



**STARTING SOON:**  
**2021 Long-Term Care Update**  
***What You Should Know about Elder Law***

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# WELCOME - HOUSEKEEPING

- We are sharing our webcam; please note your lines are muted
- Interactive Program: please have your mouse ready
- Type questions in the Q&A pod on the bottom of your screen
- Presentation is posted at this web page under the heading, “Long Term Care Planning”  
[www.pierrolaw.com/resources](http://www.pierrolaw.com/resources)



**The Pines at Heartwood** is a Medicaid approved Assisted Living Program providing:

- Professional Nursing 24/7
- Personalized Aide Care
- Medication Management
- Case Management
- Robust Recreation Activities



**The Pines at Glens Falls & The Pines at Catskill** both offer "Passport Rehabilitation" - a specialized rehab program with specialties in:

- Pulmonary & Stroke Rehab
- Heart Failure & Cardiac Recovery
- Clinical services including IV therapy, Wound Care, Respite Care, Long Term Care
- 24/7 admissions

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# 2021 Long-Term Care Update

## *What You Should Know about Elder Law*

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# Our Attorneys



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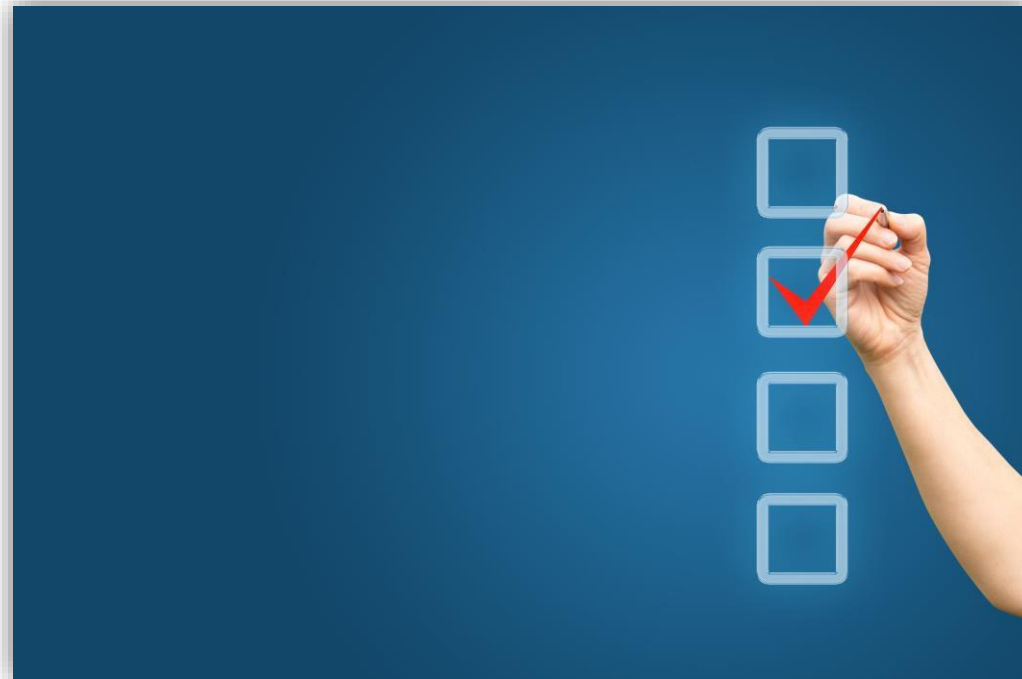
Michael Gadomski

# AGENDA



- Estate Planning
  - Pandemic impact
  - Why is it important?
  - The “Core Four”
- 2020-2021 Changes
- Long Term Care - obtaining and paying for it
- Care coordination, advocacy
  - The Caregiver Crisis

# A Brief Poll



# GOALS OF ESTATE PLANNING



**Appoint individuals** to handle various management functions during life and after death



**Protect and preserve assets** from creditors, taxes and probate

**Provide a legacy** to secure your family's future by preserving wealth



# PANDEMIC IMPACT:VIRTUAL PLANNING

- “Essential Services” = Legal Representation
- Documents can be executed remotely with audio and video
- No need to leave home



# WHY NOW?

Who will make decisions on my behalf if I am unable?

