

Nursing Home Medicaid Coverage - Basic Financial Eligibility Rules about Income, Resources, and Spousal Protections

Medicaid rules are different for people living in the "community" than people living in institutions. For this article, the word "institution" means nursing home care. If you live in your home, someone else's home, or an Assisted Living Program, you are considered to live in the "community."

This article explains the different financial eligibility rules in the two broad eligibility categories -MAGI and NON-MAGI.

1. **NON-MAGI** - Most people who need nursing home care are **age 65+ or, if under 65, receiving Medicare because of disability**. They are "Non-MAGI". **Click [here](#).**
2. **MAGI** - The Affordable Care Act (ACA) established new financial eligibility rules for those **under age 65 who do not have Medicare. Includes those under 65 and** who are disabled if they do not yet have Medicare (MAGI CATEGORY) . If they need nursing home care, some different rules on asset transfers, liens, and institutional budgeting apply. **Click [here](#).**

Financial Eligibility for INSTITUTIONAL MEDICAID for the "Non-MAGI" Category - Aged 65+, Blind or Disabled.

1. Transfer of Assets --

This [article on transfers of assets](#) describes the rules that require a waiting period, or transfer penalty, for Medicaid to pay for nursing home care if you transferred assets during the "lookback period," which in most cases is the period since February 8, 2006.

2. The "NAMI" = Net Available Monthly Income.

This is the amount of a nursing home resident's income that s/he is expected to contribute toward the cost of his or her care. It is the nursing home version of the Medicaid spend-down. The general rule for institutional or "**chronic care**" **budgeting** is that ALL income, other than the amount needed to pay Medicare or Medigap health insurance premiums, must be paid over to the nursing home as the NAMI, except for a \$50/month Personal Needs Allowance (PNA).

- These rules are in the [State DOH MRG INCOME Chapter](#) at pp. 225-238

- Income is counted for this institutional "**post-eligibility budgeting**" that would be excluded if received while the individual was on COMMUNITY Medicaid. 42 CFR Â§ 435.832(c) provides that "income that was disregarded in determining eligibility must be considered in this process [the **post-eligibility** determination of the amount to be paid from the individual's income and the amount to be paid by Medicaid]." "Post-eligibility" is the budget calculation of the NAMI, as opposed to "eligibility," which is whether the individual is eligible for Medicaid at all (s/he might not be because of a transfer of assets, or because income is so high that it exceeds the cost of nursing home care). For example:

- ◆ **bank interest and dividend income** is exempt for community Medicaid for people age 65+, disabled or blind (also known as "SSI-related Medicaid category"). However, in institutional Medicaid, this income is counted. See DOH Medicaid Reference Guide Income Chapter at pp. 177, 89-9
- ◆ Income may be placed in a **pooled trust or a supplemental needs trust** to eliminate the spend-down while in the community, but may not eliminate the NAMI in institutional budgeting. *Wong v. Daines*, 571 F.3d 247(2d Cir. 2009).
- ◆ **\$20** is always subtracted from monthly income for people age 65+, disabled or blind in community budgeting, but not in institutional budgeting.
- ◆ **earned income disregards** that disregard the first \$65 and then half of the remaining earned income in a month for SSI-related people in the community, to disregard earned income they or their spouses earn, do not apply for institutional budgeting.

However there are exceptions to the rule that requires all income to be paid to the nursing home except for \$50/month.

A. Holocaust restitution and the amount needed to pay any **health insurance premiums** is always exempt, in nursing homes and the community.

B. COMMUNITY BUDGETING -- When an individual is first admitted to a nursing home, if there is a reasonable expectation that s/he will return home, she is allowed to keep income up to the community Medicaid level, which in 2021 is \$884 per month. Additionally, the income deductions or disregards that are not allowed in chronic care or institutional budgeting -- see above -- ARE permitted during this period, which has no specific time limit but is generally 6 months and sometimes renewable for another 6 months. So the \$20/month disregard allows the individual to keep up to \$884/month (2021 level). See this article on Maintaining Community Budgeting During Temporary Nursing Home Stays, with the NYC HRA Forms called the Discharge Alert.

C. SPOUSAL IMPOVERISHMENT and Dependent Income Allowances -- State DOH MRG INCOME Chapter at pp. 225-238

1. An Institutionalized Spouse in a nursing home may use all or part of his or her income to support his or her "Community Spouse," the spouse at home, depending on the spouse's own income. If the spouse at home has his or her own income that is less than the

"minimum monthly maintenance needs allowance" [MMMNA] (\$3,259.50/mo in 2021), then the "Community spouse" may keep his/her own income plus enough of the "institutionalized spouse's" income to bring the total up to the MMMNA level. This is called the "*community spouse monthly income allowance*" (CSMIA).

