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More Information on Medicaid Eligibility & Asset Transfers

Medicaid
Medicaid, a joint Federal and State funded program, was established by Federal Law in 1965. It is a needs-based/means-tested program originally conceived as a way to provide health care for low-income individuals. Over the years Medicaid has come to be the major payor of the cost of long-term care for the middle class, especially nursing home care.

Each state formulates a Medicaid plan, which is then approved by the federal government. While some coverage, including skilled nursing facilities, is mandatory, the states are allowed to elect optional additional services. Medicaid will pay for nursing home care in all states and New York has the most comprehensive Medicaid home care program.

Eligibility: To meet the income and resource tests for Medicaid, income and resources must be spent down to levels established by federal and state regulations. New York has established income and resource levels which change along with the federal poverty levels published each year. These levels can be found in the Medicaid income and resource chart found on our website. Except for exempt resources such as the home and automobile, assets in excess of these amounts have to be spent or otherwise be unavailable at the time of application in order for the individual to be eligible for Medicaid. Income is also restricted under the Medicaid Program. In New York, the applicant is required to contribute all income in excess of the income Medicaid guidelines. Again, these amounts are indexed by inflation and follow the federal published poverty levels.

Long-Term Care Coverage Under Medicaid
In 1988, the NYS Department of Health developed a new methodology to estimate the future need for nursing home beds in New York. Since then, Medicaid reimbursement rates have been determined by the resident score on the Resource Utilization Groups classification scale (RUGs). The higher the RUGs score, the greater the need for skilled nursing. Nursing homes generally do not want residents with low scores as the reimbursement rate will be low.

The majority of states that subsidize assisted living services for low-income older persons utilize Medicaid 1915c waivers under the Social Security Act. A waiver allows for a more flexible use of Medicaid to cover services, such as in an assisted living facility.

A model of Medicaid covering assisted living care is limited to low-income individuals who score low on the RUGs scale, but would otherwise be eligible for nursing home care. In addition, there are other such Medicaid-waiver programs in New York, where the resident may be able to have Medicaid pay for the cost of care if they have a certain RUGs score. The Medicaid-waiver program provides viable alternatives to low-income elderly. Unfortunately, most of the newly developed for-profit assisted living facilities that have opened, even those offering memory care, are not covered by Medicaid or these waiver programs.

New York has an extensive home care program which is funded by Medicaid. Obtaining eligibility for Medicaid for home care services is a simpler process than becoming eligible for Medicaid nursing home care, as there is still no penalty period for transferring funds at the current time. A lookback period for home care and transfer of penalty rules may be implemented in 2025. This will radically change the Medicaid home care landscape. The current "transfer-free" Medicaid home care program provides an important home care option

Protection of Spouse
Treatment of Resources—The general rule is when one spouse is institutionalized and applies for Medicaid, the total value of the assets held by **either** spouse is considered in determining eligibility. Regardless of which spouse holds title to the assets, one-half of the total would be considered to be held by each spouse. This is the so-called "Spousal Share." The Community Spouse (the spouse not receiving Medicaid benefits.) is allowed to retain a special asset amount which changes every year as per federal guidelines (the Spousal Resource Allowance) and a monthly income much higher than the regular Medicaid income guideline. The Community Spouse Resource Allowance can be increased if greater resources are needed to generate an income equal to the minimum monthly maintenance needs allowance explained below or by court order. Please see our annual Medicaid chart for these changing annual amounts.

An important exception to the above is provided in New York and is known as "Spousal Refusal." The Community Spouse can refuse to contribute that spouse's resources for the institutionalized spouse's care. When the Community Spouse has resources in excess of the federally mandated Community Spouse Resource Allowance, they can hold on to these resources. This is a very important right. The Institutionalized Spouse cannot be denied Medicaid under the following circumstances: (a) Community Spouse who is retaining more than his or her "Community Spouse Resource Allowance" refuses to contribute to the institutionalized spouse's costs of medical care; and (b) the Institutionalized Spouse executes an assignment of support from the Community Spouse in favor of the Department of Social Services; or (c) the Institutionalized Spouse is physically or mentally impaired and cannot assign the right to sue for support, or (d) denial of assistance would create undue hardship. This right of refusal can also be exercised in Medicaid home care cases.

If the Community Spouse exercises his or her refusal right, the Department of Social Services may bring an action to require the Community Spouse to contribute to the cost of the institutionalized spouse's health care. These types of cases often result in a negotiated settlement.

Inter-spousal Transfer of Assets
The law also allows for unlimited transfers from the Institutionalized Spouse to the Community Spouse with no impact on the applying spouse's eligibility for Medicaid benefits. It is an "exempt" transfer and will not interfere with the processing of the Medicaid spouse's application for benefits. Please note that the Community Spouse could then refuse to use those assets to pay for the Institutionalized Spouse's care.

