



Medicaid

(Medicaid is a complicated program with numerous exceptions to the basic rules. The following information provides just an overview.)

Medicaid is a joint federal and state program, established to pay for medical care for low income/indigent Americans. Strict income and resources guidelines must be met. Medicaid programs vary from state to state. The following information pertains to New York State only.

What Medicaid Covers

New York State Medicaid covers the costs of a wide range of services for income-eligible beneficiaries. These services can be grouped into three categories:

1. Community medical services
2. Home care
3. Institutional chronic care

Community medical services include the following:

- Services of physicians “furnished in other than a hospital room or hospital based clinic, except for ambulatory surgery”, dentists, nurses, optometrists, podiatrists and other health related personnel
- Out-patient or clinic services
- Sickroom supplies, eyeglasses and prosthetic appliances
- Rehabilitation services, including physical therapy, speech therapy and occupational therapy
- Laboratory and x-ray services
- Transportation when essential to obtain medical care
- Prescription drugs for non-Medicare beneficiaries
- Durable medical equipment

Home care services include:

- Nursing
- Home health aide services
- Physical, speech and occupational therapy
- Personal care services

- Care provided through a long-term home health care program (LTHHCP) popularly known as the “Lombardi” or “nursing home without walls” program.

Institutional services include:

- Care in hospitals
- Nursing homes
- Inpatient medical facilities

Some of these services and supplies (for example, adult diapers or transportation) require prior agency approval for coverage.

Eligibility Requirements

Financial Criteria:

1. Income – The Medicaid program places a maximum allowable income limitation on all applicants. Gross income (pre-tax) is countable for Medicaid purposes and includes Social Security, pensions, interest, dividends, etc. A person applying for Medicaid must produce documentation for all of his/her income for at least the previous three months.
2. Resources – Medicaid beneficiaries are limited in the amount of resources they are permitted to have. (Some resources are considered to be exempt.) Anything that is not an exempt resource and could be converted into cash is considered an available resource for Medicaid eligibility purposes. When applying for chronic care Medicaid, one must produce documentation of his/her resources going back at least 36 months.

How do I know if my income and resources qualify me for Medicaid?

The chart below shows how much income you can receive in a month and the amount of resources you can retain and still qualify for Medicaid. The income and resource levels depend on the number of your family members who live with you.

2012 Income & Resource Levels*		
Number in Family	Monthly Net Income	Resources
1	\$792+20 ¹	\$14,250
2	\$1159+20 ²	\$20,850

Income and Resource Levels are subject to yearly adjustments.

You may also own a home, a car, and other tangible personal property and still be eligible. The income and resources of legally responsible relatives in the household will also be counted.

¹ The first \$20 is forgiven.

² The first \$20 is forgiven.

Resources

Nursing Home Residents May Have

- \$14,250 savings and other liquid assets. This includes cash, checking accounts, IRA's, mutual funds, cash value of life insurance, etc.
- Personal belongings
- Cemetery lot and marker plus pre-purchased burial space and funeral services

Income

Nursing Home Resident:

- Resident keeps the first \$50 of his/her income for personal expenses. Resident transfers enough of remainder to spouse to bring the spouse up to maximum of \$2,841 per month. Remainder, if any, is applied as resident's share of cost of care.

Spousal Allowances (when one spouse needs nursing home care and the other remains in the community)

Nursing Home Resident's Spouse (the "community spouse") May Have:

- \$74,820 savings or other liquid assets, or one half of a married couple's resources up to a maximum of \$113,640, whichever is the greater
- Personal belongings/car
- Home used as a residence
- Cemetery lot and marker plus pre-purchased burial space and funeral services

The community spouse is allowed to retain a monthly income allowance of \$2,841 unless a greater amount is established by fair hearing or court order. If the community spouse has less than \$2,841, then income from the institutionalized spouse can be given to the community spouse to bring his/her income to that level.

Income belonging to the institutionalized spouse and/or the community spouse is treated as available only to the spouse whose name it is in. Income in the name of both is considered to belong one-half to each. Income with nothing to indicate to whom it belongs is considered to belong one-half to each spouse. The income of the community spouse is not deemed available to the institutionalized spouse except as indicated above.

If the community spouse has more than \$2,841 in income per month, then Medicaid will suggest that he/she contribute 25% of the excess over that amount to the institutionalized spouse's care. But Medicaid will not be reduced if this amount is not paid.

Citizen or legal resident – Proof of citizenship or legal alien status is required for Medicaid eligibility.

