

Medicaid Spend-Down

Because Medicaid is a health insurance program for the poor, one must have income and assets below a certain limit to be eligible. For a single elderly or disabled person in New York State in 2021, the income limit is \$904/mo. of income. (after subtracting \$20/mo disregard) (The income limits for people **Disabled, Age 65+, or Blind ("DAB")**, people age 18-21 and their parents, grandparents or other "caretaker relatives" living with them are in BOX 1 on the [HRA Medicaid Chart](#)). Because of the high cost of living, especially medical expenses, many people find that although they are barely scraping by, they are "too rich" to get Medicaid. Fortunately, there is sometimes a way of getting Medicaid even if your income and/or assets are over the limit: spend-down.

The spend-down program (also called excess or surplus income) is a way for certain categories of applicants to get Medicaid even though their income or assets are over the limit, by offsetting their excess with medical expenses. For example, imagine two potential Medicaid applicants (who we will assume both are in the DAB category and both have assets below the limit).

- Sam has income of \$894/mo. after deducting the cost of his Medigap policy, and is therefore fully eligible for Medicaid (\$894 is less than \$904).
- Pam has income of \$1,050/mo., after deducting the cost of her Medigap policy. She would ordinarily not be eligible for Medicaid, because her income is over the limit by \$146/mo. (Medicaid "disregards" the first \$20 of income for people in the DAB category.. see all the [Medicaid Resource and Income Disregards](#)). However, she can "spend-down" her excess income to the Medicaid level by submitting \$146 of medical expenses incurred in the same month. Then her Medicaid coverage will be activated for the rest of that month. It is like a monthly deductible. If she had past unpaid bills when she applied for Medicaid, these could be applied toward her spenddown. Click [here](#).

Note that the spend-down program is not available to all New York Medicaid applicants.

Adults who are under age 65 and are not disabled, and are not caring for a minor-age child, cannot use spend-down. However, many don't need to use spend down because they are eligible for "MAGI" Medicaid or the Essential Plan under the Affordable Care Act (ACA or Obamacare), which uses higher income limits and NO ASSET TEST. See articles [here](#) and [here](#) and [here](#) re Essential Plan.

Some in the Essential Plan may still want Medicaid in order to get Medicaid long term care or "waiver" services. They may "spend down" to the regular non-MAGI limits only if they are under age 21 or a caretaker relative of a child under 21, or disabled.

[See this special alert re Managed Long Term Care and Spend-Down.](#)

Legal Sources:

42 USC 1396a(a)(17), 42 CFR 435.831, 18 NYCRR 360-4.8(c),
96-ADM-015 - Excess Income Program Clarifications/Prepayment of Client Liability (Pay-In) Program (and see Attachments posted
at https://www.health.ny.gov/health_care/medicaid/publications/pub1996adm.htm)

NYS 91 ADM-11: Medical Expenses Paid/Incurred by a Public Program of the State or Its Political Subdivisions

NYS DOH Medicaid Reference Guide p. 239 - 249

Training materials

Note that the income and resource limits in these documents have not been updated, so please use the figures above (Box 1 of the HRA Chart) and but they are otherwise current.

- PowerPoint presentation on Medicaid Budgeting and Spend-Down
 - Training Outline on Medicaid Budgeting and Spend-Down
 - Appendix
 - STATE DOH WEBSITE -- What is the Medicaid Excess Income Program? or https://www.health.ny.gov/health_care/medicaid/excess_income.htm - NYS Dept. of Health improved this website in response to advocacy request in 2010
 - FACT SHEET - WHAT IS THE EXCESS INCOME PROGRAM - OHIP--0026 (rev. 11/10)
- ♦ Spanish version - Explicacion del Surplus Income Program (8/2/2011)

These sources more clearly explain:

- **Past medical bills - even very old ones if they are *unpaid*** -- can be used to meet your spend-down when you apply for Medicaid, and can be used into the future until they are "used up." EXAMPLE: Sam applies for Medicaid, and has a \$1,000/ mo. spenddown. He has an old unpaid hospital bill of \$90,000 he is still getting collection notices for. The hospital stay was 5 years ago. Medicaid won't pay the bill because the hospitalization was more than 3 months before the application. But Medicaid will give him credit against his spend-down for 90 months! It will only be authorized six months at a time, so every 6 months he'll need to remind Medicaid that credit is still left from that bill. After 90 months, his credit will end.
 - ♦ If he had ***paid*** the bill, he would only get credit for a maximum of SIX MONTHS.
- **Expenses paid by ADAP or EPIC in the 3 months before the Medicaid application is filed can be used to meet your spend-down** for the first six months of Medicaid enrollment. This means Medicaid will give credit even for payments

NOT made by the recipient but paid by EPIC or ADAP. These bills can be very high. See <http://www.health.ny.gov/diseases/aids/resources>:

- ◆ [NYS DOH ADAP Pharmacy Manual](#) (see pp. 1-4).
- ◆ [NYS 91 ADM-11: Medical Expenses Paid/Incurred by a Public Program of the State or Its Political Subdivisions](#)
- ◆ Also explained in above [PowerPoint presentation on Medicaid Budgeting and Spend-Down](#)
- The spend-down must be paid by the consumer or from the consumer's own funds. See [NYC 2015 Medicaid alert and attestation form](#).

