spouse’s income if the Community Spouse’s monthly income is less than \$4,066.50 (the “MMMNA”).



**The Look Back** - If you are in the nursing home, and “otherwise eligible” for Medicaid, but made non-exempt gifts or transfers of money or property during the 5 years preceding the date of your application, you will be ineligible for Medicaid benefits for a period of time determined by the amount gifted or transferred. This is called the “penalty period.”

**Asset transfers are permitted under New York law – they are not illegal or unethical.**

# Isn't My Home Exempt?

- If you are applying for **Community Medicaid** benefits, your home is your primary residence, and your home equity is no more than \$1,130,000, the home would be temporarily exempt. However, the exemption is lost when the home is no longer your primary residence. Once the exemption is lost, Medicaid can seek to recover its expenses from the home equity.
- If you are applying for **Nursing Home Medicaid**, the home is no longer your primary residence and it is not exempt. It is a Medicaid resource and will be a significant obstacle to your eligibility.



# How to Protect Your Assets and Achieve Medicaid Eligibility



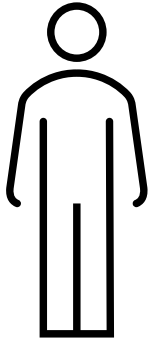
Consider possible exempt transfers.

Transfer savings and other assets to an irrevocable trust, or to family members. Even if the transfer is non-exempt, all or at least a substantial amount can often be saved.

Trusts have advantages over gifts to family members or friends.

Don't delay! Planning ahead can make all the difference in the outcome.

# If Assets Must Be Transferred to Achieve Medicaid Eligibility --



Should assets be transferred:

→ To an individual?

or

→ To a trust?



# Transfers to Achieve Medicaid Eligibility: **The Risks of Transfers to an Individual**

- Bankruptcy, lawsuits, debts
- Divorce
- If they predecease you, the assets are in their estate
- Misuse of funds
- No “step up” in tax basis / capital gains tax

# Transfers to an Irrevocable Asset Protection Trust

Your assets are protected during your lifetime

You can access Medicaid benefits

No probate proceeding, no court involvement

Upon your death, your assets are distributed according to your wishes, privately and without delay or expense

Your beneficiaries avoid capital gains tax on unrealized gains that accrued during your lifetime



**Note: you cannot be the Trustee, and the assets in the Trust cannot be directly available to you.**

# Irrevocable Trust – Grantor’s Rights

- Grantors must name an independent Trustee, and they cannot withdraw or control the assets in the Trust.
- However, The Grantor can retain a number of important rights without compromising asset protection or access to government benefits such as Medicaid:
  - The right to receive all of the net income of the Trust
  - The right to use and occupancy of a residence transferred to the Trust
  - The right to change the beneficiaries of the Trust by a subsequent Will
- Discretion can be given to the Trustee to distribute principal (to persons other than the Grantor) that can be used by the recipient to benefit the Grantor.



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