- a. The Community spouse's income consists of income solely in his or her name plus half of any income that is in the joint name of both spouses.
- b. If the Institutionalized spouse has income that is above the amount needed to bring the Community Spouse's income up to the MMMNA, the balance must be paid to nursing home as the NAMI.
- c. IF community spouse needs more of institutionalized spouse's income, s/he can sue in Family Court for an order of support, or request a fair hearing, but must prove "exceptional circumstances resulting in significant financial distress." SSL 366-c(2)9g), (8)(b); 18 NYCRR 360-4.10(a)(3), (b)(6).
- d. IF community spouse's own income exceeds the MMMNA (\$3,259.50 in 2021) Medicaid will ask for a contribution of 25% over that amount toward spouse's care. S/he can do a "spousal refusal."

2. INCOME - ALLOWANCES FOR DEPENDENT CHILDREN OR PARENTS -- Minor children and dependent children or parents (defined as having over 50% of their needs met by the community or nursing home spouse) also get an allowance from the Institutionalized spouse - \$719 mo in 2021 (up to maximum \$2,155 per family). This reduces the NAMI.

3. SPOUSAL REFUSAL - Under SSL 366.3(a) and federal law, the community spouse's refusal to contribute income and/or resources to the cost of nursing home care does not make the institutionalized spouse ineligible for Medicaid. The government has the right to sue a spouse who refuses to contribute. See NYC Spousal Refusal Form. The community spouse must still disclose her income and resources, since any transfer of resources by the community spouse affects eligibility of the institutional spouse.

4. A community spouse is entitled to the community spouse monthly income allowance (CSMIA) even if she does a spousal refusal to contribute resources. See NYS ADM 91-ADM-33 and NYS DOH Medicaid Reference Guide at page 396. However, since mid-2012, the NYC HRA Medicaid program has violated this longstanding state rule and has denied the community spouse this income allowance if she executed a spousal refusal. Many fair hearing decisions reversed these determinations, see, e.g. FH 6208131N (3/1/2013), FH 6318971R (9/5/2013). By letter of December 17, 2013, the Elder Law Section of the NYS Bar Association asked HRA to cease this unlawful practice of denying this impoverishment allowance (download here). Through a Freedom of Information request, the Bar identified some internal HRA procedures that were wrong and asked that HRA correct them. On Dec. 24, 2013, HRA issued 2013 MAP-INF 04 which correctly states that the community spouse is entitled to the CSMIA even if she does a spousal refusal, if she provides complete information regarding income and resources. See

also Letter of Roy Esnard, Counsel for HRA dated Dec. 23, 2013, explaining clarification.

HRA has retrained all relevant staff, including Fair Hearing representatives, and is rebudgeting all cases approved since October 2012. HRA's counsel asks anyone who needs rebudgeting to **request a Fair Hearing conference by calling 718-637-2426**. If your case is not resolved, please contact Valerie Bogart at vbogart@nylag.org

D. **"MAGI" individuals will have no "NAMI"** - but, by definition, their income must be under 138% of the Federal Poverty Line using MAGI income budgeting rules. See **NYS DOH GIS 14 MA/016: Long Term Care Eligibility Rules and Estate Recovery Provisions for MAGI Individuals** -- [PDF](#)

3. RESOURCES -

A. A single Medicaid recipient may have the same amount of assets as a single person living in the community (\$30,182 in 2023), plus a burial fund and pre-paid funeral arrangements. See Fact Sheet on Funeral Arrangements and this article for current asset limits.

B. **THE HOME** -- A person who becomes institutionalized may be able to transfer his or her home to a spouse or certain protected relatives. See article on Transfers of Assets. If no such exempt transfer may be made, a home owned by a person who becomes institutionalized will count as a countable resource, and will therefore disqualify the individual from eligibility for Medicaid, *unless he or she has an intent to return home*. Even if she does intend to return home, the Medicaid program may impose a lien on the home in some cases. These rules are explained below.

