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**Focus on Disabled/Age 65+/Blind
Borchard Foundation Training Series – Part IV**

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Roadmap

- Disabled, Aged (65+), and Blind Budgeting Overview
- Resource Rules for DAB, Including Transfers
- Income Rules for DAB, Including Overview of Deductions
- How Income is Budgeted – Singles vs. Couples, Spousal Refusal
- Basics of Medicaid “Spend-down” and Tips for Reducing It
- Other Strategies for Reducing Spend-down

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Medicaid

Who pays for it?	Federal Centers for Medicare and Medicaid Services (CMS), New York State Department of Health (DOH), Local Department of Social Services (LDSS)
Who administers it? (Starting January 1, 2014)	For most Medicare beneficiaries and waiver enrollees: LDSS (NYC Human Resources Administration in NYC) For most people without Medicare: The New York State of Health Exchange/Marketplace https://nystateofhealth.ny.gov/
Who gets it?	New Yorkers of limited means
Eligibility	<ol style="list-style-type: none"> 1. Category 2. Financial Eligibility: Income 3. Financial Eligibility: Resources 4. Immigration Status 5. Residency
What do you get?	Comprehensive health insurance coverage, including long-term care services (home care and nursing home care)

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Since the Affordable Care Act, there are 2 Basic Categories:

MAGI

- Everyone under 65 – including disabled *if not on Medicare**
- Have Medicare, under or over age 65+ if they are a parent/caretaker relative*
- Pregnant Women and Children

Non-MAGI

- Aged 65+, Disabled, Blind “DAB”
- Spend-down
- See next slide for other non-MAGI groups

*Can be MAGI even if they have Medicare, if they live with their own child, grandchild or another relative or step-relative, under age 18 or under 19 if a full-time student . 2013 ADM-03

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What do we mean by “non-MAGI”?

- Categories whose Medicaid eligibility is determined using the pre-ACA rules.
- Main non-MAGI category is DAB – Disabled, Aged 65+ and Blind, who are excluded from MAGI Medicaid under the ACA (with some exceptions)
- Income limits are often lower than MAGI Medicaid but non-MAGI Medicaid allows:
 - **spend down** to the income limit
 - **spousal refusal**
 - substantial disregards including use of a **supplemental needs trust**
- **Resources count** in most non-MAGI categories
- Eligibility is month to month, not continuous



SSI vs. Disabled/Aged/Blind (DAB)

	(Disabled-Aged-Blind) (“DAB”) “SSI-Related”	SSI Supplemental Security Income
Who	Age 65+ OR Disability – any age	
Asset limit	\$14,850-Single \$21,750 Couple	\$2,000- Single \$3,000 - Couple
Income limit* – Monthly	\$ 825 –Single \$1,209-Couple	\$ 820 – single \$1,204 - Couple

DAB called “SSI-Related” because they use the **same rules for counting income and resources as SSI**, discussed in following slides, including Household Size, but have different LIMITS on income and resources.

The Medicaid eligibility rules for DAB cannot be stricter than the SSI rules, but they can be more generous – NYS has a higher asset limit for DAB and other more liberal rules (ie. In-kind payments for rent are not “income”)



Non-MAGI: Disabled, Aged 65+, Blind

- People who are **disabled, age 65+, or blind (DAB)** but do not meet the financial eligibility criteria for SSI, can still get Medicaid.
- **DISABILITY STATUS:**
If applicant under 65 has not been determined disabled by the Social Security Administration (SSA), they can ask Medicaid to make a disability determination. Medicaid will use the same criteria for establishing disability as SSA.
- See Medicaid Disability Determinations - NYS Forms & Procedures at <http://www.wnylc.com/health/entry/134/>



RESOURCES



Resource Exclusions for Age 65+, Disabled

EXCLUDED ASSETS -Next slides will review rules for:

- Home
- Joint accounts
- Retirement accounts
- Life Insurance & Pre-Paid Funeral Arrangements
- Less common exemptions

See citations at [Resource Disregards -
http://www.wnylc.com/health/download/3/](http://www.wnylc.com/health/download/3/)

STRATEGIES OR EXCESS ASSETS

- Asset Transfers– Transfer Penalty, Exceptions to Transfer Penalty
- Spending Down Money
- Resource Spend Down



Home

- Home is exempt as long as applicant or spouse lives there or, if temporarily absent, expresses an intent to return home.
 - EQUITY LIMIT of \$828,000 **only if** seeking long-term care/home care. Otherwise no limit.
 - i.e., no equity limit if not seeking long-term care
 - **BUT NO EQUITY LIMIT** if spouse, minor or disabled child lives in the home
- Even though home is exempt, must plan for the future:
 - **If one DIES owning the home**, Medicaid has a **claim against ESTATE** for cost of care paid after age 55
 - Exceptions: surviving spouse, disabled child of any age, or minor child under age 21 (this exception applies to ALL assets in Estate)



Home – If placed in nursing home

- **If one goes into a nursing home owning the home**
Medicaid may place a **LIEN** on the home.
 - Exceptions – No lien if occupied by: a spouse, disabled or minor child under 21, or a sibling with equity interest in the home who lived there > 1 year before NH admission.*
 - Lien may not be executed if any of those relatives live in home or if a “caretaker child” lived in home for 2 years before NH admission.
- Nursing home admission is presumed to be permanent. Because not living there, home is no longer exempt unless occupied by one of the protected relatives. Must execute an “intent to return home” form (MAP-259H in NYC) so that home retains exempt status. However, that does not prevent placement of the lien.

