

Starting Soon...

Nursing Home Medicaid

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Welcome

- ▶ Your Lines Are Muted
- ▶ Type Questions in the Q&A Section at the Bottom of Your Screen
- ▶ Presentation is Posted: Pierrolaw.com/Resources Under Medicaid Planning
- ▶ Fill Out Our Survey with Feedback





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Serving New York State Residents Through Offices in:
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Medicaid Mondays

- Today marks our fifth program – Nursing Home Medicaid
- Watch Week 1: 2023 Update and the Surprising New Numbers
- Watch Week 2: Qualifying and Why It's Becoming Harder
- Watch Week 3: Medicaid Asset Protection Trusts
- Watch Week 4: Using a Pooled Trust to Qualify for Medicaid Home Care

- <https://www.pierrolaw.com/medicaid-planning-videos/>

or

- Pierro, Connor & Strauss





Agenda

- Recap: Income and Resources
- Exempt Assets and Transfers
- Preserving Non-Exempt Assets
 - The “Rule of Halves”
 - Spousal Refusal
- Steps you can take now if you need Medicaid or want to plan ahead





Cost of Nursing Home Care

Average Monthly Cost of Nursing Home Care (2022)

Albany	\$15-17,000/month
New York City	\$18-20,000/month

Better facilities cost more

RECAP: MEDICAID INCOME & ASSET LIMITS

Landmark Medicaid Increases Passed in NYS Budget:
Same income limit will be used for younger people under
Affordable Care Act and for Age 65+, blind & disabled

YEAR	INCOME / MTH		ASSET LIMIT	
	SINGLES	COUPLES	SINGLES	COUPLES
2023	\$1,677 + \$20	\$2,268 + \$20	\$30,182	\$40,821
Difference over 2022	+\$743	+\$901	+\$13,382	+\$16,221



Exempt Assets

Some assets that are exempt:

- \$30,183
- 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!



Your Home

- Exempt if you, a spouse or minor or disabled child lives there

(Equity Limit of \$1,033,000)

- Transfer exemptions
- Intent to return home
- Liens + Estate Recovery





Medicaid: Nursing Home v. Home Care



Chronic Care Medicaid

- **Nursing home care**
- 5-year lookback
- Transfer penalties = # of mos.



Community Medicaid

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

Nursing Home Medicaid Eligibility

While income and asset limits are up dramatically for New York Medicaid Home Care in 2023, the institutionalized **Individual Income Allowance** remains the same: \$50

Planning Considerations:

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



5 Year Look Back



Applies to Nursing Home/ Chronic Care Medicaid

- DSS audits 5 years of records
- All transfers of non-exempt assets are added up- 5 years worth
- The total is then divided by the NYS divisor- a monthly nursing home cost

Transfer of Assets

- Lookback Period
 - Nursing Home, 5 yrs.
 - Home Care,
 - 2 ½ yrs. lookback expected April 2024
- Penalties for Transfers
 - Penalty = number of months before Medicaid will pay for care



5 Year Look Back and Medicaid Penalty

Common examples of transactions that can lead to a penalty:

money gifted to a grandchild for college
vehicle sold to a family member for a dollar
large gift to your church



Exceptions

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



2023 NYS Medicaid Regional Rates

Region	Counties	2023	2022	2021
New York City	Bronx, Kings (Brooklyn), NY (Manhattan), Queens, Richmond (Staten Island)	\$14,142	\$10,857	\$13,307
Long Island	Nassau, Suffolk	\$14,146	\$14,012	\$13,834
Northern Metropolitan	Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester	\$13,906	\$13,389	\$13,206
Western (Buffalo)	Alleghany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming	\$12,130	\$11,884	\$11,054
Northeastern (Albany)	Albany, Clinton, Columbia, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington	\$12,744	\$12,560	\$11,689
Rochester	Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, Yates	\$13,421	\$13,376	\$12,020
Central (Syracuse/Utica)	Broome, Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, Tompkins	\$11,726	\$11,328	\$10,857

The Medicaid Penalty

The penalty is a number of months of ineligibility



- ▶ For example, transfers of \$152,928 are discovered within past 5 years:
$$\text{\$152,928} / \text{\$12,744} = 12 \text{ months w/o Medicaid}$$
- ▶ Penalty period begins when person is:
 1. Receiving Care in a Nursing Home
 2. Is otherwise eligible - \$30,182 or less of countable assets
 3. Has submitted a Medicaid application
- Who pays during the penalty period?

What if No Planning Has Been Done?

Rule of Halves

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



Rule of Halves Example- Bob A.

- ▶ Bob has **\$3,490/month of income**, **\$364,182 of non-exempt assets**, and he has gifted **\$100,000** over the past 5 years
- ▶ Bob has nursing home costs of **\$16,000/month**
- ▶ His family pre-pays his funeral (could pay for others), buys him a television, clothes, furniture and pays legal fees- a **total spend down of \$34,000**
- ▶ Bob gifts **\$100,000** to a Medicaid Asset Protection Trust, and loans **\$200,000** to Robert Jr., all on

March 28, 2023



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

Example (cont.)

- ▶ Income- \$3,550 - \$50 allowance = \$3,500 net

Nursing Home Cost -Income	\$16,000 - \$3,500
Needed from Assets/ Month	\$12,500/mo.
Non-Exempt Assets	\$364,182
-Spend-Down	- \$34,000
-Resource Allowance	- \$30,182
At Risk Capital	\$300,000

Example (Cont.)

- ▶ Gift of 100K plus prior gifts of \$100K = \$200K Transfer
 - $\$200,000 / \$12,744 = 15.69$ month penalty
- ▶ Loan of \$200,000 (1/2)= Note payments of \$12,500/month for 16 months
- ▶ Apply for Medicaid April 1, 2023
 - Penalty runs 4/1/23 - 7/31/24
 - Note pays 4/1/23 - 7/31/24
- ▶ **Medicaid Eligible Aug. 1, 2024**

What Has Bob Saved?

Bob's Remaining Assets



Trust	\$100,000
Allowance	\$30,182
Pre-Paid Contract	\$12,000
Personal Property	\$10,000
Prior Gift	\$100,000

\$252,182 saved!

- 8/1/24 forward- Medicaid Pays
- Bob's Trust- Protected from Medicaid, but his children can access it and use the money to supplement his care, upon death they inherit. (See last month's Medicaid Monday for more on Irrevocable Trusts)



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

Married Couples



Minimum Monthly Maintenance Needs Allowance (MMMNA)

- *Deals with income*

&

Community Spouse Resource Allowance (CSRA)

- *Deals with Assets*

MMMNA

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

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

CSRA

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

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

Current CSRA in New York is \$74,820 (or $\frac{1}{2}$ of the couples resources up to a maximum of \$148,620 *if greater*)



Spousal Refusal

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



Spousal Refusal



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

Plan Ahead To Avoid These Issues

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

Medicaid Asset Protection Trust

- Retain income for yourself
- Preserve the principal of the assets (the assets held by the Trustee) for spouse, children or other beneficiaries.
- Trust provides asset protection
 - Significant tax benefits

Watch the Webinar on
“MAPT” at
www.pierrolaw.com/videos

Do You Need a Lawyer to File a Medicaid Application?





IN FOUR DAYS!

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

- Thurs., May 11
- 8:30am-3:15pm
- The Desmond, Albany
- Or Live Stream
- Free to Attend
- 6 CEUs for Social Workers



Thank You!
QUESTIONS?

**Schedule a
Consultation for
You or your
Clients:
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