
27th Annual
ELDER LAW
FORUM
WILL BE STARTING SOON...

27th Annual
ELDER LAW FORUM

WELCOME! HOUSEKEEPING:

- Your mics are muted
- Materials can be viewed at: pierrolaw.com/resources
- Type questions for speakers into Q&A section at the bottom of your screen
- Fill out the Survey following program
- Social Workers: be present for the entire program

INTRODUCTION

Louis W. Pierro, Founding Partner
Pierro, Connor & Strauss, LLC

PIERRO, CONNOR & STRAUSS, LLC
Trusted Counsel

The Impact of Covid

- Hospitals and Nursing Homes Under Fire
- The Coming of Age of Telemedicine
- Staffing Shortages Exacerbated by COVID
- Budget Deficits, Volatile Insurance Markets, Escalating Costs
- Innovation Lacking in Both the Provision and Payment for Care During the Pandemic

A Sea Change in Care?

- Value Based Payments vs. Fee-for-Service
- CMS Expanding Home and Community Based Services (HCBS)
- Medicare and Medicare Advantage Expansion into Long-Term Care
- New 1115 Waiver to Expand Funding of Community Based Care

- Adoption of New Technologies by Providers and Payors – Telemedicine and Beyond

OUR SPONSORS: THANK YOU!

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Forum Agenda

8:40	NYS Legislators: **Hot Topics In Long-Term Care**
9:20	Medicaid Update: **New York's New Home Care Rules**
10:00	Views From The Executive Branch: **New Frontiers Of Aging In NY**
10:45	Coffee Break **& Networking**
11:00	Remarks from **U.S Senator Kirsten Gillibrand**
11:10	Providing Care in the Home: **New York's Changing Landscape**
11:30	Panel: **Staffing Shortages in Health and Long-Term Care**
12:30	Lunch **& Exhibitors**
1:00	Remarks: **Lunch Sponsor**
1:10	Panel: **Innovation & Automation**
2:05	Panel: **Medicaid Case Study**
2:55	Wrap Up

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Dan Bazile

News Anchor

A Discussion with State Law Makers

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Hot Topics in Long-Term Care

Assembly Member
John McDonald III

Senator
Sue Serino

Assembly Member
Ron Kim

Spectrum News
Dan Bazile

Assembly Member
John McDonald III

Senator
Sue Serino

Assembly Member
Ron Kim

Valerie Bogart

Director,
Evelyn Frank Legal Resources Program,
New York Legal Assistance Group (NYLAG)

“Medicaid Update: New York's New Home Care Rules”

NYS Medicaid & Home Care Changes 2022

27th Annual Elder Law Forum

May 19, 2022

Valerie Bogart eflrp@nylag.org

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ABOUT NYLAG

The New York Legal Assistance Group (NYLAG) is a leading non-profit that provides free civil legal services, financial counseling, and engages in policy advocacy efforts to help people experiencing poverty.

The Evelyn Frank Legal Resources Program (EFLRP) at NYLAG focuses on access to Medicaid for older people and people with disabilities for long term care.

https://nylag.org/evelyn-frank-legal-resources/

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Agenda

1. GOOD NEWS - Increase in Medicaid income and asset limits!!!
2. Independent Assessor – Starts May 16, 2022
3. New Reg Allows MLTC Plans to reduce services after transition from Immediate Need
4. Involuntary Disenrollment from MLTC – allowed to resume on many grounds
5. Other Changes coming in 2022-2023
    1. Home Care Eligibility – ADL Thresholds/ Minimum Needs (will be later)
    2. Lookback - won't be discussed today
6. What is ICAN? Get HELP!

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MEDICAID INCOME & ASSET LIMITS WILL INCREASE JAN. 2023

For Age 65+/ Disabled/Blind
Also Medicare Savings Program

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Backgrounder: Non-MAGI and MAGI

1. Since 2014 - the Affordable Care Act (ACA) increased income limits & eliminated asset limit for people under age 65 who do not have Medicare to **138% Federal Poverty Line (FPL)**.
    1. Called "**MAGI" Medicaid – "Modified Adjusted Gross Income"** because uses tax rules for income.
    2. Has **NO ASSET limit**.
2. But age 65+, younger disabled still have old rules. When they get Medicare at 65 or after 2 years on SSD they "fall off the cliff." Called "**Non-MAGI Medicaid**. Suddenly, Medicaid has a lower income limit (**85% FPL**), so they have a spend-down, or lose Medicaid for excess resources.

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NYS Budget April 2022: Passed Landmark Medicaid Increases

- The SAME income limit will now be used for both younger people under the Affordable Care Act (MAGI) and for Age 65+, Blind & Disabled (Non-MAGI) =138% Federal Poverty Line (FPL).
- Medicare Savings Program limits also increased.
  - **QMB** will be the same as Medicaid – 138% FPL (pays for Part B premium AND Medicare cost-sharing)
  - **QI-1** will be 186% FPL (pays for Part B premium only)
  - No more SLIMB program.
- Increases start Jan. 1, 2023 – see next slide

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2023 Medicaid & MSP Limits – Age 65+, Blind, Disabled						
Benefit	% FPL		SINGLES		COUPLES	
	2022	2023	2022	2023	2022	2023
Income limit per Month						
Medicaid	82%	138%	$934	$1563	$1,367	$2,106
QMB	100%	138%	$1,133	$1563	$1,526	$2,106
QI-1	135%	186%	$1,529	$2107	$2,060	$2,838
Medicaid Asset Limit			$16,800	$28,134	$24,600	$37,908

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More about the INCOME LIMIT Increases

a. Age 65+, Blind and Disabled group will still be Non-MAGI, using the same budgeting rules as before (like Spend-down and Spousal Refusal).
    a. Just the **income limit** is being increased to the MAGI limit.
    b. **May still use Pooled Trust** or "spend down" excess income on medical expenses.
b. Before, many people with MAGI Medicaid on NY State of Health Exchange lost Medicaid when they got Medicare at 65 or based on disability, because of lower income limits. Now many will no longer *fall off the cliff*.
c. Nursing home budgeting won't change – same calculation of NAMI as before.

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Increase in Asset Limit

- NYLAG and other advocates asked NYS to REPEAL the ASSET TEST for non-MAGI Medicaid – to be the same as for MAGI Medicaid.
- Why? The asset rules are biased against people of color who statistically are more likely to have **savings in bank accounts**, not:
  - **Homes** - which are exempt if equity under $955,000
  - **IRAs** and other retirement funds – which are exempt as long as taking distributions.
  - See coalition letters at http://www.wnylc.com/health/news/90/
- Unfair that a tenant can't save $50,000 in the bank but a homeowner can have equity of $955,000, or own a $1 million dollar IRA and shelter the RMD in a pooled trust.
- But – the asset test was increased but not repealed.
- No change in Estate recovery rules, liens, spousal impoverishment, lookback and transfer penalties for nursing homes.

*CMS State Medicaid Director Letter #14-001, *Application of Liens, Adjustments and Recoveries, Transfer-of-Asset Rules and Post-Eligibility Income Rules to MAGI Individuals,* https://www.medicaid.gov/federal-policy-guidance/downloads/smd-14-001.pdf

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Medicaid increases – practical issues

- CMS approval will be required for this to go into effect.
- **If approved - Effective date will be Jan. 1, 2023.**
- Old rules continue **for this year – new applicants** must use existing asset and income limits.
- **COVID NOTE – Current recipients** have not gone through annual renewals since Public Health Emergency (PHE) started March 2020. Federal "Maintenance of Effort" rule has banned cutting off Medicaid or increasing spend-down even if ineligible, has excess income, or did not return renewal.*
  - Public Health Emergency expected to end later in 2022 – all 8.8 Million NYS Medicaid recipients will be evaluated in renewals that will take the State a year. Hopefully, timing will work out to use the new limits on the renewals
  - See tips on renewals - http://www.wnylc.com/health/entry/227/

*http://www.wnylc.com/health/news/86/#2.%20NYS%20Medicaid%20Policies%20-%20MOE

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“INDEPENDENT ASSESSOR” FOR HOME CARE

Medicaid Redesign Team II change enacted in 2020

Home Care Regulations adopted 8/31/21 –effective Nov. 8, 2021
but implementation to start May 16, 2022

NYLAG & NYSBA COMMENTS on proposed regs
http://www.wnylc.com/health/download/771/ (3/13/21)

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3 MRT II Changes Enacted in 2020 - Status

Medicaid Redesign Team II Change	When does it Start?
Independent Assessor for Personal Care services (PCS) & Consumer Directed Personal Assistance (CDPAP) "NYIA" will be Phased in	May 16, 2022 – MLTC enrollment, *standard* managed care and DSS requests July 1, 2022 – Immediate Need, *expedited* managed care requests Not yet scheduled – annual reassessments, requests for increases in hours, NH/hospital discharges
New **minimum 3 ADLs** required for eligibility for PCS & CDPAP (2 ADLS if dementia)(Slides at end)	**DELAYED:** CANNOT START UNTIL the next quarter after Public Health Emergency ends. If not extended, PHE ends July 2022 so earliest start date for these is 10/1/2022. http://www.wnylc.com/health/news/86/#2.%20NYS%20Medicaid%20Policies%20-%20MOE
30-Month LOOKBACK for MLTC enrollment and all Requests for PCS and CDPAP (not covered in this slide deck)	

Regulations & Guidance

- **New NYS DOH NYIA website** - https://www.health.ny.gov/health_care/medicaid/redesign/nyia/
- **Document Repository** tab on site has links to NYIA Policies
  1. Amended Personal Care & CDPAP regulations 18 NYCRR 505.14 & 505.28
  2. 22 OHIP/ADM-01 - 4/20/22 for local DSS Medicaid offices
  3. MLTC Policy 22.01 4/27/22 for MLTC plans https://www.health.ny.gov/health_care/medicaid/redesign/mrt90/mltc_policy/docs/2022-04-27_mltc_22-01.pdf
  4. MMC Guidance - 4/28/22 for mainstream plans (mostly people without Medicare or other primary insurance)
- **Trainings** tab has many PowerPoints DOH presented to plans and Local DSS
- NOTHING for consumers and NO FAQs as of 5/14/22 – only

https://nymedicaidchoice.com/ask/do-i-qualify-managed-long-term-care

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Alphabet Soup! Learn new acronyms!

NYIA - New York Independent Assessor – replaces CFEEC (Conflict-Free Evaluation and Enrollment Center) – Has **3 functions:**

1. **CHA or IA Community Health Assessment or Independent Assessment** (Maximus Nurse assessment using the **UAS-NY**)
2. **IPP Independent Practitioner Panel** –Maximus doctor, nurse practitioner, or physician assistant who will now schedule:
   - **CA Clinical Appointment** – Examination by the IPP, which then prepares --
   - **PO Practitioner's Order** – Replaces the M-11q or DOH-4359 Physician's Order. Will be signed by IPP.
3. **IRP Independent Review Panel** –New review required if plan or LDSS proposes hours more than 12 per day on average, *for the first time*

Acronyms used here that are NOT changing --

- **PCS** – Personal care services
- **CDPAP** – Consumer Directed Personal Assistance Program
- **DSS** – Local county Dept. of Social Services (HRA in NYC) --Medicaid agency that handles all applications for Medicaid and requests for PCS/CDPAP
  (1) for people excluded or exempt from MLTC or mainstream managed care or
  (2) applying based on Immediate Need for home care
- **TBI and NHTDW** – Traumatic Brain Injury & Nursing Home Transition & Diversion Waiver
- **MMC - Mainstream Medicaid Managed Care –** mandatory plans for those without Medicare or other primary insurance, and who have no spenddown. Mostly under age 65, but also includes elderly or disabled SSI recipients who don't have Medicare, often because of immigration status. Members of these plans must request PCS or CDPAP from the plan and all other Medicaid services.

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What Assessments does NYIA Do?

NY Medicaid Choice ("NYMC" or Maximus) has huge new role. Until now only did Conflict-Free Assessment for MLTC enrollment. Once phased in, NYIA will do all assessments for Personal Care (PCS) or CDPAP ("home care"):

1. **MLTC** - Continues to do Nurse assessments to enroll in MLTC or Medicaid Advantage Plus (MAP), but now must also do a **second medical assessment by an "Independent Practitioner Panel" (IPP)** before MLTC enrollment
   a. Once phased in, will take over all MLTC Nurse assessments – annual reassessments, requests for increases, hospital or NH discharges. All will also require the IPP.
   b. NYIA does NOT assess for **PACE** enrollment.
2. **Local DSS/HRA** - Takes over ALL PC/CDPAP assessments by **DSS/HRA** – Immediate Need, or for people exempt or excluded from MLTC or mainstream MMC including:
   a. Enrolled In HOME HOSPICE, or OPWDD, TBI or NHTD waivers
   b. Adults with Medicaid but not Medicare, and people ages 18-21
3. **Mainstream managed care (MMC)** plans - takes over ALL PC/CDPAP assessments by **MMC** plans; does requests to transfer from MMC to MLTC.

In all above situations, both a NYIA CHA (Nurse assessment) AND CA (medical assessment by IPP) are required (once phased in)

4. PLUS - A new High-need review "**Independent Review Panel**" is required where plan or DSS determine needs > 12 hours/day if had fewer hours before.

**** Plan or DSS still decide the plan of care (hours), using the new assessments**

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Independent Assessor being phased in:

A. Starts May 16, 2022:

1. For enrollment into MLTC/MAP (not PACE) (replaces CFEEC)
2. For standard ***NEW*** requests for PCS/CDPAP to DSS for age 18+ - if exempt or excluded from MLTC or MMC, including:
   - in HOME HOSPICE, OPWDD, TBI or NHTD waivers
   - Adults with Medicaid but not Medicare, and people ages 18-21
3. Mainstream managed care – *Standard** ***NEW*** requests for PCS/CDPAP for age 18+ and voluntary transfers to MLTC

B. Start July 1, 2022 - Immediate need applications to DSS/HRA and *expedited* ***new*** requests to mainstream managed care.*

C. Starts Later – No date set yet:

1. Annual ***reassessments*** (no longer 6-month) – for MLTC, mainstream managed care & DSS/HRA
2. Every request to plan or LDSS for an ***increase*** or on ***discharge from NH, hospital***.
3. Voluntary transfer from MLTC plan to MLTC plan

*Standard requests must be processed in 14 days. Expedited must be processed in 72 hours, if delay would seriously jeopardize enrollee's life or health or ability to attain, maintain, or regain maximum function. Both subject to 14 day extension. 42 CFR 438.210(d)

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More on Phase In – Transition cases

- What if requested CFEEC before May 16th?
  - NYMC will do CFEEC with old procedures. Will not do the CA / PO or high-need IRP review. Plan does enrollment assessment as before, but may use the CFEEC assessment instead.
- What if mainstream member requested PCS/CDPAP before May 16th? Or if you applied for Immediate Need before May 16th?
  - Requests processed under old rules. No NYIA assessments done. Plan or LDSS still do the nurse's assessment - even if merely made phone call to LDSS before May 16th to request assessment.
  - If consumer requested voluntary transfer from MMC to MLTC before 5/16/22, processed under old rules.

MMC policy p. 1, ADM p. 4, MLTC policy p. 1

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The NYIA process – DSS, MMC

Jargonary

- NYIA – NY Independent Assessor
- CHA – Community Health Assessment
- CA – Clinical Appointment
- IPP – Independent Practitioner Panel
- PO – Practitioner's Order

Step 1

- Consumer, caregiver, LDSS or plan **calls NYIA** to request initial assessment. Must have Medicaid (more on this below- slide 31)
- 855-222-8350, M-F 8:30am-8:00pm, Sat 10:00am-6:00pm

Step 2

- **NYIA will schedule CHA and CA within 14 days**
- CHA and CA can occur M-F 8:30am-5:00pm, Sa-Su 10:00am-6:00pm

Step 3

CHA appointment

- NYIA nurse completes UAS-NY (in person or telehealth)

Step 4

CA appointment

- IPP examines consumer (in-person or telehealth), reviews CHA, determines if self-directing and stable medical condition, and completes the PO form

Step 5

Outcome Notice sent by NYIA. If denied PCS/CDPAP → Fair Hearing Rights.

If approved → NYIA refers to LDSS or MMC plan, which use CHA & PO to decide plan of care. If approve 12 or less hours/day – go to **Step 7**. If > 12 hours/day, go to **Step 6.**

Step 6

- **Independent Review Panel (IRP)** If DSS/plan's proposed plan of care > 12 hrs/day, they must refer for IRP review. Within **6 days**, panel makes recommendation to Plan/LDSS of whether plan of care maintains health and safety at home.

Step 7

- **Plan/DSS use CHA & PO, and IRP if required, to finalize plan of care and send consumer notice with appeal rights.**

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The NYIA process – MLTC enrollment

Steps 1-4

- Same as prior slide for DSS/MMC (CHA and CA requested, scheduled and conducted)

Step 5

- **If NYIA denies MLTC enrollment → NYIA Outcome notice** has Fair Hearing Rights
- **If NYIA approves MLTC enrollment** → NYIA Outcome Notice tells consumer to call NYIA for plan options, and consumer calls a plan to enroll as before.
- **IA & Outcome Notice good for ONE YEAR**, while CFEEC expired after 75 days.

Step 6

- **Prospective MLTC Plan Gives Plan of Care, based on CHA and CA --**
- If plan says needs 12 or less hours → enroll (same as now) → **go to Step 8**
- If plan says needs > 12 hours, go to **Step 7** but may enroll in the meantime.

