Empowered Aging Forum: Medicaid Planning

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BOND SCHOENECK & KING ATTORNEYS

- **Bio**:
  - Jeremy is a Member (partner) with Bond, Schoeneck & King, PLLC, who practices in the areas of trust and estate planning and administration, elder law, Medicaid planning, and counseling families with a loved one with special needs.
  - Named in Best Lawyer's in America® for Elder Law (2025, 2026) and by the Daily Record to its Power 50 for Law List in 2024
- **Education**:
  - J.D., University of Dayton School of Law
  - B.A., St. John Fisher College, *magna cum laude*

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Agenda

- Medicaid Eligibility in New York
  - Community Medicaid
  - Chronic Care Medicaid
- Asset Protection Strategies
  - Long-Range Planning
  - Short-Range “Crisis” Planning

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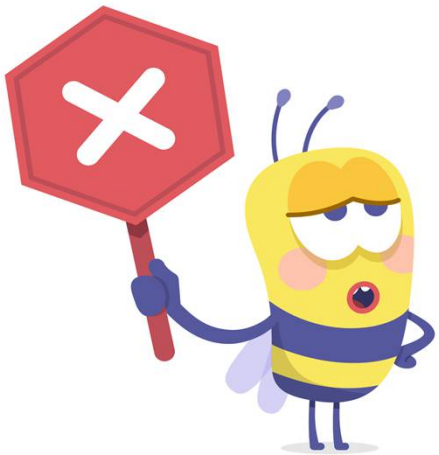
What is Long-Term Care ("LTC") Planning?

- a/k/a "Medicaid Planning" or "Asset Protection Planning"
- Planning for needs that arise from aging or chronic illness
  - Health care component
  - Emotional component
  - Financial component
  - Legal component – "Estate Planning" and "Elder Law"
- May involve **legally** protecting assets

No two plans are the same



- Who is “in charge” if you need help?
- How much $$ do you need for your lifestyle or for your LTC needs?
- What (if anything) do you want to leave to your family, friends, or charity after you die?
- What impact will your LTC planning have on your appeal to various facilities?
- How do you plan to pay for unexpected health care costs?

- Studies project that as many as 70% of adults over 65 will need some form of LTC before they die
- Round the clock care at home averages nearly $290,000/yr. ($795/day or $33/hour)
- 1 in 4 Americans is now a caregiver
- **Average** cost of nursing home care in this Rochester region is $15,127/mo.

Ways to Pay

- Medicare / Health Insurance
- Long-term care insurance
- Private pay
- Gifts from wealthy friends/relatives
- Medicaid

What is Medicaid?

- Federal/State program that can pay for LTC expenses for those that qualify
- Asset and Income Limits – different limits for single applicants and for married couples
- Payor of last resort
- Different standards for *Community* Medicaid programs (at home care) vs. *Chronic Care* Medicaid (nursing home)

Common Myths and Mistakes

- “We’re too rich to qualify”
- “We’re too old/young to worry about LTC planning”
- “My money is buried in the backyard, so I am fine”
- “They take your house”
- “I have LTC insurance, so I don’t need to plan”
- “I will use my retirement accounts to pay for my LTC”
- “Just give the house to your kids and it’s safe”
- “I have a trust already, so Medicaid can’t touch it”
- “My kids are joint on my accounts, so we are safe”
- “My kids will take care of me”

Types of Medicaid in New York

Community Medicaid	Chronic Care Medicaid
• Personal care, physical therapy, home health care and home health aid services • Disabled, Aged and Blind • Pregnant Women & Children • Waiver Programs – OPWDD, OMH, etc. • MBI-WPD • CDPAP • Different Asset and Income thresholds for the different programs • **** No look-back period ****	• Hospitals, medical facilities, nursing homes • Asset and Income thresholds • **5-year look-back period on asset transfers**

**Starting ~~Oct. 2020 2022 2023~~ maybe 2026 – 2.5 year lookback **

A listing of the medically necessary services that Medicaid may cover can be found at : https://www.emedny.org/ProviderManuals/index.aspx

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Community Medicaid
Income and Assets Levels for
+65, disabled or blind

Single Person:

- $32,396 in *non-exempt assets*
- $1,800/mo. in income
- Exempt Assets
  - Burial Funds (up to $1500) and prepaid funeral agreements
  - House (no limit to equity value)
  - Retirement Accounts (IRA,401k, etc.) in payout status
  - Vehicle

Married Couple:

- $43,781 in *non-exempt* assets.
- $2,433/mo. in income
- Exempt Assets
  - Burial Funds (up to $1500) and prepaid funeral agreements
  - House (no limit to equity value)
  - Retirement Accounts (IRA,401k, etc.) in payout status
  - Vehicle

What assets are counted?

- Bank Accounts
- Investment Accounts
- Stocks and Bonds
- Certificates of Deposit
- Cash Value of Life Insurance
- Vehicles (if you own more than one)
- Vacation/Recreational Property

What if you have excess assets?

