

January 25, 2021

## BASIC ELIGIBILITY FOR MEDICAID HOME CARE IN NEW YORK STATE

-- For People Age 65+ or <65 who have Medicare --

Since Medicare does not cover most long-term home care, many people age 65+ or who are under 65 and have **Medicare** because of disability also need to apply for **Medicaid** to obtain home care. To receive Medicaid, their income and financial resources must be below strict limits.

In addition to long-term care, Medicaid can help pay Medicare's high out-of-pocket costs for deductibles and coinsurance and can help subsidize the cost of prescription drugs. Medicaid also covers some of the gaps in Medicare such as dental care, vision, hearing aids, non-emergency medical transportation.

***WARNING: This Fact Sheet Only Explains Eligibility for Age 65+ or < 65, are Disabled with Medicare.***

This fact sheet describes the rules of financial eligibility for one category of people seeking Medicaid – those who are Disabled, Aged 65+ or Blind (“DAB” or “NON-MAGI”).

A different category of people have expanded eligibility rules for Medicaid under the Affordable Care Act. These are children and adults under 65, including those with disabilities who do not have Medicare. They have higher income limits than people age 65+ and have no limit on assets for Medicaid. This category is sometimes called “MAGI.” They apply for Medicaid on the New York State of Health Marketplace. Those different eligibility rules not covered by this Fact Sheet -- See <https://nystateofhealth.ny.gov/> for information.

EXCEPTION: A small group of people age 65+ or < 65 and who have Medicare may be eligible for Medicaid under the more liberal “MAGI” rules of the Affordable Care Act. They are those who live with and care for a child, grandchild or other relative under 18 or under 19 and in school. They should contact a Navigator for assistance.

[www.communityhealthadvocates.org](http://www.communityhealthadvocates.org) or  
<https://info.nystateofhealth.ny.gov/IPANavigatorSiteLocations>.

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I. **Financial eligibility is based on INCOME and RESOURCES**

A. **RESOURCES** (including bank accounts, CDs, stock, investments, etc.)

If you are age 65+, blind, or disabled, you are allowed to have these cash resources:

2021	Living Alone	Married Couple
	\$15,900	\$23,400 (Spousal Impoverishment rules may allow more savings. See below)

Income or Resource? At the end of April, Sidney’s combined bank accounts had a balance of \$15,000. His May Social Security check is \$1000, and when direct deposited, his bank account balance on May 5<sup>th</sup> is \$16,000. He is still eligible for Medicaid in May, as long as he spends down his account so that the closing balance at the end of May is \$15,900 or less. His Social Security is INCOME in the month received and only becomes a RESOURCE if saved into the next month.

**BURIAL FUND \$1500** -- applicant and spouse may each have one burial fund (includes the cash value of any life insurance policies). This must be a separate account from your other savings. Open the account with a \$1500 deposit. You can let the interest accrue and it will not count towards your income limit. If you have life insurance with a “cash surrender value,” the cash value counts toward the \$1500 burial fund limit, or it can count toward your resource limit.

**PRE-PAID NON-REFUNDABLE FUNERAL AGREEMENT** – purchase this in any reasonable amount from a funeral home to cover costs of funeral, burial space, casket, etc. (This is allowed in addition to the \$1500 burial fund). However, any money left over will go to Medicaid. If the value of “non-burial space-related items” (such as flowers, religious services, transportation) is \$1500 or less, you may also have a separate \$1500 burial fund. You may, in some cases, pre-pay for burial for a spouse and certain other family members too. See more information at <http://wnylc.com/health/entry/36/>.

**HOUSE or co-op** – Your home is an exempt resource for Medicaid, but if you are seeking home care services the equity in a house or co-op or condo must be under \$906,000 (2021). However, if you living in the home with a spouse or minor or disabled child, there is no limit on the equity value of the home. If the equity is above the limit, and no spouse, minor or disabled child lives with you, you can reduce the equity by taking out a mortgage or reverse mortgage.