Joint Accounts

Joint Bank accounts are commonly used for convenience or estate planning purposes

- Medicaid assumes that ALL of the money in the account belongs to the applicant
- Applicant can rebut the presumption by showing that the joint owner deposited some/all of the money and it was not a gift to the applicant.
- Taking applicant’s name off account is considered a **transfer of assets** if later need nursing home care
 - But transfers between spouses are OK

Investment accounts are different – applicant deemed to own pro-rata share with co-owner(s)

Retirement Accounts – are they an asset?

- Any account that has special tax treatment to encourage saving for retirement - IRA, Keogh, 401(k) / 403(b)
 - **Retirement account of applicant is exempt as a resource only if** it can be put in payout status (meaning client can take periodic distributions without a tax penalty) and regular distributions are taken. Payout is required even if the applicant is under age 70-1/2 so IRS does not *require* distributions.
 - If client can't take distributions without a tax penalty (ie age 50 and not disabled), then IRA is counted as an asset, minus the amount of the tax penalty. GIS 98 MA/024
 - But distributions are not required if you'd have to quit your job to withdraw money.
 - Payout *not required* in Medicaid Buy-In for the Working Disabled!
 - Ineligible spouse does not have to take distributions – IRA is exempt for community Medicaid for applicant. *DOH GIS 06 MA/004 - Treatment of Community Spouses' Retirement Funds*
- GIS 98MA/024; GIS 16 MA/010–Life Expectancy Table update;

Retirement Accounts - Income

- The periodic distributions from an IRA or other retirement accounts are counted as income
- Distributions must be actuarially sound – based on life expectancy
 - > age 70.5 Use IRS “Required Minimum Distribution” tables
 - < age 70.5 Use Medicaid life expectancy tables*
 - May take annually rather than monthly – will pro-rate as monthly income
- **Irregular withdrawals** could cause the entire IRA to count as an asset because you are treating it as savings, not retirement. MRG pp. 135-137, 316
- Distributions can be put in a pooled trust!

MRG pp. 135-137, 316, cites on prior slide

Life Insurance and Funeral Arrangements

- Medicaid allows some pre-paid arrangements for funeral to be exempt – for the applicant, spouse, and certain other relatives.
- **BURIAL PLOT** – exempt
- **LIFE INSURANCE** – exempt if cash value < \$1,500. If > \$1,500 the excess amount counts toward Resource limit. May borrow loan against cash value to reduce countable amount.
- **PRE-PAID IRREVOCABLE FUNERAL AGREEMENT** allowed in any reasonable amount. Good way to spend down excess assets.
 - May also set up for spouse, children, parents & their spouses.
- May have **\$1500 burial fund** too, unless the pre-paid funeral agreement includes \$1500 or more worth of “non-burial space” items (what Medicaid considers extras – clergy, hearse, funeral service costs)
- **Rules are complex. See fact sheet with statutory cites at <http://www.wnyc.com/health/entry/36/> and 11 OHIP/ADM-4.**

Less Common Resource Exemptions

- **Holocaust Reparations** <http://www.wnyc.com/health/entry/65/>
 - Accounts with balance less than total amount of Holocaust reparations received in lifetime are exempt
 - *Inherited* Holocaust reparations are also exempt (change 12/2014 – see <http://www.wnyc.com/health/entry/65/>)
- Personal injury awards for nursing home negligence are exempt. New York Public Health Law § 2801-d (5).
- **Time-limited disregards**, such as retroactive Social Security benefit lump sum disregarded for 9 months. 18 NYCRR 360-4.6(b)(2)(vi), MRG p. 323; some VA retro benefits disregarded.
- **ABLE accounts** (new) – For those certified disabled before age 26, will allow people on SSI and/or Medicaid to accumulate up to \$100,000 in gifts from donors – who *together* can give up to annual gift tax exclusion (\$14,000). New Article 84 of Mental Hygiene Law enacted 12/2015, eff. 4/1/16 but not yet implemented.
- **Trusts** – Complicated! Many kinds, some are exempt.

What to do with Excess Assets – (1) Transfer assets

1. **NO TRANSFER PENALTY** for Community Medicaid! Eligible for all home care, Assisted Living Program, hospital & outpatient care the 1st of the month following the month in which assets are transferred.
2. However, if enter a **nursing home** in next 5 years, a non-exempt transfer will trigger a **transfer penalty** – a delay in Medicaid paying for nursing home care. Must be careful with transfers even if seeking community Medicaid/MLTC.
3. **Length of transfer penalty.** # months = amount transferred divided by regional average NH cost. NYC in 2016 = \$12,029 (see next slide).

EX: $\frac{\$120,290}{\$12,029} = 10$ month penalty
 Medicaid won't pay for nursing home care

Transfer rules are from the Deficit Reduction Act of 2005. Cites and more at
<http://www.wnyc.com/health/entry/38/>
<http://www.wnyc.com/health/download/37/>

Medicaid Regional Rates in NY

REGION	2016 RATES	2015 RATES
Long Island	\$12,633	\$12,390
New York City	\$12,029	\$11,843
Northern Metropolitan	\$11,768	\$11,455
Rochester	\$11,145	\$10,660
Northeastern (Albany)	\$9,806	\$9,414
Western (Buffalo)	\$9,630	\$9,442
Central (Utica)	\$9,252	\$8,768

Rate used: depends on where NH is located or the region in which the individual resides, if not institutionalized. **Out of state facilities:** use the region closest to the location of the facility. **If applying for retro coverage,** and retro coverage would begin in the previous year when a different rate was in effect, use the rate in effect during the *month of application*.