- Legal
- Financial
- Health care

What happens to my assets if I pass?



# FAILING TO PLAN = COURT

- Guardianship
- Probate

# THE CORE FOUR – THE FOUNDATION

## THE CORE ESTATE PLANNING DOCUMENTS

**POWER OF ATTORNEY (POA)**

**HEALTH CARE PROXY (HCP)**

**DISPOSITION OF REMAINS  
APPOINTMENT (DORA)**

**WILL**

# POWER OF ATTORNEY



Appoint an individual to transact business and financial matters in your name

- Co-agents + alternates – Who?
  - Agent must sign - Oath
  - Statutory Gifts Rider - Key
- Durable, Springing
- Wrong POA = Court



# HEALTH CARE PROXY / LIVING WILL



- Allows a person to designate a surrogate - the health care agent - by executing a health care proxy
- The health care agent's authority to act begins when the attending physician determines that the patient lacks capacity to make health care decisions
- Living will provides direction to health care agent including end of life decisions.
- DNR, MOLST

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# DISPOSITION OF REMAINS APPOINTMENT (DORA)

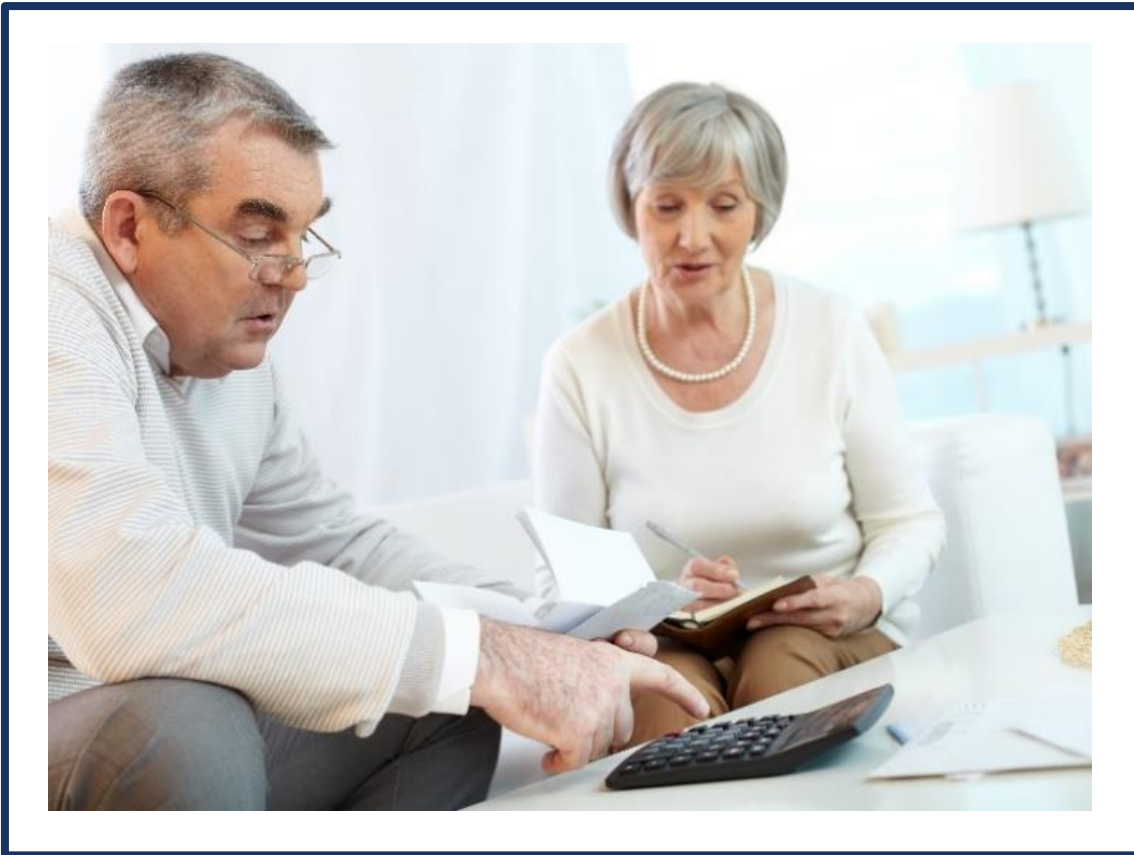
- 
- Allows you to appoint a person, known as your Agent, to be responsible for **carrying out your burial or cremation wishes**
  - You can **limit the powers given to your Agent** by including special instructions on the form
  - Families have universally said that having a loved one's directions in their own words gave **comfort and guidance at a difficult time**

