

STARTING SOON.....

MEDICAID MONDAYS IN MARCH

“Nursing Home Medicaid”

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WELCOME!



- We are sharing our webcam; please note your lines are muted
- Type questions into Q&A section at bottom of your screen
- View and download the Presentation:
<https://www.pierrolaw.com/resources/>
Under “Medicaid Planning”
- Complete short survey that will appear at conclusion of program
Technical issues? Email info@pierrolaw.com



Medicaid Monday



NURSING HOME MEDICAID

PRESENTED BY: LOUIS W. PIERRO, ESQ. & FRANK E. HEMMING, ESQ.

MEDICAID MONDAYS IN MARCH

- Today marks our fourth and Final Program– Nursing Home Medicaid
- Watch Week 1: “How to Qualify”
- Watch Week 2: “Medicaid Asset Protection Trusts”
- Watch Week 3: “Medicaid Home Care”
 - <https://www.pierrolaw.com/medicaid-planning-videos/>

or

- Pierro, Connor & Strauss





OUR ATTORNEYS



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Agenda



- Steps you can take now if you need Medicaid or want to plan ahead
- The numbers: Income and Resources
- Exempt Assets and Transfers
- Preserving Non-Exempt Assets
 - The “Rule of Halves”
- Admissions, Advocacy and Alternatives



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

COST OF NURSING HOME CARE



Average Monthly Cost of Nursing Home Care (2022)

Albany	\$15-16,000/month
New York City	\$18-20,000/month

Better facilities cost more!

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

EXEMPT ASSETS



Excluded from the 5 year look back:

- \$16,800
- One automobile
- Prepaid burial and funeral services



YOUR HOME

- Exempt if you, a spouse or minor or disabled child lives there
- Transfer exemptions
- Intent to return home
- Liens + Estate Recovery



EXEMPT ASSETS



Also excluded from the 5 year look back:



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

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 college
- vehicle sold to a family member for a dollar
- large gift to your church



Exceptions

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



5 YEAR LOOK BACK



5 YEAR LOOK BACK



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

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

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?

- Gifts within 5 years of a nursing home application create a penalty that doesn't begin until you are below \$16,800, in a nursing home, and submit a Medicaid application.

If you are ineligible for 12 months, who will pay? Is that “game over?”



THE RULE OF HALVES



- A Gift and loan are made of 50% of countable assets.
- The promissory note has been ruled by the Courts to be a **non-countable asset**, just income (used to pay the nursing home)
- The loan payments are calculated to private pay the nursing home while the penalty period runs- a **complex calculation**



RULE OF HALVES EXAMPLE- BOB A.



- Bob has **\$3,490/month of income, \$350,800 of non-exempt assets**, and he has gifted \$100,000 over the past 5 years
- Bob has nursing home costs of \$16,000/month
- His family pre-pays his funeral (could pay for others), buys him a television, clothes, furniture and pays legal fees- **a total spend down of \$34,000**
- Bob **gifts \$100,000 to a Medicaid Asset Protection Trust**, and **loans \$200,000 to Robert Jr.**, all on March 28, 2022



When is Bob eligible for Medicaid, and how much has he saved?

EXAMPLE (CONT.)



- Income- \$3,490 - \$50 allowance = \$3,440 net

Nursing Home Cost	\$16,000
-Income	- \$3,440
Needed from Assets/ Month	\$12,560/mo. (Northeastern Rate)
Non-Exempt Assets	\$350,800
-Spend-Down	- \$34,000
-Resource Allowance	-\$16,800
At Risk Capital	\$300,000

EXAMPLE (CONT.)



- Gift of 100K plus prior gifts of \$100K = \$200K Transfer
 - $\$200,000 / \$12,560 = 15.92$ month penalty
- Loan of \$200,000 (1/2) = Note payments of \$12,560/month for 16 months
- Apply for Medicaid April 1, 2022
 - Penalty runs 4/1/22 - 7/31/23
 - Note pays 4/1/22 - 7/31/23
- **Medicaid Eligible Aug. 1, 2023**



WHAT HAS BOB SAVED?

Bob's Remaining Assets



Trust	\$100,000
Allowance	\$16,800
Pre-Paid Contract	\$12,000
Personal Property	\$10,000
Prior Gift	\$100,000

\$238,800 saved!

- 8/1/23 forward- Medicaid Pays
- Bob's Trust- Protected from Medicaid, but his children can access it and use the money to supplement his care, upon death they inherit.