2016 rates at GIS 15 MA/023 - Policy Change for Determining the Appropriate Medicaid Regional Rate for Calculating a Transfer Penalty Period and the Regional Rates for 2016. Later rates at https://www.health.ny.gov/health_care/medicaid/publications/index.htm

Exceptions to Transfer Penalty

Applicant < 65 and Disabled

- ❖ **Supplemental Needs Trust, whether individual or pooled**
- ✓ SNT for someone else, including a family member, who is < 65 and disabled
- ✓ Child who is certified blind or disabled of any age
- ✓ Spouse, who can do a spousal refusal, or, if using MLTC, can keep up to \$74,820 with Spousal Impoverishment protections
- ✓ For purposes other than to qualify for Medicaid
 - E.g., healthy 60-year-old gave child a gift; did not know would get hit by bus the next day.

Applicant ≥ 65

- All of the same exceptions apply in the list for < 65 **EXCEPT** the 1st one.
- Transfers into a pooled trust > 65 have a penalty if enter a nursing home in next 5 years, and substantial funds remain in the trust because did not spend the monthly deposits and they accumulated. [GIS 08 MA/020](#) (Situation 2)
- May NOT transfer into an individual SNT > 65 at all!

What to do with Excess Assets (2) Spend the Money on Yourself

Spend down the excess assets to the Medicaid limits – if spend \$\$ on one's own expenses, not as a gift for someone else → no transfer penalty:

- Pre-pay for funeral agreement, burial space.
- Pay down mortgage, pay back loans.
- Home improvement, buy stuff, travel.
- Pre-pay rent, utility bills. Keep receipts!
- Pay for medical care – home care, etc.

Must spend down to Medicaid limit in Month A, then apply for Medicaid in Month B.

What to do with Excess Assets

(3) Resource Spend-down

- DAB applicants can use Spend-down if **Resources** are over the Medicaid limit—not available in other Medicaid categories.
- With Resource Spend-down, you may only spend-down on Medical Care, not pay rent or buy other things—so if Medicaid is not needed until the following month, it is always better to do other Medicaid planning, i.e. transfer assets (with legal advice), spend resources on other needs.
- Past unpaid or paid bills can be applied to offset the resource spend-down, just like excess income.

Example: Spending Down Excess Resources

- Jerry is 64, and receives Social Security Disability, but not yet Medicare. He has \$16,850 in the bank. He has a \$1500 burial fund and pre-paid funeral agreement. Jerry owes \$2,000 in back rent. He needs Medicaid for the current month. His resources are \$2000 over the \$14,850 resource limit (2016).
- If he applies this month, he will have a \$2000 “resource spend-down.” Medicaid will pay current medical bills above \$ 2000.
 - Even though he owes \$2000 in back rent, he can only spend down the excess savings on *medical bills*. Jerry should spend down this month on rent, BEFORE he applies for Medicaid next month.

Is Taylor Eligible for Medicaid re Assets?

- Taylor is 65 and has SAVINGS of \$35,000 in liquid savings plus an IRA of \$75,000.
- **IRA** is not counted as an asset if in distribution. If he was not taking distributions because under age 70 ½, he must start taking distributions according to life expectancy tables.
- **SAVINGS** of \$35,000 exceed single limit of \$14,850 by about \$20,000.
Options:
 - **Pre-paid funeral arrangements** for self, parents, or siblings
 - **Pre-pay rent or other expenses**
 - **Transfer excess resources** –
 - Do any exceptions to penalty apply? Does client have a spouse or disabled child to transfer to? Or another disabled person < 65 to transfer funds into a supplemental needs trust?
 - Can't transfer to pooled trust without incurring a transfer penalty if seeks Medicaid for Nursing Home care in next 5 years.
 - Might decide to take risk of transfer penalty – client's choice.

Taylor continued – Impact of transfers on Nursing Home Eligibility

- Even with a transfer of excess assets, Taylor can get community-based care under Medicaid (MLTC, ALP) in the month after the month of the transfer.
- **LOOKBACK** - If Taylor needs nursing home care in the next 5 years, must submit a new Medicaid application with 5 years of financial statements upon entering the NH.
 - The Medicaid office (DSS) identifies transfers within the preceding 5 years. It will find the \$20,000 transfer and, if no exceptions apply, impose a transfer penalty.
 - In NYC in 2015 = Penalty rate is \$12,029. EX: \$20,000 transferred in NYC = 1.7 months Medicaid won't pay for nursing home care.

WARNING: IF PERSON RECEIVES SSI

- If individual receives SSI – federal income subsidy for poor people who are disabled or age 65+ and receive little or no Social Security of their own, **there IS a transfer penalty that will STOP SSI benefits for up to 3 years**
 - The Medicaid they automatically receive through SSI will terminate but they should receive a “Stenson” notice allowing them to apply for Medicaid under Non-MAGI category, with no interruption.
- If an SSI recipient receives a lawsuit settlement or lump sum –
 - **If under age 65** MAY put funds into a **supplemental needs trust** – individual trust or pooled trust. Will have NO transfer penalty.
 - **If over age 65** a transfer into a supplemental needs trust will trigger a transfer penalty and **STOP SSI** for up to 3 years, depending on amount transferred. Medicaid can continue for that period.
- **Any non-exempt transfer at ANY AGE can stop SSI for up to 3 years.** See <http://www.wnylc.com/health/entry/5/> - p 27 et seq.



