
STARTING SOON....

MEDICAID MONDAYS IN MARCH

“Medicaid Home Care”



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Your lines are muted

Type questions in the
Q & A section at the
bottom of your screen

Presentation is posted:
Pierrolaw.com/resources
Under “Medicaid
Planning”

Fill out our Survey with
feedback

WELCOME - HOUSEKEEPING



MEDICAID MONDAYS IN MARCH

- Today marks our Third Program– Medicaid Home Care
- Week Four on March 28 – Nursing Home Medicaid
- Watch Week 1: “How to Qualify”
- Watch Week 2: “Medicaid Asset Protection Trusts”

■ Pierro, Connor & Strauss





OUR ATTORNEYS



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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?

Private LTC
Insurance
+ Life
Products

Self-
Insuring

Medicaid

**Medicaid is the
only government
program that
pays for LTC**



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

NEW IN 2022: RESTRICTIONS TO ELIGIBILITY FOR MEDICAID HOME CARE

If You Want to Age at Home, New York Rules Effective Spring and Summer 2022* Will Make it Harder to Qualify



Chronic Care

- **Nursing home care**
- 5-year lookback
- Transfer penalties = # of mos.
- “Rule of Halves” planning

Community

- **Home health care**
- Assisted living facility
- Medicaid managed long-term care
- Adult day care
- *No lookback under current rules*
- *2 1/2 yr. lookback to be implemented*

*Awaiting NYS DOH Guidance for some provisions

NEW 2022 MEDICAID ELIGIBILITY NUMBERS

Monthly Income

Individual (at home)	\$934 (+\$20) ¹
Couple (both at home)	\$1,367 (+\$20) ¹
Minimum Monthly Maintenance Needs Allowance (MMMNA) ²	\$3,435

Resources

Individual	\$16,800 ²
Couple (both at home)	\$24,000 ²
Comm. Spouse Resource Allowance	\$74,820 (or the spousal share of 1/2 combined resources up to a maximum of \$137,400)

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 \$3,435 of their own income, they will receive a portion of their spouse's to reach \$3,259.50

THE MEDICAID PENALTY



The penalty is a number of months of ineligibility



- For example, transfers of \$150,720 are discovered within past 5 years:
$$\text{\$150,720} / \text{\$12,560 (ave. Regional Rate)} = \text{12 months without Medicaid}$$
- Penalty period begins when person is:
 1. Receiving Care in a Nursing Home
 2. Is otherwise Eligible - \$16,800, or less of countable assets
 3. Has submitted a Medicaid application
- Who pays during the penalty period?

2022 NYS MEDICAID REGIONAL RATES



Region	Counties	2022	2021	2020
New York City	Bronx, Kings (Brooklyn), NY (Manhattan), Queens, Richmond (Staten Island)	\$13,415	\$13,307	\$12,844
Long Island	Nassau, Suffolk	\$14,012	\$13,834	\$13,407
Northern Metropolitan	Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester	\$13,389	\$13,206	\$12,805
Western (Buffalo)	Alleghany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming	\$11,884	\$11,054	\$10,720
Northeastern (Albany)	Albany, Clinton, Columbia, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington	\$12,560	\$11,689	\$11,280
Rochester	Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, Yates	\$13,376	\$12,020	\$12,342
Central (Syracuse/Utica)	Broome, Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, Tompkins	\$11,328	\$10,857	\$10,068

WHEN DO THE LOOKBACK / PENALTY CHANGES TAKE EFFECT?



- Most recent update – Full implementation of the new law may commence 7/1/22*

*Meaning Public Health Emergency ends 6/30/22

*See “NYS DOH” letter on our Resources Page

- The new law imposes a “Medicaid lookback” on Community Medicaid applicants for asset transfers after October 1, 2020
- The Penalty will be “phased in” through April 1, 2023

Look Back!

July 2022						
S	M	T	W	T	F	S
					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						

Friday, Jul 1st 2022

October 2020						
S	M	T	W	T	F	S
				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

Thursday, Oct 1st 2020

ISSUE: WILL THE LOOKBACK BE RETROACTIVE?



- **Transfers of income made on or after October 1, 2020 are subject to the new lookback period, but penalties from the new lookback period will not be enforced until 7/1/22.**
 - Example of Phase In
 - 21-month lookback for applications in July 2022
 - 22-month lookback for applications in August 2022
 - 30-month lookback for applications filed on or after April 2023
- *Question – Will existing Medicaid Beneficiaries be Grandfathered, or re-examined on Recertification?*

WHICH MEDICAID TRANSFER EXEMPTIONS STILL APPLY?



Transfers to the following individuals/trusts are **EXEMPT**:

1. Spouse
2. Disabled or blind child, or a trust for the benefit of such child
3. A trust established solely for the benefit of an individual under sixty-five years of age who is disabled

REMEDIES THAT WILL BE AVAILABLE AS TO THE ASSET TRANSFER PENALTY



Transfer penalties may not apply if a satisfactory showing is made that...