Step 7

- **Independent Review Panel (IRP)** If MLTC plan's proposed plan of care > 12 hrs/day, they must refer for IRP review, but consumer may enroll & plan may submit enrollment before IRP referral or while IRP is pending. Within **6 days**, panel makes recommendation of whether plan of care maintains health and safety at home.
  Go to **Step 8**

Step 8

- Plan uses CHA & PO, and IRP if required, to finalize plan of care.

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Independent Assessor Process – more detail

1. **TWO "Independent assessments" by *NYIA– should be scheduled within 14 days.***
   - A. **Independent Assessment (IA) –** NYMC nurse ***and***
   - B. **Clinical Assessment (CA)** by Independent Practitioner Panel **(IPP)-** exam by NY Medicaid Choice PHYSICIAN, physician's ass't. or nurse practitioner who prepares a Practitioner's Order **(PO).** See sample of new form.*****

Problem – they don't know consumer. Reg says they

> **"…**may review other medical records and consult with the individual's providers and others involved with the individual's care if available to and determined necessary by the medical professional." 505.14(b)(2)(ii)(e).

But how to submit records, especially if telehealth?

- **TIP: Submit treating physician letter or try using the old forms** M11q/DOH-4359. **Warning**: Guidance says these forms are being *discontinued* (once NYIA is phased in) but we think applicant still has right to submit info, and plan/LDSS should still accept these forms for INFORMATION, not as MD "order."

WHERE are these 2 assessments done? Expect pressure to use telehealth!

- IA (nurse) – Reg says done where consumer located - home, NH or hospital (or may use telehealth) 505.14(b)(2)(i)(c).
- IPP - Reg, ADM and MLTC policy don't say where medical exam is. MMC policy p. 3 says may be in person or telehealth. But must consumer travel?

*https://www.health.ny.gov/health_care/medicaid/redesign/nyia/faqs/docs/2022-02-16_mmco.pdf slides 11-15

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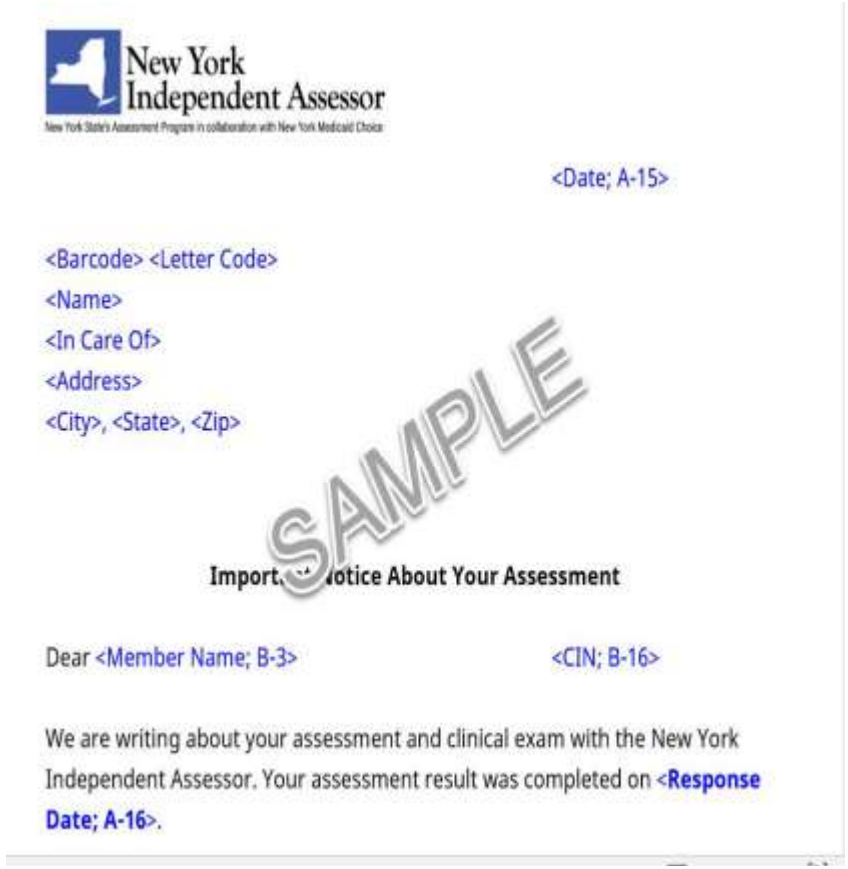
2. Outcome Notice Content



New York Independent Assessor

New York State's Assessment Program in collaboration with New York Medicaid Choice

<Date; A-15>

<Barcode> <Letter Code>
<Name>
<In Care Of>
<Address>
<City>, <State>, <Zip>

SAMPLE

Import... Notice About Your Assessment

Dear <Member Name; B-3> <CIN; B-16>

We are writing about your assessment and clinical exam with the New York Independent Assessor. Your assessment result was completed on **<Response Date; A-16>**.

- The notice will contain a section entitled **Your assessment showed**, which is where it informs the consumer of the outcome
- There are multiple possible outcomes, depending upon the consumer's situation (MLTC/Mainstream/Immediate Need) and NYIA's findings
  - "You are eligible for CBLTSS"
  - "You may be eligible for CBLTSS"
  - "You may qualify to receive LTSS through a MLTC plan"
  - "...however your health condition is not stable enough to get...care at home"
- These notices will be very confusing for consumers, so **it's important to get a copy of the notice** to properly advise them!

2. NYMC "Outcome Notice" – if ELIGIBLE

If after the 2 assessments NYMC says eligible for PCS/CDPAP or MLTC enrollment --

- Notice refers applicant back to NYIA to learn MLTC plan options, contact MLTC plans and enroll as before
- If in mainstream plan or exempt from MLTC - Tells consumer to call DSS or MMC plan to "share results" to develop plan of care.
  - ADVOCACY CONCERN – Why is burden on consumer to contact LDSS/ plan to move request forward. NYMC sends the results anyway to DSS/plan thru portal – that should be enough for DSS/plan to take next step.
- Will NYIA properly direct consumer so they don't get bounced around?

https://www.health.ny.gov/health_care/medicaid/redesign/nyia/faqs/docs/2022-01-26_ldss.pdf slides 33-35 and https://www.health.ny.gov/health_care/medicaid/redesign/nyia/faqs/docs/2022-01-26_mmco.pdf

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2. NYMC "Outcome Notice" – if NOT ELIGIBLE

- NYIA Outcome Notice of denial of PCS/CDPAP/MLTC – can request Fair Hearing.
- For MLTC, this is not a change. NY Medicaid Choice always sent denial notice to consumer.
- But **for DSS/HRA and managed care plans, this is a big change. Denial notice used to come from DSS/HRA or managed care plan**. Is this legal?

https://www.health.ny.gov/health_care/medicaid/redesign/nyia/faqs/docs/2022-01-26_ldss.pdf slides 33-35 and https://www.health.ny.gov/health_care/medicaid/redesign/nyia/faqs/docs/2022-01-26_mmco.pdf

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Why can NYIA deny PCS/CDPAP or MLTC?

- **Personal care/CDPAP** – denied if not "medically stable." 18 NYCRR 505.14(a)(3)(this is not a new requirement)
  - not expected to exhibit sudden deterioration or improvement;
  - does not **require frequent medical or nursing judgment** to determine changes in the plan of care;
  - physically disabled or frail elderly individual does not need **skilled professional care** in the home but does require routine supportive assistance to prevent a health or safety crisis from developing.
  - **TIP**: If client has SKILLED needs (trach, oxygen, tube feeding explain that informal caregiver will do tasks OR use CDPAP
- **For MLTC enrollment or Mainstream MMC** – even if not "medically stable" for PCS/CDPAP, could still be eligible for Private Duty Nursing or Adult Day Health Care services from MLTC plan -- so should not be denied enrollment.
  - For MLTC, must need Community-Based long term services & supports (CBLTSS) for **120 days** (but not required for MMC)
- The 3 ADL criteria (2 if dementia) are NOT in effect yet!

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DSS & Plans Develop Plan of Care

3. **HRA/DSS or Plan uses the IA and CA to develop plan of care – and authorize services if 12 hrs/day or less.**
4. **Variance – DSS or Plan may dispute the IA** if they have "material disagreement" affecting plan of care. Then IA may make requested change or has **10 days** to do a *new assessment*.
    a. More delay – MLTC must request variance "with due expediency," and has 10 business days to provide info on request from NYIA to support dispute.*
    b. Consumer may refuse reassessment without penalty – then DSS or plan must use original IA.*
    c. Plans get penalized if request too many variances.
5. **Will plan/LDSS nurse still assess client?** Gray area. DOH acknowledges that the UAS/CHA has gaps – doesn't assess night-time needs or informal caregiver availability. So they still need to assess but won't be paid for it!
6. **If HRA or Plan say needs > 12 hours per day** → see next slide.

*MMC Policy p. 8, MLTC Policy p. 7-8, ADM p. 12

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Independent Review Panel (IRP) – if > 12 Hrs/day

6. **If DSS or Plan say needs > 12 hours/day for the 1st time → Must refer for "Independent Review Panel" (IRP) –** recommends whether proposed plan of care is "reasonable and appropriate" to maintain health & safety in the home.
   a. **ALERT: Saying "unsafe" can be pretext for forcing into nursing home – violate *Olmstead* and ADA.** A "public entity must ensure that its safety requirements are based on **actual risks**, not on **mere speculation, stereotypes, or generalizations** about individuals with disabilities." 28 CFR §35.130(h)
   b. IRP may ***recommend*** changes in plan of care but **NOT specific amount of hours**. 505.14(b)(2)(v)(f)
      - If proposed 24/7 live-in not safe, can IRP recommend 2x12?
   c. **Grandfathered if already has > 12 hrs/day** - IRP not required if consumer already receiving > 12 hours/day, including if request increase from live-in to split-shift*
   d. **Plan/DSS make final decision and issue notice**. Does not have to take IRP recommendation. 505.14(b)(2)(iii)(f)

* MLTC Policy p. 10, ADM p. 10, MMC policy p. 6 – clarifies 18 NYCRR 505.14(b)(4)(xi)(b)

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Independent Assessor - Concerns

Capacity of NY Medicaid Choice to Do Assessments in 14 Days

Does NY Medicaid Choice have enough:

1. **Nurses** and **MDs**, Nurse practitioners, PA's to do the CHA and IPP within **14 days** of request?
   - Huge nursing shortage aggravated by COVID.
   - CFEEC's already delayed for MLTC
   - By 7/1/22 will start Immediate Need & Expedited assessments for MLTC/ mainstream to be done in 6 days
   - Once fully phased in -**about 300,000/year**!
2. **Call Center capacity** – Calls for CFEECs go into voicemail, calls not returned. How will handle massive increase to schedule the THREE new assessments?

Independent Assessor Concerns -- Delays!

- Even if NYIA can do CHA & IPP assessments in **14 days** –
- HRA/DSS must determine hours within **7 days** of receiving back all of the assessments, then
- Referral for IRP Medical Review will take at least **6-10 more days**
- Add **10 days** if DSS/Plan disputes "material fact" in IA.
- Whole process will take **minimum 30 days** likely much longer. But law and regulations set shorter time limits:
  - Immediate Need– DSS must approve Medicaid AND home care 12 Days after application filed (starts July 1, 2022)
  - Plans have 14 days to process a standard request, extendable up to 14 more days. Only 72 hours for expedited requests. See next slide. Impossible to meet these time limits!
- **DSS/Plan *may* (not *must*) authorize "temporary" care > 12 hours/ day pending the High Need IRP Review* if can't meet deadlines – in regulation***

* 505.14(b)(3)(ii), 505.28(g)(2) **505.14(b)(4)(vi), 505.28(e)(4)
https://www.health.ny.gov/health_care/medicaid/redesign/nyia/faqs/docs/2022-02-16_mmco.pdf slide 51

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How will MLTC/ mainstream plan comply with federal deadlines to decide requests to Increase or New Services

Type of Request	Maximum time for Plan to Decide
Expedited*	**72 hours after receipt of request,** though plan may extend up to 14 calendar days if needs more info.
Standard	**14 calendar days from receipt of request,** though plan may extend up to 14 calendar days if needs more info.

MMC guidance p. 5 says times run from date of request *only if a current CA & IPP are on file* – under fiction that only physician's order can start the clock. We think this violates federal reg that says time runs from **receipt of the request** for service. 42 CFR 438.210(d).

***Expedited if delay would seriously jeopardize the enrollee's life or health or ability to attain, maintain**, or regain maximum function. 42 CFR 438.210(d)

Independent Assessor Concerns

Lack of guidance, public information

- LDSS/plans must operationalize huge systems changes for referrals to and from NYIA in new portal, issue internal procedures, train staff – guidance was only issued April 20 – 28, 2022 (slide 13)
- Earlier guidance – 21 ADM-04 & MLTC Policy 21.06 (12/13/21) didn't touch on IA – about relatively minor changes in regs:
  - Reassessments now annual not every 6 months
  - CDPAP: only one FI per consumer; designated rep for non-self directing consumer must be present at all assessments, new agreement between consumer/rep and LDSS/plan
  - **M11q/physician's order may be signed by Nurse practitioner, physician's assistant,** Osteopath – not just MD
  - Tweaks permitted reasons for reductions in MLTC Policy 16.06:
  - Tweaks policy on "safety monitoring" under NYS DOH GIS 03 MA/003 and MLTC Policy 16.07

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Can you request the new NYIA assessments while Medicaid application is pending?

- Unclear.
- Since 2014, a CFEEC could be scheduled and conducted while Medicaid application pending.
- New reg should allow this – it says only that Medicaid eligibility must be established before services are *authorized*. 18 NYCRR §505.14(b)(4)(i).
- But MLTC Policy 22-01 says, “The NYIA will only conduct the initial assessment process for individuals with active Medicaid.” The ADM is inconsistent, saying in one place Medicaid can be processed concurrently with assessments, and in another Medicaid must be active to schedule the assessments (pp. 5-6).

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Appeal & Fair Hearing Rights

- Plan/LDSS ***may not*** authorize > 12 hours wo/ high-need IRP **unless** ordered by a Fair Hearing or court. 18 NYCRR 505.14(b)(4)(vi).
  - MMC Policy adds also if ordered by External Appeal of NYS Dept. Financial Services (Article 49 Title II of NYS Insurance Law), but MLTC Policy doesn't mention it. See http://www.wnylc.com/health/entry/184/#external%20appeals.
- **In FH, may ALJ order 24-hour care if** consumer requested 24-hour care, but plan/LDSS approved 8 hrs, so didn't refer for high-need IRP? Reg above implies the answer is YES, since plan must comply with FH decision even if no IRP. DOH rep said YES at a meeting, but we asked them to clarify in policy (otherwise ALJs might remand for lack of the IRP, causing more delay).
- **EVIDENCE PACKET** – DSS & MMC guidance say DSS/MMC plan give notice and responsible for compiling Evidence Packet, including all NYIA assessments. PowerPt says UAS disputed by plan/LDSS is REPLACED by new one, so appears will not be part of packet.* Unclear if consumer can request it. MLTC Policy says nothing about notice and Evidence Pkt.
- Will **NYIA be a party** to a hearing? MMC & DSS guidance says appellant or plan/DSS may call NYIA as a witness, but does not say how. (MMC policy p. 10, ADM p.11). MLTC policy is silent.

https://www.health.ny.gov/health_care/medicaid/redesign/nyia/faqs/docs/2022-02-16_mmco.pdf slide 21

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Advocacy

Advocacy:

- 12/15/21 Letter to DOH from NYLAG & Medicaid Matters NY, with 1/6/22 update http://www.wnylc.com/health/download/801/
- 2/2/22 Letter - http://www.wnylc.com/health/download/807/
- 3/25/22 Letter - http://www.wnylc.com/health/download/812/
- 5/3/22 NYLAG questions about the new policies http://www.wnylc.com/health/download/814/

- **See prior NYLAG comments from when regulations were proposed** http://www.wnylc.com/health/news/85/#comments
- **Look for updates** at http://www.wnylc.com/health/news/85/ and https://www.health.ny.gov/health_care/medicaid/redesign/nyia/
- **Report delays in scheduling Conflict Free assessments**:
  - Independent.assessor@health.ny.gov / (518) 474-5888
  - DOH MLTC Complaint Unit
    1-866-712-7197 or mltctac@health.ny.gov

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RECENT HOME CARE CHANGES NOW IN EFFECT

1. MLTC Lock-In
2. Reductions in Hours after a “Transition Period”
3. Disenrollment from MLTC plans if in Nursing Home 3+ Months
4. Other Grounds for Disenrollment

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Changes in "Transition Rights"

- Upshot: If your client receives **Immediate Need** services – they should not enroll in an MLTC plan until after they receive notice from NY Medicaid Choice to enroll 120 days later.
- They might get some pressure to enroll earlier – by the home care agency that wants to keep the case, etc**. DO NOT enroll EARLY**! They will not get TRANSITION RIGHTS!
- Next slides explain– and see article at http://www.wnylc.com/health/entry/232/ and Fact Sheet at http://www.wnylc.com/health/download/797/

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Involuntary MLTC plan changes –
Who has Transition Rights?

