

Starting Soon...

Nursing Home Medicaid

June 10, 2024

Louis W. Pierro, Esq.
Founding Partner

Frank E. Hemming III, Esq.
Senior Associate Attorney



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





Our Team Of Attorneys



Louis Pierro



Aaron Connor



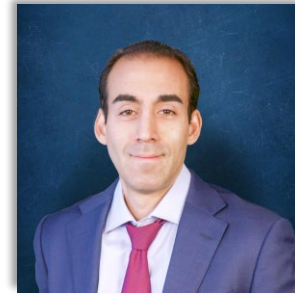
Peter Strauss



Richard Rothberg



Frank Hemming



Anthony Khatchoui



Theresa Skaine



Arkley Mastro



Robert Bosman



Michael Mullaney



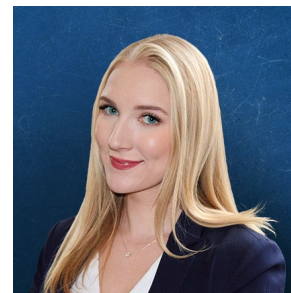
Tommaso Marasco



Jacob Verchereau



Kristen Peck



Patricia Whelan



Kimberly Gallo

Serving New York State Residents Through Offices in:

Albany, New York City, Ronkonkoma, Garden City, Hudson, Lake Placid, Utica

Also licensed in New Jersey, Massachusetts and Florida

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 (2024)

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

Better Facilities Cost More...

NEW 2024 MEDICAID ELIGIBILITY NUMBERS

Monthly Income

	2024	2023	Difference
Individual (at home)	\$1,732 +\$20	\$1,677 +\$20	\$ 55
Couple (both at home)	\$2,351 +\$20	\$2,268 +\$20	\$ 83
Community Spouse Income Allowance	\$3,853.50	\$3,715.50	+\$138
Institutionalized Spouse Income Allowance	\$ 50		

NEW 2024 MEDICAID ELIGIBILITY NUMBERS

Resources			
	2024	2023	Difference
Individual	\$31,175	\$30,182	\$ 993
Couple	\$42,312	\$40,821	\$1,491
Comm. Spouse Resource Allowance	\$74,820 ¹		

1 - \$74,820 (or the spousal share of 1/2 combined resources up to a maximum of \$154,140)

EXEMPT ASSETS

Some assets that are exempt:

- \$31,175
- Pre-paid burial
- Income producing business assets
- Life insurance – face value less than \$1,500!
- IRA in “Periodic Payment Status”- *major exception, include Roth IRA's*
- One Car

Non-Exempt Assets= EVERYTHING ELSE!

Your Home

- Exempt if you, a spouse or minor or disabled child lives there
- Transfer exemptions
 - Caretaker Child (2 yrs.)
 - Sibling with an Equity Interest (1 yr.)
 - Disabled Child
 - Spouse
- Intent to return home
 - Subjective Intent OK
- 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
- 30 month lookback – 2025?

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 (60 months) worth
- The total is then divided by the NYS divisor- which is dependent on where the facility is located

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



2024 NYS Medicaid Regional Rates

Region	Counties	2024	2023
New York City	Bronx, Kings (Brooklyn), NY (Manhattan), Queens, Richmond (Staten Island)	\$14,273	\$14,142
Long Island	Nassau, Suffolk	\$14,668	\$14,136
Northern Metropolitan	Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester	\$14,165	\$13,906
Western (Buffalo)	Alleghany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming	\$12,241	\$12,130
Northeastern (Albany)	Albany, Clinton, Columbia, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington	\$13,235	\$12,744
Rochester	Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, Yates	\$14,419	\$13,421
Central (Syracuse/Utica)	Broome, Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, Tompkins	\$12,196	\$11,726

The Medicaid Penalty

The penalty is a number of months of ineligibility



- ▶ For example, transfers of \$158,820 are discovered within past 5 years:
 $\$158,820 / \$13,325 = 12 \text{ months w/o Medicaid}$
- ▶ Penalty period begins when person is:
 1. Receiving Care in a Nursing Home
 2. Is otherwise eligible - \$31,175 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 **\$3,550/month of income**, **\$385,175 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 \$110,000 to a Medicaid Asset Protection Trust, and loans \$210,000 to Robert Jr., all on June 28, 2024



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	\$16,000
-Income	- \$3,500
Needed from Assets/ Month	\$12,500/mo.
Non-Exempt Assets	\$385,175
-Spend-Down	- \$34,000
-Resource Allowance	- \$31,175
At Risk Capital	\$320,000

Example (Cont.)

- ▶ Gift of 110K plus prior gifts of \$100K = \$210K Transfer
 - ▶ $\$210,000 / \$13,235 = 15.87$ month penalty
- ▶ Loan of \$210,000 (1/2) = Note payments of \$12,500/month for 16 months
- ▶ Apply for Medicaid July 1, 2024
 - ▶ Penalty runs 7/1/24 - 10/31/25
 - ▶ Note pays 7/1/24 - 10/31/25
- ▶ **Medicaid Eligible November 1, 2025**

What Has Bob Saved?

Bob's Remaining Assets



Trust	\$110,000
Allowance	\$31,175
Pre-Paid Contract	\$12,000
Personal Property	\$10,000
Prior Gift	\$100,000

- 11/1/25 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)

\$263,175 saved!



MARRIED COUPLES

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

Married Couples



Minimum Monthly Maintenance Needs Allowance (MMMNA)

- *Deals with income*

&

Community Spouse Resource Allowance (CSRA)

- *Deals with Assets*

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: \$3,853.50

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 \$154,140 *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

MEDICAID MONDAY WEBINARS

Home Care Applications

**Part 1:
Financial Eligibility
July 8 @ 12 PM**

**Part 2:
NYIA, MLTC & Immediate Needs
August 12 @ 12PM**

▶ **REGISTER:**
www.pierrolaw.com/events
▶ **(518) 459-2100**

Watch the Whole Series
www.pierrolaw.com/videos/



THANK YOU!

**Schedule a
Consultation for
You or your
Clients:
(518) 459-2100**