- the individual or the individual's spouse intended to dispose of the assets either at fair market value, or for other valuable consideration; or
- the assets were transferred exclusively for a purpose other than to qualify for medical assistance; or
- all assets transferred for less than fair market value have been returned to the individual
...if the burden of proof is met, then the transfer is exempt.

INCOME OVER \$954/MO.



- Under current law, a Medicaid recipient's excess income can be contributed to a Pooled Trust to avoid the Medicaid Spend-down
- INCOME ALLOWANCE – 2022 - \$954 for Single; \$1,387 for couple
- Pooled trust can pay any expense incurred by Medicaid recipient— rent, mortgage, food, technology, etc.

ISSUE: ARE TRANSFERS TO A POOLED TRUST EXEMPT?



Income

- DOH “Informal” Position
 - Transfers of income by an individual age 65 or older who is disabled to a Pooled Income Trust will be subject to a penalty **UNLESS**
 - There is a satisfactory showing that the funds will be utilized for the benefit of the Beneficiary (for full fair market value)

Assets

- Historically, per the NYS Medicaid Reference Guide (pg. 360), there is no exception to the transfer rules for transfers of assets to pooled trusts created for the benefit of persons 65 years of age or older



WHAT STEPS CAN YOU TAKE NOW TO ACCESS COMMUNITY MEDICAID?

UNTIL 7/1/22, EXISTING LOOKBACK / PENALTY RULES APPLY



- If a Community Medicaid Application **IS FILED PRIOR 7/1/22**, existing rules apply, meaning there is no lookback for homecare and no penalty or waiting periods.
- Applicant must have assets below \$16,800.00 and income less than \$954.00 per month
 - **Assets**
 - Use Medicaid Asset Protection Trust (MAPT) or Gifts prior to 7/1/22
 - Spend Down on Legitimate Expenses
 - Home repairs
 - Automobile
 - Prepaid Burial
 - Transfer assets to Community/Non-Applying Spouse
 - **Income**
 - Use Pooled Income Trust for excess monthly income over \$954/mo., or shift income to Community Spouse if their income is below MMMNA of \$3,435.00

EXAMPLE: MEET BEVERLY



- Income \$2,954/ Month
- Assets
 - IRA \$75,000
 - Savings & Checking \$25,000
 - Home \$250,000
 - \$100K in Stock



MEDICAID HOME CARE EXAMPLE



QUERY:

When can Beverly be eligible for
Medicaid Home Care if we start
planning today?

MEDICAID HOME CARE EXAMPLE



Answer:

- April 1, 2022
- How is that Possible?

MEDICAID HOME CARE EXAMPLE



- Step 1 – Beverly creates and funds a Medicaid Asset Protection Trust with her home, stock and \$11,000
- (covered in Session 2, March 14, 2022)
- Step 2 – Beverly creates a Pooled Trust and assigns \$2,000 of income per month



MEDICAID HOME CARE EXAMPLE



- Step 3 – Beverly applies for Medicaid – What counts?
 - **Assets = \$16,800**
 - **Income = \$954**
- Medicaid Trust and Pooled Trust funded- income and asset protected
- No Waiting Period!

WHAT IF BEVERLY NEEDED CARE EVEN FASTER??



Fast Track Medicaid Application if Immediate Need for Personal Care or CDPAP (Can't Wait Out 4+ Month MLTC Process)

- 2015 Law requires new procedures to process a Medicaid application in **SEVEN DAYS** for any applicant with an immediate need for personal care (PCS) or consumer-directed personal assistance (CDPAP) services & to approve PCS/CDAP in 12 days.
- Question – How will the new Home Care Rules affect the Immediate Needs application? – **STILL UNKNOWN**

NEW REGULATIONS EFFECTIVE NOVEMBER 8, 2021



- Updated Regulations published September 8, 2021
- 60 days to effective Date, but further delays have occurred

According to NYSDOH:

“These regulations modernize the PCS and CDPAS regulations, codify current Department policy, and align Medicaid Managed Care Organization (MCO) authorization roles and responsibilities to those of the Local Departments of Social Services (LDSS) by adopting a variety of new rules.”

NEW INDEPENDENT ASSESSOR EFFECTIVE MAY 1, 2022



- DOH will replace the functions now performed by local districts, MLTC plans and mainstream Medicaid managed care plans with a **new “Independent Assessor,” Maximus**, charged with determining how much Personal Care and CDPAP may be authorized.

NEW INDEPENDENT ASSESSOR (CONT.)