1. **INTENT TO RETURN HOME - Home Not Counted as an Asset** -- 20 C.F.R. Â§ 416.1212(c) provides that "if an individual (and spouse, if any) moves out of his or her home without the intent to return, the home becomes a countable resource because it is no longer the individual's principal place of residence." *Anna W. v. Bane*, 863 F. Supp. 125 (W.D.N.Y. 1993), held that a person's "subjective intent to return home" must be considered in whether a homestead may be considered an available resource. This court decision voided the application of state regulation 18 N.Y.C.R.R. Â§ 360-1.4(k) to require medical proof of the ability to return home, since that requirement was more strict than the SSI standard.

a. How to Indicate Intent to Return Home. This intent may be expressed in a letter or affidavit signed by the person, or by an agent authorized under a power of attorney, on the HRA form used in New York City, or by written statements of relatives or friends who have personal knowledge of the person's intent to return home. For this purpose, a subjective intent to return home controls, even if there is no reasonable expectation that the person will be discharged and return home. (In contrast, the entitlement to "community budgeting of income", allowing a new nursing home recipient to keep the full Medicaid income allowance (\$884 in 2021) instead of only \$50, is based on reasonable expectation to return

home.

2. **MEDICAID LIEN ON HOME** -- in contrast to the determination whether the home is an available resource, the controlling factor for the imposition of a lien is whether the person is permanently absent and not reasonably expected to be discharged back home. N.Y. Soc. Serv. Law Â§ 369(2)(a)(ii); 18 N.Y.C.R.R. Â§ 360-7.11(a)(3)(ii). The local Department of Social Services must provide adequate notice and prove at a hearing that the person cannot reasonably be expected to be discharged from the institution and return home. 42 U.S.C. Â§ 1396a(a)(18) and 1396p(a)(2) ; 42 C.F.R. Â§ 433.36(d), NYS 92 ADM-53. If the agency prevails after adequate notice is provided and a hearing (if requested), a lien can be imposed on the home even if there is a subjective intent to return home.

a. If the person returns home, the lien dissolves. 18 N.Y.C.R.R. Â§ 360-7.11(a)(3)(i). However, the home may be subject to estate recovery after the person's death.

b. NO lien may be placed on the home of a person who is permanently institutionalized if one of the following lawfully resides in the home:

i. a spouse;

ii. a child under 21 OR an adult child who is blind or permanently and totally disabled; or

iii. a sibling who has an equity interest in the home and who resided in the home for at least one year before the date of the recipient's admission to the medical institution. (89 ADM-45 defines "equity interest")

iv. The institutionalized individual must be given an opportunity to make an exempt transfer the home to one of the individuals for whom there would be no transfer penalty. DOH 02-OMM/ADM-3 p. 7

N.Y. Soc. Serv. Law Â§ 369(2)(a)(ii); 18 N.Y.C.R.R. Â§ 360-7.11(a)(3)(ii).

c. No lien may be placed if the institutionalized individual is in the MAGI category, i.e. does not have Medicare. See **NYS DOH GIS 14 MA/016: Long Term Care Eligibility Rules and Estate Recovery Provisions for MAGI Individuals** -- [PDF](#)

d. A lien validly placed cannot later be liquidated if any of these relatives live in the home:

i. a sibling who lived there for a year (regardless of any equity interest), immediately before the recipient's admission to the medical institution, and has lawfully resided in the recipient's home on a continuous basis from the date of the recipient's admission to the medical institution through the present day; or

ii. a child who provided care to the individual has resided there for two years immediately before the individual's admission to the institution, and who has continued to lawfully reside there to the present day

C. PROTECTIONS FOR COMMUNITY SPOUSE -- Community spouse may keep couple's combined joint and individual resources up to the greater of \$74,820 (2021) or one-half of the couple's total combined assets up to \$130,380 (2021). The balance is deemed available to institutional spouse for cost of care. Rules are in NYS DOH MRG Resources Chapter at pp. 331 -335

1. A Community spouse may establish the need for more resources to generate enough interest income to bring income up to the MMMNA. There have been many developments on the rules for establishing how much in resources may be kept to generate this income.

a. "ANNUITY" -- A July 27, 2006 State Medicaid Director letter issued by the U.S. Centers for Medicare & Medicaid Services (CMS), states that the State may use any reasonable method to determine the amount of increased resources needed to generate adequate income to make up a MMMNA shortfall, including, but not limited to, considering the cost of a single premium annuity to generate the needed income. In a 2007 directive, DOH 07-OHIP-INF-3, NYS DOH states that local districts and hearing officers may consider the resource amount needed to purchase a single premium immediate life annuity that would generate the income shortfall amount. Since an annuity would likely generate higher interest than a mere savings account, this policy has the effect of limiting the amount of the increased resources needed to generate income for the spouse. The directive specifically states that the annuity need not actually be purchased -- but income may be imputed as if it were purchased.