# WILL



- Direct the distribution of your property
- Establish trusts to preserve assets, reduce or eliminate estate taxes and protect your family
- Designate an Executor and Trustee
- Appoint a Guardian for your minor children
- Create testamentary trusts

# REVOCABLE LIVING TRUST



- Organize your assets
- Provide for Management and use should you become incapacitated
- Secure beneficiaries
- Create 'downstream' trusts outside of the Court's reach
- Avoid probate
- Not Medicaid protected – Fully Available Assets

# TRUST

VS.

# WILL

- ✓ No Probate
- ✓ Manages Assets During Life and provides long term protection
- ✓ Provides for Successor Trustee upon death or incapacity
- ✓ Financial affairs remain private
- ✓ Must be 'funded' to be effective

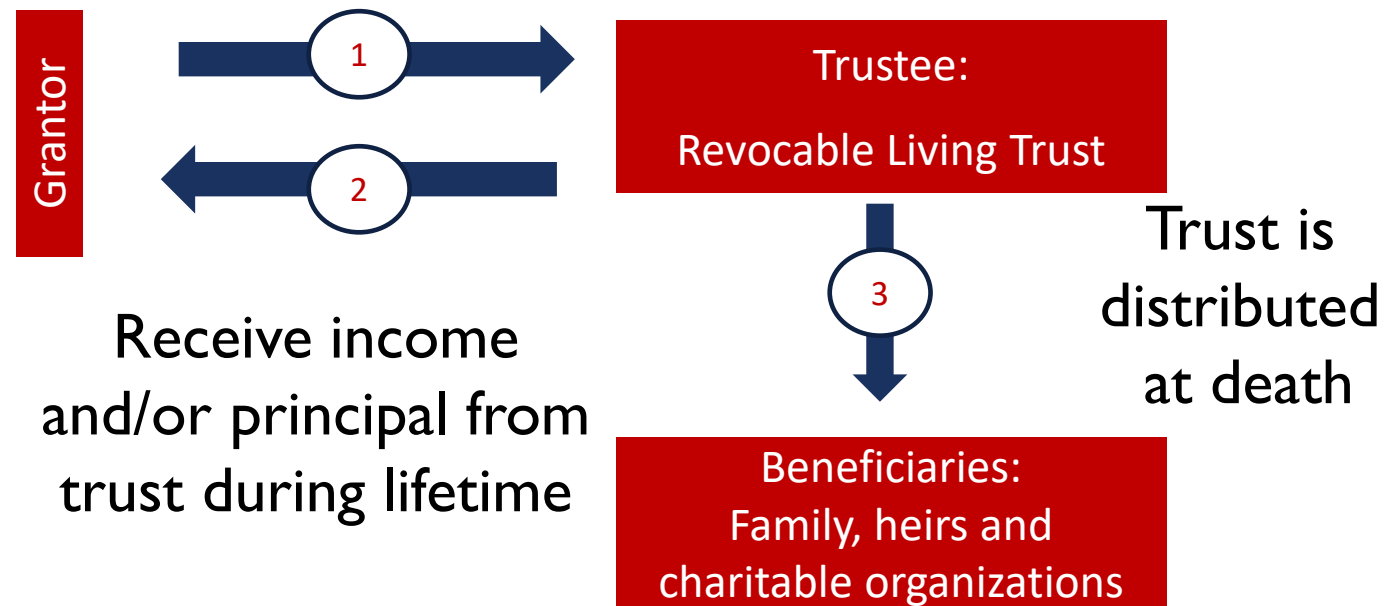
- ✗ Probate: cost & delays
- ✗ Takes effect after death
- ✗ No provision for incapacity
- ✗ May need a guardian or other planning
- ✗ No privacy – court papers filed in probate are public record
- ✗ Extra costs and delays if any beneficiary is a minor or disabled person

***Major problem with ONLY having a Will: Probate can take several months to several years!!!!***



# REVOCABLE TRUST WITH FUNDING

Place all assets in trust (except IRA)



You can be the Grantor, Trustee and Beneficiary!