PAY-IN PROGRAM (2019-08 Fact Sheet now posted in various languages)

- All local Medicaid programs in NYS must offer PAY-IN program as an option for people with a spend-down, allowing pre-payment of spenddown directly to Medicaid, up to 6 months at a time, instead of submitting medical bills as a condition of activating Medicaid. 18 NYCRR [360-4.8\(c\)\(4\)](#); State ADM [96-ADM-15](#).
- The spend-down must be paid by the consumer, or if by a family member, it must use the consumer's funds. See these [NYC MICSA Alerts 8/31/15 & 5/18/15 re Payment of Surplus Bills or Pay-in by Third Parties with accompanying form MAP-3107a Attestation of Use of Recipient Funds to pay Surplus](#)
- HRA PAY-IN FACT SHEET and forms --
 - ◆ [MAP-931A Optional Pay-In Program \(ENGLISH\)](#) (Fact sheet updated 3-22-19 to include State fact sheet on [pooled trusts](#) also available on [DOH website](#). Note that the NYS Bar Association Elder Law Section has asked DOH to revise the pooled trust fact sheet because it does not clearly explain the use of pooled trusts and how to enroll, as required by the [Pooled Trust Notification Act](#). Read more about this law [here](#).
 - ◇ MAP-931A Fact Sheet available in: [Spanish](#) [Russian](#) [Korean](#) [Polish](#) [Traditional Chinese](#) [Simplified Chinese](#) [Urdu](#) [Bengali](#) [Haitian-Creole](#)
 - ◆ [MAP-931B Agreement to Participate in Pay-In Program](#)
 - ◆ [MAP-3107a Attestation of Use of Recipient Funds to pay Surplus](#)
- On March 30, 2015, HRA's Division of Accounts Receivable and Billing (DARB) relocated. See [this Medicaid Alert](#) for the new address to send checks and the phone number to pay in by credit card.

TIPS TO *ELIMINATE* THE SPEND-DOWN for SPECIAL CATEGORIES - See this Article

There are special budgeting rules for people who work (or their spouses work) even a small amount, and for people who used to receive SSI, and those who returned to the community from a nursing home or adult home, and others. See [this article](#) to see if you can benefit by these special rules.

If you can't, consider using a **SUPPLEMENTAL NEEDS TRUST (SNT)**
TO ELIMINATE THE SPEND-DOWN - People who are "**disabled**" as defined for **Social Security benefits** -- whether under or over age 65 -- may deposit their spend-down into an SNT, and request their local DSS to rebudget their income to disregard the deposited income - this eliminates the spend-down. See more here:

- [How to use a pooled SNT to eliminate the Medicaid spend-down.](#)
- [Step-by-step guide to enrolling in the NYSARC Pooled SNT for Medicaid spend-down](#)
- [List of Pooled SNTs in New York State](#) (people age 65+ may only use a pooled trust, not a individual SNT, to deposit their excess income or spend-down)
- [Advocate's Outline on Supplemental Needs Trusts](#)
- [Legal Authorities Relating to Supplemental Needs Trusts](#)

NYC HRA Medicaid Program Forms & Materials about Spend Down--

- **Submit medical bills by fax in NYC** -- See the [May 2009 announcement](#) that the NYC Medicaid program now accepts submission of medical bills by fax, and download the [official NYC Spend-down Fax cover sheet](#).
- [MAP-931 Explanation of Excess Income Program](#) (note this is authored by NYC and does not necessarily represent advocates' interpretation of the rules) - Better is the New [NYS DOH FACT SHEET - WHAT IS THE EXCESS INCOME PROGRAM - OHIP--0026](#) (rev. 11/10)
- A Medicaid Recipient who submits medical bills from a Provider to meet the spenddown will receive an OHIP-3183 "Provider/Recipient Letter" indicating which medical expenses are the responsibility of the Recipient (and which the Provider should not bill to Medicaid). When the Recipient is enrolled with a Managed Long Term Care Plan (MLTC), the Recipient and the MLTC will receive an OHIP-0128 "MLTC/Recipient Letter" indicating the amount that the Recipient owes to the MLTC (after deducting the medical expenses/bills from the spenddown). See [this Medicaid Alert](#) with the forms.
- **PAY-IN PROGRAM - OPTION for paying in spend-down to Medicaid up to six months at a time --**
 - ◆ [MAP-931A Optional Pay-In Program](#)
 - ◆ [MAP-931B Agreement to Participate in Pay-In Program](#)
 - ◆ On March 30, 2015, HRA's Division of Accounts Receivable and Billing (DARB) relocated. See [this Medicaid Alert](#) for the new address to send checks and the phone number to pay in by credit card.
 - ◆ On October 28, 2021, [DARB Online Payment Option for Medicaid Excess Income Consumers](#) alert was issued and provides instructions for Online Credit Card payment to DARB. Use this [link](#) to NYC CityPay website. Medical bills cannot be submitted through this website.