TIP: If you own a home, you should consult an elder law attorney to take steps to protect the home, since Medicaid may place a lien on the home if you later enter a nursing home (if no spouse, minor or disabled child lives there). See [www.naela.org](http://www.naela.org). Also, if the home is part of your Estate when you die, Medicaid may make a claim against your Estate, with certain exceptions.

**WARNING - Transfer Penalty:** Transfers of the home and of other assets, discussed below, can disqualify you or your spouse from receiving nursing home care for up to five years after the transfer or home care or the Medicaid Assisted Living Program for up to 2.5 years after the transfer, and can trigger high income taxes on appreciation of the home. An experienced elder law attorney is needed to sort through these issues. *See more below about the new lookback and transfer penalty for home care and Community Based Long Term Care – that will go into effect some time in or after July 2021.*

**HOLOCAUST Reparations**, including the Ghetto Pension or other payments made based on your status as a Nazi victim are exempt. While it is best to separate the reparations from other funds going forward, one should still be eligible if, in the past, the reparations were combined with other funds, as long as the amount received can be documented. Interest on reparations is exempt as “income,” but counts toward the resource limit if it is saved beyond the month received. More info at “[Holocaust or Nazi Victim Reparations -- Effect on Medicaid, SSI and other Federally Funded and New York State Benefits](http://wnylc.com/health/entry/65/)” posted at <http://wnylc.com/health/entry/65/>.

**IRA, KEOGH or retirement funds** of you or your spouse are exempt as a resource only if you or your spouse are withdrawing periodic payments. Medicaid requires you to take these distributions even if the IRS does not. The IRS does not require you to take withdrawals until age 70.5, and if you turn 70.5 after Jan. 1, 2020, you do not have to take withdrawals until age 72. Also, the IRS *allows* you to take withdrawals without a tax penalty after age 59.5, or earlier if you have a disability. However, Medicaid *requires* you to take IRA distributions at *any age, unless* you are under 65, working, disabled, and enrolled in the Medicaid Buy-in for Working People with Disabilities. See

The minimum amount of the periodic IRA distribution varies depending on the amount of money in your IRA, your age, and marital status. Although taking these distributions exempts your IRA as a resource, the withdrawals themselves are counted as “income.”

For more info on exempt resources <http://www.wnylc.com/health/entry/113/>

**IF YOU HAVE EXCESS RESOURCES**, that is, over the resource limits above as of the first day of the month in which you are applying for Medicaid, you can become eligible for Medicaid in three ways:

1. One way is to *spend* the excess down on:
  - (a) Medical care or private home care, or
  - (b) Household items or expenses, or paying down mortgage or buying a house,  
or
  - (c) Pre-paid funeral agreement and/or burial fund – *see exempt resources above*

2. If you have old *unpaid* medical bills, present them with your Medicaid application. These can offset the amount of your excess resources or spend-down. They can be as much as six years old because they are still “viable,” meaning provider could still sue to collect them. See NYS website at [http://nyhealth.gov/health\\_care/medicaid/excess\\_income.htm](http://nyhealth.gov/health_care/medicaid/excess_income.htm)
3. **TRANSFERS OF ASSETS – Currently there is no transfer penalty for Community Medicaid including home care services. However --**

**Beginning July 1, 2021, (start date is subject to the COVID protections under FFCRA Families First Cares Act and may be later) applicants applying for MEDICAID FOR Community-Based LONG TERM CARE SERVICES will be subject to a LOOK BACK PERIOD, requiring the applicant and spouse to submit all financial statements going back to October 1, 2020. This look back period will increase gradually until it is 30 months in April 2023. If a transfer is found during the lookback period, by the applicant or spouse, then a “transfer penalty” will be imposed, meaning Medicaid will not pay for community-based long term care services for a period of time that depends on the amount transferred. For more information, see: <http://www.wnylc.com/health/news/85/#lookback>**

Applicants applying for **Nursing Home Medicaid** are subject to an LOOK BACK PERIOD OF **5 YEARS** (60 months) and a transfer penalty may be imposed, meaning Medicaid will not pay for nursing home care for the penalty period.