- Where member received Medicaid home care services, whether through a managed care/MLTC plan or through LDSS, then was **REQUIRED** to enroll in or change MLTC plans, they have ***Transition*** or ***Continuity of Care*** Rights
- The new MLTC plan is required to:
  - continue the **same plan of care** (**same hours** of home care or other services, e.g. adult day care, PT)
  - In some but not all cases allow the **same providers**, even if they are "out-of-network" of new MLTC plan
- **HOW LONG IS TRANSITION PERIOD?** This period is usually **90 days** (**120 days** if the reason consumer enrolled in the new plan was because the old MLTC plan closed).

*NYLAG Fact Sheet on Transition Rights at http://www.wnylc.com/health/download/797/

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Involuntary MLTC plan changes –

When Does Member Have Transition Rights?

1. Their old MLTC **plan closed**.*
2. **Received Immediate Need** personal care or CDPAP from HRA/DSS for **120 days**, then was required to enroll in MLTC plan. ***No rights if enroll in MLTC early!!!***
3. **Had Medicaid before enrolled in Medicare**, so was in a "mainstream" managed care health plan. Then got Medicare at age 65 or after 2 years of SS Disability. **If received home care from Medicaid health plan, will be assigned to an MLTC** or Medicaid Advantage PLUS (MAP) plan ("Default enrollment")**
4. Was **involuntarily** disenrolled from MLTC plan and assigned to a different plan (more on this later)

*Rights when Plan Closes – see **MLTC Policy 17.02** and
**Default Enrollment - see http://www.wnylc.com/health/entry/226/

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Involuntary MLTC plan changes – What happens after Transition Period (90 or 120 days?)

- **Before Nov. 8, 2021**, MLTC plan could reduce hours only for limited reasons in. MLTC Policy 16.06, which is based on *Mayer v. Wing*, 922 F. Supp. 902 (S.D.N.Y. 1996). Reasons are:
  1. Medical condition improved, reducing need for assistance
  2. Social circumstances changed (ex. daughter moved in)
  3. Mistake made in original authorization (very limited ground)
- **BEWARE**: **Eff. Nov. 8, 2021**, change in State regulation allows plans to reduce hours *after transition period* if plan claims that HRA/DSS or previous plan "authorized more services than are medically necessary," without proving any *change*. Plan notice may simply:
  - indicates a clinical rationale that shows review of the client's specific clinical data and medical condition**
- The new regulation only applies after a Transition Period ends. MLTC Policy 16.06* still restricts other MLTC reductions otherwise.

**New regs 18 NYCRR 505.14(b)(4)(viii)(c)(3)(vii), 505.28(i)(4)(iii)(h) –Personal Care reg at https://regs.health.ny.gov/regulations/recently-adopted pp. 60, 137

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Involuntary MLTC plan changes –

If Plan Wants to Reduce Hours after Transition Period

Plan must still send a written NOTICE of a reduction, which member still has the right to appeal -- in 2 stages:

1. ***Initial Adverse Determination*** to reduce or deny an increase → request internal PLAN APPEAL. See sample next slide.

   If that appeal is denied, Plan sends --

2. ***Final Adverse Determination*** to reduce or deny increase → request FAIR HEARING. In request, check that client is Homebound. This gives special extra rights.

- Right to **AID CONTINUING ONLY** if appeal quickly within 10 days of date of BOTH above notices. This means old hours continue while appeal pending. .

FOR HELP CONTACT ICAN 1-844-614-8800 or EFLRP Mon. 10 AM – 2 PM eflrp@nylag.org 212-613-7310

NYLAG Fact Sheet on MLTC appeals at http://www.wnylc.com/health/downloads/654/ and longer article at http://www.wnylc.com/health/entry/184/

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MLTC Lock-In – Limit on *Voluntary* MLTC Plan Changes

- Until 12/2020, you could voluntarily change MLTC plans any time.
- **Since 12/1/20** – If you **first enrolled** in or **changed MLTC plans on or after Dec. 1, 2020**:
  - **90-day grace period** to change plans for any reason
  - **9-month Lock-in** - May change plans only for **good cause** during the next **9 months.** See next slide re Good Cause.
- **What if enrolled before 12/1/20?** May change plans any time, but after 90-day grace period in new plan, locked in for 9 months.
- **Which plans –** Lock-in only for "MLTC plans" - may transfer to or from a PACE or Medicaid Advantage Plus (MAP) plan any time.
- NY Medicaid Choice sends out "End of Lock-in Notices" 60 days before end of 9-month lock-in period.

Sample notice to current MLTC members of new lock-in in Appendix and posted at http://www.wnylc.com/health/download/753/; see more at http://www.wnylc.com/health/entry/114/#LOCK-IN

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MLTC Lock-In – What is Good Cause to Change plans?

- **Good Cause** to change plans **after 90-day grace period – call NYMC to get "unlocked" -**
  1. Member moves from the plan's service area,
  2. Plan fails to furnish services,
  3. Member did not consent to enrollment
  4. Plan and member mutually agree that transfer is appropriate
  5. Aide is no longer working with current plan
- Just because you CAN change plans is it a good idea? NO. See next slide

See DOH MLTC Policy 21.04 and FAQ at https://www.health.ny.gov/health_care/medicaid/redesign/mrt90/mltc_policies.htm

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COMPARE: VOLUNTARY Plan Changes

No Transition Rights

- If MLTC member changes plans:
  - Within 90-day grace period after enrollment, or in
  - 9 month Lock-in Period with Good Cause to change plans.
- Member has ***no continuity of care or "transition rights"***
- **New plan is not required to continue the same plan of care of former plan**
  - **New plan may give fewer hours,** without proving a change in medical condition or social circumstances
    - Doesn't even have to give advance notice of a "reduction," with right to appeal with Aid Continuing, because DOH does not consider it a reduction.
  - **Member has right to request an increase and appeal** if denied, but has
  - **No "Aid Continuing" rights** to keep old hours during appeal

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COVID issues

Aide Shortage Exacerbated by COVID

- Chronic aide shortage is national.
- *Fair Pay for Home Care* bill sponsored by Senator Rachel May and Assembly Health Chair Richard Gottfried didn't pass. Would have set wages for home care workers at 150% of the highest minimum wage in a region, or $22.50/hour.
- Instead, budget increased wages $3 over 2 years.
- Meanwhile – file grievance with MLTC plan and complaint with NYS DOH -**1-866-712-7197 or e-mail mltctac@health.ny.gov.** Plans must use out-of-network providers if can't staff case.*

*42 CFR 438.206(b)(4); MLTC Partial Capitation Model Contract, Article VII, Section D]; FH No. 7735470N.

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MLTC INVOLUNTARY DISENROLLMENTS

Starting Again 2021-2022

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Involuntary Disenrollments Resuming

MLTC plans may disenroll members involuntarily for certain reasons.* All disenrollments were banned during the pandemic. DOH is allowing some disenrollments to resume. GIS 21 MA/17 and GIS 21 MA/24.

- There are now 5 allowed reasons, and a 6th coming.
- What happens after disenrollment? Depends on which ground.
  1. Member **assigned to a new MLTC plan OR**
  2. **Referred to local DSS** for services.

  Either way, member has Transition Rights to same hours and services for 90 days

*Involuntary disenrollment grounds are in Model MLTC contract, Art. V. D. 3 -4 https://www.health.ny.gov/health_care/medicaid/redesign/docs/mrt90_partial_capitation_contract.pdf at pp. 21-23

**List of 13 MAP plans with their aligned Medicare D-SNP by county at http://www.wnylc.com/health/download/784/

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Procedure for Involuntary Disenrollment

1. Plan sends member **30-day Notice of Intent to Disenroll**. This notice is NOT appealable.
2. Plan refers case to NY Medicaid Choice, which sends member **10-day Notice of Disenrollment**.
   - Notice has **FAIR HEARING rights**. Must request hearing within 10 days before effective date to get **AID CONTINUING.** This allows staying in plan until hearing decided.
3. After disenrollment - **assigned to a new MLTC plan OR referred to local DSS** for services. Member has Transition Rights.

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Grounds for Involuntary Disenrollment

1. **Long Term Nursing Home stay** 3+ months – see http://www.wnylc.com/health/entry/199/
2. Enrollee **moved out of plan's service area** within NYS.
3. **MAP plans only – (Medicaid Advantage Plus**) - Member changed their Medicare plan, so is disenrolled from MAP plan that requires enrollment in "aligned" Medicare Dual-SNP (Medicare Advantage Special Needs Plan) operated by same company.**

For #2 & #3 – GIS says case will be referred to LDSS which must continue same Plan of Care pending a reassessment. Advocate must be proactive to demand this or to ask NY Medicare Choice to enroll in MLTC plan – likely disruptions in services.

*Involuntary disenrollment grounds are in Model MLTC contract, Art. V. D. 3 -4 https://www.health.ny.gov/health_care/medicaid/redesign/docs/mrt90_partial_capitation_contract.pdf at pp. 21-23

**List of 13 MAP plans with their aligned Medicare D-SNP by county at http://www.wnylc.com/health/download/784/

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2 More Disenrollment Grounds - GIS 21 MA/24 -

4. **Behavior** of member or their family seriously impedes plan's ability to deliver home care
   - For reasons other than resulting from member's "special needs" or diagnosis
   - FH rights with Aid Continuing;
   - if don't win FH or don't request FH – **assigned to new MLTC plan.**
5. **Member absent from the service area for more than 30 days** (90 days for MAP).
   - Because of COVID, members were allowed to pause services – while staying with family or to limit exposure.* Plan required to show tried to contact member.
   - NYMC will notify member that may transfer to another MLTC plan. If they don't pick one, dropped from MLTC and **not assigned to another MLTC plan.**

*COVID-19 Guidance for Voluntary Plan of Care Schedule Change 4/23/20
https://health.ny.gov/health_care/medicaid/covid19/2020-04-23_guide_volplanofcare.htm
(See ***NYLAG Know Your Rights Fact Sheet for MLTC Members*** -
http://www.wnylc.com/health/download/739/

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6th Enrollment ground coming

6. No Services provided in prior calendar month

- DOH told plans these disenrollments will be permitted starting May 1, 2022 but delayed – may start July 1, 2022. No directive yet.
- Consumers alarmed because many consumers do not receive authorized services because of **AIDE SHORTAGE.**
- Also, consumers were allowed to PAUSE services because of COVID (see previous slide). That guidance is still in effect.

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COMING: 3-ADL MINIMUM NEEDS REQUIREMENT

Restricts who is Eligible for Personal Care, CDPAP, & MLTC

ON HOLD because of Public Health Emergency

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NEW: 3 ADL "Minimum Needs requirement"

Eligibility for PCS/CDPAP & MLTC will require the need for:

1. *Limited assistance* with **physical maneuvering** with **3 ADLs** ("more than 2" ADLs), with sole exception if have
2. **Dementia** or Alzheimer's diagnosis - need **cueing or supervision** with **2 ADLs** ("more than 1 ADL")

ADLs = Walking/locomotion, bathing, personal hygiene, dressing, eating, toileting/incontinence care, transfer on/off toilet

Compared to Now – just need **ONE ADL** to enroll in MLTC or get PCS/CDPAP from HRA/DSS thru Immediate Need, etc.

- Now, if don't need help with ADLs, can apply to HRA/DSS for Housekeeping up to 8 hours/week. This program is ENDING – no new applicants once changes take effect. Will add to EISEP waiting lists for age 60+.

WHEN? Sometime in 2022 or 2023 TBD

Current recipients will be grandfathered in – in MLTC, housekeeping, DSS If services authorized before implementation date – even if don't meet new criteria

S.S.L. §§ 365-a subd.2 (e), 365-f, subd. 2, 18 NYCRR § 505.14(a)

3 ADL Requirement

ADL counts only if need "Limited Assistance with "Physical Maneuvering"

Unless dementia or Alzheimer's diagnosis, ADL counts toward the minimum only if needs "at least limited assistance with physical maneuvering."

The **UAS instructions** define seven degrees of assistance as follows, with "7" being the most assistance:

1. Independent
2. Independent, setup help only – Article or device placed within reach, no physical assistance or supervision in any episode.
3. **Supervision – Oversight/cuing. Will Not Count unless has Dementia diagnosis (or "serious mental illness"- see next slide)**
4. **Limited assistance – Guided maneuvering of limbs, physical guidance without taking weight. This is minimum amount of need to count. Does this include "Contact guarding" (hovering)?**
5. Extensive assistance – Weight-bearing support (including lifting limbs) by one helper where person still performs 50% or more of subtasks.
6. Maximal assistance – Weight-bearing support (including lifting limbs) by two or more helpers; or, weight-bearing support for more than 50% of subtasks.
7. Total dependence – Full performance by others during all episodes.

Who is left out - needs "supervision" but not physical maneuvering with ADLs?

- Only **Dementia** or **Alzheimer's** diagnosis qualifies with 2 ADL's based on needing "supervision" not hands-on assistance
- Leaves out:
  1. Traumatic Brain Injury
  2. Developmental Disability
  3. Visual impairments
  4. Other cognitive, neurological or **psychiatric impairment***
- This discriminates based on diagnosis and is illegal in our view. Should include anyone who needs supervision because of *any* impairment.
- *In response to comments published with final regulations, DOH agreed to qualify people with "**Serious Mental Illness**" who need cueing assistance with 2 ADLs – treat the same as Dementia. But ***no one else***. And not added to regulation – only says in comments that they will create a procedure to request an exemption as a reasonable accommodation*

*See slide 26 to link to final regulations – see p. 244

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Caution on "Supervision"

- A person has dementia is eligible for MLTC or Immediate Need only if they need **cueing or supervision with 2 ADLs**.
- Medicaid **DOES** cover safety monitoring, supervision or cognitive prompting ***to assure safe completion of ADLs, but not stand-alone general supervision.****
- **TIP: Always identify the ADL for which client needs supervision or cueing to assure safe performance,** instead of saying client needs general **"safety monitoring" or "supervision."**
  - Eg**.** Needs cueing and prompting **for** safe ambulation, or **for** toileting, etc. And describe **how** supervises (remind to use walker, remind to do post-elimination hygiene), etc.
- New regulation doesn't change the rule but will lead to more denials for people with dementia, if don't find 2 ADLs client needs supervision with.

*Rodriguez v. DeBuono, 175 F.3d 227 (2nd Circ. 1999; MLTC Policy 16.07 (https://www.health.ny.gov/health_care/medicaid/redesign/mrt90/mltc_policy/16-07.htm); MLTC Policy 21.06: 21ADM-04

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Stay up to date

- Sign up for NYLAG EFLRP e-lerts with updates here http://eepurl.com/deQxtr - select TOPIC: Elder Law (Medicaid, long-term care)
- See Resource Sheet in materials for other links
- NYS **DOH MLTC Complaint Line:**

  Tel 1-866-712-7197

  or email mltctac@health.ny.gov
- For Help – Call ICAN – next slides

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Introduction to ICAN

What is ICAN?

ICAN stands for
Independent Consumer Advocacy Network.

ICAN is the New York State Ombudsprogram for people with Medicaid who need long term care or behavioral health services.

We assist New Yorkers with understanding how to enroll in and use managed care plans that cover long term care or behavioral health services.

What do we do?

- **Answer your questions** about managed care plans.
- **Give you advice** about your plan options.
- **Help you enroll** in a managed care plan.
- Identify and **solve problems** with your plan.
- Help you **understand your rights**.
- Help you **file complaints** and/or grievances if you are upset with a plan's action.
- Help you **appeal** an action you disagree with.

Get help

(844) 614-8800

ican@cssny.org

icannys.org

Who do we help?

We help anyone enrolled in a **Medicaid managed care plan** who needs:

- **long term care services** (like home attendant, adult day care, or nursing home); or
- **behavioral health services** (help recovering from and living with mental illness or substance use disorder.)

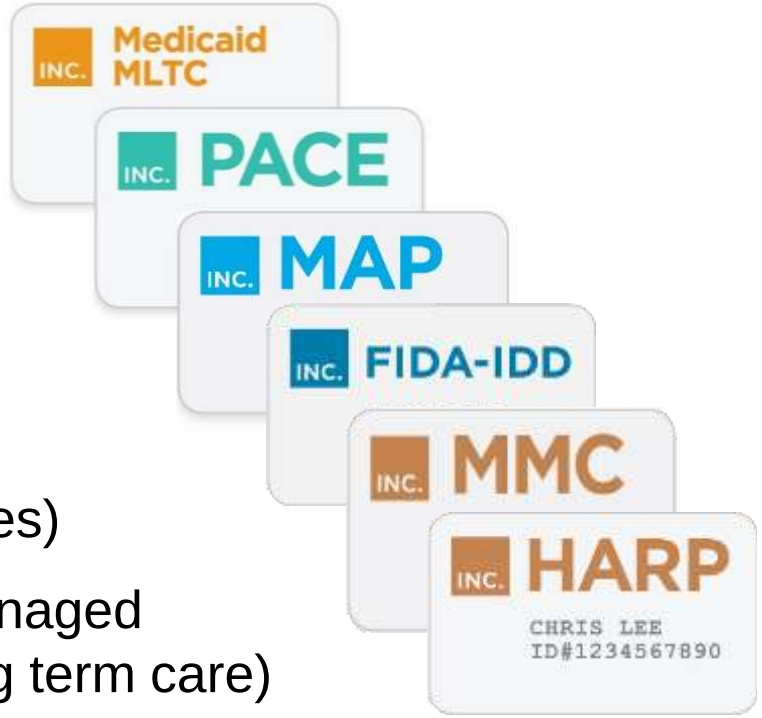
We also help educate people who are newly eligible for enrollment in a Medicaid managed care plan.