Residency – A Medicaid applicant must prove that he/she is a resident of NY. For Medicaid purposes, proof of residency means: 1) physical presence in NY and

2) the intention to make NY one's home. There is no minimum time period for establishing residency.

Documentation

Because one has to qualify to receive Medicaid, the Department of Social Services requires extensive documentation to prove eligibility. Documentation is required to prove:

- Identity
- Age
- Residence
- Citizenship
- Disability
- Marital Status
- Income (three months)
- Resources (36 months or more)

Time for Determining Eligibility & Date of Coverage

The Medicaid agency is required to make an eligibility determination within 45 days of the date of application.³ A written notice of acceptance or denial must be sent to the applicant. The process can take longer if Medicaid requests additional documentation.

If one is accepted on Medicaid, the notice should indicate the effective date for coverage. The coverage period is typically 3 months retroactive from the date of the application.

Spend down - Surplus Income Program

Some Medicaid applicants have a monthly income in excess of the "allowable income guidelines." In New York State, even though someone may not meet income eligibility guidelines, they still may be eligible for Medicaid. In this instance, if the applicant has incurred medical bills equal to or in excess of the amount that they are over income, they are eligible to have Medicaid pay their medical bills minus the surplus amount. The Medicaid recipient does not actually have to pay out the surplus amount. It is enough just to have incurred the medical expense.

The "Look Back" Period (for Long-term Care only)

As part of the effort to control government spending on entitlement programs, new federal Medicaid restrictions will make it harder for Americans to qualify for Medicaid-paid long-term care coverage by simply spending down the size of their estates through large gifts, most notably to children, other family members (other than one's spouse) and charities.

The look-back period during which any transfers of assets will be evaluated is now five years.

³ NY Comp. CODES R. & REGS. Tit. 18 § 360-2.4 (a).

Medicaid will conduct a financial review and will “look-back” 60 months from the date of application for Medicaid. Medicaid will require an individual to produce all financial documents. An examiner will review the documents to look for any transfer of assets. A transfer may or may not result in a period of ineligibility for Medicaid. It will depend on when the transfer was made and the amount of the transfer. Medicaid may choose not to questions gifts of under \$2,000.

Transfer of Assets

The transfer rules are designed to penalize individuals for transferring assets (income or resources) that could have been used to pay medical bills. If an applicant is eligible for Medicaid due to transfer of assets within the look-back period, before Medicaid will pay any benefits, that person must contribute an amount equal to those gifts toward his/her nursing home care. As an example, a client gifted \$100,000 to his children in 2007 and then applied for Medicaid in 2008. The \$100,000 reduced his assets enough to qualify him for Medicaid, so the law requires that he pay the first \$100,000 of his care, out of pocket, before Medicaid benefits will pay. Persons using the gifting strategy to attempt to qualify for Medicaid will have to plan very carefully.

Because of the complexity of the *transfer of asset* rules, we strongly encourage an individual to consult with an attorney before a transfer is made.

Spousal Refusal

Spouses have a legal duty to support each other. However, when a spouse refuses to provide financial support to the applicant spouse, Medicaid initially cannot consider the income and resources of the refusing spouse. In this instance, the non-applicant spouse must write and submit to Medicaid a “spousal refusal letter” which indicates the spouse’s refusal to contribute to the cost of the medical bills of the applicant spouse.

Once informed of the “spousal refusal,” Medicaid must base its eligibility determination solely on the applicant’s income and resources. Medicaid has the right to sue the refusing spouse based on the spouse’s legal duty to support.

Notice of Fair Hearing and Denials

Any applicant who is denied Medicaid has the right to a fair hearing by an Administrative Law Judge. A written decision must be rendered within four to six weeks of the hearing.

Burial funds

Medicaid allows a \$1500 per person burial allowance. In addition you may pre-pay all funeral expenses provided the funds are placed in an irrevocable (unchangeable) burial trust arranged by a funeral director. Funeral homes are familiar with this provision and can assist you. Keep in mind, the unused funds, if any, are non-refundable and will go to Medicaid to partially reimburse it for benefits that have been paid out.

Lifespan Resource

Lifespan can give you current Medicaid income/resource guidelines. And call us at 244-8400 for personalized guidance regarding your specific long-term care financing issue. There will likely be a charge for this service.

Note: All situations are different. Due to the complexity in the law and ever changing Medicaid regulations, please consult with a Lifespan representative or elder law attorney. Government rules and regulations are subject to change.