For information on transfers of assets and the transfer penalty, see <http://wnylc.com/health/entry/38/> and consult an elder law professional, which can be found at [www.naela.org](http://www.naela.org). For news about how NYS is implementing the new lookback for Community-Based Long Term Care, check <http://www.wnylc.com/health/news/85/#lookback>.

**B. INCOME** – is the amount you receive each month or less regularly – from Social Security, pensions, work, gifts, and distributions from IRAs or annuities.

#### **INCOME LIMITS – (2021)**

**\$884/month -- Living alone    \$1,300/month -- Couple**

Medicaid generally counts GROSS income, but there are some deductions and exemptions described below. Again, these rules for Disabled-Aged-Blind (DAB) are different than those used for younger people. For more information see <http://www.wnylc.com/health/entry/195/>

#### **1. Basic Budgeting Rules for Income:**

- A. **“In-kind” income** -- Family should NEVER give you CASH. They can help you by paying bills directly.

Direct payments to the landlord, utility company, or other vendor for rent, phone bills, or other expenses are NOT counted as income, if made by persons who are not “legally responsible” for the client. (An adult daughter’s payment to the landlord of her mother’s rent is NOT income

because she is not legally responsible for her mother. Only a spouse is legally responsible for a spouse, or a parent for a child under age 21). Note that people on SSI have stricter rules.

- B. **EXEMPTIONS** -- Some income is not counted, such as German or Austrian War Reparations, reverse mortgage payments, interest and dividends, and bona fide loans. These exemptions are for the DAB non-MAGI category – Disabled, Aged 65+ and Blind. MAGI has different exclusions.
- C. **DEDUCTIONS from income** -- For people aged 65+, blind, or disabled, subtract from GROSS income:
  - \$20 off the top
  - Medicare Part B, Medicare Supplemental (Medigap) insurance, and other health insurance premiums.
  - EARNED INCOME – if you or your spouse is working, special deductions apply – From monthly gross income, deduct the first \$65 then one-half of the remainder.

If the amount left after these deductions is above the above limits, you are eligible for Medicaid after you "spend-down" the excess income on medical expenses (or use a pooled trust – see below).

**EXAMPLE:** Anne lives alone with gross \$1113 Social Security/ month, before her Part B is deducted. Her "surplus" or spend-down is \$60.50 (2021).

Social Security (gross)	\$ 1113.00
– Medicare Part B premium (2021)	148.50
– \$20 income deduction (65+, blind, disabled)	20.00
<hr/>	
MEDICAID INCOME	944.50
Medicaid standard for one	– \$884.00
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Medicaid SURPLUS or SPEND-DOWN	\$60.50

**2. Strategies to Eliminate or Reduce the “Spend-Down” - see more on these strategies here <http://www.wnylc.com/health/entry/222/>**

**A. *Deposit Income into a Supplemental Needs Trust or Pooled Trust.***

You may enroll in a *Supplemental Needs Trust* to deposit your “excess” income monthly. An overview of pooled trusts can be found here <http://www.wnylc.com/health/entry/2/> and a step by step guide to enrolling in one can be found here <http://www.wnylc.com/health/entry/44/>. Pooled trusts are listed here and have different fees. <http://www.wnylc.com/health/entry/4/>

**B. *Special Housing Deduction if You Were in a Nursing Home or Adult Home for 30+ Days AND are moving to the community with Managed Long Term Care (MLTC)***

You may be eligible for a large income deduction to help you pay rent or other expenses if Medicaid paid for any part of your nursing home or adult home stay. To qualify, you must enroll in an MLTC plan upon discharge, or stay in one if you were already enrolled before being admitted to the nursing home or adult home. This allowance may ELIMINATE your spend-down! See this article <http://www.wnylc.com/health/entry/212/> and this fact sheet <http://www.wnylc.com/health/download/711/> for more info.

