



HOW TO FINANCE LONG TERM CARE

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Disclaimer

- This is an overview – not a complete statement of the law and is not to be considered legal advice
- If you have any questions, contact
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Paying for Long Term Care

- Long Term Care Insurance
- Medicare/Medigap
- Medicaid

Long Term Care Insurance

- Private LTC policies can provide assistance with home care or nursing home care
- Newer hybrid policies combine LTC benefit with death benefit if LTC benefit not fully redeemed
- NYS Partnership Policies are a way to combine private LTC insurance with later Medicaid coverage

Issues with LTC Insurance

- Insurability
- Premium Affordability
- Limits on coverage

Medicare

- Medicare:
 - Eligibility: Most Seniors over **65**
- Coverage Divided into Parts:
 - A: Hospital Care
 - B: Medical Insurance
 - C: Medicare Advantage Plan
 - D: Prescriptions

Part A Nursing Home Benefits: 100 days?

- Days 1-20 fully paid, as long as doctor determines you need rehabilitation, and the stay is not deemed purely “custodial”
- Potential for 80 more partially paid days at a nursing home, but co-pay of \$176/day
 - Early termination if rehabilitation services not leading to any “improvement.” Recent federal settlement to prevent this but not yet implemented.
 - Coverage also terminated if patient deemed “recovered”
- **CAUTION:**
 - **Need qualifying hospital stay to trigger any coverage of NH**

Observation Status: The New Grey Area of Medicare Part A Coverage

- Hospitals being surcharged by the Center for Medicare Services for admitting patients, rather than “observing them”
- New Observation Status Departments, where patients not admitted
- Leads to coverage denials of nursing home stays and higher costs to patients for hospital expenses not covered by Medicare Part A since not “inpatient”

Medicare Part B Coverage

- Medical services necessary to treat a disease or condition
- Clinical research
- Ambulance services
- Durable medical equipment
- Mental health
- Second opinions
- Limited outpatient prescriptions
- Preventive screenings and wellness visits

Very limited home care benefit (roughly 8 hours per week, post surgery, for wound or other skill needs, lasting 3-6 weeks in duration)

Medigap Supplemental Policies

- Help defray co-pays and deductibles relating to Medicare coverage
- Do not provide any additional coverage for LTC services not covered by Medicare

Medicaid

- Broader Range of Services Covered, including:
 - Up to 24 hours per day of Home Care
 - Unlimited amount of Nursing Home Care coverage

Medicaid

- Applications and rules vary depending on what coverage a person needs:
 - Community Care (covers home care)
 - Institutionalized Care (covers Nursing Home care)

- “[N]o government agency has the right to complain that **middle class people choose to voluntarily inflict poverty on themselves**, when it is the government itself which has established the rule that poverty is a prerequisite to the receipt of government assistance in defraying the costs of **ruinously expensive but absolutely essential medical care.**”

- *In re Shah*, 257 A.D.2d 275 (2d Dep’t 1999), order aff’d, 95 N.Y. 2d 148 (2000) (emphasis added).

NY Medicaid Transfer Rules

- Community Medicaid/ Home Care Services
 - No look-back period for transfers*
 - No penalties for uncompensated transfers*

*Effective October 1, 2020, NY Medicaid will begin implementing a **30-month (2 ½ Year)** look-back period for long term home care applications. With this new lookback period, it will become even more important for individuals to consider Medicaid planning and the proactive transfer of assets prior to a care need arising.

NY Medicaid Transfer Rules

- Institutional Care
 - **5** year look-back period for uncompensated transfers
 - Non-exempt transfers create penalty period that does not start to run until the person is receiving institutional care

Medicaid Community Care

Assets

- One person household:
 - **\$15,750** plus exempt assets
- Two person household:
 - **\$23,100** plus exempt assets

Income

- One person household:
 - **\$875 + \$20**
- Two person household:
 - **\$1,284 + \$20**

Medicaid Institutional Care

Assets

- Applicant Resources:
 - \$15,750
- Community Spouse Resource Allowance:
 - \$74,820 up to \$128,640
 - May be higher if request hearing and receive judicial approval

Income

- Applicant Income:
 - \$50
- Community Spouse Income:
 - \$3,216.00

NY Medicaid (Temporarily) Exempt Assets

- House (maximum of \$893,000 value) 
- Car (unlimited value) 
- Contents of Household (unlimited value)

Caveat: Although these are exempt assets for determining eligibility, most of these assets could be vulnerable to an estate recovery claim by NY State

NY Medicaid Exempt Assets

- Life Insurance (\$1,500 in cash value exempt if no burial account funded)
- Funeral/Burial Exemptions
 - Prepaid funeral trust (no limit, but should not be overfunded as unused portion must be returned to Medicaid)
 - Burial plot/vault exempt
 - Burial account funded with no more than \$1,500. Account must be separate and specifically designated as a burial allowance
- IRAs as long as in pay-out status (i.e., MRD taken yearly)

How to Preserve Assets

1. Outright Gifts
2. Asset Protection Trust
3. Pooled Trust to Shelter Income
4. Spousal Refusal
5. Exempt Transfers

Outright Gifts



Pros

- Simple

Cons

- Negative Tax Consequences (especially for a house)
- No Asset Protection:
 - Divorce
 - Litigation
 - Death
- No Guarantee to get it back

Irrevocable Income-Only Trust

- Pros:
 - Principal would be protected from creditors
 - Immediately upon transfer, assets would not count as a resource and the clock starts “ticking” for the look-back period.
 - Trust Income still available to support H & W
 - Trust assets remaining at death can pass automatically to named beneficiaries AND receive step up in basis to date of death value

Irrevocable Income-Only Trust

- Cons:
 - Initial burden of transferring assets into trust
 - If either spouse needs Long Term Medicaid Home Care benefits after October 1, 2020 and within the next 30 months (2 ½ years), the trust may need to be unraveled and then an emergency Medicaid plan would need to be developed.
 - If either spouse needs Institutional Medicaid within the next 60 months (5 years), the trust may need to be unraveled and then an emergency Medicaid plan would need to be developed.

