Maintaining Community Medicaid Budgeting and SSI Benefits During Temporary Nursing Home Stays

Many Medicaid recipients are admitted to nursing homes but plan to return to their homes in their community. Financially, they need to maintain income so that they can continue to pay rent, utility, and other living expenses to preserve their apartment or home for their return. However, both Medicaid and Supplemental Security Income (SSI) rules presumes that because they were admitted to a nursing home, they are staying there permanently. Permanent residents are allowed to retain only the $50 personal allowance, and the amount needed to pay a supplemental Medicare (Medigap) policy, and the rest of their income is paid for their nursing home care. See this article on Medicaid rules for coverage in nursing homes. This article explains the exceptions to these rules that allow the resident to maintain "community budgeting" or "non-chronic care" while in the nursing home, allowing them to retain the same income they are allowed in the community - $1732/month + $20 (2024). ALSO, SSI recipients have their own rules. Both are discussed in this article.

KNOW YOUR RIGHTS: Download these Fact Sheets that summarize the rules explained in this article:

1. **Part 1 -SSI RECIPIENTS** -- See this Fact Sheet and more here
2. **Part 2 -- People Who Do Not Receive SSI or Who Receive SSI Plus Other Income** -- See this Fact Sheet updated March 2024 and more here. If they receive any SSI, they must ***also*** file the form described here and in this Fact Sheet.

IMPORTANT -- Is SSI the indidual's ONLY income? or do they receive other income too?

- **If the recipient receives *only* SSI,** they just submit the SSI form below to the SSA office. They do not need to request "community budgeting" from the Medicaid program using the procedures in Part 2 of this article. It is enough to use these SSI procedures. This is because SSI recipients automatically receive Medicaid in New York State, and the methodologies used to assess income for Medicaid may not be more restrictive than those used for SSI for people who are disabled, aged, or blind (DAB). 42 U.S.C. Â§ 1396a(a)(10)(C)(i)(III); 42 CFR 435.831(b), 435.845.
- **If the individual receives both SSI and Social Security or another type of income**, then s/he must do BOTH the SSI procedures described in #1 below, *and* the Medicaid procedures described in #2 below, in order to retain both types of income for a limited period during a temporary institutionalization.

Part 1. People with Supplemental Security Income (SSI) Can Keep SSI for THREE MONTHS if forms are filed, plus request NYS Emergency Assistance for Adults for SIX more months.

The SSI program has a "Temporariy Institutionalization" ["TI"] rule that allows SSI recipients who are temporarily in a medical institution (hospital or nursing home) to keep their full SSI check for the first 3 full months of institutionalization to pay rent or other expenses to maintain their home to which they may return upon discharge. These rules are in this Fact Sheet, along with a form to request these temporary SSI benefits. The rules are in the Social Security POMS Â§ SI 00520.140.

In July 2023, the SSA released a new form -- the SSA-186 *Temporary Institutionalization Statement to Maintain Household and Physician Certification*.

The new form was featured in this SSA 2024 Spotlight. The form has two parts:

1. **Page 1 - Patient/Recipient Statement** -- SSI recipient or their representative payee states that they need SSI to pay rent or other expenses to maintain their home they intend to return to. If the recipient is incapacitated and does not have a representative payee, a knowledgeable source acting on behalf of the recipient (e.g., family member, friend, or hospital staff) may sign the first part and submit the form on the recipient's behalf to SSA.
2. **Page 2 - Physician Statement**: must be completed by the physician who certifies that the recipient's length of stay within the medical institution is expected to be 90 days or less.

The completed SSA-186 form must be faxed or delivered to a Social Security Office so that it is **received** no later than the **90th day after the date of admission**, **or before the day of discharge, whichever is earlier.** Keep proof that you delivered the form by hand, mailed it certified, e-mailed or faxed it.

- **Find your local SSA office fax number** in this Field Office Locator - scroll down to Locate Your Office by Zip - Enter zip code, and then click on ***I Need Other Services*** *(do not click on "I Need Card Services")* to see the fax, phone number, address and hours.

WARNING: If you receive BOTH SSI and Social Security or another type of income, you must file the SSA-186 SSA FORM AND ALSO follow the steps below to obtain Medicaid Community Budgeting.

If you don't file the form, even if your SSI does not stop while you're in the nursing home, you could be charged with an "Overpayment" later, which means your SSI check is reduced by 10 percent a month until you repay the amount of the overpayment. You can request a "waiver" of the overpayment, but this is burdensome, and the waiver could be denied. Better to prevent the overpayment by filing the SSA-186 form on time! See more about SSI overpayments here.

NOTE: A portion of SSI benefits for NYS residents is paid for by the State, supplemental to the federal payment. This is called the SSP Program. The temporary SSI benefits noted above should include an SSP supplement. It may be advisable to provide the same

forms to the SSP program. See Reporting Changes to Your Case. If you do not receive a SSP supplement, contact the SSP program.

NYS Emergency Assistance to Adults (EAA) -- may provide an additional six months of assistance to cover shelter for individuals intending to return home.

Social Services Law Â§ 303(1)(g) -- "It shall be the duty of the social services official to provide emergency assistance, in accordance with regulations, ... to an eligible aged, blind or disabled person who has one or more of the following needs: Household expenses essential to the maintenance of a home, in the case of a person whose SSI benefit has been reduced because he has been placed in a medical facility. Within forty-five days following placement in such a facility, the social services official shall determine whether, and payments under this subdivision shall not continue unless, such person is expected to remain in such a facility for less than one hundred eighty days following the reduction in such benefits;" See also 18 NYCRR Â§ 397.5(g)

See State OTDA info re Emergency Assistance. More info here (upstate), for NYC , and NYC HRA.