We can talk to friends, family members, social workers, providers, and anyone else who is helping people with their healthcare decisions.

What kinds of plans does ICAN work with?

The plans we work with are:

- **MLTC** (partially capitated MLTC)
- **PACE** (Programs of All-inclusive Care for the Elderly)
- **MAP** (Medicaid Advantage Plus)
- **FIDA-IDD** (FIDA for People with Intellectual or Developmental Disabilities)
- **MMC-LTSS** (Mainstream Medicaid Managed Care for those enrollees who need long term care)
- **HARP** (Health And Recovery Plans)

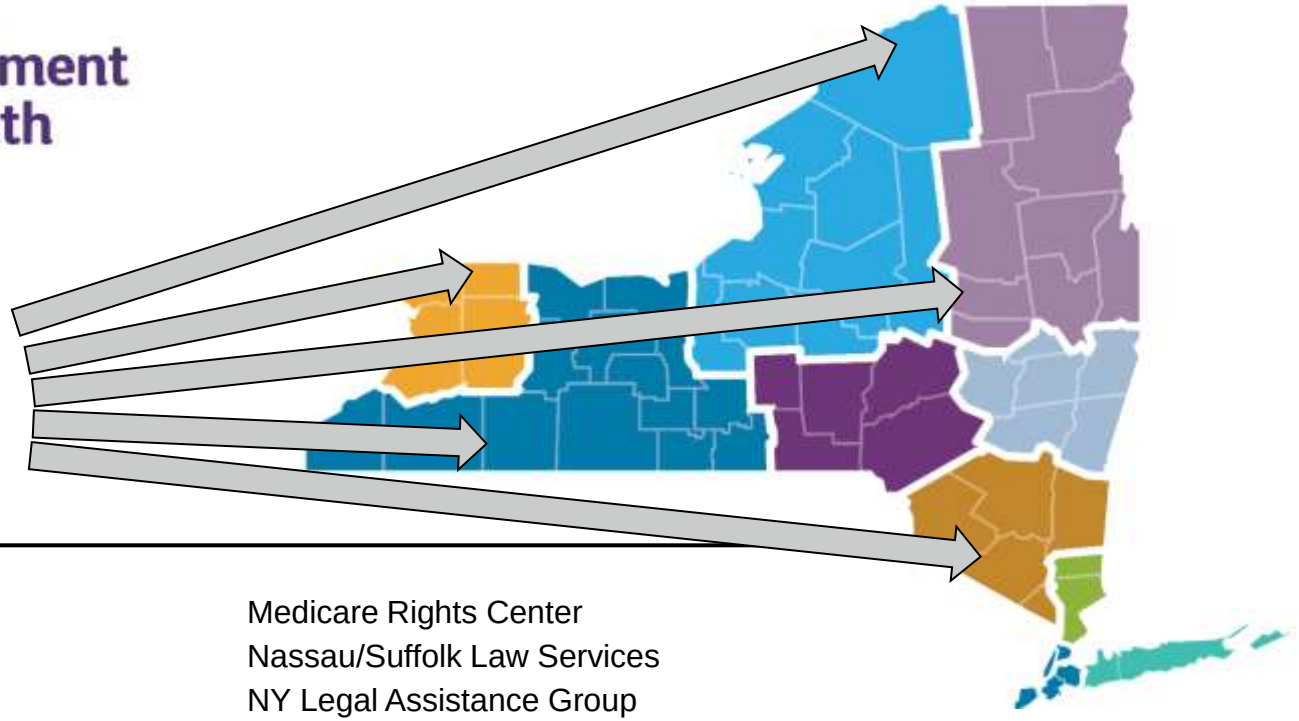


* FIDA is no longer available after 2019.

Who is ICAN?

NEW YORK STATE | Department of Health

Community Service Society | Fighting Poverty Strengthening New York



Our Network of Agencies:

ACR Health
Action for Older Persons
BronxWorks
Center for Independence of the Disabled NY
Healthy Capital District Initiative
Korean Community Services
Legal Assistance of Western New York
Legal Services of the Hudson Valley
Medicare Rights Center
Nassau/Suffolk Law Services
NY Legal Assistance Group
South Asian Council for Social Services
Southern Adirondack Independent Living
Urban Justice Center
Westchester Disabled On the Move
Western NY Independent Living

How we help

Our trained counselors answer our **toll-free telephone hotline** Monday-Friday, 9am-5pm (also email and online chat)

Our services are completely **free and confidential**.

Our counselors speak English, Spanish, Russian, and Mandarin Chinese.*

We'll meet you **in person** at our offices or at your home.

We give **educational presentations** to consumers, caregivers, and professionals.

We monitor our cases for **potential trends** and report them to the state.

* Interpreters are available for all other languages.

THANK YOU

More information at nylag.org and nyhealthaccess.org

Please donate to support us!

https://www.nylag.org/donate-now/

At prompt please designate Evelyn Frank program!

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27th Annual ELDER LAW FORUM

View From the Executive Branch: New Frontiers of Aging in New York

Greg Olsen
NYS Office for the Aging

Adam Herbst
NYS Dept. of Health

Adam Herbst

Special Advisor to the Commissioner for Aging and LTC, New York State Department of Health

NEW YORK STATE | Department of Health

Greg Olsen

Acting Director,
New York State Office for the Aging

NEW YORK STATE OF OPPORTUNITY. | Office for the Aging

NEW YORK STATE OF OPPORTUNITY. | Office for the Aging

27th Annual Elder Law Forum

What Characterizes Older Adults

- **A growing population with increased and unprecedented longevity**: Older adults are living longer and healthier lives, and their numbers are growing.
- **Highly heterogeneous**: There is enormous variation in health, functional ability and financial status. Disparities exist along the dimensions of income, gender, race/ethnicity and education.
- **Social and economic impact**: Older adults hold a disproportionately large share of our country's wealth, represent a enormous source of consumer spending and economic productivity, and contribute in myriad ways (e.g., support to grandchildren, child care) to family and community life.

Source: http://www.frameworksinstitute.org/aging.html

What is Aging

- **Normative and lifelong**: Aging is a normative process that extends across the lifespan.
- **Cumulative**: Educational, financial and social experiences and contexts of childhood and middle age predict well-being in older adulthood.
- **Distinct from disease and decline**: While physical and cognitive changes are a normative part of growing older, aging does not necessarily mean disability

Source: http://www.frameworksinstitute.org/aging.html

Aging Network - 4 Primary Groups of Customers

1. Individuals seeking information, assistance, assistance with benefits, Part D Plans, entitlements applications, linkages to other systems, etc.

2. Individuals with chronic conditions or in need of minor assistance – implement 41 highest level Evidence-Based Interventions serving 36,000+

3. Individuals at risk of higher levels of care, poor health outcomes, ER and NH placement

4. Individuals caring for a loves on with functional and cognitive impairments

What Makes Up Good Health?

1. Outdoor Spaces and Buildings

2. Transportation

3. Housing

4. Social Participation

The AARP Network of Age-Friendly Communities

and work within

The 8 Domains of Livability

help communities become great for people of all ages

5. Respect and Social Inclusion

6. Civic Participation and Employment

7. Communication and Information

8. Community and Health Services

Learn more at AARP.org/agefriendly

AARP Real Possibilities

AARP LIVABLE COMMUNITIES

Master Plan on Aging – Age Friendly NY 2.0

NEW YORK STATE OF OPPORTUNITY. Office for the Aging

What's In Governor Hochul's FY 23 Budget

Broad View

- $2 billion property tax relief
- $2 billion to protect renters, funds for eviction legal representation
- $540 million for homeowners' assistance fund
- $1 billion DOT Capital Plan
- $1 billion health care transformation
- $2.4 billion – healthcare improvements
- $2 billion for bonuses for health care and front-line workers
- $500 million for Human Services COLA
- $1 billion – tech purchases, internet access, subsidize $30 cap on internet for those at 200% of poverty or less

Economic Development

- Downtown Revitalization – Round 6
- New York Forward – Rural community transformation
- Office of Workforce and Economic Development
  - Coordinate statewide efforts through REDCs to meet local workforce needs
- Restore New York Communities Program – not active since 2017
  - $250 million
  - Target disadvantaged communities – removal/restoration of dilapidated sites
- ConnectAll – Largest investment in digital infrastructure
  - $1 billion
  - Affordable broadband
  - Purchase tech, subsidize wifi for those at or below 200% of poverty
  - Can be accessed by aging network

NEW YORK STATE OF OPPORTUNITY. Office for the Aging

Environment/Energy/Agriculture

- Improvements to state parks and increased access to open space - $290 million
- Continuation of Nourish NY – farmers to emergency food networks
- Expand SNAP to Farmers Markets
- $4 billion clean water, clean air, green jobs
- $500 million offshore wind

Human Services

- Homeowners – at risk of default or foreclosure - $540 million
- OTDA - $2.2 billion for rental assistance
- HEAP – expanded access to benefits and emergency benefits
- SNAP – expansion of amounts, simplified application for older adults, expand to Farmers Markets
- $25 billion/5 year – affordable and supportive housing
  - Supportive Housing - $1.5 billion – construct 700,000 units, rehab 3,000 units and create 20,000 units over 15 years
  - Multi-family new construction - $1 billion – construction or reuse of affordable rental housing up to 60% AMI
  - Senior Housing - $300 million – develop or rehab housing for low income older adults
  - Middle Income Housing - $90 million – construction or reuse of affordable housing – 60 – 130% AMI
  - Community Investment Fund - $80 million – mixed-use affordable housing development

Human Services

- Public Housing Preservation - $150 million – rehab, demolish or rebuild and replace public housing outside NYC
- Multi-family preservation - $450 million – rehab of affordable multi family rental housing
- Mitchell-Lama - $120 million to preserve and improve housing
- Small Building Rehab - $60 million – rehab, demolish or reconstruct buildings with 5-40 units
- Accessory Dwelling Units - $85 million for creation or rehab of accessory dwelling units. Also proposed zoning change to allow for at least one on each property
- Manufactured Homes - $20 million – mobile and manufactured
- Homeownership - $400 million – affordable home purchase for low and moderate incomes
- Electrification - $250 million – to weatherize and electrify housing stock
- Renters Protections - $2 billion – to protect renters and $250 million for renters who don't meet income criteria for ERAP
- Require municipalities to all accessory dwelling units
- Spur transit-oriented development (TOD)
- Encourage Hotel conversions

Mental Hygiene

- $25 million in 2023 and $60 million in 2024 to support federal roll-out of Criss Hotline
- Significant expansion in workforce to access Mental Health Services
- Strengthen and investments in suicide prevention

Core Home and Community Based Services Provided by the Network of Aging Professionals

Coordinated with Local Network of Partners

- Home delivered meals (HDM)
- Congregate meals
- Nutrition counseling & education
- Senior center programming
- Health promotion and wellness
- Evidence Based Interventions – CDSMEs, fall prevention, etc.
- Volunteer opportunities
- Respite and caregiver supports
- Legal Services
- Home modifications, repairs
- Elder abuse prevention and mitigation
- NY Connects (ADRC) - LTSS I&A/R, options counseling, benefits and application assistance
- Health Insurance Information , Counseling and Assistance (HIICAP)
- Personal Care Level I and II (non-Medicaid)
- Case management
- Ancillary services such as PERS and assistive devices
- Minor home repair/modifications
- Social adult day services
- Transportation to needed medical appointments, community services and activities
- Long Term Care Ombudsman
- Combat Social Isolation

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COMPASS Comprehensive Assessment = Plan of Care

Info gathered during Assessment

- Personal Information
- Living Arrangement
- Elder Abuse/Neglect
- Frail/Disabled
- Caregiving Status
- Housing Status
- Home Safety Checklist
- Energy Checklist
- Social Interaction/Isolation
- Neighborhood Safety
- Pets
- Self Evacuation ability
- Medical Treatment Emergency Accommodation
- Health Status, Medical Insurance
- Chronic Illness and or Disability

Info gathered during Assessment

- Assistive Devices
- Health care visits – PCP, Dentist, Hospitalization, ER, Eye, Hearting
- PRI Score, UAS Assessment
- Legal Information – i.e. proxy, advance directives, MOLST
- Nutrition/NSI/BMI
- Psycho-Social Status – PHQ9, GAD7, CAGE-AID
- Loneliness/Isolation Scale
- Tech check
- Medication List
- Fall Risk Factors
- ADL/IADL History
- Services Receiving
- Informal Supports Status
- Income
- Veteran Status
- Benefits/Entitlements

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Pandemic Response – New/Expanded Initiatives

- NYSOFA's award-winning animatronic pet project, which has proven to reduce isolation, loneliness and pain. This program has been replicated across the country – 30 states.
  - April – 2020 – purchased almost 17,000 pets
  - Testing efficacy of walker squawker in NH to reduce/prevent fall risk and fall related injuries

- First state in the nation to partner with the National Association of Home Builders to provide Certified Aging in Place Specialist (CAPS) training to network case managers.

- Piloting home sharing based on the successful Home Share Vermont Program that matches older homeowners with individuals looking for affordable housing – a relationship that not only promotes affordable housing but assists the older adult in daily tasks that help them maintain their independence.

- Partnership with Trualta for all caregivers in NYS – evidence-based training and support platform

Pandemic Response – New/Expanded Initiatives

- Expanding Virtual Senior Center Model to 11 more counties - 19 locations throughout New York currently to bring virtual programming into the homes of older adults.
- Expanding partnership with GetSetUp to bring over 600 courses and classes into the homes of older adults and providing an economic opportunity for older adults to teach classes on the platform and supplement their income by getting paid for their skill. – more than 110,000 users in 1 year
- Partnering with GoGoGrandparent, a specialized ride-share service for older adults using trained drivers who understand the challenges older adults face. This partnership will also provide an opportunity for older adults (and those of all ages) to enter the gig economy by becoming a driver while expanding transportation options in New York State.
- Expanding partnership with TCARE and Arch Angels to support caregivers.
- Launched Working Caregiver Guide with DoL – public and private sector – surveying businesses statewide
- Partnered with the NYS Council on the Arts to bring professional artists into the homes of older adults.
- Partnered with Pets Together, a national non-profit that combats isolation by connecting individuals to volunteers using the power of pet therapy to combat loneliness and isolation.

Pandemic Response – New/Expanded Initiatives

- Supporting Expansion of the Village to Village Movement in NYS and the first Villages Regional Technical Center of Excellence
- Pilot testing integrated care model – health care, AAA services and technology to serve older adults holistically, measure results
- Expanding Integrated Care Model embedding AAA staff in physicians offices
- Implementing Bill Payer program in 10 counties to deter or address financial exploitation
- Partnership with Intuition Robotics to test AI Platform – ElliQ
  - designed to foster independence and provide support for older adults through daily check-ins, assistance with wellness goals and physical activities, and more using voice commands and/or on-screen instructions.
- Partnering with HCP – Membership association for LHCSAs to address lack of aides – identifying aides specifically assigned to AAA's
  - Average home client 83 years old
  - Stays on program with other supports for 6.4 years
  - 20% who are eligible but cannot receive services due to lack of aides wind in NH or MLTC
    - Cost avoidance to state - $75 million state share annually

Pandemic Response – New/Expanded Initiatives

- Video Tutorials – Federal, State and Local Benefits
- FB Live – over 400,000 views
- Added social isolation screen and technology screen to comprehensive assessment tool
- Addressing Health Disparities and Hard to reach
  - Video training, in person training, data driven
- ID/DD Partnership
  - Developed training for network to address older adults taking care of individual with IDD/DD and recognizing these individuals are living much longer
  - 75% of these individuals do not touch any public system for support

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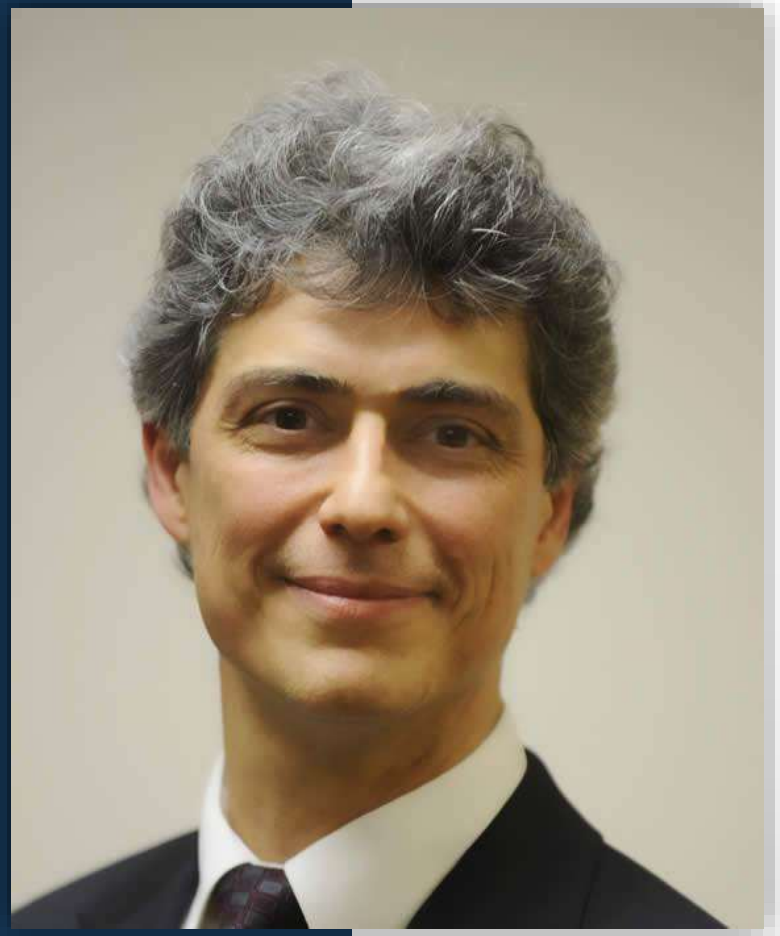
Senator Kirsten Gillibrand

U.S. Senate Special Committee on Aging

27th Annual ELDER LAW FORUM



Al Cardillo

President,
Home Care Association of New York State

“Providing Care in the Home: New York's Changing Landscape”

27th Annual ELDER LAW FORUM

PIERRO, CONNOR & STRAUSS, LLC
Trusted Counsel

Time for A

"New York Home Care *First* Policy"

Al Cardillo, LMSW

President & CEO

Home Care Association of New York State

HCA
HOME CARE ASSOCIATION OF NEW YORK STATE

May 19, 2022

A time for every purpose …

Article 36 – NY Home Care Policy
Chapter 795 of 1977

NYS Public Health Law

Article 36

Declaration of legislative findings and intent.