MARRIED COUPLES

If only one spouse is applying for Medicaid, there are spousal impoverishment rules in place to protect the non-applicant spouse
(often called the community spouse)

MARRIED COUPLES



Minimum Monthly Maintenance Needs Allowance (MMMNA)

- *Deals with income*

&

Community Spouse Resource Allowance (CSRA)

- *Deals with Assets*



- **Income allowance** allows a married Medicaid applicant to transfer a portion, or all, of his/her income to the non-applicant spouse who earns little to no income
- Community spouse's income must fall under a certain level in order for the applicant spouse to transfer funds

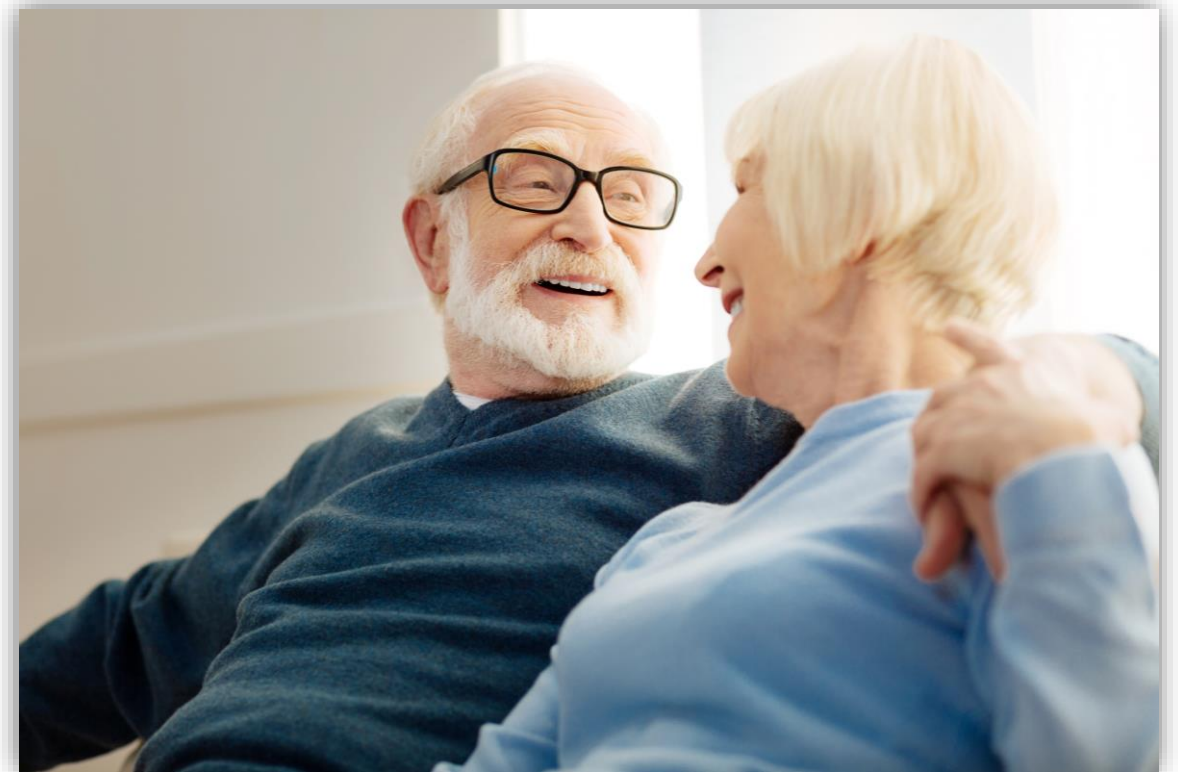
Current New York State MMMNA limit: \$3,435

CSRA

Assets held jointly by a husband and wife can be allocated to the non-applicant spouse.

- The assets the non-applicant spouse is permitted to retain is referred to as the Community Spouse Resource Allowance (CSRA)

Current CSRA in New York is \$74,820 (or $\frac{1}{2}$ of the couples resources up to a maximum of \$137,400 *if greater*)



SPOUSAL REFUSAL



- Happens when the spouse living in the community **refuses to turn over income or assets to support the spouse** who is living in the nursing home in order to obtain Medicaid eligibility



SPOUSAL REFUSAL



- Applicant must assign his or her right to support from the spouse to the State, then the **State cannot deny Medicaid coverage**, even if the spouse has **assets over the allowed limit**
- **But**, the State may seek a contribution towards the cost of care

PLAN TO AVOID THESE ISSUES- MEDICAID PENALTY



Trust Planning 5 years in advance can help you avoid having to “spend down” to qualify for Medicaid

Medicaid Asset Protection Trust

- You retain the income for yourself and preserve the principal of the assets (the assets held by the Trustee) for your spouse, children or other beneficiaries.
- When properly drafted, the trust will provide asset protection along with significant tax benefits, including avoidance of gift taxes, and a reduction of capital gains taxes

Watch the Webinar on
“MAPT” at
YouTube
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Do you need a law firm to file a Medicaid application?



RESERVE YOUR SPOT!



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)



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