# Medicaid Asset Protection Trust (Irrevocable) (MAPT)

CLIENTS

ASSETS



INCOME



- Trustee – manages trust assets
- Beneficiaries – income & principal
- Income = grantor
- Principal = heirs

# INTEGRATE YOUR ASSETS

**Neglecting to coordinate real estate, businesses, investments, retirement plans, life insurance, annuities and other assets with your trust is a common error!**

- **OWNERSHIP**
- **BENEFICIARY DESIGNATIONS**
- **TRUST FUNDING KIT**





# PLANNING FOR LONG-TERM CARE (LTC)

# KEY QUESTIONS ON PAYING FOR LTC

1. **Where** would you want to live?
2. **Who** would take care of you?
3. **How** would you pay for it?

Self-  
Insuring

Private LTC  
Insurance  
+ Life  
Products

Medicaid



# MEDICAID PLANNING



## **What to do when:**

1. Insurance is unaffordable
2. You are uninsurable – age, health
3. Long-Term care is imminent  
Even in crisis (i.e. already receiving home care or in a nursing home)  
planning is possible

# 2021 MEDICAID ELIGIBILITY NUMBERS



## Monthly Income

Individual (at home)	\$884 (+\$20) <sup>1</sup>
Couple (both at home)	\$1,300 (+\$20) <sup>1</sup>
Minimum Monthly Maintenance Needs Allowance (MMMNA) <sup>2</sup>	\$3,259.50

## Resources

Individual	\$15,900
Couple (both at home)	\$23,400
Comm. Spouse Resource Allowance	\$74,820 (or the spousal share of 1/2 combined resources up to a maximum of \$130,380)

*1 - The first \$20 of monthly income per household will not be counted when determining the eligibility of those Medicaid applicants who are aged, blind, or disabled. Income includes monies coming in each month such as Social Security, pension, rent payments, and disability payments*

*2 - If Community Spouse makes less than \$3,259.50 of their own income, they will receive a portion of their spouse's to reach \$3,259.50*

# MEDICAID BASICS – FINANCIAL ELIGIBILITY



## Medicaid LTC Services are Divided into Two Categories:

### Chronic Care

- Care provided in nursing home
- 5-year lookback
- Transfer penalties
- “Rule of Halves” planning

### Community

- *Home health care*
- Assisted living facility
- Medicaid managed long-term care
- Adult day care
- No lookback under current rules



**New 30-month lookback for asset transfers effective 7/1/21**

# 5 YEAR LOOK BACK



- Applies to **Nursing Home/ Chronic Care Medicaid**
- All transfers of non-exempt assets are added up- 5 years worth
- The total is then divided by the NYS divisor = average monthly nursing home cost