"The legislature hereby finds and declares that the provision of high quality home care services to residents of New York state is a priority concern [and] .... should be a primary focus of the state's actions."

_____

Forty-five years ago and a head of its time ....

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Where have you gone
Joe DiMaggio?

Home Care Policy Buried, Lost -
- Time to Reset, Restore, Prioritize

Important to Understanding and Assessing the Policy, Program and Structural Context for Home Care:

What is NY State's Central Health Care Vision?

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The Context: NYS Government's Central Health System Design Vision

NY's Core HSD Elements

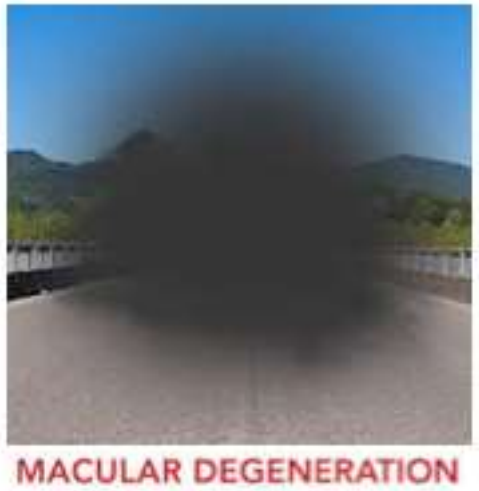
A Look at where we've been 2011 – 2020

- "Care Management for All" (2011)
- Delivery System Reform Incentive Payment program (DSRIP)
- System Integration
- State Health Improvement Plan
  - Advanced Primary Care
  - Prevention Agenda
- Value Based Payment
- Federal Waiver with funds, mandatory provisions and performance targets
- Coverage – Essential Benefits Plan, and State and ACA directions

Cliffs & Changes

Since 2020

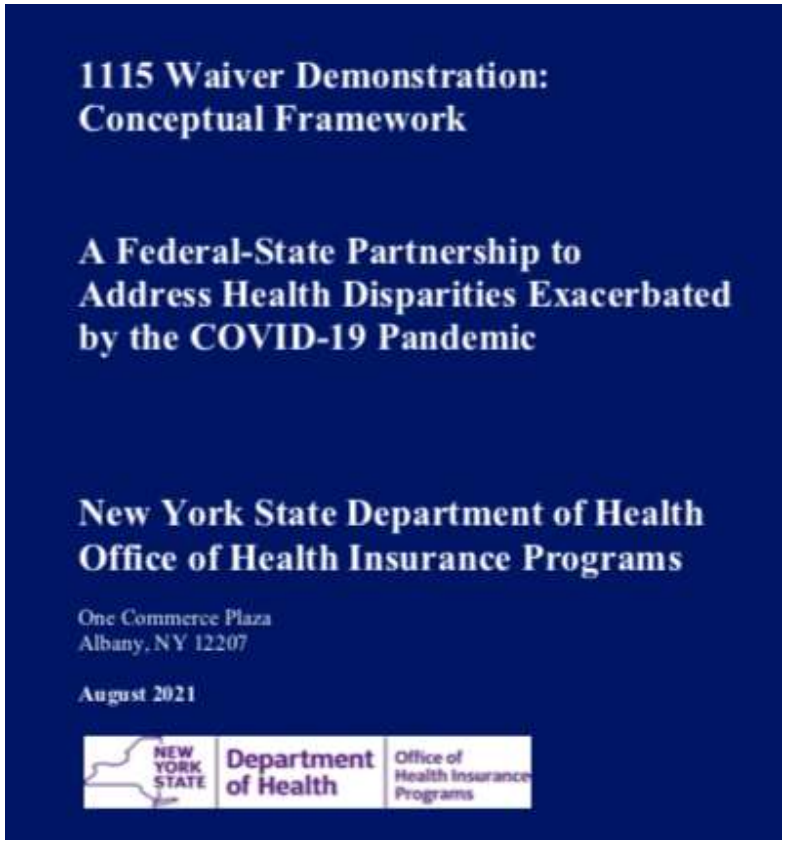
- DSRIP renewal and DSRIP-successor Waiver federally denied
- VBP – waiver expired; state trying to ramp back up
- State Improvement Plan – new funding ended
- Managed Care – still ramping further, and into next phase; transition to fully integrated models, while (ironically) some service categories are being carved out (nursing home, transportation). NYS now attempting procurement to reduce all MCOs
- Increased eligibility thresholds
- Imposition of “Independent Assessor”
- Specialty programs (e.g., traumatic brain injury, nursing home division waiver, care at home for medically fragile children) continue carve-out
- Push to carveout pharmacy from MCO
- COVID-19 Pandemic



New York's New Waiver Initiative
New Central Model "HERO"

Health Equity Regional Organizations "HERO"

The New Central Health Policy Focus?



https://health.ny.gov/health_care/medicaid/redesign/2021/docs/2021-08_1115_waiver_concept_paper.pdf

New Central Model "HERO"

- "New York State (NYS or the State) requests ($13.5) billion over five (5) years to fund a new 1115 Waiver Demonstration that addresses the inextricably linked health disparities and systemic health care delivery issues that have been both highlighted and intensified by the COVID-19 pandemic."

- "If approved, this 1115 Waiver Demonstration would utilize an array of multi-faceted and linked initiatives in order to change the way the Medicaid program integrates and pays for social care and health care in NYS."

- "It would also lay the groundwork for reducing long standing racial, disability-related and socioeconomic health disparities, increase health equity through measurable improvement of clinical quality and outcomes, and keep overall Medicaid program expenditures budget neutral to the federal government."

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New Central Model "HERO"

"This waiver proposal is structured around four subsidiary goals:

- Building a more resilient, flexible and integrated delivery system that reduces racial disparities, promotes health equity, and supports the delivery of social care;
- Developing supportive housing and alternatives to institutions for the long-term care population;
- Redesigning and strengthening health and behavioral health system capabilities to provide optimal response to future pandemics and natural disasters; and
- Creating statewide digital health and telehealth infrastructure."

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Central Program, Policy, Structural Context:

Where does Home Care Fit?

The Home Care Space

Home

Neighborhood

Community

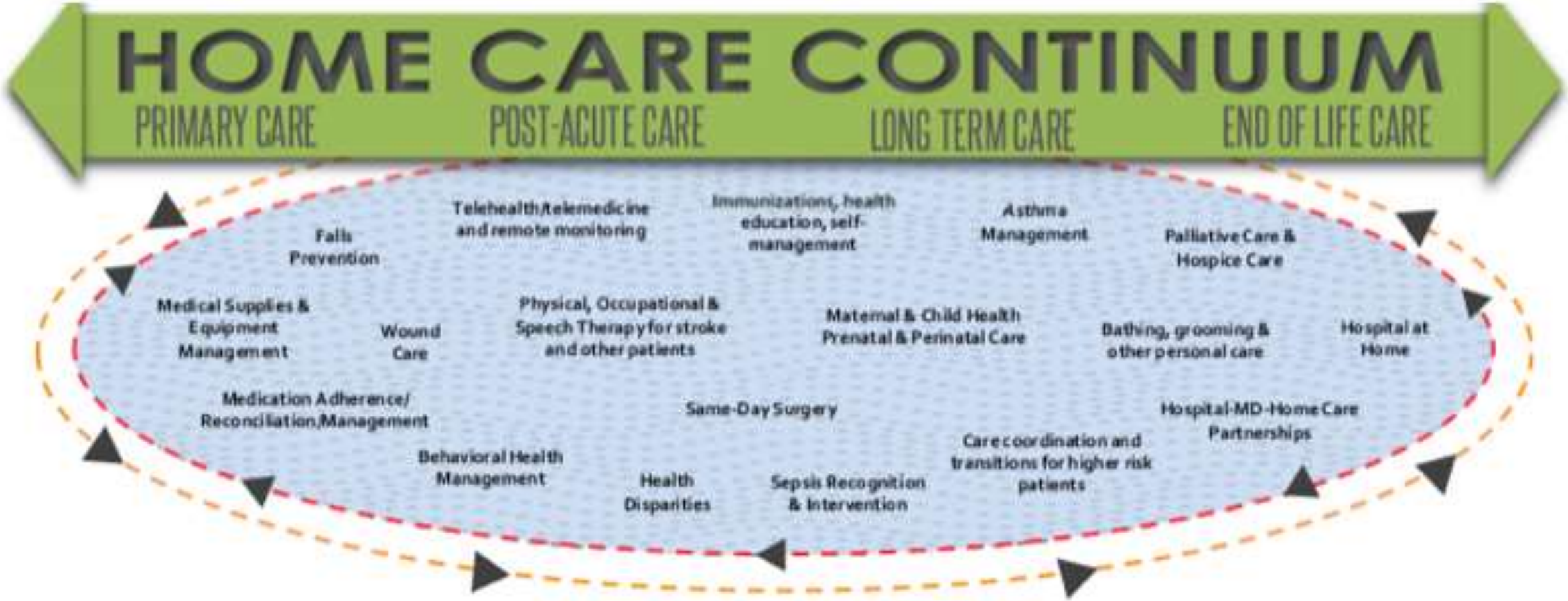
The Streets

Farms
Mountains
Valleys
Islands

Specialty Settings
(assisted living
group homes)

The Emergency Room

Across the Continuum



A Partner Across the Continuum

Critical Issue & Opportunity Areas

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Key Status Areas

- Finance
- Workforce
- Demand

Finance

Certified Home Health Agencies

Approximately 428,548 patients are served by CHHAs every year in New York State[4].

An estimated 57% of CHHA's had a negative operating margin in 2020[5].

-3% was the average operating margin for CHHAs in 2020[6].

Licensed Home Care Services Agencies

Approximately 484,170 patients are served by LHCSAs every year in New York State[3].

An estimated 33% of LHCSAs had a negative operating margin in 2020[4].

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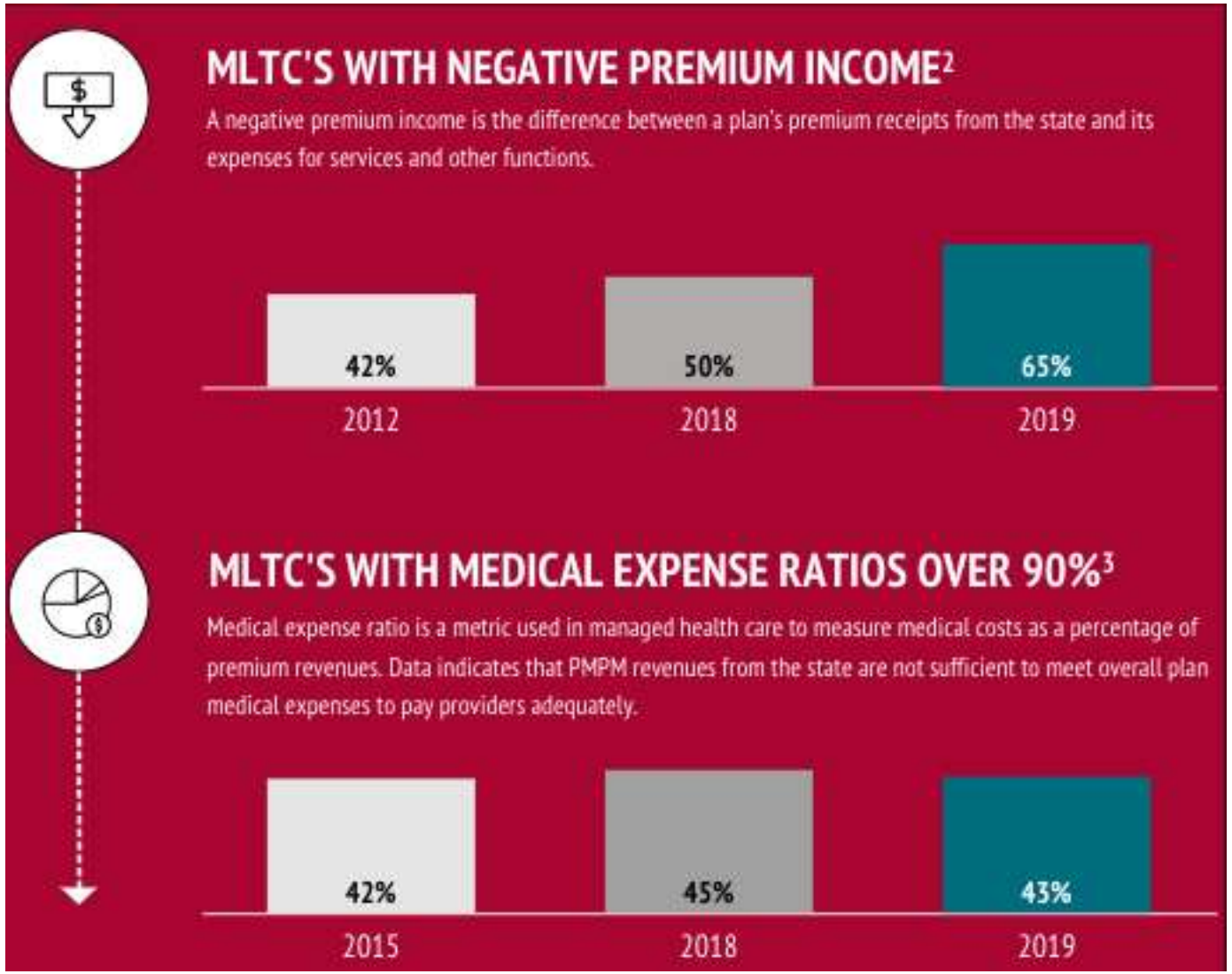
Finance

Managed Long Term Care Plans



Hospice

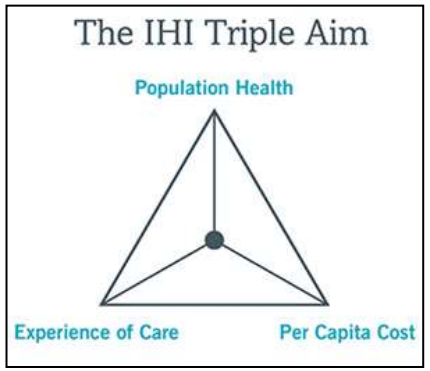
Over 54,000 patients are served by Hospice organizations every year in New York State[2].

An estimated 62% of Hospices had a negative operating margin in 2019[6].

-12% was the average negative operating margin for Hospices in 2019[7].

Critical Issue & Opportunity Areas

- Workforce
- Quality, Evidenced-Based Care,
  Performance measurement
- Value and Efficiency



- Partnerships (hospitals, physicians/primary care, behavioral and mental health, payors, social determinants of health) and Integral system roles
- State/federal design goals – action on new state waiver; duals, fully integrated models, bundles, accountable care
- State/federal health reforms that are incompatible or regressive – LHCSA RFO, Independent Assessor, higher threshold in order to receive service.