- Maximus will conduct **one Community Health Assessment** (CHA) which will be used to develop a plan of care for each Medicaid enrollee.
 - **Implementation Date for Independent Assessor now 5/1/22 according to DoH, and will be for “initial assessment” process only.
 - Initial Assessment Process
 - Community Health Assessment
 - Medical exam and practitioner’s order, and
 - Independent review process for new individuals seeking PCS/CDPAS or MLTC eligibility

INDEPENDENT ASSESSOR CONT...



- Independent assessment process for adults 18 and over as well as children for ages between 4-17 will be implemented at a later date.
- In 2020 budget - new independent assessor was to apply more rigid standards using **a new assessment tool** that was to be developed to determine hours awarded by Medicaid
 - NOW – Governor Hochul’s proposed 2022 budget would abandon this. Instead, it is likely new guidelines and standards would be issued to plans and local districts, or the IA

INDEPENDENT PRACTITIONER PANEL



- The regulations **replace** the requirement for a **physician's** order to authorize PCS/CDPAS (Personal Care Services/Consumer Directed Personal Assistance Services)
- **NEW REQUIREMENT:**
Services to be ordered by a qualified, **independent practitioner** (Medical Doctors, Doctors of Osteopathy, Nurse Practitioners and Physician's Assistants) **selected by the state.**
- Panel will determine if the individual is self-directing or has an appropriate self-directing other, and if the individual can **safely receive PCS/CDPAS at home** based on their medical stability.

SCHEDULING CONCERNS



- Maximus will also eventually replace the current nurse for all Medicaid CASA / DSS assessments, including immediate needs assessments, those seeking homecare but are exempt from enrolling with MLTC plans, or those seeking OPWDD / TBI / NHTD waived services
- **Does NY Medicaid Choice (MAXIMUS) have the capacity to schedule all of these assessments?**

INDEPENDENT REVIEW PANEL



- An **additional medical review** will be required the first time an authorization for PCS/CDPAS services **exceeds 12 hours per day**, on average.
- The medical review will be conducted by an **“Independent Review Panel” (IRP) established by the Independent Assessor** (Maximus). The Panel will review the individual’s community health assessment, their Practitioner’s Order and their Plan of Care.
- IRP will determine if the plan of care is reasonable and appropriate to maintain the person’s health and safety at home.
- IRP can recommend changes in scope, type, amount or duration of services but **cannot** specify a recommended number of hours.

3 ADL REQUIREMENT AFTER JULY 1, 2022?



New Law Enacted on 10/1/2020 stated:

To qualify for PCS / CDPAS services and to enroll with an MLTC plan:

- Will require “Limited assistance with physical maneuvering with **“more than two” ADL’s (3+ ADLs)** or
- Persons with dementia or Alzheimer’s diagnosis must need **“at least supervision with more than one ADL” (2+ADLs)**
- People already receiving personal care, housekeeping or CDPAP services as of the implementation date of the new regulations are **“grandfathered in”** under the previous rules

STATUS OF 3 ADL REQUIREMENT NOW



- Currently – a bill was proposed in both the NYS Senate and Assembly (A5367/S5028) which would repeal the ADL thresholds needed to qualify for in-home services, so this proposed requirement is on hold.
- If repealed, individuals would be qualified to receive services if:
 - An applicant was determined following an assessment to be in need of home care services or private duty nursing and is self-directing or has a representative to make informed choices regarding their care

OTHER CONCERNS CONT.



MLTC plans can involuntarily disenroll recipients for reasons specified in their contract, including:

- Failure to pay spend-down
- Hospitalization for greater than 45 days
- Enrollee was absent from the service area for more than 30 consecutive days

IF YOU HAVE QUESTIONS...



- Questions about the new regulations can be sent to: Independent.assessor@health.ny.gov.
- Also refer to NYLAG (nylag.org) for updates.

NEXT STEPS?



Every situation is unique and requires an individualized plan

- If you think you can qualify for Medicaid now
 - Get a comprehensive assessment by an independent geriatric care manager (EverHome Care Advisors)
 - Conduct thorough review of your income and resources (LTC questionnaire)
 - Consult with a qualified elder law attorney
 - Asset transfers must be completed by 5/31/2022
 - Medicaid Applications must be filed by 6/30/2022

NEXT STEPS?



Every Situation is Unique.



- If you are planning for the future:
 - Begin with a financial and legal analysis (LTC Questionnaire)
 - Consult with a qualified insurance professional
 - Consult with a qualified elder law attorney to explore legal planning to access Medicaid and protect your assets.
 - Purchase insurance and enact trusts as soon as possible

REGISTRATION HAS OPENED!



27th Annual **ELDER LAW FORUM**

<https://www.pierrolaw.com/events/>

- Free to Attend
- Thursday, May 19
- 8:30am-3pm
- The Desmond, Albany
- Or Live Stream
- 6 CEs for Social Workers (\$15/credit)

THANK YOU! QUESTIONS?



**Email us to
Request a copy of our 2022 Medicaid Guide
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