**C. *Eliminating the Spend-down for Married Individuals – Spousal Impoverishment Protections if one Spouse needs MLTC***

Where just one spouse needs Medicaid Managed Long Term Care or “Immediate Need” home care, the married couple may keep significantly more income and assets without having to use a pooled trust or spend-down. Under the “spousal impoverishment” rules, the spouse receiving MLTC or “Immediate need” services may keep \$416/month (2021), after deducting the cost of any Medicare and Medigap premiums, and allocate enough of the remainder of his/her income to the “community spouse” to bring that spouse’s income up to \$3259.50/mo. (2021). With this method, the applicant has no spend-down if the combined income is less than \$3675.50/mo plus any Medicare and Medigap premiums.

***When can married individual request Spousal Impoverishment protections?***

- a. If applying for Medicaid in order to receive Medicaid personal care or consumer-directed personal assistance based on an “**Immediate Need**,” you may request spousal impoverishment budgeting. See fact sheet with forms at <http://www.wnylc.com/health/download/637/> and more here <http://www.wnylc.com/health/entry/203/>
- b. If applying for Medicaid and planning to enroll in an MLTC plan once approved, and you are not applying for “Immediate Need” home care, then you may NOT request spousal impoverishment budgeting with the application. It may be requested from HRA only AFTER the applicant is enrolled in MLTC. However, the application *may* use “Spousal Refusal,” explained below, and then request HRA to convert the budget to use “spousal impoverishment” budgeting once the spouse needing home care is enrolled in an MLTC plan. Otherwise, the applicant will have a high spend-down initially.
- c. If you are already receiving Medicaid and are enrolled in an MLTC plan, you may request this budgeting from HRA/ DSS – as long as your spouse is not on Medicaid.

***SPOUSAL REFUSAL*** – Married individuals applying for Medicaid might be denied Medicaid – or have a very high spend-down – if the assets or income of their spouse is counted. With spousal refusal, Medicaid will count only the income and resources of the spouse applying for Medicaid, as though he or she is single. But Medicaid then has the right to sue the “well spouse” for failing to contribute. In New York City, HRA sends collection letters to refusing spouses, but if your combined income is under \$3,675.50/month and combined resources are under about \$130,000 HRA will generally confirm that it will not pursue a lawsuit. Above those thresholds, they will review individual circumstances.

The NYC Spousal Refusal Form can be downloaded here <http://www.wnyc.com/health/download/66/>. Couples with significant assets or income should consult an experienced elder law attorney before using Spousal Refusal.

*Who benefits from spousal refusal* – Carol, who is married, is applying for Medicaid in order to enroll in an MLTC plan, but may not request “spousal impoverishment” budgeting until she is actually enrolled in an MLTC plan. If her spouse Sam’s income would give Carol a high spend-down, Sam can do a “spousal refusal.” After Carol is enrolled in MLTC, she can request spousal impoverishment budgeting, which may obviate the need for spousal refusal going forward.

***OPTION TO USE A POOLED TRUST and IGNORE SPOUSE’S INCOME.*** If the spouse Sam’s income is high, near or above the spousal allowance (\$3259.50/mo. in 2021) then spousal impoverishment budgeting may not help. Carol could still have excess income (spend-down). She may want to enroll in a pooled supplemental needs trust instead. With this option, spousal impoverishment and spousal refusal are not used at all. Carol uses “single” income and resource limits, depositing her own income that exceeds the “single” income limit. See NYS DOH GIS 12-MA-13 [https://www.health.ny.gov/health\\_care/medicaid/publications/docs/gis/12ma013.pdf](https://www.health.ny.gov/health_care/medicaid/publications/docs/gis/12ma013.pdf)