INCOME

Income

- Income is any payment received from any source
 - Regular - Weekly (example: paycheck), monthly (example: Social Security), annually (example: IRA distribution)
 - Irregular/Infrequent - Example: Royalties, gifts, inheritances
- Income is income in the month received
 - Lump sums from *retirement accounts* are an exception (see “retirement accounts”)
- All Medicaid categories start by counting gross income, then allowing exclusions or deductions to reach net countable income
 - **Each category of Medicaid has different exclusions or deductions**
- Net countable income is then compared to the income limit for the applicant’s household size

MAGI		DAB
Limit – single	\$1,354	\$825
Gift or inheritance	Not counted	Cash gifts COUNT as income. Donor may pay expense in-kind (direct payment for rent, utilities)
Workers Comp	Not Counted	COUNTS as income
Earned income	Gross income counts, except cafeteria plan contribution	HALF of gross earned income is disregarded, after first deducting \$65 of monthly income
VA benefits	Not counted	Count as income.
Workers Comp	Not counted	Counted
Structured settlements*	Not counted	Count as income.
Income, dividends	COUNT	Do not count (community Medicaid only—count for institutional!!!)
IRA distributions, pensions, Social Security	COUNT	COUNT

Income Deductions/Exemptions

- **Deduct from gross monthly income**
 - \$20 from unearned income
 - first \$65 and ½ of the remainder of earned income
 - Interest and dividends do not count for community Medicaid
 - Holocaust reparations do not count
 - Health insurance premiums deducted
 - Medicare, Medigap, or any other supplement
 - Dental insurance
 - Note: if applicant is in an enhanced Part D plan, and will qualify for Extra Help for even one month during the year, only that portion over the “benchmark” premium will count as an income deduction
- **IRA's** – distributions count as income (must take distributions otherwise IRA counts as a “resource” unless in MBI-WPD)
 - no tax penalty for distributions if person “disabled” even if under age 59-1/2
 - Even if IRS doesn't require distributions (e.g., Roth IRAs), Medicaid does if you want principal to be exempt

BUDGETING

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How to Calculate the Spend-Down for Disabled/Aged/Blind (Single)

\$ 1500.90	GROSS Social Security*
- 104.90	Part B premium (2016)
- 20.00	Disregard for all DAB cases
- <u>150.00</u>	Medigap premium/ month
- 274.90	Total Deductions
1226.00	NET MEDICAID INCOME
- 825.00	Medicaid Income Level for One (2016)
401.00	SPEND DOWN

* Before deduction of Part B premium



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How to Calculate the Spend-Down for Disabled/Aged/Blind (Couple)

\$ 1500.90	GROSS Social Security – Applicant
+ 1000.00	Gross Social Security – Spouse
2500.90	GROSS INCOME
- 209.80	2 x 104.90 Part B (2016)
- 20.00	Disregard -DAB cases
- <u>300.00</u>	Medigap premium per mo.
- 529.80	Total Deductions
1971.10	NET MEDICAID INCOME
- 1209.00	Medicaid Income Level for 2 (2016)
762.10	SPEND DOWN



Whose income is counted?

- On the last slide, we counted both spouses' income and compared it to the Income Level for TWO.
- Medicaid has complicated rules for deciding when you count BOTH spouse's income and use the income level for TWO, or just use ONE spouse's income and use the income level for ONE.
- These are known as family or household size rules. Cites below and basic rules follow.

MRG 232 , 18 NYCRR 360-4.2; Chart at <http://www.wnylc.com/health/download/96/>



DAB Budgeting – Household Size

BASIC RULES for DAB*

1. DAB households are **always 1 or 2**, never more (unlike MAGI and some other non-MAGI categories).
2. Single adults are ALWAYS household size of ONE
3. **Children** never count toward DAB Adult's household size (single or couple) and their income never counts.
4. **PA or SSI recipients are invisible**- not counted as part of household size AND their income not counted
5. Disabled child < 18 is always **ONE** but parent's income is "deemed" available – complicated rules. Child may choose MAGI instead if more favorable.



Married people - Household 1 or 2 ?

- Married individuals who live apart from spouse are **ONE**
- SSI-related adult who lives with a non-SSI-related spouse is **ONE** if the non-SSI-related spouse's income is **less than** the difference in income limits for a household of one and household of two (or \$384 in 2016). The non-SSI-related spouse's income does not count at all
 - These applicants are budgeted as a household of **two** for **RESOURCES**
 - Example: Sam, age 68, is married to Pat, age 62. Pat is not disabled so is "non-SSI-related." Sam is "SSI-related." Sam's Social Security income is \$1,220. Pat never worked and has no income. Since Pat's income is less than \$384, Sam's household size is **ONE**. Sam's income limit is \$825 so Sam will have a spend-down (would have none if could use **TWO**)
 - Pat is MAGI and Eligible (MAGI income limit for 2 = \$1843)
- If live with children < 18, it is more complicated. See <http://www.wnyc.com/health/download/96/>, MRG 231-233

Spousal Refusal

- If under Household size rules, both spouses' income must be counted, there is a way out. If the non-applying spouse does not need or qualify for Medicaid, client may apply alone if spouse "refuses" to make income/resources available for medical care.
- With Spousal Refusal, budget is the same as the Single Budget Example – Spend down is \$401 instead of \$762.10
- County has right to sue "refusing" spouse for support. Each county/NYC has different policy on who they sue.
- NYC won't sue if assets under \$74,820, income under \$2,980.50/mo.
- If Spouse needing Medicaid needs Managed Long Term Care, may not need spousal refusal because of Spousal Impoverishment protections – discussed later.
- NYC form can be used as a model – posted at <http://wnyc.com/health/download/66/>

Excess Income = Spend-down

- The net income after all deductions are taken is called “excess income” or a spend-down.
- But this does not make your client ineligible for Medicaid.
- Medicaid eligibility should be approved but subject to an income spend down.
- This means that the consumer has **provisional eligibility**, which is not **activated** until she has met her spend-down.
- Generally, she must incur medical expenses equal to the spend-down. These rules are explained in next slides.

SPEND DOWN BASICS

What is Spend-Down?