Critical Issue & Opportunity Areas

- Health Information Exchange for care management, measurement, data
- Policy Priorities - Health disparities, public health
- System demands for more care
- Innovation – clinical, program, organizational, system levels
- Reaching outside of boundaries to provide service, meet need.
- Build upon the many lessons learned in pandemic (areas of flexibility, collaboration with partners, new approaches to service, new uses of technology, more.....)
- Fundamental need to address workforce and to have structural support and fix

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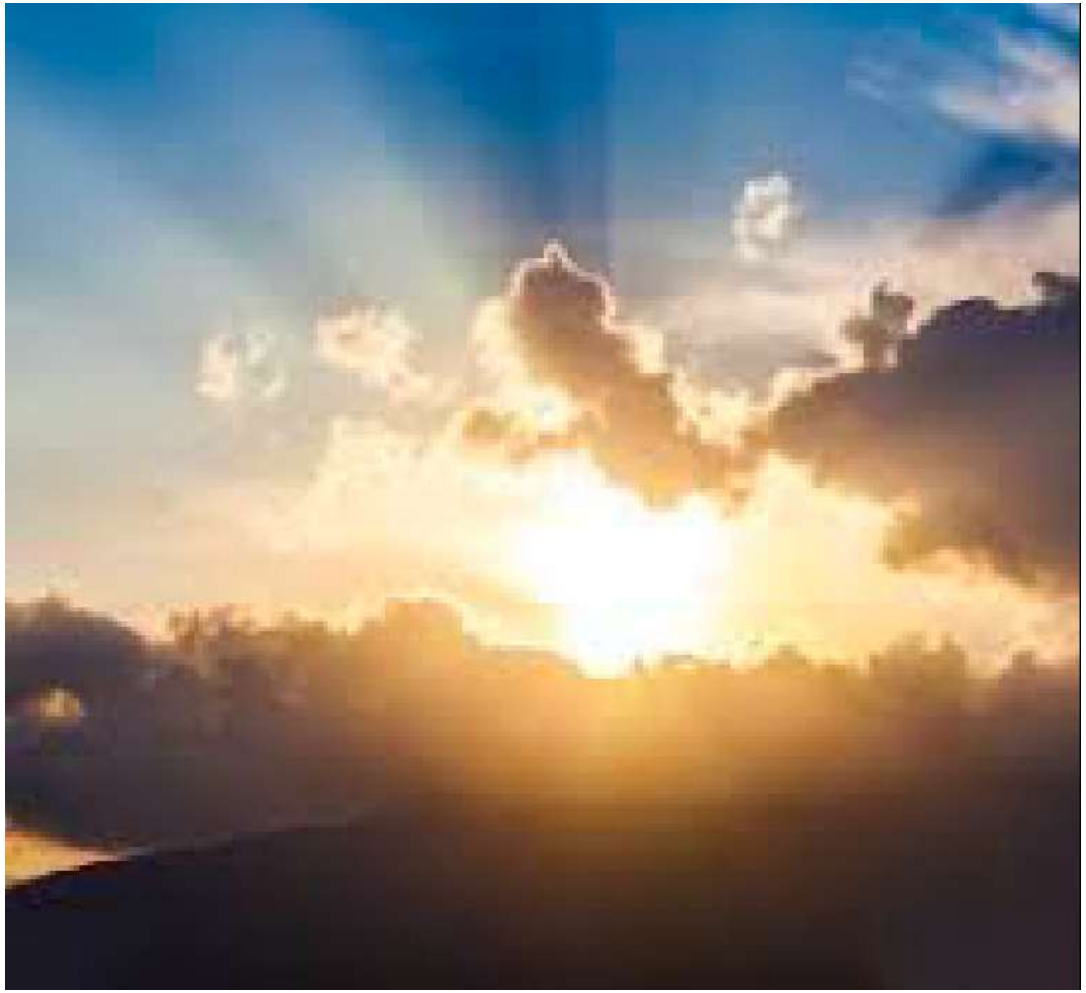
What's the Vision?



Home Care *First*

Home Care First

First for older adults, first for persons with disabilities, first for children and families, first for hospital recovery, first for managing chronic illness … Home Care, First.

Home Care First – S.8295 (Gottfried) & A.9148 (Rivera)

- **Home Care Priority in Public Policy**
  Reinforces Article 36 policies prioritizing home care availability and accessibility across the the health care system.
- **Home Care as Principal Option for Care**
  Provides explicit statute ensuring that all individuals, when medically appropriate, be presented the option for care at home.
- **Rate Adequacy**
  Requires that state rate setting ensure adequate financial and programmatic support for accessible, high level home care in accordance with HCF goals.
- **Workforce Support**
  Provides an additional state rate mechanism to support recruitment, training, compensation and retention of the home care workforce, including aides, nurses, and therapists, further target shortage areas and disciplines, and critical supports.
- **Inclusion Across State Policies & Initiatives**
  Ensures home care is considered and appropriately included in the state's strategic primary, preventive and public health initiatives and policies (addressing home care's constant omission from such relevant policies, supports and roles).

Home Care First – S.8295 & A.9148

- **Capital & Infrastructure Support**
  Ensures consideration and inclusion in state programs that provide capital, infrastructure and workforce development support and funding (where home care is also often overlooked).

- **Telehealth**
  Updates home care's participation in telehealth, since the 2007 home telehealth program.

- **Patient Referral**
  Provides for information and guidance to assist patient referral for home care by hospitals, nursing homes, physicians, and other applicable settings, including in the discharge planning process.

- **Comprehensive Public Education**
  Provide for a comprehensive public education program about home care.

- **Access to Coverage** Requires analysis of insurance and other coverage program to determine changes necessary to align coverage with state-of-the-art medical practice.

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Home Care Federal

- New nationwide Home Health Value Based Purchasing initiative
- Federal advocacy priorities
  - Funding and workforce (Medicaid and Medicare)
  - Telehealth
  - Regulatory flexibility
  - PDGM behavioral adjustment
  - Innovation in Medicare coverage (e.g., homebound flexibility, Centers for Medicare and Medicaid Innovation initiatives for home care and hospice, “Choose Home Act”)

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Opportunities in Innovation

Opportunities in Innovation

Opportunities in Innovation

Opportunities in Innovation

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Opportunities in Innovation

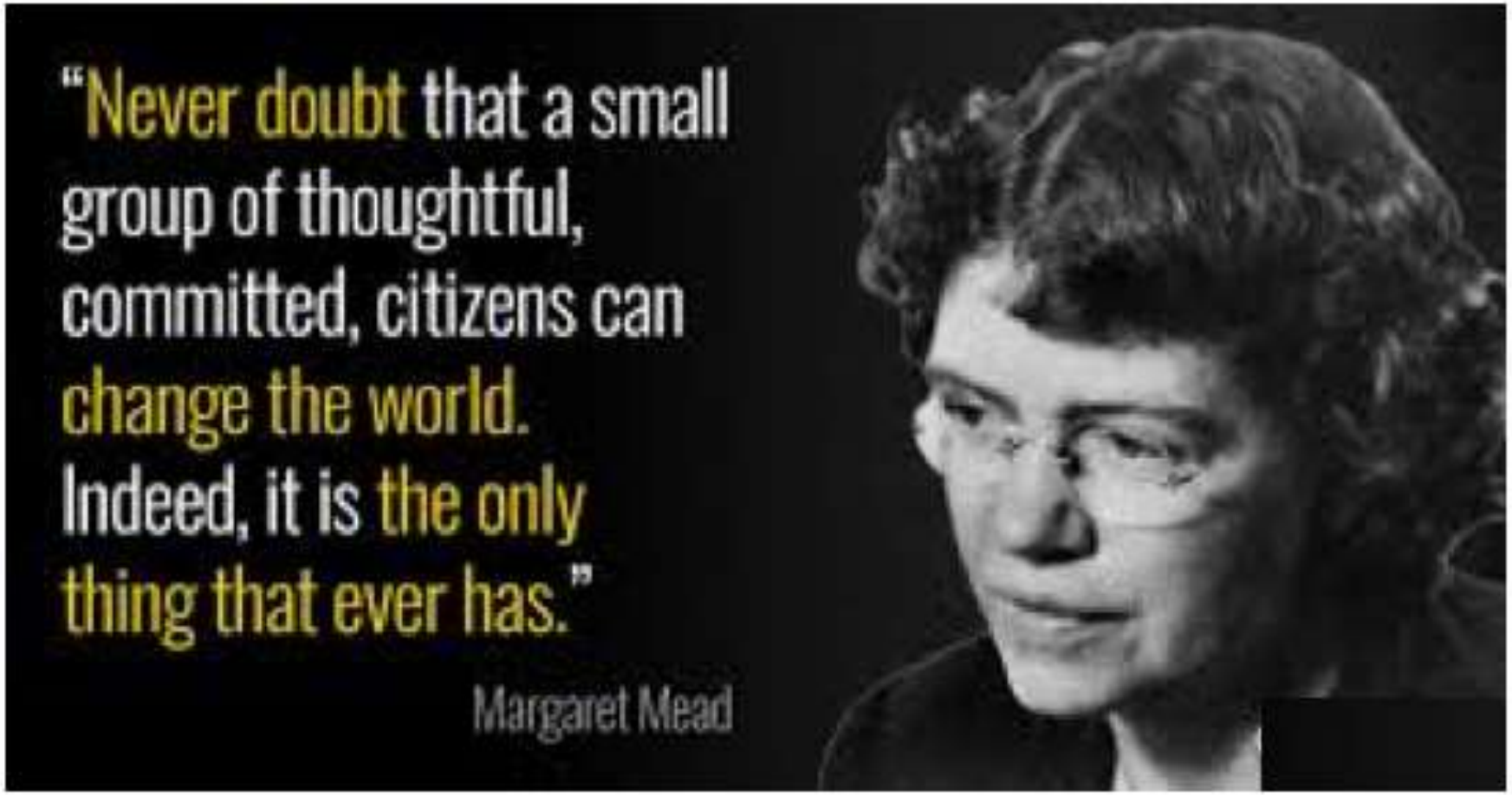
Opportunities in Innovation

Leadership

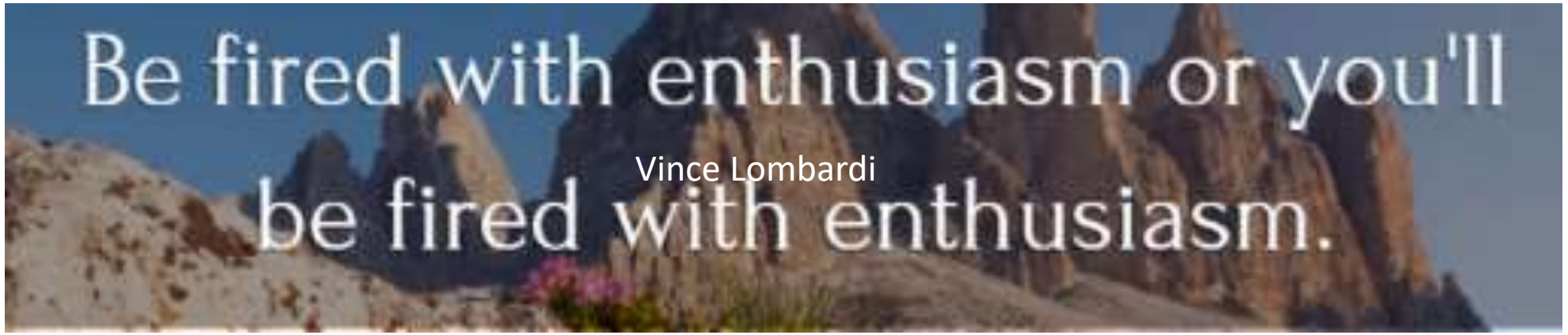
It’s up to home care to LEAD in the home care space, and in collaboration with partners across the continuum

Leadership

Leadership


"Never doubt that a small group of thoughtful, committed, citizens can change the world. Indeed, it is the only thing that ever has."
Margaret Mead

Leadership


Be fired with enthusiasm or you'll
Vince Lombardi
be fired with enthusiasm.

Staffing Shortages in Health and Long-Term Care: Meeting the Needs

Moderator: Al Cardillo
President, Home Care Association of NYS

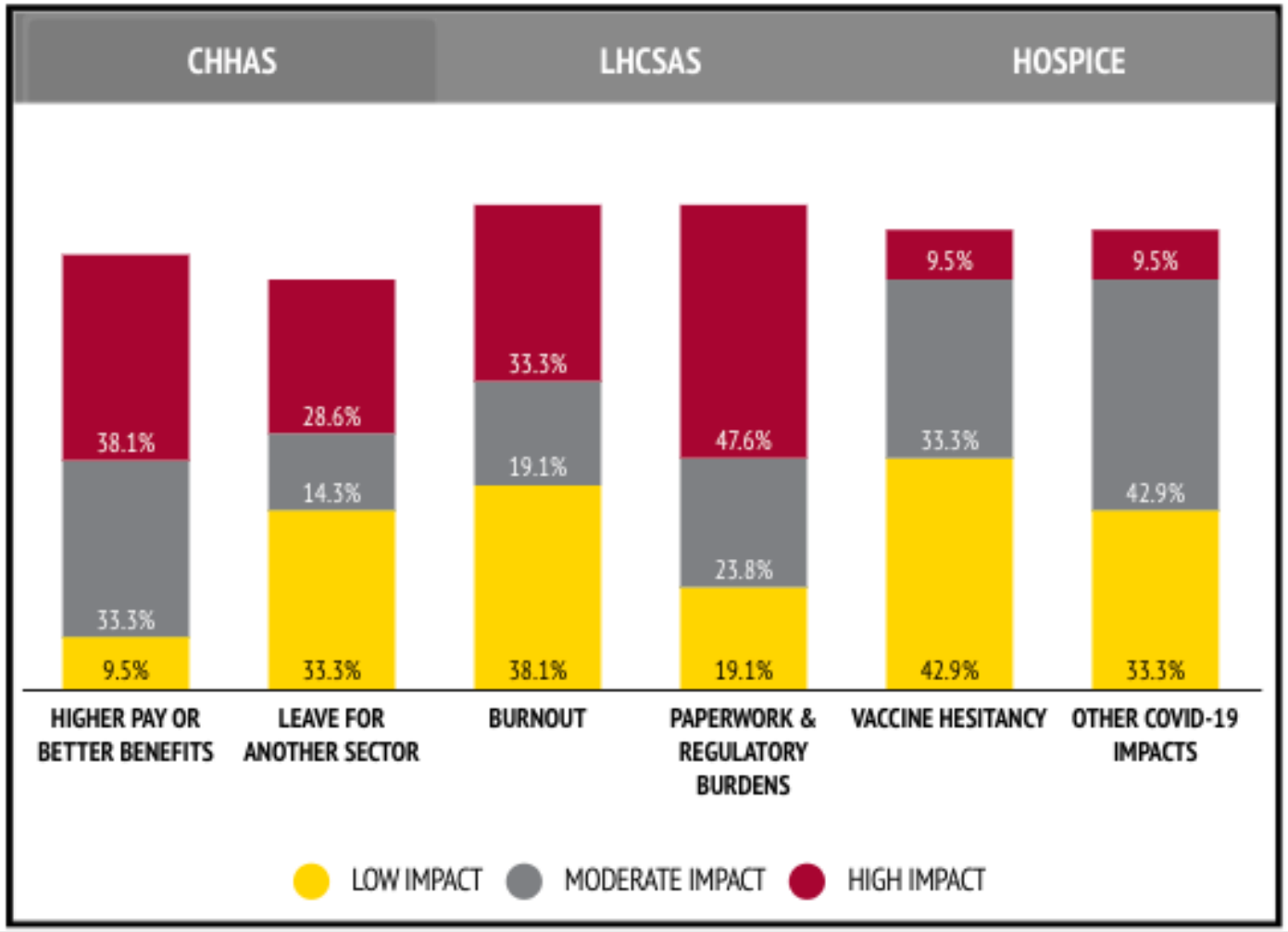
Joseph Twardy
EVP of Health Plans and Chief Transformation Officer, Nascentia Health

Jean Moore
Director, Center for Health Workforce Studies

Dora Fisher
Director, Post-Acute & Continuing Care, HANYS

Peter J. Strauss, Esq.
Senior Partner,
Pierro, Connor & Strauss, LLC

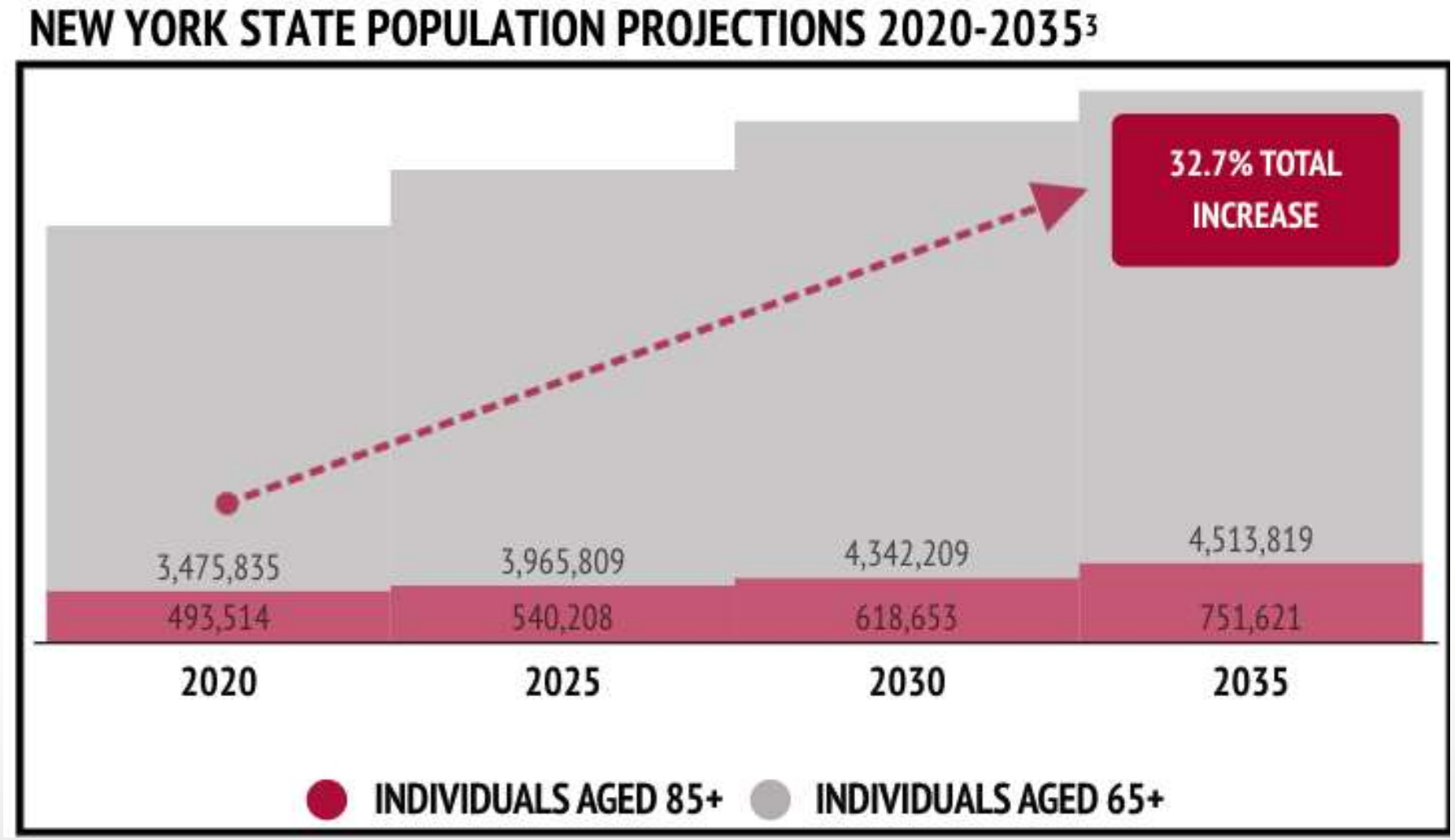
Workforce Shortages and Needs



31% of all personal care aide and **25%** of all RN positions are currently unfilled[1].