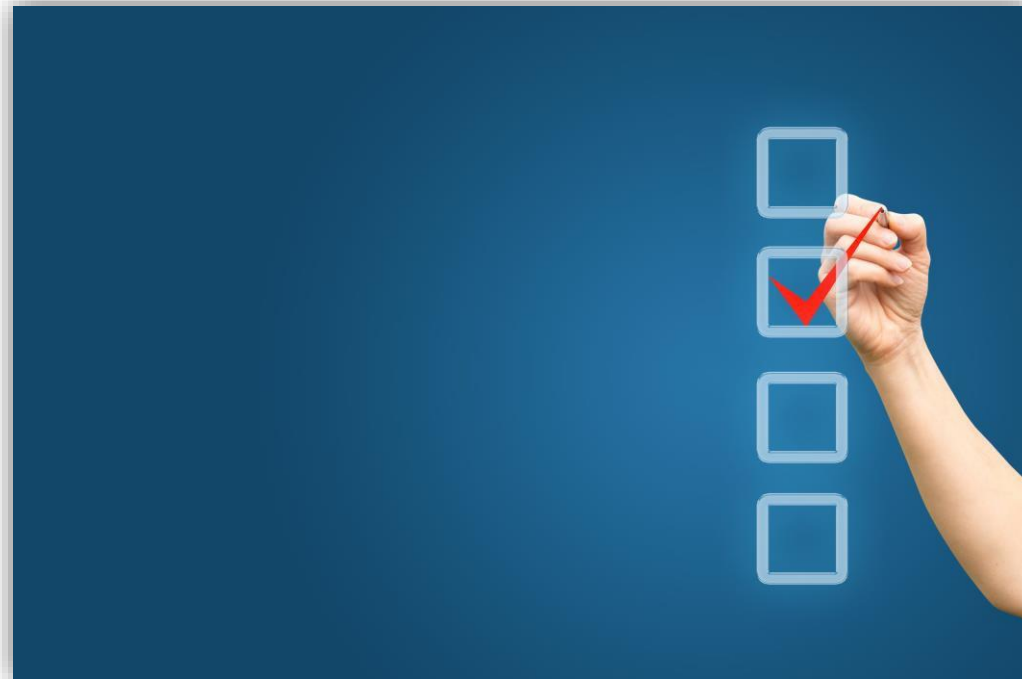
# 2021 NYS MEDICAID REGIONAL RATES



Region	Counties	2021	2020	2019
New York City	Bronx, Kings (Brooklyn), NY (Manhattan), Queens, Richmond (Staten Island)	<b>\$13,037</b>	\$12,844	\$12,419
Long Island	Nassau, Suffolk	<b>\$13,834</b>	\$13,407	\$13,407
Northern Metropolitan	Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester	<b>\$13,206</b>	\$12,805	\$12,636
Western (Buffalo)	Alleghany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming	<b>\$11,054</b>	\$10,720	\$10,556
Northeastern (Albany)	Albany, Clinton, Columbia, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington	<b>\$11,689</b>	\$11,295	\$11,280
Rochester	Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, Yates	<b>\$13,020</b>	\$12,460	\$12,342
Central (Syracuse/Utica)	Broome, Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, Tompkins	<b>\$10,857</b>	\$10,451	\$10,068



# A Brief Poll



# EXEMPT ASSETS



Some assets that are exempt:

- \$15,900
- Income producing property – business assets
- Life insurance – face value less than \$1,500!
- IRA in “Periodic Payment Status”- *major exception*
- One Car

**Non-Exempt Assets= EVERYTHING ELSE!**

# 5 YEAR LOOK BACK AND MEDICAID PENALTY



**Common examples** of transactions that can lead to a penalty:

- money gifted to a grandchild for graduation
- vehicle sold to a family member for half the value
- large gift to charity

## Exceptions

- Transfers to a spouse or disabled child
- Transfers of the home to certain beneficiaries



# THE MEDICAID PENALTY



The penalty is a number of months of ineligibility



- For example, transfers of \$112,800 are discovered within past 5 years:  
 $\$112,800 / \$11,280 = 10$  months without Medicaid
- Penalty period begins when person is:
  1. Receiving Care in a Nursing Home
  2. Is Otherwise Eligible - \$15,900
  3. Has submitted a Medicaid application

# Medicaid Home Care Programs

- Basic home care program: Managed Long Term Care (MLTC)
- Nursing Home Transition + Diversion Waiver (NHTD)
- Consumer Directed Assistance Program
- Immediate Needs Program
- Pace (all inclusive program)



Go to <https://www.pierrolaw.com/videos> to watch our webinars on these programs



# WHEN DO THE **HOME CARE** CHANGES TAKE EFFECT?



- The law imposes a “Medicaid lookback” for Transfers on or after October 1, 2020 (in effect now)
- According to DOH – Full implementation of the new law will commence on or after 7/1/21
- Opportunity – Apply for Medicaid Home Care before July 1<sup>st</sup> – Use Old Rules!

JULY 2021						
SUN	MON	TUE	WED	THU	FRI	SAT
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

www.theprintablecalendar.com

# THE MEDICAID PENALTY



## The Penalty for Home Care (30 Months Lookback)



- **Application before 7/1/2021**
  - **NO PENALTY**
- **Application on or after 7/1/2021** (or when effective)
  - **Same as Nursing Home**
- **Penalty begins to run when the applicant is “otherwise eligible” to receive services were it not for the penalty period, and actually applies**
  - **Who determines if “otherwise eligible” at home?**

# YOUR TREATING PHYSICIAN CAN'T HELP



- Personal care and CDPAP services must be prescribed by a qualified **independent physician** selected or approved by DOH.
- Physicians familiar with patients and specialized to treat them are **ineligible**.
- This requirement will add even more delays to applying for services as the consumer will need to arrange an assessment by this independent physician (with no medical history) in order to apply.