- Spend-down is like a monthly insurance “deductible.” Deductibles are typically met only once per year, but remember that Medicaid eligibility is month-to-month.
 - A.K.A. “excess” income or “surplus” income.
- Spend-down allows people whose income exceeds the Medicaid limit in a given month to *become* eligible by applying medical bills they incurred in the past or they now incur to offset the excess income.



For more info see 96-ADM-15* and more info on spend-down at <http://wnylc.com/healthrenty/46/>
 Posted at http://www.health.state.ny.us/health_care/medicaid/publications/pub1996adm.htm

Meeting Spend-down: which bills?

- Medical bills **incurred** count toward the spend-down.
 - Date “incurred” is date of service, not the date that the bill is issued.
- WHOSE BILLS? Medicaid recipient’s bills AND
 - The spouse’s bills, even if spouse is not applying for Medicaid
 - But if the spouse does a “spousal refusal,” then you may not use his or her bills.
 - Bills for any dependent child under 21
 - TIP: if there is a dependent child, screen for MAGI budgeting, which could be more favorable



18 NYCRR 360-4.8(c), NYS DOH MRG 241
http://www.health.ny.gov/health_care/medicaid/reference/mrg/

Meeting Spend-down: which bills?

- “Incurred” medical bills can be paid or **unpaid**
- Paid bills include bills paid by EPIC or ADAP expenses – more later
- Unpaid bills include medical bills not covered by any insurance (e.g., Medicare deductibles and coinsurance and Medicaid copayments)
 - Services not covered by Medicaid that are medically necessary:
 - Chiropractors, podiatrists, drugs a Part D plan won't cover, bills of doctors who don't take Medicaid
 - Over the Counter Items – (vitamins, lotions) with a doctor's note explaining medical necessity & receipts

Meeting spend-down: Past bills?

- A new applicant may use old medical bills to meet their spend-down when applying for Medicaid.
 - How old depends on whether the bills are PAID or UNPAID.
- **PAID** bills for services provided and paid for in the **3 calendar months** before the month of application or during the application can be used.
 - Paid bills are **only good for the first 6 months of coverage**.
- **UNPAID bills** count as long as they are **viable**
 - Provider can still sue to collect them (**rule of thumb is 6 years old**)
 - Unpaid bills **can be carried forward indefinitely**, past 6 months.

Meeting spend-down: Past bills?

- Medicaid can be retroactive for up to THREE CALENDAR MONTHS before the month of application filing.
- For services received during the retro period, if the bill is:
 - PAID – at applicant's choice, Medicaid can:
 - **Reimburse** whoever paid, IF the client was eligible for Medicaid during the retroactive period **and/or**
 - **Credit** the bill against the Spend-down.
 - UNPAID – Medicaid can PAY the bill directly to the provider, if the provider accepts Medicaid



Meeting spend-down: Special rules for EPIC and ADAP

- Bills paid by EPIC or ADAP in the 3 months before the month of application, plus during the time the Medicaid application is processed, are like other paid bills – they can meet the spend-down for the 1st month of Medicaid and up to the 1st 6 months of Medicaid.
- The amount EPIC or ADAP pays, not just client's co-payment, counts toward the spend-down. To get the amount, ask pharmacist for a printout or write to:
 - EPIC, POB 15018 Albany, NY 12212
 - HIV Uninsured Care Programs, Empire Station, POB 2052 Albany, NY 12220
 - Include a HIPAA release with your letter. HIPAA release at <http://wnylc.com/health/download/267/>

91 ADM-11, 18 NYCRR § 360-4.8(c)(1), MRG p. 239 ;
<http://www.wnyc.com/health/entry/197/>
<https://www.health.ny.gov/diseases/aids/general/resources/adap/manuals/docs/pharmacy.pdf>

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Options for Using Paid Bills

(if incurred in 3 mos. before Medicaid application)

Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July
Three-Month Retroactive Period – bills incurred & paid in this period			Application Month						PAID bills may never be carried forward past 6 months from application
			6 – month Medicaid eligibility period if want only future coverage, but may still use paid bills from retroactive period to meet spend-down						
			6-month period if want partial retroactive coverage for Dec bills						
			6 – month period if want full retroactive coverage to have unpaid bills in retroactive period PAID or paid bills REIMBURSED						

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Using Past Paid and Unpaid Bills

2013 – Sept	Oct 13	Nov 13	Dec 13	Jan 14	Feb - June 14	July on 2014
Can use unpaid bills from this period to meet spend-down indefinitely into future	Three-Month Retroactive Period			Application Month		
	<ul style="list-style-type: none"> Can use paid bills, including EPIC, incurred in this period to meet spend-down for up to 6 months beginning Oct, Nov, Dec. 13 or Jan 14. Can be reimbursed for paid bills incurred in this period. Can have unpaid bills incurred during this period paid by Medicaid. 				Paid bills cannot be used to meet spend down past June 14	Only past unpaid bills can be carried over to this period

6 months from application

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TIP: Using Past Bills to get Medicaid to Get Extra Help for Part D

- You only need to meet spend-down for ONE MONTH to get Extra Help for the ENTIRE calendar year
- Use unpaid past bills to meet the spend-down for ONE MONTH!
- If the ONE MONTH in which you meet spend-down is in July or later in year, then you get Extra Help for the rest of the CURRENT calendar year and the ENTIRE FOLLOWING CALENDAR YEAR.



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Special Hospital Stay Rule

- Medicaid requires a higher spend-down for inpatient hospital stays. Even if just hospitalized for one night, client is charged 6 times the monthly spend-down before Medicaid pays. See https://www.health.ny.gov/health_care/medicaid/excess_income.htm
 - EXAMPLE: The Medicare hospital deductible is \$1,288 (2016). Your client has a spend-down of \$100 per month. She is hospitalized and does not have a Medigap to pay her deductible.
- Medicaid will pay only \$688 of the \$1288 bill, client is charged 6 x \$100 = \$600. If client needs Medicaid in the community for those 6 months, the spend-down is already met with this bill.