### **3. Once the Spend-Down is Minimized– How Spend-Down Works.**

If your net income after deductions is more than the Medicaid level, you must “spend down” the excess income on medical expenses every month to qualify for Medicaid to pay for any other medical expenses each month. If you receive home care, you will be billed by the MLTC plan for the spend-down every month. An MLTC plan may disenroll you if you do not pay the spend-down. This is why it is important to enroll in a pooled trust or use the other strategies to reduce or eliminate your spend-down described above. See these and other strategies to reduce the spend-down. <http://www.wnyc.com/health/entry/222/>

## II. HOW TO APPLY FOR MEDICAID TO OBTAIN MEDICAID HOME CARE

Most adults who want Medicaid home care who are age 65+ or who are younger and have Medicare because of disability must first **apply for Medicaid at the local NYC or county Dept. of Social Services (DSS)** to obtain home care.

**QUICK SUMMARY OF APPLICATION PROCESS** (more explained below):

You have a choice of TWO TRACKS for applying for home care. Here are the steps with approximate time they each take:

### 1. **REGULAR TRACK – Seeking Medicaid to Enroll in Managed Long Term Care:**

- a. **Apply** for Medicaid at the County DSS/HRA up to 45 days
- b. Request a “**Conflict Free Eligibility**” in-home evaluation from Maximus (NY Medicaid Choice) **1-855-222-8350** 5-14 days
- c. **Pick a plan** - MLTC, Medicaid Advantage Plus, or PACE plan –
  - i. Schedule an in-home assessment with plan } up to 30 days
  - ii. Pick a plan and enroll.
  - iii. Enrollment paperwork must be submitted by 19<sup>th</sup> of month for enrollment to start 1<sup>st</sup> of next month. No mid-month pick-up dates. 10-41 days
- d. After enrollment on 1<sup>st</sup> of month, MLTC Plan conducts assessment and starts services 30 days

***TOTAL TIME TO START SERVICES APPROXIMATELY 3-5 months***

### 2. **FAST TRACK if have IMMEDIATE NEED for PERSONAL CARE/ CONSUMER-DIRECTED PERSONAL ASSISTANCE (CDPAP) SERVICES**

- a. **Apply for Medicaid AND home care** (submit physician’s order/M11q and “Attestation of Immediate Need” to DSS/ HRA)

DSS HAS 12 days to approve Medicaid and home care, with more time if application incomplete. Medicaid office arranges for services to be provided by a contracted home care or Consumer Directed agency “as expeditiously as possible.”

***TOTAL TIME TO START SERVICES APPROXIMATELY 2-3 weeks***

- b. After 120 days of receiving home care services authorized by HRA/DSS, consumer receives letter from New York Medicaid Choice that she must select and enroll in an MLTC plan within 60 days or she will be assigned to one randomly.

### **MORE ON MEDICAID APPLICATION PROCESS:**

- A. **WHAT TO SUBMIT - BOTH REGULAR AND FAST TRACK** - Submit Medicaid application (Access NY Health Insurance Application)

<https://www.health.ny.gov/forms/doh-4220all.pdf> with:

1. **Supplement A** - <https://www.health.ny.gov/forms/doh-5178a.pdf>

NOTE - NYC is requiring a new form starting Jan. 1, 2021. Do not use the old Supplement A FORM DOH-4495a.



physical exam < 30 days before) (download at [http://www.nyc.gov/html/hra/downloads/pdf/services/micsa/m\\_11q.pdf](http://www.nyc.gov/html/hra/downloads/pdf/services/micsa/m_11q.pdf))

#### D. To enroll in a Managed Long Term Care Plan

1. Once Medicaid is accepted, contact *New York Medicaid Choice* to request a **Conflict Free Eligibility and Enrollment Assessment**. 1-855-222-8350

A nurse will visit and assess your need for home care (**By telehealth during COVID-19 emergency**).

See <https://www.nymedicaidchoice.com/ask/do-i-qualify-managed-long-term-care>. See Fact Tips on Conflict Free Assessment at <http://www.wnylc.com/health/download/573/>. Ask a family member or social worker to be present at the assessment to help point out your functional needs, medications, and diagnoses.