# NEW ASSESSMENT TOOL



- DOH will replace the function now performed by local districts, MLTC plans and mainstream Medicaid managed care plans with a new “Independent Assessor,” likely **Maximus**, charged with determining how much Personal Care and CDPAP to be authorized.
- This new independent assessor will apply the more rigid standards using a new **assessment tool** that the State will develop by April 1.



# OTHER CONCERNS CONT.



MLTC Lock-In Rules started as of December 1, 2020

- New Medicaid recipients allowed to change MLTC plans within 90 days of enrollment.
- If transfer to new plan doesn't occur within first 90 days following enrollment, plan cannot be changed for 9 months (meaning total enrollment = 1 year)



Allows you to develop a plan with your team of professionals

Ensures that all options are available

Provides greater protection of resources

Gives peace of mind that wishes are being followed

# THE IMPORTANCE OF PLANNING EARLY





# EverHome Care Advisors

Care Coordination, Advocacy, Navigation and Guidance through the aging process

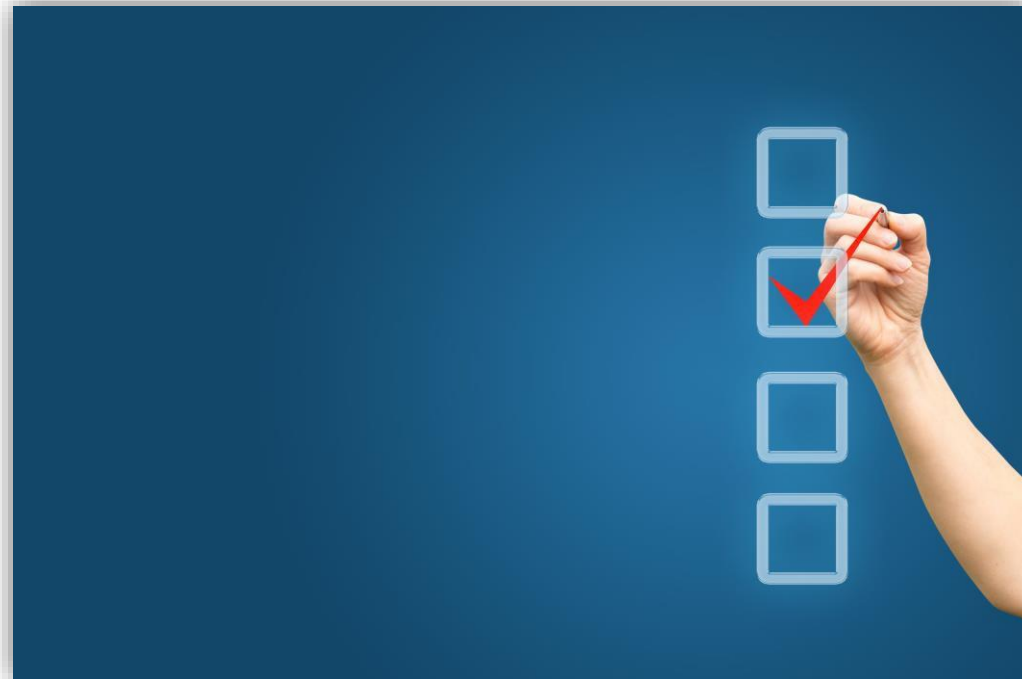


Families often see this fork in the road and do not know what to do.