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Pay-In Program

- Pay In allows spend-down clients to activate their Medicaid coverage for up to 6 months, by paying their spend-down to Medicaid. They can get their money back if they do not use services equal to the spend-down. MRG p. 303
- Pay-In is best for people who:
 - Have a low spend-down so that they can afford to pay 3-6 months at a time – it's too much trouble to bring in medical bills, or use Pay-In, every month, or to set up a pooled trust; and
 - Those who can afford it! **Consumers who utilize Pay-In must use their own funds to meet their spend-down.** See Medicaid Alert May 18, 2015 <http://www.wnyc.com/health/download/593/>
- To enroll in Pay-In, the client should contact HRA/DSS. For more, see <http://www.wnyc.com/health/download/175/> and <http://www.wnyc.com/health/download/174/>
- Forms used in NYC are posted on <http://www.wnyc.com/health/entry/46/>

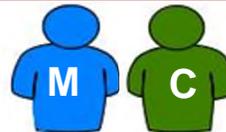


OTHER STRATEGIES



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Case Scenario: Morgan & Chris



- Morgan and Chris are married and have no children.
- Morgan gets SSD; Chris gets SSRI. Both receive Medicare.
- Morgan needs home care
- “Disabled, Aged, Blind” (DAB or “SSI-related”) budgeting is used at application

	Morgan	Chris
Income	\$2,000	\$1,500
Chris' income	\$1,500	
Medicare Part B premium	- \$242	\$121
Income disregard	- \$ 20	
Net Countable Income	\$3,238	
Medicaid standard (couple)	- \$1,209	
Excess Income/Spenddown	\$2,029	

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Strategies for Dealing with a Spend Down in MLTC

- 1 MBI-WPD – if < 64 and can work
- 2 MLTC Housing Allowance
- 3 Spousal Impoverishment Budgeting
- 4 Pooled Income Trust
- 5 Negotiate with MLTC or pay spend-down

Strategies for Dealing with a Spend Down in MLTC

1

MBI-WPD – if < 64 and can work

Medicaid Buy-In for Working People with Disabilities (MBI-WPD)

- Work incentives for people with disabilities under age 65 - higher income limits. NY SSL 366.1(a)(12)-(13).
- Initial NYS DOH Directive 04 OMM/ADM-5. Many subsequent directives listed at <http://www.wnylc.com/health/entry/59/>.
- State website http://www.health.ny.gov/health_care/medicaid/program/buy_in/index.htm
- **HOW MUCH WORK:** No minimum amount – even one hour/month – filing/ dog walking/child care. Just need a letter from employer – can be a friend. No requirement that Social Security taxes withheld. [GIS 09MA/015](#)
- **Must meet Social Security's Disability standard**– if not receiving SSD, may ask Medicaid to determine disability (follow procedures at link on slide 7). Unlike regular SSD, may earn > Substantial Gainful Activity (\$1130/mo 2016). 04 OMM/ADM-5

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MBI-WPD Income & Resources

Family Size	1	2
Monthly Income (250% FPL)	\$2,475	\$3,338
Resources	\$20,000	\$30,000

- Uses higher Medicaid income / resource limits for working people with disabilities
- Eligibility
 - Age 16-64 – ENDS AT 65!!
 - Certified disabled (including on SSD)
 - Working (no minimum no. of hours – even 1 hr/mo)
 - Income & Resources under MBI-WPD limits
- Not just for people on MLTC!



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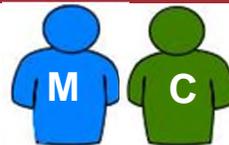
MBI-WPD Income & Resources

- **INCOME** - Use “SSI-related” Medicaid income counting and deduction rules, including:
 - \$20 disregard +health insurance premiums deducted
 - Earned income – disregards > ½ of gross income
 - Subtract impairment related work expenses (IRWE)
 - Subtract \$65/month
 - Subtract 1/2 remainder/month (example next slide)
- **RESOURCES** –
 - Retirement funds disregarded. DOH 11 ADM-07. Do not have to take distributions.
 - Higher limits - \$20,000 singles, \$30,000 couples



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Morgan's MBI-WPD Budget



- Morgan gets a job that pays \$163/month – prove with letter from employer
[GIS 09MA/015](#)
- Determine MBI-WPD Budget:
 1. Determine countable **unearned** income
 2. Determine countable **earned income**, after subtracting disregards
 3. Apply **MBI-WPD standard** for a couple
 4. If still too high, may use Spousal Refusal or SNT



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Strategy #3 for Dealing with a Spend-Down in MLTC

2

MLTC Housing Allowance



Housing Allowance for MLTC Enrollees Leaving a Nursing Home or an Adult Home

- NH or Adult Home residents discharged home with MLTC can get a higher community Medicaid income limit if:
 1. Resident was in a nursing or adult home for **30 days** or more, not counting the day of discharge,
 2. **Medicaid made a payment** toward the nursing home care, and
 3. Resident has a **housing expense**
- Allowance is regionally standardized by county
- Gets added to the \$845 income limit
- Couples may not use this and also use spousal impoverishment. Choose one that's best
 - Married individuals in PACE cannot use this.
- Plan or consumer must submit [MAP 3057](#)