ALERT - Tips for Managed Long Term Care Applicants who have a Medicaid Spend-down (Excess income)

- **Provisional Medicaid Coverage** -- When someone applies for Medicaid and is determined to have a spend-down or "excess income," Medicaid coverage does not become effective until they submit medical bills that meet the spend-down, according to complicated rules explained here and on the State's website. Many people applying for Medicaid to pay for long-term care services can't activate their Medicaid coverage until they actually begin receiving the services, because they don't have enough other medical bills that meet their spend-down. This creates a catch-22, because they cannot start receiving MLTC services until Medicaid is activated. If they apply and are determined eligible for Medicaid with a spend-down, but do not submit bills that meet their spend-down, the Medicaid computer is coded to show they are not eligible. As a result, an MLTC plan could refuse to enroll them -- because they do not have active Medicaid. To address this problem, HRA recently created a new eligibility code for "provisional" Medicaid coverage for people in this situation. **This is explained in this Medicaid Alert dated July 12, 2012.** Applicants who expect to have a spend-down should attach a copy of this Alert to their application and advocate to make sure that their case is properly coded.
- **May 5, 2014 - State issues directive that takes a step in fixing computer coding problems that delay enrollment in MLTC.** NYS DOH GIS 2014 MA/10 -- 06 to 30 Conversion for MLTC Enrollees. An unexpected but serious problem with implementation of MLTC has been long delays in enrolling in an MLTC plan, even after an individual has endured the long process of applying for Medicaid. Problems are especially bad for people who apply for Medicaid and are determined to have a spend-down or "excess income." Their Medicaid coverage does not become effective until they submit medical bills that meet the spend-down, according to complicated rules explained here and on the State's website. Many people applying for Medicaid to pay for long-term care services can't activate their Medicaid coverage until they actually begin receiving the services, because they don't have enough other medical bills that meet their spend-down. This creates a catch-22, because they cannot start receiving MLTC services until Medicaid is activated. Until their Medicaid is activated, the Medicaid computer is coded to show they are not eligible. As a result, an MLTC plan could refuse to enroll them -- because they do not have active Medicaid. To address this problem, the State is trying a few steps.
 - ◆ First, applicants must request Eligibility CODE 06 if they are seeking MLTC. See **Medicaid Alert dated July 12, 2012**. This gives them "Provisional Medicaid" eligibility so that an MLTC plan sees they have Medicaid and will enroll them.
 - ◆ Second, until now, the MLTC plan had to then request that HRA/DSS "convert" their eligibility to CODE 30, which is full Medicaid rather than provisional Medicaid. In NYC, MLTC plans were required to fax HRA a "conversion form and package" to activate Medicaid when the consumer has a spend-down. Download Conversion cover sheet here. Despite extensive

education by HRA, many plans failed to do this.

- ◆ NOW, in May 2014, this new GIS explains that as long as CODE 06 was used on the application, the code will automatically change to CODE 30 full eligibility when the MLTC plan enrolls the individual. So.. no "conversion" form should be necessary.

- **MLTC's may Disenroll Member for Non-payment of Spend-down** - The HRA home attendant vendors were prohibited by their contracts from stopping home care services for someone who did not pay their spend-down. Similarly, CHHA's are prohibited by state regulation from stopping services based on non-payment. FN 4. MLTC programs, however, are allowed to disenroll a member for non-payment of a spend-down. See model contract p. 15 Article V, Section D. 5(b). While the State's policy of permitting such disenrollment is questionable given that federal law requires only that medical expenses be incurred, and not paid, to meet the spend-down (42 CFR 435.831(d)), the State's policy and contracts now allow this disenrollment. For this reason, enrollment in pooled or individual supplemental needs trusts is more important than ever to eliminate the spend-down and enable the enrollee to pay their living expenses with income deposited into the trust.

ADVOCACY: Read the May 2009 Report by the New York Health Foundation on "Streamlining New York's Excess Income Program." prepared by Manatt Health Solutions and the Consumer Workgroup Response.

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



Article ID: 46
Last updated: 17 Feb, 2022
Revision: 22
Medicaid -> Financial Eligibility -> Medicaid Spend-Down
<http://health.wnyc.com/health/entry/46/>