Care Coordinators/  
Care Managers can  
provide the guidance  
and help in navigation  
of aging



# A Brief Poll



# Options for seniors to receive needed care and services

- Local Office of the Aging Programs
  - Little to no cost to the senior
  - Different programs to support the individual to remain in their home and community
  - Limited availability for EISEP programs due to caregiver shortage
  - COVID-19 - Many programs have closed or have limited services
  - Access same caregiver pool as agencies and facilities
- Private pay
  - Can often provide care and services that have restrictions with formalized caregivers ( medication administration)
  - Need to have a payroll system for household employees ie. GTM (legally)





# Options for seniors to receive needed care and services continued...

- Long Term Care policies
  - Additional option to have needed services paid for
  - **Access same caregiver pool as agencies and facilities**
- Medicaid Programs
  - **Access same caregiver pool as agencies and facilities**
  - Medicaid Managed Long Term Care
    - Agency Model
    - Consumer Directed Personal Assistance Program (CDPAP)
  - Nursing Home Transition and Diversion Waiver (NHTDW)



# Other issues that affect an individual's ability to remain in the community

- Caregiver shortage is significantly impacting an individual's ability to remain at home
  - Significant caregiver shortage in the United States and in New York State
    - The more “rural” the area the more limited the caregiver pool
    - There are many “licensed” home care companies that are “approved” for an area, but the reality is there is usually fewer than 10 agencies that service the area and less than that may have caregiver availability
  - The pool of health care workers providing home care includes the same caregivers in facilities.
- The number of seniors needing care is increasing and will continue to increase.
- Many families are not living together and some family members live in other states or countries