2. If approved after this assessment, **choose a Managed Long Term Care plan** and enroll. Contact *New York Medicaid Choice* – <http://www.nymedicaidchoice.com/>

**1-888-401-6582** - This company, Maximus, is the enrollment broker under contract with the State, which can explain the enrollment process and your options for selecting a managed long term care plan.

<http://www.nymedicaidchoice.com/program-materials>

For Lists of Plans, click on Long Term Care plans in your region)

Learn about Managed Long Term Care –

- What is MLTC? <https://icannys.org/icanlibrary/what-is-mltc/> and other fact sheets <http://www.wnylc.com/health/entry/202/>
- Background article on MLTC <http://wnylc.com/health/entry/114/>
- Updates on MLTC – <http://wnylc.com/health/news/41/>

3. **WARNING** – If your Medicaid is approved with a spend-down, your Medicaid case may not show up as “active” and the MLTC plan may tell you that you are not eligible to enroll. If this happens-

- Tell the plan to fax a MAP Medicaid Cover Sheet Form HCSP-3022 (known as a “CONVERSION FORM” – download at <http://www.wnylc.com/health/download/450/>) to the HRA HCSP MLTC Provider Relations Unit, requesting that the code be changed and Medicaid be activated.

TEL: (929) 221-2427

Fax: (718) 636-7848

- If the plan refuses to schedule an assessment or fax a conversion form -- Call the MLTC Complaint line 1-866-712-7197; NY Medicaid Choice 1-888-401-6582; EFLRP at 212-613-7310 [eflrp@nylag.org](mailto:eflrp@nylag.org) or ICAN 1-844-614-8800

**For more on special rules during COVID-19 emergency see** <http://www.wnylc.com/health/news/86/> and <https://www1.nyc.gov/site/hra/help/health-assistance.page>.

**Medicaid eligibility rules are complex. For more information or help with the Medicaid application or for other questions about long term care, contact:**

CSS – Community Health Advocates	(888) 614-5500
New York Legal Assistance Group (city-wide) –	
• General intake	(212) 613-5000
• Evelyn Frank Legal Resources Program	(212) 613-7310
The Legal Aid Society (city-wide)	(888) 663-6880
Cardozo Bet Tzedek Legal Services	(212) 790-0240
JASA/ Queens Legal Services for the Elderly (Queens only)	(718) 286-1500
Legal Services NYC (citywide)	(917) 661-4500
Manhattan - Lenox Hill Neighborhood House	(212) 744-5022 x1392
Public Health Solutions – Medicaid enrollment for Age 65+/Disabled/Blind <a href="https://www.healthsolutions.org/community-work/health-insurance/aged-blind-disabled/">https://www.healthsolutions.org/community-work/health-insurance/aged-blind-disabled/</a>	
National Academy of Elder Law Attorneys - online locator	<a href="http://www.naela.org">http://www.naela.org</a>
New York City Dept. Aging--Alzheimer’s and Caregiver Resource Center	311

**To request a Conflict-Free Assessment for MLTC**

New York Medicaid Choice (CFEEC) 1-855-222-8350

**Complaints about MLTC plans - NY States Department of Health MLTC Complaint Hotline:**

[mltctac@health.ny.gov](mailto:mltctac@health.ny.gov) 1-866-712-7197

**For help with MLTC problems – enrollment, denial of services, and other problems -**

**ICAN – Independent Consumer Assistance Network - OMBUDSPROGRAM FOR MLTC**

[ican@cssny.org](mailto:ican@cssny.org) TTY: 711 Website: [icannys.org](http://icannys.org) 1-844-614-8800

**THIS DOCUMENT STATES GENERAL INFORMATION AND IS NOT LEGAL ADVICE.**

VISIT OUR WEBSITE at <http://nyhealthaccess.org>

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