• N.Y. Dep't of Health, ADMINISTRATIVE DIRECTIVE: SPECIAL INCOME STANDARD FOR HOUSING EXPENSES FOR INDIVIDUALS DISCHARGED FROM A NURSING FACILITY WHO ENROLL INTO THE MANAGED LONG TERM CARE (MLTC) PROGRAM, 12 OHIP/ADM-5 at 2-4 (Oct. 1, 2012); GIS 14 MA/17 (Aug. 5, 2014); **MEDICAID ALERT (FEB. 14, 2013)—FORM MAP 3057(E) IN NYC** - [HTTP://WWW.WNYLC.COM/HEALTH/DOWNLOAD/398/](http://www.wnylc.com/health/download/398/)



2016 Housing Allowance Amounts

Region	Counties	Deduction
Central	Broome, Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, Tompkins	\$384
Long Island	Nassau, Suffolk	\$1,060
NYC	Bronx, Kings, Manhattan, Queens, Richmonc	\$1,094
Northeastern	Albany, Clinton, Columbia, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington	\$440
North Metropolitan	Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester	\$837
Rochester	Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, Yates	\$400
Western	Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming	\$341

N.Y. Dep't of Health, GENERAL INFORMATION SYSTEM MESSAGE: GENERAL INFORMATION SYSTEM MESSAGE: 2016 MEDICAID ONLY INCOME AND RESOURCE LEVELS AND SPOUSAL IMPOVERISHMENT STANDARDS, [GIS 15 MA/021](#) (Dec. 22, 2015). See also attachment 1



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Maintaining the Housing Allowance

- No end date once the allowance is approved!
- Beware of Renewals: If consumer had allowance in the last coverage period, then loses it at renewal resulting in a spend down or an increase to her spend down, consumer's benefits have been reduced—the notice should say so, but might just say “acceptance”
 - LDSS may want consumer to submit new [MAP 3057](#), but there is no authority for this—governing ADM only says you lose the allowance upon disenrollment from MLTC
 - Allowance should be automatically renewed if case is coded correctly
- Effective date: allowance is available as of the day that the MLTC enrollment becomes effective. [12ADM-05](#)



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Morgan's Housing Allowance Budget



- Applying the housing allowance lowers Morgan's spend down (using Spousal Refusal)

	Morgan
Income	\$2,000
Part B premium	- \$121
Income disregard	- \$20
Housing allowance (NYC – 2016)	- \$1,094
Net Countable Income	\$765
Medicaid standard (single)	- \$825
Excess Income/Spenddown	\$0

(NOTE: Since he's married, choice of using this allowance or Spousal Impoverishment allowance. Can't use both.)

Strategies for Dealing with a Spend Down in MLTC

3

Spousal Impoverishment Budgeting

Spousal Impoverishment Budgeting

- Option for married couples where one spouse is in MLTC, a waiver program or nursing home
 - Different budgeting methodology than community Medicaid for Disabled/Aged.
 - Non-MLTC spouse gets deduction for insurance premiums, but not earned income
- If no dependents, MLTC applicant with a **non-MLTC spouse** can have up to \$3,364.50 per month. Add in \$668 per dependent family member (maximum 3 – see next slide for definition).
- If no dependents, the \$3,364.50 breaks down as follows:
 - Up to \$2,980.50/month of joint income for non-MLTC spouse
 - \$384/month personal needs allowance for MLTC recipient
- Resources: Higher of \$74,820 of assets or half of assets up to \$119,820
- In our example, Morgan and Chris would benefit from this because their countable income is \$3,238/mo, which is less than \$3,364.50

Spousal Impoverishment Budgeting Terminology cont'd

- **Family Member Allowance** - Under spousal impoverishment budgeting rules, certain dependent family members can get an allowance from the MLTC spouse - \$668/mo in 2016.
 - Maximum \$2,003 in FMAs per family(150% FPL)
- For purposes of the FMA, a **family member** is a minor child, or dependent child, parent or sibling of the institutionalized spouse or community spouse. The family member must be residing with the community spouse and have over 50% of his/her maintenance needs met by the MLTC spouse or the non-MLTC spouse.

18 NYCRR § 360-4.9 - 4.10, N.Y. Dep't of Health, MEDICAID REFERENCE GUIDE: INCOME at 278-282, GLOSSARY (June 2010). 2016 amounts – NYS DOH [GIS 16 MA/007 - 2016 Federal Poverty Levels](#)



Spousal Impoverishment only available AFTER on Medicaid

- Married person must initially APPLY for Medicaid using regular community Medicaid rules. Applying spouse must transfer assets to other spouse if over single asset limit.
 - This would require use of **SPOUSAL REFUSAL** if spouse's income would create a large spenddown, or if spouse's assets disqualify the applicant spouse from Medicaid. Soc. Serv. L. § 366.3(a).
 - Could change in future as CMS arguably says budgeting should be used at application if need long term care. SMD 15-001, May 7, 2015*
<https://www.medicaid.gov/federal-policy-guidance/downloads/smd050715.pdf>
- The applicant may have a high spend-down using regular community Medicaid rules
 - But this is just for one month; can request Spousal Impoverishment when enrollment is complete and will have NO spenddown.
 - A pooled trust wouldn't be worth the trouble just for a month.
 - If client needs Medicaid right away, can do spousal refusal and revoke upon enrollment in MLTC.



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Converting to Spousal Impoverishment Budgeting

- Enrolling in MLTC doesn't automatically change the budgeting!
- As soon as applicant is enrolled in an MLTC → submit DOH Request for Spousal Impoverishment Assessment Form to LDSS / HRA
 - HRA and some other counties prefer MLTC Plan, not Member, submit this request
- Form available at page 9 of NYS Medicaid Update, March 2014 -- next slide.
- Warning –local DSS and plans still unfamiliar!