b. "INCOME FIRST" -- *Robbins v. DeBuono*, 218 F.3d 197 (2d Cir. 2000) held that a community spouse can have an increase in the CSRA to generate additional income without first allocating the institutionalized spouse's Social Security benefits to the community spouse. However, since then, a series of decisions led to reversal of this policy, announced in State directive NYS GIS 05 MA/002. Effective January 2005:

"...a community spouse with income less than the MMMNA will not be allowed to retain resources in excess of the maximum community spouse resource allowance in order to generate income that could be provided by the institutionalized spouse from his/her Social Security benefits. This is true regardless of whether the institutionalized spouse actually makes Social Security benefits available to the community spouse. The decision to give a community spouse a higher community spouse resource allowance continues to be an issue resolved only by fair hearing decision or court order.

Please note that this does NOT mean that the institutionalized spouse is required to transfer Social Security benefits to the community spouse. Under spousal impoverishment budgeting, an institutionalized spouse is allowed, but not required, to make income available to the community spouse as a community spouse monthly income allowance (CSMIA). If an institutionalized spouse chooses not to make available all or part of the income budgeted as a CSMIA, this income will be counted in determining the amount of the institutionalized spouse's income to be applied toward the cost of care."

NYS GIS 05 MA/002.

c. Since Jan. 1, 2006, a **Community Spouse's IRA** is exempt as a resource only if it is in payment status, meaning s/he must be taking distributions. 18 NYCRR Section 360-4.10(a)(9).

d. Spousal impoverishment protections don't apply to "MAGI" category. **NYS DOH GIS 14 MA/016: Long Term Care Eligibility Rules and Estate Recovery Provisions for MAGI Individuals -- PDF**

2. SPOUSAL REFUSAL - Under SSL 366.3(a) and federal law, the community spouse's refusal to contribute income and/or resources to the cost of nursing home care does not make the institutionalized spouse ineligible for Medicaid. The government has the right to sue a spouse who refuses to contribute. See NYC Spousal Refusal Form.

MAGI: People Under 65 without Medicare or other 3rd Party Insurance

MAGI includes Nursing Home care if "medically frail." Under GIS 14 MA/16- Long Term Care Eligibility Rules and Estate Recovery Provisions for MAGI Individuals - the need for nursing home care alone meets that definition.

- Does not require a disability determination UNLESS income EXCEEDS THE 138% FPL MAGI limit 15 OHIP/INF-1 #20 - 22.

NO RESOURCE LIMIT FOR MAGI! But unlike Non-MAGI Medicaid, income from interest and dividends does count.

Transfer of Assets - If need Nursing home care > 29 days, must submit 5-year lookback and normal transfer penalty/ and exceptions apply. But - there is no RESOURCE test for MAGI. GIS 14 MA/16,

• A MAGI individual is "otherwise eligible" if income < 138% FPL. 15 OHIP/INF-1
NO MEDICAID LIEN on homestead. GIS 14 MA/16. But home equity limit applies to single individuals. 15 OHIP/INF-1 Q. #11.

INCOME BUDGETING:

- MAGI income limits apply in NH, counting only NH resident not spouse's income.
- If nursing home resident's income < 138% FPL - they are eligible and there is no NAMI. (Can keep \$1,677/mo. 2023)
- **Cannot use spousal impoverishment**, though nothing precludes giving that income to one's spouse.
- If also "disabled" can opt to use non-MAGI budgeting instead, with spousal impoverishment, if it is more advantageous.
- Income has different rules in MAGI than in Non-MAGI. See articles on MAGI here.

MUST TRANSFER MEDICAID from NYS of HEALTH "Exchange" to Local DSS/HRA

Financial Eligibility for INSTITUTIONAL MEDICAID for the "Non-MAGI" Category - Aged 65+, Blind or Disabled

- If someone found eligible for MAGI on [NYSofHealth](#) needs NH care, even if in a mainstream managed care plan, their Medicaid must be transferred to the LDSS for input of needed eligibility codes, and to evaluate "lookback" and assess any transfer penalties. .

See [NYC HRA Alert "Consumers with Medicaid Coverage on the NYSOH \(Marketplace\) whose Coverage Must be Transitioned to WMS"](#) - (updated 3/10.2015 - updates alert from 6/112014, copy of which is attached) - procedure for transferring case to LDSS
Home equity limit applies to single individuals. [15 OHIP/INF-1 Q. #11](#) (2023 - \$1,033,000 - for current limit see Box 18 on current [HRA Medicaid chart](#))
ALSO SEE [MLTC Policy 14.01](#): Transfers from Medicaid Managed Care to Managed Long Term Care

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