What Is A Trust?

- A separate legal entity
 - Can be assigned a tax ID number, but not always
 - May be obligated to file a tax return if all income not distributed
- Corpus: trust assets
- Trustee: the fiduciary and manager of all trust assets
- Creator: trustor, grantor or donor
- Beneficiaries/Remaindermen: designated recipients of income and principal

Why Use a Grantor Trust

- Medicaid Planning
- Protect a spendthrift beneficiary
- Beneficial tax treatment
 - Preserve Enhanced Star and VA real estate tax rates
 - Step up in basis upon death reduces capital gains tax on sale
 - Income taxed at the grantor's individual tax rate
- Allocate income and principal to different classes of beneficiaries
- Avoid Probate
- Protect minor or disabled beneficiaries

House Example



- Transfer Outright to Children
 - Vulnerable to children's creditors
 - Children take on the cost basis of parents: price of initial purchase plus cost of any improvements
- Transfer to Children with Reserved Life Estate
 - If house sold during Grantor's lifetime, generates value to parents – could lead to Medicaid ineligibility

House Example: Outright Gift

- Parent's Initial Purchase Price: \$50,000
- Current FMV: \$650,000
- Cost Basis for Children: \$50,000
- Capital Gains: \$600,000
- 15% Tax: \$90,000

House Example: Transfer to Trust

- Parent's Initial Purchase Price: \$50,000
- Current FMV: \$650,000
- Cost Basis for Trust Beneficiaries
Upon Grantor's Death: \$650,000
- Capital Gains: \$0
- 15% Tax: \$0

House Example: Transfer to Trust

- Children receive date of death valuation on house as cost basis, so only capital gains owed is on increase post date of death
- Grantor given right to elect a legal life estate in trust
 - Legally obligated to pay real estate taxes
 - Continues to qualify for Enhanced Star and VA real estate tax reductions
 - No value to Grantor if right released, because house fully owned by Trust

Revocation under New York Law

- EPTL allows for revocation of an irrevocable trust with the consent of all persons with a beneficial interest: EPTL 7-1.9
- Requires trusting family relationships

Practice Tip: Explore family dynamics and make sure that you create a trust that has the ability to limit interested parties to those with legal capacity

Additional Medicaid Planning Strategy: Life Estate Purchase

- Purchase Life Estate in Home
 - Medicaid Applicant (MA) can purchase a life estate interest in the home of a caregiver child
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 - As long as Applicant lives in home 1 year prior to receiving care, then does not get penalized
 - Potentially protects 100% of assets sheltered
- Cons:
 - If apply for institutional care within less than one year, then does not qualify as an exempt transfer

EMERGENCY MEDICAID PLANNING

- It's never too late to protect assets from the cost of a nursing home

Increase Value of Exempt Assets

- Purchase pre-need funeral contract
- Purchase a new car for a well spouse
- Make home improvements if equity under \$893,000
- Place all Qualified Retirement Assets in pay-out status

Spousal Refusal

- Pros:
 - Applicant can transfer all assets to spouse and qualify for Medicaid
 - Spouse will not have to relinquish rights to any assets
 - Even if the refusing spouse has to repay, the amount to be repaid is the lower rate paid by Medicaid, instead of the higher private paid rate for home care or nursing home care

Spousal Refusal

- Cons:
 - Spouse may be sued in Court by NY State
 - With budget constraints, this is happening more frequently
 - Could jeopardize spouse's eligibility for future Medicaid benefits unless further planning can be done

Alternative to Spousal Refusal

- Applicant spouse transfers all assets to well spouse
- Well spouse loans all assets to trusted person, and applicant spouse qualifies for Medicaid
- When the loan is repaid, well spouse makes transfers
- On recertification, Medicaid only asks for resources of the applicant spouse, not the well spouse

Additional Emergency Medicaid Planning Strategies

- Gift/Loan Strategy for a single applicant:
 - Gift 50% of assets
 - Loan 50% to responsible person
 - Person then qualifies financially for Medicaid because loan is an income stream not an asset
 - Penalty period begins to run on 50% gifted when receiving institutional care and Medicaid application submitted
 - Loan income covers cost of care during penalty period

Gift/Loan Example

\$500,000

- \$250,000 Gift
 - 25 month penalty period
- \$250,000 Loan
 - Pays for care during penalty period
 - Note: actual cost of care can exceed the loan amount
 - Precise calculations of income, assets and prior gifts to minimize penalty period and overage performed

Gift/Loan

- Cons:
 - Lose 50% of assets to health care costs
 - Risk loan not being repaid

Additional Emergency Medicaid Planning Strategies Continued

- Personal Care Contracts:
 - Transfer assets to caregiver in exchange for performance of services
 - Contemporaneous log of service required
- Cons:
 - Potential Income Tax owed by caregiver

NY Medicaid Home Care Planning Summary

- Take Advantage of Some Exempt Asset and Transfer Rules
- Create Irrevocable Income-Only Trust
- Use Pooled Supplemental Needs Trusts for Excess Income

NY Medicaid Institutional Planning Summary

- Emergency Medicaid Planning
 - Increase Value of Exempt Assets
 - Review Spousal Refusal Option
 - Personal Care Contract
 - Gift/Loan Strategy

Thank you

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