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NYS DOH
Medicaid
Update March
2014 p. 9

Request for Assessment Form

Overseas

Overseas Spouse

Institutionalized Spouse Name: _____

Address: _____

Telephone Number: _____

Community Spouse Name: _____

Current Address: _____

Telephone Number: _____

I/we request an assessment of the items checked below:

Couple's countable resources and the community spouse resource allowance

Community spouse monthly income allowance

Family member allowance

Check If you are a representative acting on behalf of either spouse. Please call your local department of social services if we do not contact you within 10 days of this request.

NOTE: If an assessment is requested without a Medicaid application, the local department of social services may charge up to \$25 for the cost of preparing and copying the assessment and documentation.

Signature of Requesting Individual: _____

Address and Telephone # if different from above: _____

www.health.ny.gov/health_care/medicaid/program/update/2014/mar14_mu.pdf

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Strategies for Dealing with a Spend Down in MLTC

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Pooled Income Trust

Pooled Income Trust

- A type of Supplemental Needs Trust
- Only for people with disabilities (including age 65+ with disability)
- Shelter monthly income from consideration by Community Medicaid
 - Deposit excess income into the trust
- Trust can pay third parties for shelter, food, clothing, recurring bills, etc. (Different trusts have different rules)
- No direct payments to beneficiary

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Pooled Income Trust (cont'd)

- Must be established by a non-profit that pools deposits of multiple beneficiaries
 - List of pooled trusts in NY:
<http://www.wnylc.com/health/entry/4/>
- Pooled trusts have start up costs and monthly fees. Amounts vary by trust.
- Trustee (nonprofit) is remainderman
- Can use pooled trust instead of spousal impoverishment budgeting if more favorable



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Pooled Income Trust (cont'd)

- People 65+ must obtain a disability determination if they don't already have one
 - Requires several forms to be submitted to LDSS with trust. See <http://www.wnylc.com/health/entry/44/> (for more on pooled trusts, this webpage also includes a taped, in-depth seminar by the Evelyn Frank Legal Resources Program)
- How much to contribute?
 - Spend-down Amount + Amount of Medicare Part B premium
 - Less than Spend-down → If low monthly bills and concerns about accumulating a balance
- Accumulating a large balance in trust account could cause a transfer penalty for nursing home care



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Morgan's Single Budget with a Pooled Trust



- Imagine Morgan was single so spousal options are not available. A pooled trust eliminates Morgan's spend down.

	Morgan
Income	\$2,000
Income disregard	- \$20
Net Countable Income	\$1,980
Medicaid standard (single)	- \$825
Spenddown	\$1,155
Pooled trust contribution	- \$1,155
Spenddown with Trust	\$0

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Trust Tip – Medicare Savings Program (MSP)

- Perk: Pooled trust can make someone eligible for the Medicare Savings Program (MSP)
 - MSP pays the Medicare Part B premium
- Normally Morgan's income of \$2,000/mo. is too high to qualify for an MSP. But the budget on the previous slide calculates his spenddown with NO deduction for the Part B premium. By putting the spenddown of \$1,155 into the trust, the "countable income" for MSP as well as Medicaid is only \$825.
- MSP puts \$121/month into Morgan's pocket – and offsets the monthly fees of the trust.

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Trust Tip – Married Couples

- Morgan and Chris are married again. But now Chris' income is \$3,000/month (instead of \$1,500).
- Since the MMMNA is \$2,980.50, less than Chris' income, Chris isn't entitled to a CSMIA, so spousal impoverishment budgeting isn't helpful
- Morgan will have a high spend-down and may instead use a pooled trust. [GIS 14 MA/025](#)
 - How much should be put in the trust monthly?
 - He is budgeted as single. [GIS 12 MA/013](#). "SSI-related" community budgeting is used. Net income over \$825/mo. = Spend-down = Trust deposit



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Strategies for Dealing with a Spend Down in MLTC

- 6 Negotiate Spend Down with MLTC or Pay the Spend-down



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Negotiate Spend Down Amount with MLTC

- MLTC may be willing to accept lower monthly spend down
- Information on cost of living expenses may be persuasive
- Full spend-down amount is still a legal debt



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Meeting the Medicaid Spend-Down

- **What Should Happen (See GIS 13 MA/018):**
 1. Paid and unpaid bills for out-of-pocket medical expenses submitted to LDSS
 2. LDSS informs MLTC of remaining spend down using LDSS 3183 form:
https://www.health.ny.gov/health_care/medicaid/publications/docs/gis/13ma018atta.pdf
 3. MLTC bills remainder of spend down to enrollee
 4. If do not pay spend down to MLTC, may be disenrolled (following notice with appeal rights)



Meeting the Medicaid Spend-Down

- **What is Happening Depends on the County:**

- At least one LDSS applies the accumulated, submitted paid and unpaid bills to the spend down at renewal, which reduces or eliminates the amount the MLTC bills for the upcoming year
- Another LDSS attempts to follow the process in GIS 13 MA/018, but reports that timing issues have resulted in people paying the spend down to the MLTC and then having to seek reimbursement with the LDSS's help

Spend-down Checklist

- Ask clients with a spend-down if they or spouse has:
 1. UNPAID medical bills from the past, even as long as 6 years ago? (Bill showing amount due after Medicare paid counts).
 2. PAID medical bills from services received in the 3 calendar months before the current month?
 3. Used EPIC or ADAP in the 3 calendar months before the current month, or in the current month?
 4. If under 65: are you able to work even 1 hour per month? → MBI-WPD
 5. All ages: do you have any dependents?
→ Use MAGI Budgeting with higher income limit?
 6. If needs MLTC → will Spousal Impoverishment Protections help?
 7. Will Spousal Refusal or Pooled Trust help?

THANK YOU!