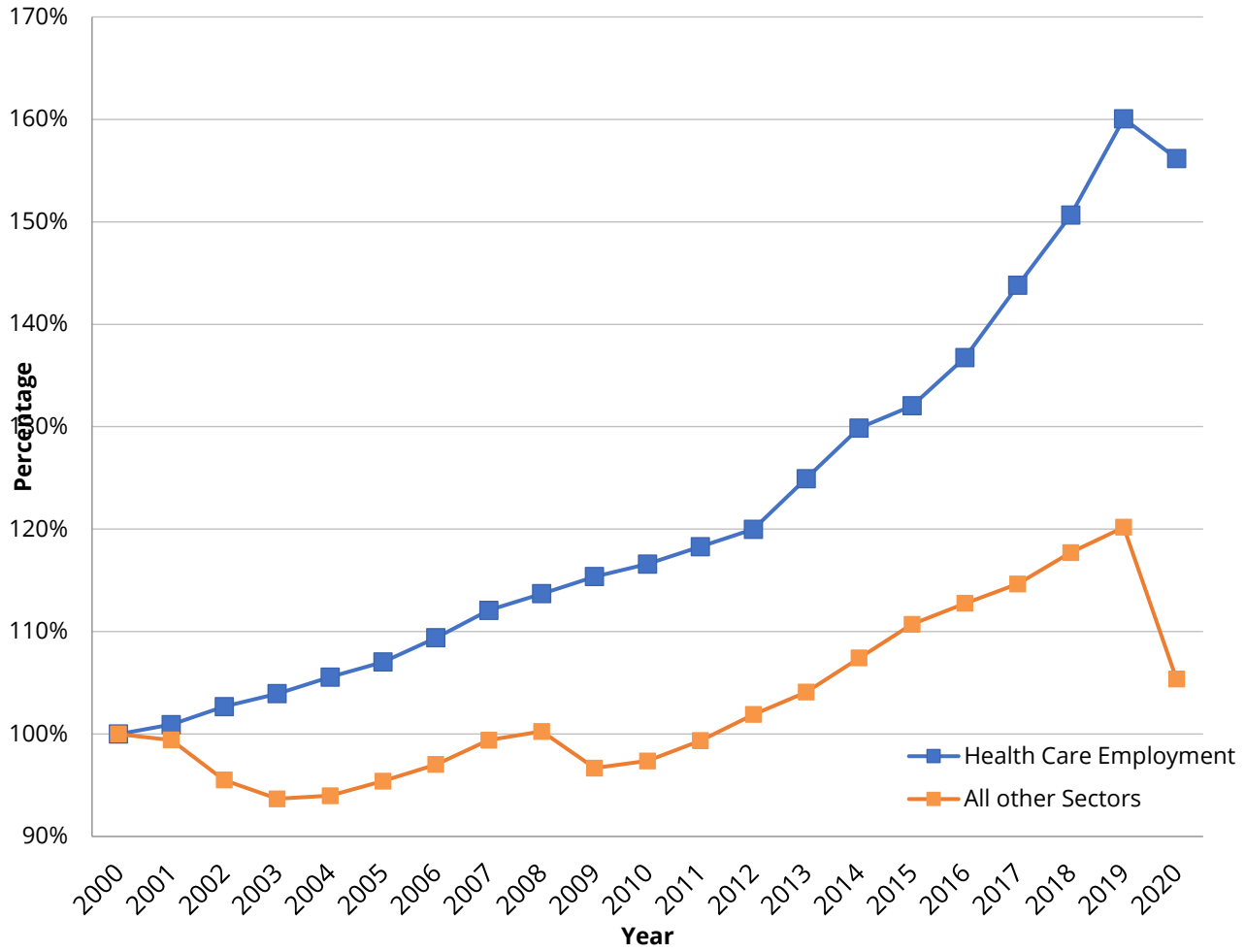
Home health aides have an average turnover rate of **26%** among all home care providers[2].

Demand Trends & Growth



In NYC, Health Care Employment Has Grown Much Faster Than Employment in All Other Sectors

Employment Growth in the New York City Region, 2000-2020 (Standardized to 2000)



Source: New York State Department of Labor, Quarterly Census of Employment and Wages

CHWS Center for Health Workforce Studies

Declines in Number of Graduates Between 2016 and 2020: RNs, NPs, LPNs, Pharmacists

Number of Graduations in Selected Health Care Occupational Programs in the New York City Region, 2016-2020

Occupational Program	2016	2017	2018	2019	2020	Change Between 2016 and 2020	
						Number	Percent
Registered Nurses	3,838	3,785	3,431	3,566	3,418	-420	-10.9%
Pharmacists	495	602	546	298	328	-167	-33.7%
Licensed Practical Nurses	450	208	243	334	287	-163	-36.2%
Nurse Practitioners	560	570	557	452	480	-80	-14.3%
Clinical Laboratory Technologists	152	136	113	88	102	-50	-32.9%
Occupational Therapists	291	336	288	227	257	-34	-11.7%
Physician Assistants	635	637	665	610	608	-27	-4.3%
Respiratory Therapists	23	23	28	0	0	-23	-100.0%
Occupational Therapy Assistants	66	57	68	35	46	-20	-30.3%
Nurse Anesthetists	11	11	13	10	0	-11	-100.0%

Source: Integrated Postsecondary Education Data System

CHWS Center for Health Workforce Studies

NYC Long Term Care Facilities Reported Persistent Challenges Retaining RNs, LPNs & CNAs

Retention Difficulties Reported by New York City Nursing Homes and Adult Care Facilities, 2019 and 2020/21

2019 Retention Difficulties	2020/21 Retention Difficulties
Personal Care Aides	Registered Nurses (Newly Licensed)
Registered Nurses (Newly Licensed)	Personal Care Aides
Licensed Practical Nurses	Nurse Directors/Managers
Registered Nurses (Experienced)	Registered Nurses (Experienced)
Home Health Aides	Home Health Aides
Certified Nurse Aides/Assistants	Licensed Practical Nurses
MDS Coordinators	Paid Feeding Assistants
Nurse Directors/Managers	Infection Prevention Practitioners
Dietitians/Nutritionists	Dietitians/Nutritionists
Occupational Therapy Assistants	CNAs and Temps

CNAs, Certified Nursing Assistants; Temps, Temporary Certified Nursing Assistants

CHWS
Center for Health Workforce Studies

What is Your Perspective on the Health Workforce Shortage From Your Position in the Health Care System?

The Newly Adopted State Budget Committed New Resources and Programs to Address Workforce Issues.

- What Do You Think the Impacts Will Be of These New Resources and Programs, and What Further Needs to Happen to Address the Workforce Needs?

- In Particular, What Needs to Happen Programmatically and Fiscally in the Immediate?

What Can Be Done to Encourage New Entrants in the Health Care/Home Care/LTC Field, from High School and Up?

What Can Be Done to Better Support Retention in the Workforce?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Innovation & Automation:
Can Models Like Medicare & Medicaid Keep Pace with Advancements in Care?

Moderator: Louis Pierro
Founding Partner,
Pierro, Connor & Strauss

Nick Kraft
Senior Vice President,
Chief Sales & Marketing Officer,
CDPHP

Keith Algozzine
Founder & CEO,
UCM Digital Health

Becky Preve
Executive Director,
Association on Aging in
New York

Bob Vandy
President,
Advisors Insurance Brokers

Medicaid, Medicare and Private Insurance: Is Risk Management Under the New Value-Based Payment System Leading to Innovations in Health Care?

Nick Kraft

Senior Vice President, Chief Sales & Marketing Officer
CDPHP

How Has Telemedicine Reshaped the Health Care Landscape and What Further Innovation Lies Ahead?

Keith Algozzine

Founder & Chief Executive Officer
UCM Digital Health

How Have New York State Programs and Services Evolved to Embrace Innovation in Health and Long-Term Care?

Becky Preve

Executive Director
Association on Aging in New York

Association on AGING in New York

NYS Was an Early Innovator in LTC Insurance with its Partnership Program.

What Innovations in Private Financing of LTC Have Taken Place and What Can New York Do to Provide Meaningful Choices for Private Insurance Coverage?

Bob Vandy

President
Advisors Insurance Brokers

AIB Advisors Insurance Brokers

AN INTEGRITY COMPANY

The New Home Health Care Ecosystem: Tech-Enabled Care Management

EVERHOME
CARE ADVISORS

VivaLynx
Empowered Aging through Technology

The New Home Health Care Ecosystem: Tech-Enabled Care Management

EVERHOME CARE ADVISORS

VivaLynx
Empowered Aging through Technology

Medicaid Case Study: The State of Play in Home Care

Will Mom & Dad Realize Their Dream of Never Leaving Home?

Moderator: Aaron Connor
Managing Partner,
Pierro, Connor & Strauss

Susan Vail
Life Care Coordinator,
EverHome Care Advisors

Frank Hemming
Sr. Associate Attorney,
Pierro, Connor & Strauss

Sarah Szewczyk
Director of Outreach &
Community Relations,
NYSARC

Denise Figueroa
Executive Director
Independent Living Center
of the Hudson Valley

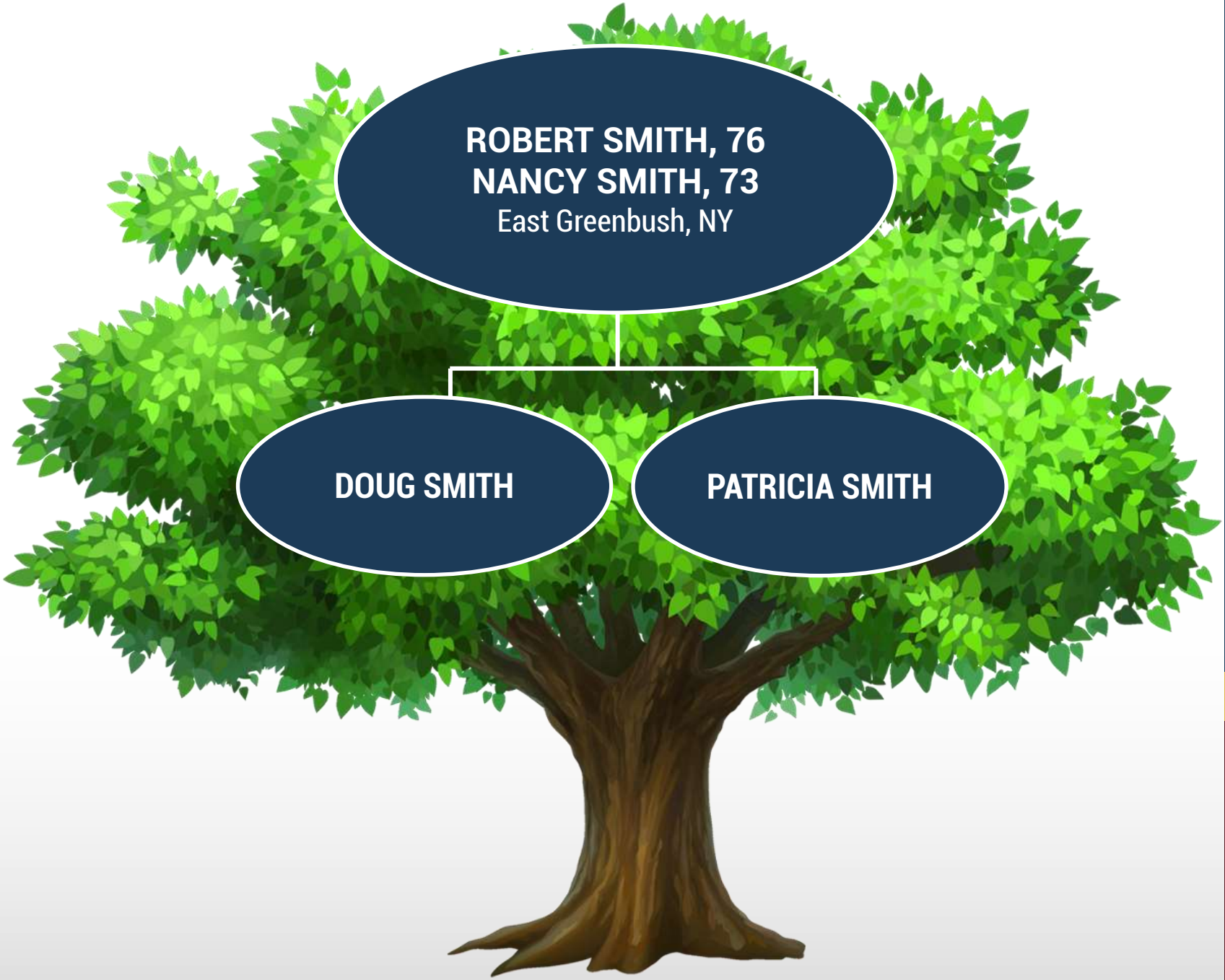
Case Study Overview:

- Meet Robert, 76 and Nancy, 73
- Living in East Greenbush, NY
- Robert's health is especially in decline
- Worried about the future
- **MAJOR GOAL:** Age in their own home!

The Smith Family Tree

Patricia: Wants to Help Parents Out, But Can't Afford to Quit Her Job

Doug: Ready to Assist Parents, But He Works Full Time



Smith Financials

Robert's Income	
Social Security	$2,000
Pension 1	$1,544
Pension 2	$500
IRA MD	$1,529
TOTAL	$5,573

Nancy's Income	
Social Security	$1,500

Assets	
Home (Joint)	$500,000 (Paid Off)
IRA (Robert)	$450,000
Life Insurance (Robert)	$50,000 (Cash Value)
Cash (Joint)	$50,000
Car (Joint)	
TOTAL NON-EXEMPT ASSETS	$1,080,000

Legal Documents

Will	YES
Power of Attorney	YES
Health Care Proxy	YES
MOLST	NO
Trust	NO

Robert's Health:

- Parkinson's Disease
- Short Term Memory Loss
- COPD
- Heart Disease

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Nancy's Health:

- Mild Cognitive Impairment
- Diabetes

Nancy is Exhausted: Can't Keep Up With Caring For Robert

27th Annual ELDER LAW FORUM

Caregiving S.O.S.!

The family reaches out to a Home Care Agency, but staff is short

Instead, they hire a neighbor and *pay under the table*

4 hours/day @ $20/hour

They have heard about Medicaid, but think that they have too many assets to qualify. Concerned about the number of hours of care Robert will need and about finances, the family reaches out for help!

Susan Vail

Life Care Coordinator
EverHome Care Advisors

EVERHOME
CARE ADVISORS

Care Coordination, Advocacy, and Navigation

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 care

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ALCA

8

knowledge areas

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The Smiths

Robert Smith

Age: 76

Parkinson's Disease with short term memory; COPD; and heart disease

ADL assistance needed: Transfers and toileting

Nancy Smith

Age: 73

Mild Cognitive impairment; Diabetes; mild arthritis

Able to "care for" Robert, but needs more assistance

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The Process….

- Nancy and her daughter, Patricia contacted EverHome looking for assistance to find care
- I met with Nancy and her daughter to discuss what their situation was and how I could assist them
- Review options for them regarding engaging with EverHome as well as recommendations for continued steps to obtain care

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Key Information: Regarding the Smith Family

Robert Smith ,76 , and his wife Nancy, 73 , lives in East Greenbush (close to bus route)

Per the daughter, Patricia, Robert and Nancy has a Health Care Proxy, HCP, Power of Attorney, POA, and Will

Discussion of non-hospital Do Not Resuscitate (DNR) and Medical Order for Life Sustaining Treatment (MOLST)

Patricia wants to assist in care for Robert and the Doug cannot assist in care but wants to help.

They are paying a neighbor for care on M, W, F under the table (Paying $20 per hour and hired for 4 hours/day). Paying for care out of the Smith's hard-earned savings. Family contacted agencies and was unable to get care for Robert.