Part 2. RULES FOR MEDICAID RECIPIENTS WHO DO NOT HAVE SSI

- **KNOW YOUR RIGHTS: A summary of the rights explained in this article is in this Fact Sheet (updated March 2024).**

a. How Medicaid typically budgets a new nursing home resident's income

Any person who enters a nursing home, or who stays in a hospital for 6 months and has no spouse, is presumed to be in **permanent absence status**, meaning "that an individual is not expected to return home." See 18 NYCRR Â§ 360-1.4(k). For people in "permanent absence status," Medicaid uses **chronic care budgeting** to calculate how much of their income must be used to pay toward the cost of care. See 18 NYCRR Â§ 360-4.9. Beginning with the first full calendar month of the person's admission to the nursing home, they are allowed to keep only a personal needs allowance of $50, plus enough money to cover any private health insurance premiums. See 18 NYCRR Â§Â§ 360-1.4(c), 360-4.9; Medicaid Reference Guide 232-235. (If married or for those with dependents, spousal impoverishment protections also apply and are not discussed here). If they were not admitted on the first day of a month, then for the partial month of their admission Medicaid uses **community budgeting**, under which a single person may keep $1732 (2024)(138% Federal Poverty Level) of their income plus enough to cover health insurance premiums

i. All new residents are "presumed" to be admitted to the nursing

home permanently

The shift to "chronic care budgeting" occurs automatically during the first full month of the nursing home admission because Medicaid presumes that all residents are permanently absent, meaning they are not expected to return home. State regulation 18 NY Code of Rules & Regulations Â§ 360-1.4(k) provides:

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It will be presumed that an individual will not return home if:

(1) a person enters a skilled nursing or intermediate care facility;

(2) a person is initially admitted to acute care and is then transferred to an alternat

(3) a person without a community spouse remains in an acute care hospital for more than

Adequate medical evidence may overcome the presumptions set forth in paragraphs (1) thr
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ii. How to overcome the presumption that any new nursing home resident is permanently absent

This presumption may be overcome by "adequate medical evidence" that the resident expects to return home. The medical evidence need not GUARANTEE that the resident will return home - it is only an expectation. Since the nursing home generally prepares and submits the Medicaid application, it is the nursing home's role to inform Medicaid that the individual expects to return home and to submit "adequate medical evidence" to rebut the presumption that the resident will not return home. However, since the nursing home has no incentive to do this extra work, the resident, family or advocate must ask nursing home to do this. (The nursing home is not harmed financially if a resident obtains Community Budgeting, since the difference is paid by Medicaid. It's just more paperwork).

b. PROCEDURE -- "Discharge Alert" and other FORMS USED IN NYC updated as of 3/24/2023

In New York City, the nursing home should file a form called a **Discharge Alert -- Non-Chronic Care Budget (MAP259d)** (formerly called the 1122)(revised in May 2020), on which the treating physician certifies that the resident is planning to return to community living, specifying an anticipated discharge date. In October 2015, HRA revised this and related forms with this HRA MICSA Alert which NYLAG has updated to include updated forms. The PDF includes copies of all of the new forms updated as of 3/22/24.

1. MAP-259d - **Discharge Alert,** signed by the physician (page 7 of PDF)
2. MAP-259e - **Cancellation or Change in Discharge Plan** (page 8 of PDF)
3. MAP259f - **Discharge Notice** - to notify that indivdual was discharge (page 9 of PDF)
4. MAP259g - **Respite Stay Notice** (page 10 of PDF)

5. MAP 259t - **Request to Convert Case** (page 11 of PDF)- submit with MAP259d to request non-chronic care budgeting (community budgeting) or to notify that Medicare or other Third Party Health insurance was terminated. Also for Mainstream managed care placement in NH
6. MAP-2159 Notification of Change or Correction to File from nursing facility (pp 12-13)
7. MAP-2159i **Notice of Permanent Placement - Medicaid Managed Care** (p. 14)
8. MAP2159W Permanent Placement Disenrollment Request (p. 15)
9. MAP-648p - **Submission of Request from RHCF - Residential Health Care Facility** (pp. 16)

These procedures changed in 2015, when permanent nursing home residents were required to enroll in or stay enrolled in managed care or MLTC plans -- and again in 2020 when long-term nursing home residents swere no longer eligible to stay in MLTC plans. See this article. See NYC Protocols on Nursing Home Submissions.

c. There Is No Six-Month Limit - or Any Time Limit - for Community Budgeting

In June 2015, NYS DOH confirmed that there is no time limit for community budgeting. See Frequently Asked Questions re Nursing Home Transition to MLTC and Managed Care - See Eligibility Section, Question #2 Question No. 2, DOH explains that "non-chronic budgeting" allows individuals who are expected to return home to retain the regular Medicaid income level, with no set durational limit. "...There is no set durational limit, for example 6 months, for temporary status in a nursing home; however, for Medicaid eligibility purposes, the consumerÂ´s status should be re-evaluated periodically based on medical evidence." No state regulation or state law says that community budgeting is just for six months. It may be necessary for the nursing home to file a new "Discharge Alert" stating the new anticipated discharge date.

KNOW YOUR RIGHTS: Download these Fact Sheets that summarize the rules explained in this article:

- Fact Sheet for SSI Recipients
- Fact Sheet for People Not Receiving SSI

This article was authored by the Evelyn Frank Legal Resources Program of New York Legal Assistance Group.

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