Treatment of Income—The Community Spouse is allocated a minimum monthly maintenance needs allowance which is an acknowledgment of the continuing cost of living in the community. If the non-applying spouse's income is low and the other spouse's income is needed for support, a portion of the Medicaid spouse's income will be allocated to the non-Medicaid Community Spouse necessary to bring their income to an acceptable federally approved level. This income allowance can be increased by a Fair Hearing, or by a Family Court Order if a greater need is established. It is also adjusted each year for inflation. In addition, there is a family allowance, which can be deducted from the Institutionalized Spouse's monthly income for each dependent family member. If a Community Spouse's income exceeds the allowance, the local Medicaid Agency can assess a 25% contribution towards the cost of care from the Community Spouse's excess income.

Transfer of Assets
A Homestead is defined as the primary residence occupied by a medical assistance applicant/ recipient and/or members of his/her family. (See 18 NYCRR ß360-1.4(f)). The homestead includes the home, land, and integral parts such as garages and outbuildings. The homestead may be a Condominium, Cooperative Apartment, or mobile home. Including 2, 3, and 4 family units.

A home is considered an exempt resource and will not be considered in determining eligibility as long as a family member as defined below is residing in the property. Family members may include the applicant's/ recipient's spouse, minor children, certified blind or disabled children, and other dependent relatives. Medicaid has set an equity limit on an exempt homestead. In NY, the equity limit permitted to maintain the exempt status is just over $1 million and this limit increases with inflation. Therefore, a homestead will not be counted if the Medicaid recipient maintains an ownership interest in the home. Despite this, we do advise transferring title out of the Medicaid applicant/recipient's name to avoid future lines.

To accomplish Medicaid eligibility, a Medicaid applicant's ownership of a residence can be handled in many different ways as an exempt asset if the equity value is within the current NY guidelines or less.

Keep the Home—the nursing home resident may retain the residence and qualify for Medicaid if he/she signs a statement of intent to return home (the home will remain exempt so long applicant demonstrates his/her intent to return home). See Anna W. v. Bane, 863 F.Supp. 125 (W.D.N.Y. 1993)

However, upon the death of the applicant, the Department of Social Services (DSS) can exercise the right of recovery against the estate and if the home is still in the estate,

To avoid the Right of Recovery and preserve the home (generally the largest asset in the estate) applicants will transfer the home as part of the Medicaid Plan. This transfer will be treated as any other transfer and therefore, the applicant should be careful. This type of transfer of the property will create a plan to either avoid a penalty period or consider if there are sufficient assets to pay during the resulting period of ineligibility.

Exempt Transfers to a "Qualified Individual" include: (18 NYCRR 360.4-4(C)(2)(III)(8)(1)(4) and SSL ß366.5(d)(3)(i)(A)-(D)

-Transfers of the homestead are treated the same as transfers of other non-exempt assets, even if the homestead was exempt at the time of the transfer unless the homestead is transferred (1) to the spouse; (2) to a child who is under twenty-one or certified blind or certified permanently and totally disabled; (3) to a sibling with an equity interest in the home who was residing in the home for at least one year immediately before the date of the institutionalization; or (4) to an adult (nondisabled) child commonly known as the "caretaker child," who was residing in the home for at least two years immediately prior to the date of institutionalization and who has provided care which permitted the parent to reside in the home rather than in an institution. Transfers of the homestead to one of these individuals will not result in any period of ineligibility for Medicaid. However, a professional should be consulted to analyze the effects of such a transfer on any future estate/gift tax and capital gains tax planning.

Note: If a home is transferred to a "qualified individual," that person may subsequently transfer the home without the Medicaid recipient incurring any penalty. However, there may be substantial tax implications with the transfer, so an attorney should be consulted. If there is no "Qualified Individual," the transfer will create a period of ineligibility. It is important to minimize the period of ineligibility and ensure that the applicant has sufficient money to pay during the period of ineligibility.

Transfer of Homestead to Trust—Here, you need to be careful that the Trust is drafted properly by an experienced elder law or trust and estates attorney who is aware of the Medicaid rules. Transfers to a Trust may result in the required lookback period in which the home transfer will be discovered and result in a long penalty period.

Inter-spousal Transfers
The Institutionalized Spouse is allowed to transfer resources to the Community Spouse without limit or penalty. (Beware of possible gift and/or estate tax problems with large transfers and estates.)

Penalty Period—If an institutionalized individual applying for Medicaid or his or her spouse disposes of resources for less than fair market value to someone other than each other or a disabled child, a penalty period is imposed. The Applicant is ineligible for Medicaid for a calculated time depending on the total amount of the transfers. The formula for determining the penalty period establishes the period of time this uncompensated transfer amount would pay for the Medicaid-covered care. The published monthly regional cost of nursing facility services is used to calculate the penalty. This monthly regional cost of nursing facility services is set annually by the State Department of Social Services. For example, if the applicant transfers an asset with a value of $50,000 and the regional rate is $10,000, the applicant would be ineligible for Medicaid for 5 months. In New York State the regional rate varies from county to county, with higher rates in downstate New York.

Home Care
Currently, New York provides home care benefits to Medicaid recipients. Home care programs are not subject to the transfer of assets rules, which apply to applicants for institutional care. A recent New York law passed which changed the law and now can subject home care applicants to the same transfer of assets rules as nursing home applicants. New York has not implemented this law and is projected to start in 2025

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