# Care Coordination

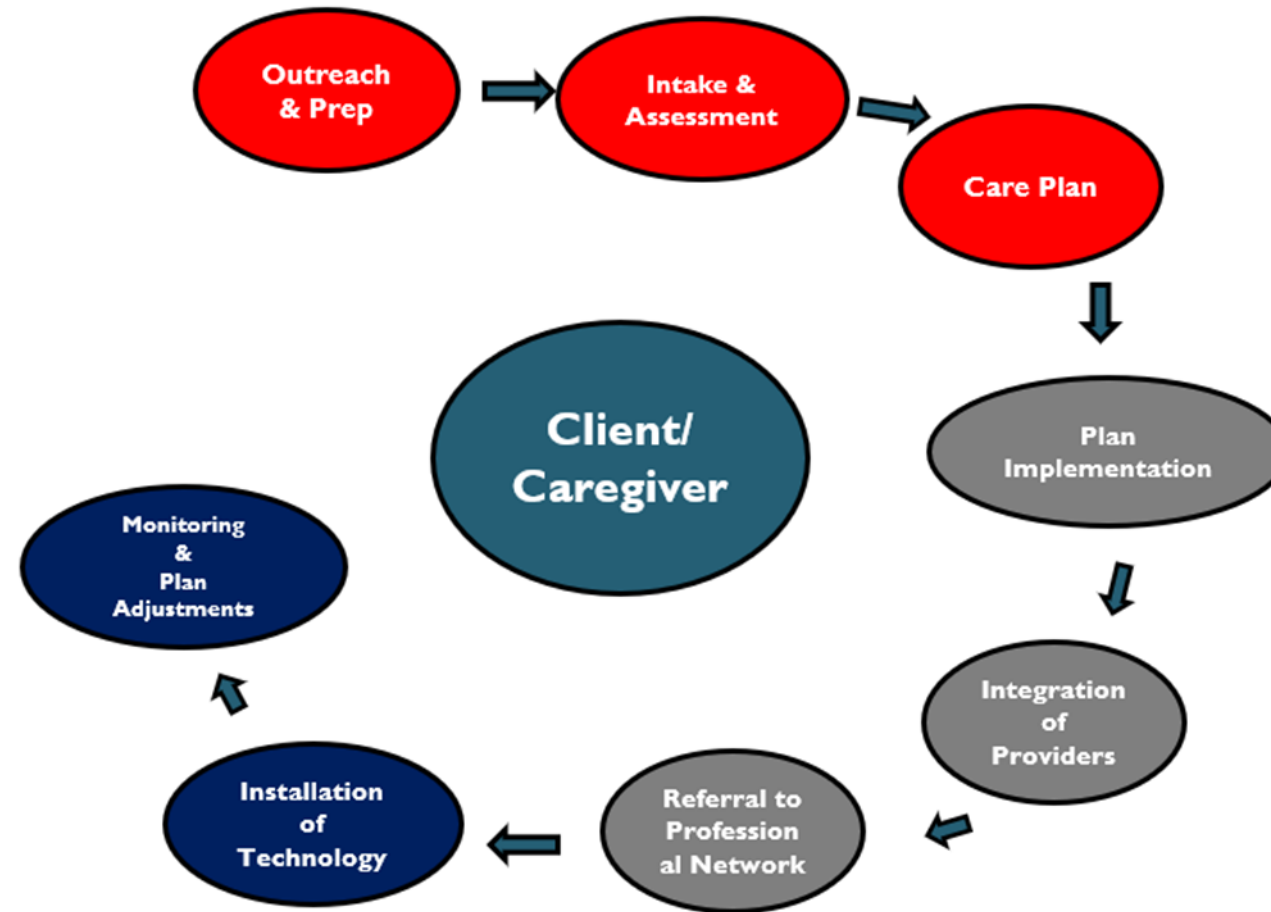




# Partners in the health care journey

- Can assist the discharge planners with planning for the patient's needs
- Provide care advocacy and navigation
- Connect patients and families to needed care
- Holistic approach to care coordination
- Assist with transitioning from one level of care to the other
- Guide and assist patients and families with the process of care options through
  - Long Term Care policies
  - Private pay
  - Medicaid Home Care options

# EverHome Care Advisors



# Assess

- Comprehensive in-home assessment
- Review of goals, concerns, medical history, care needs
- Assessment of financial resources, insurance and legal planning documents
- Determination of Medicaid eligibility or affordable care options
- Development of personalized care plan





# Implement

- Implementation of care plan
- Guidance through selection of care and resources
- Insurance, Medicare and Medicaid advocacy
- Coordination of caregiver selection
- Supervision, training on home care technology powered by VivaLynx
- Plan review to ensure success



# Monitor

- 24/7 use of technology to track real time health and financial data
- Monitors daily activities and provides alerts
- Information sharing among family members, caregivers and providers- your team!
- Updating of personal care plan to meet changing needs
- Support for transition to other levels of care, if needed





# Role of Technology in the Aging Process

- Enhances the ability for the individual to age in place
- Improves safety of individuals in their home
- Creates systems where families and caregivers can receive alerts and real time data regarding the individual
- Seamless integration of technology into daily life and activities – no “hands on” training required

# Alarm.com



**Discreet Motion  
Detectors  
Strategically  
Placed  
throughout the  
residence**



**Bed / Chair  
Occupancy  
Sensor**



**Door / window /  
cabinet Sensors**



**Live Video  
Conferencing  
with your  
loved one**

# ECARING HOME MANAGEMENT



- **CONNECTED:** Real Time communications into and out of the home
- **EASY INTEGRATION** into existing caregiver and care manager workflows
- Available in **MULTIPLE LANGUAGES** for ease of use for care workers and patients
- **Average response time to problem in home UNDER 11 MINUTES\***
- **ROBUST PLATFORM** to provide telehealth and other services





- 24/7 immediate triage & treatment by the UCM ER team
- Take all acute problems and exacerbations of chronic disease
- Actionable data collection and analytics
- Improved quality, reduced cost & life saving







# VivaLynx

*Empowered Aging through Technology*

Wellness – Home Monitoring



EHR History



Emergency Doctors



Financial Protection  
Alerts & Alarms



Care Coordination  
Legal and Financial  
Planning



**EACH OF US HOLDS A PIECE OF THE PUZZLE ....  
TOGETHER WE CAN COMPLETE THE PICTURE OF  
WHO OUR CLIENTS / PATIENTS ARE !**

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# GO DEEPER

**“Medicaid Mondays in March”**  
**Free 30-minute webinars, 12-12:30pm**

**March 1 – How to Qualify**

**March 8 – Medicaid Trusts**

**March 15 – Medicaid Home Care**

**March 22 – Nursing Home Medicaid**

**March 29 – What Happens if You’re Denied?**

**REGISTER: [Pierrolaw.com/events](https://Pierrolaw.com/events)**  
**(518) 459 - 2100**

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# SAVE THE DATE!

## **“26<sup>TH</sup> Annual Elder Law Forum” - Virtual**

**8:30-11:30am**

**Friday, May 21**

**Friday, June 4**

**6 CE Credits offered to Licensed Social Workers**

**REGISTRATION OPENING SOON!**

**[pierrolaw.com/events](http://pierrolaw.com/events)**

# THANK YOU! QUESTIONS?



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