Both Robert and Nancy utilize Social senior center T and TH for meals and events

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Recommendations and Plan of Action

1. A brief assessment of need and current functional ability
2. Review care options
    1. Continue paying for care privately, but hiring a payroll company for payment of the aide
    2. Explore options of care though Medicaid
        1. Nursing Home Transition and Diversion Waiver Program -NOT AN OPTION
        2. Medicaid Managed Long term Care
            1. Agency Model - No aides available
            2. Consumer Director Personal Assistance Program (can keep existing aide)
1. Recommendation of a consult with Elder Law Firm that did initial planning documents for legal guidance regarding Medicaid and the financial as well as legal considerations
2. Discussion of financial concerns and considerations
3. Discussed the steps to be taken to participate in Consumer Directed Personal Assistance Program
4. Discussion and exploration of use of technology for monitoring , communication and overall wellbeing

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Steps for accessing care for Consumer Directed Personal Assistance Program

1. Medicaid Managed Long Term Care (MLTC)
2. Conflict Free Assessment Evaluation
3. Selection of Medicaid Managed Long Term Care Company
4. Selection of type of program/ aides
5. Consumer Directed Personal Assistance Program- You hire and train, aides that are not part of a company or agency
6. Selection of fiscal intermediary
7. Competition of paperwork and training of care aides
8. Start care with Consumer Directed Personal Assistance Program

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Other Key Factors to Consider

During the process of applying for Medicaid may be eligible for other programs and assistance for care:

- Office for the Aging
- Programs through other organizations
- Respite programs
- Hiring a Household Employment Company (GTM , HomePay etc.)

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Questions?
We'd love to hear from you!

EVERHOME
CARE ADVISORS

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PIERRO, CONNOR & STRAUSS, LLC
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Estate Planning Basics

1. **Power of Attorney**

   Gifting Authority to Complete Planning if Incapacitated

2. **Health Care Proxy**

3. **Disposition of Remains Appointment**

4. **MOLST**

5. **Last Will and Testament**

Medicaid Eligibility 2022

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 ResourceAllowance	$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 $3,435

Robert's Home

Residences have special rules for eligibility purposes:

- Exempt if Robert or Nancy or minor or disabled child lives there
- Transfer exemptions
  - Caregiver Child
- Intent to return home
- Liens + Estate Recovery if part of Robert's estate
- **Home Equity Limit - $955,000**

Exempt Assets

Some Other Assets That Are Exempt:

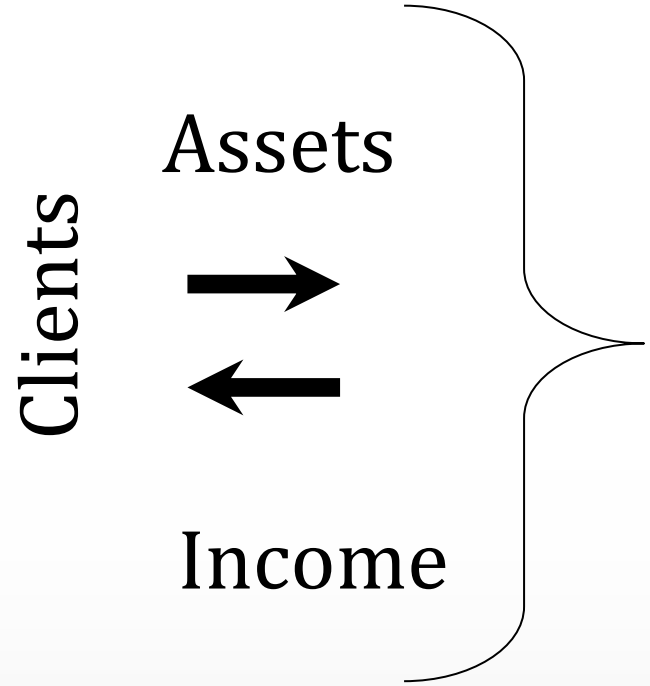
- $16,800
- Pre-paid burial
- Income producing property – business assets
- Life insurance – face value less than $1,500!
- IRA in “Periodic Payment Status"- ***major exception***
- One Car

NON-EXEMPT ASSETS= EVERYTHING ELSE!

Current Plan to Achieve Community Medicaid Eligibility

- Fund Medicaid Asset Protection Trust (MAPT) with House and Life Insurance
- Plan remains possible due to COVID emergency and NY's failure to implement new Community Medicaid eligibility rules passed in October 2020
  - As Robert doesn't have a MAPT already, then one would be created and funded to create eligibility
- Create and fund Pooled Income Trust for excess monthly income

Medicaid Asset Protection Trust



- Trustee – manages trust assets
- Beneficiaries
  - Client – income for life and right to use real property
  - Heirs = Remaindermen - inherit when trust ends

Medicaid Asset Protection Trust

Home
Bank Accounts
Stocks & Bonds
Annuities
Life Insurance
Business
Real Estate

MEDICAID ASSET PROTECTION TRUST

- Income is yours if you want it.
- Principal can NOT be given back to you directly.

Medicaid Asset Protection Trust

Security Features

- Choose initial Trustee, and change at any time
- Choose initial beneficiaries, and change at any time
- With the consent of all beneficiaries, in some jurisdictions the trust can be "amended or revoked"

KEEP OUT

Cash
Bank Acct.
IRA, 401(k)

Medicaid Asset Protection Trust

Advantages:

- Medicaid protection started for potential nursing home placement for either spouse after 5 year period is over
- Probate avoidance
- Ability to distribute assets outright or in further trust
- Ability to hire and fire trustees
- Access to income and assets within the trust, just has to be done properly
- Ability to revoke an irrevocable trust with consent of beneficiaries
- **Ability to qualify for Community Medicaid immediately, until October 1, 2022**

New Rules Taking Effect As Early As Fall 2022

- The law imposes a "Medicaid lookback" for transfers after **October 1, 2020** for Community Medicaid
- When in effect, there will be up to a 30-month lookback done for every community application (audit of all financial activity from date of application back to October 1, 2020)
    - If transfers/gifts are found within the lookback period, penalties will be assessed and the applicant will not be eligible for Medicaid for a period of time.

This is the system currently used for nursing home applications. except the lookback period is 5 years/60 months

2022 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	Duchess, 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

What We've Saved - Income

ALL OF IT!

$954.00 – Robert's to use

Excess Income above $954.00 allowance – sheltered within Pooled Income Trust

Nancy still receives her $1,500.00

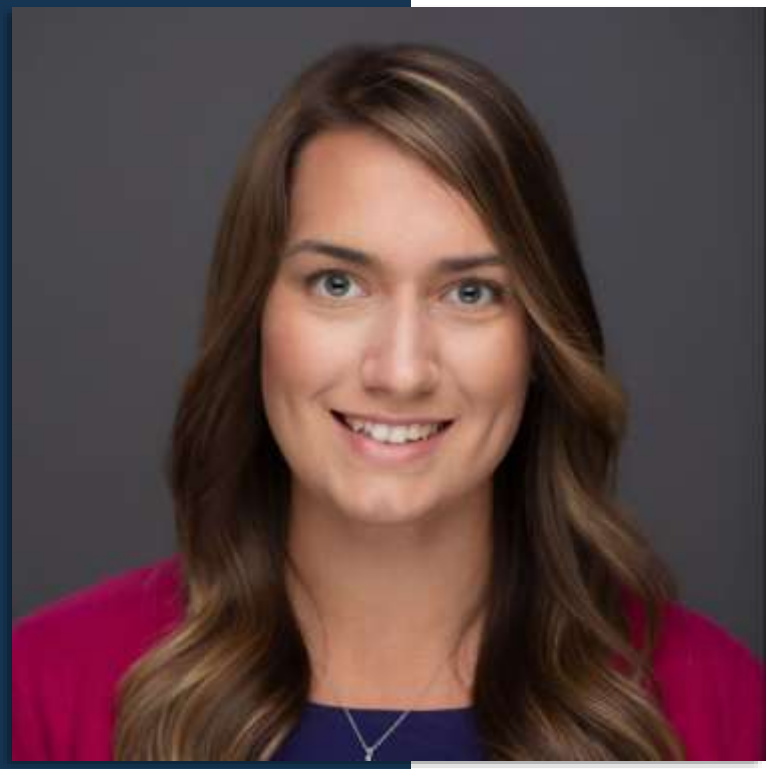
What We've Saved - Assets

ALL OF THEM!

- House sheltered in Irrevocable Trust
- IRA – Exempt Asset
- Life Insurance sheltered in Irrevocable Trust
- Cash – Owned by Robert/Nancy by in appropriately titled accounts
- Car – Exempt Asset

Timing Issues as Result of New Assessment Rules

- MAXIMUS requiring Medicaid approval to begin Community Assessment process
    - Does coverage have to be active? Does applicant have to show proof of monthly spenddown?
- Scheduling Issues for Nurse Assessment and Independent Doctor Appointment
- Spouses not able to be assessed at same time



Sarah Szewczyk

Director of Outreach & Community Relations, NYSARC Trust Services

NYSARC TRUST SERVICES

Pooled Supplemental Needs Trust (SNT)

- A **pooled trust** is a special type of **irrevocable supplemental needs trust**
- Non-profit agrees to hold assets for a person with a disability
- Allows a person to qualify for Medicaid home care
- Protect excess funds to improve quality of life
- Allowable under Federal and New York State statutes
- Must have a qualifying disability under SSA definition
- Funds in trust used to pay monthly living expenses
- Goal to remain at home for as long as possible

Benefits of a Pooled Trust

- Qualify and maintain financial eligibility for Community Medicaid
- Without a complete loss of financial resources
- Supplement care provided through Medicaid and other benefits
- Medicaid pays for medical expenses that Medicare does not cover
- Receive care and therapy services from the comfort of home
- Alternative to nursing home placement
- Provide respite and financial relief to family caregivers

Using a Pooled Trust for Income Spend-down

"Income received by an individual and placed into a pooled SNT in the same month will be disregarded for Medicaid eligibility purposes."

2022 NY Medicaid Income Limits	
Individual	$934/month (+$20)
Couple	$1,367/month (+$20)
2022 NY Medicaid Resource Limits	
Individual	$16,800
Couple	$24,600

Monthly Income Examples:

- Social Security
- Pension
- IRA Distributions
- Alimony

Robert's Pooled Income Trust

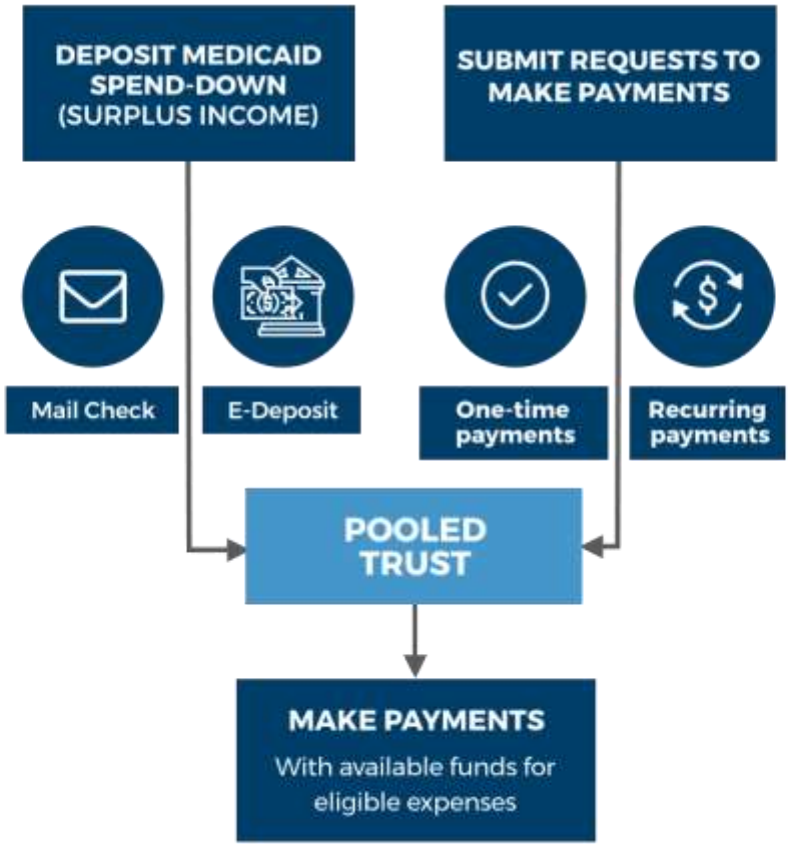
After the monthly administrative fee, Robert will have around **$4,319** in his trust account to pay bills and other expenses.

Robert's total monthly income:	**$5,573**
Medicaid Income Limit:	-$954
Excess monthly income (spend-down)*	**= $4,619 excess income**
Administrative fee	-$300
Funds left in the trust to pay bills	**$4,319/mo.**

*Excess monthly income is determined by Medicaid

Trust Administration

- **Primary benefit rule**
- Items/services to supplement benefits
- Requests require documentation
- Disbursements paid directly to third parties
- No cash to beneficiary or their bank account
- Federal SSA POMS policy trust closes at death



Types of Disbursement Requests

- Bill/receipt to pay a third party directly
- Reimburse an individual (adult child, sibling, friend, etc.)
- Make purchases using a credit card
- Quote/Invoice for service or purchase

What can the trust pay for?

For a person who ONLY receives Community Medicaid, the trust will typically pay for monthly living expenses:

- Rent* or mortgage*, property maintenance*, and taxes
- Utility bills, cable, phone, etc.
- Car Payment*/Vehicle expenses/Insurance (owned by Beneficiary)
- Uncovered Medical Expenses/OTC items
- Additional hours for home health aids not covered by Medicaid
- Groceries, clothing, and other personal needs
- Entertainment/Recreation
- Irrevocable pre-need funeral arrangement*

**These requests are eligible for automatic payment*

Robert: How will he use trust funds?

Robert's approximate monthly balance:	**$4,619**
Additional Home Care (4 hrs/day @ $25/hr + $59/mth payroll)	- $2,859/month
Electric bill	- $220/month
Cable/phone bill	- $200/month
Property taxes ($3,000/qtr)	$1,000/mth
Approximate left to pay other expenses:	$40

Impact of 2022 Rules

Approx. **$1,040** left to spend in the trust each month.

He could use this money to fund everyday living expenses and save to pay his property taxes each quarter.

New Community Lookback rules, likely will have Medicaid recipient spend their entire monthly deposit within the month it's made.

Robert would have to spend approx. **$4,319** each month.

Contact us with questions!

If you have additional questions following today's presentation, please contact us at:

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Let's Connect! LinkedIn

Denise Figueroa

Executive Director,
Independent Living Center of the Hudson Valley

Independent Living Center of the Hudson Valley (ILCHV)

Disability rights organization that is led by and inspires people with disabilities to achieve self-determination and advocates for an integrated society.

ILCHV services include individual and systems advocacy, peer counseling, independent living skills training, information and referral, consumer directed personal assistance (FI), benefits advisement, nursing home transition, veteran directed care, equipment loan, and more

Now that Robert is Eligible For Medicaid, How Can Fiscal Intermediaries Help Him Get the Home Care Services He Needs?

Consumer Directed Personal Assistance

- CDPA is a good fit for Robert and his family.

- Take control over his own care. Hire who he wants in his house

- Daughter Patricia can earn money as his caregiver

- His son Doug can serve as Designated Representative

What is Consumer Directed Personal Assistance (CDPA)?

- CDPA was designed by the disability community to allow people with disabilities or their designated representatives to direct their personal assistance needs.
- CDPA allows people with disabilities in need of personal care to recruit, hire, train, supervise and terminate their own personal assistants.
- Allows people to hire anyone 18 or older, including family members (except spouse) and friends to serve as a Personal Assistant.
- Provides flexibility in scheduling

Who is Eligible?

- Must be Medicaid eligible
- Be eligible for home care services, personal care services or private duty nursing
- Require some or total assistance with one or more home care, personal or skilled nursing needs;
- Be self-directing, capable of making choices regarding activities of daily living and managing their own personal assistant services, or
- Have a designated representative who can assume the employer role to recruit, hire, train, supervise and terminate PA's.

What is the Fiscal Intermediary (FI)?

The Fiscal Intermediary is responsible to:

- Enroll and train consumers on their responsibilities in CDPA
- Process payroll
- Ensure all payroll liabilities are paid
- Utilize an electronic visit verification (EVV) system
- Notify consumers and PA's when annual physicals are due
- Monitor for Medicaid fraud

Robert's Enrollment

Once Robert selects ILCHV as his FI, the center will work with Robert and his son, Doug to complete the consumer agreement that outlines responsibilities of the consumer, designated representative and FI.

Staff will provide PA enrollment forms including federal, state withholding, I-9, health assessment forms, benefits information

The process of enrollment for Robert can be quick, since he has already identified his daughter Patricia as caregiver. Usually 1 to 2 weeks, depending on physical.

Training for Robert & His Daughter

ILCHV will provide training to Doug and Patricia on EVV system for time tracking to ensure proper processing of payroll.

CDPA provides flexibility, safety and security to Robert and his family.

New DOH Rules – the Impact

Very concerned the new requirements for independent assessment will likely be a barrier to people receiving the proper hours of service they need to live in the community safely.

Family doctors have a better understanding of their patients needs and family supports.

Requirements for 3 or more ADL needs or 2 if you have cognitive impairment will prevent some currently eligible people from receiving personal assistance services, potentially leading to unsafe situations and potential nursing home placement.

New DOH Rules – the Impact

It is important to plan for long term care needs before they are needed. In particular for those who have built up assets and want to ensure they don't need to go into poverty to get the care we should all have available.

Working as a team with attorneys to set up safeguards, you can live your life with dignity in the community.

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27th Annual
ELDER LAW FORUM

Q & A SESSION

THANK YOU
FOR ATTENDING

PLEASE JOIN US NEXT YEAR FOR THE