- Calculated as of the first day of the month in which you apply
- Options:
  - Spenddown
  - Pay bills
  - Transfer (ie: “gift”) the assets – there is no lookback period - **for now!**
  - Spousal Refusal

Case Study 1:

Community Medicaid Asset Spenddown

- Single Applicant
  - Total available assets of A/R $50,000
  - Resource Limit ($32,396)
  - Over-resourced $17,604
- Single Applicant after planning
  - Total available assets of A/R $50,000
  - Resource Limit ($32,396)
  - Pre-Planned Funeral ($7,500)
  - Transfer to MAPT or gifted away ($10,104)
  - Over-resourced $ 0.00

What if you have surplus income?

- Income is calculated in the month received
- If held into next month it becomes an asset
- Options:
  - Spenddown on care
  - Pay past unpaid medical bills
  - Fund a pooled trust
  - Fund an SNT (if under 65)
  - Spousal Refusal

Case Study 2:

Community Medicaid Income Spenddown

- Applicant's Income
  - $ 2,000/mo. from Social Security
  - $ 1,000/mo. RMD from the IRA
  - ($1,800/mo.) income allowance
  - ($ 20/mo.) income disregard
  - ($ 185/mo.) insurance premium

  $ 995/mo. surplus can be used on medical care, or to fund a Pooled SNT

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Community Medicaid – Final Thoughts

- Lookback period may eventually be implemented
- Community Medicaid **does not** cover nursing home care
- What happens if you cannot stay home?
- What if something happens to your spouse?
- Consider using Care Coordinators to help with medical piece
  - Lifespan maintains a list on its "resources" page
  - https://static1.squarespace.com/static/531f242de4b0467fe7ea5084/t/68ffcf2f2ce6c001c38c66dc/1761595183824/Geriatric+Care+Management+Professionals+%281%29.pdf

Average Costs of Nursing Home Care in 2025 by Region

- **Long Island ($14,914)** – Nassau, Suffolk
- **New York City ($14,582)** – Bronx, Kings, New York, Queens, Richmond
- **Central ($13,042)** – Broome, Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, Tompkins
- **Northeastern ($13,916)** – Albany, Clinton, Columbia, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington
- **Northern Metropolitan ($14,569)** – Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester
- **Rochester ($15,127)** – Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, Yates
- **Western ($12,842)** – Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming

GIS 23 MA/21

Chronic Care Medicaid in 2025

Resource Limits

- **Institutionalized Spouse** ("IS"): can have $32,396 in *non-exempt* assets
- **Community Spouse** ("CS"): the spouse at home can have the greater of $74,820 or the "spousal share" (½ of a couple's joint resources up to a maximum of $157,920)
- If you have no CS, then you would be only looking at the limits for an IS.

Exempt Assets are not counted

- Residence and adjoining land
- One Vehicle
- Personal property
- Pre-paid funeral accounts & Burial Plots
- IRA's and other Qualified Retirement accounts may be exempt (401k, 403(b) and others) (special rules apply)
- Annuities may be exempt (special rules apply)
- Other: Life Estates; Tax Refunds; Equity value of a trade or business; Income producing property

What about the House?

- Residence and adjoining land with an equity value up to $1,097,000 is exempt.
- Medicaid will put a lien on the house unless:
  - Spouse, disabled child, child under 21, or sibling with an equity interest lives there
- When the house is eventually sold, the lien allows Medicaid to recover for any benefits paid during your lifetime

Case Study 3:

Chronic Care Medicaid Resource Limits

- IS owns the following:
  - House - $500,000
  - One Vehicle - $20,000
  - Bank Accounts - $20,000
  - Life Insurance
    - Death Benefit - $500,000
    - Cash Value - $10,000

Case Study 4:

Chronic Care Medicaid Resource Limits

- IS and CS own the following:
  - House - $500,000
  - Two Vehicles
    - 2015 Honda Accord - $10,000
    - 2025 BMW - $75,000
  - Bank Accounts - $75,000
  - Life Insurance
    - Death Benefit - $500,000
    - Cash Value - $10,000
  - Retirement Accounts in “payout” status - $2,000,000

Chronic Care Medicaid in 2025

Income Limits

- IS can “keep” $50/mo.
- CS can “keep” $3,948.00/mo.
- Plus enough for insurance premiums
- Any excess income **MUST** be paid to the nursing home as **N**et **A**vailable **M**onthly **I**ncome (“NAMI”)
- There is no pooled trust option for excess income

Case Study 5:

Chronic Care Medicaid Income

- IS and CS have income of $6,000/mo. with supplemental insurance premiums of $185.00/mo. each:

Total Monthly Income	$6,000.00
Insurance Premiums	($ 370.00)
IS's allowance	($ 50.00)
CS's MMMNA	($3,948.00)
NAMI	$1,632/mo.

Transfer Penalties

- **Look-back period**: five years immediately before the Medicaid “pick-up” date (ex: 12/2020 – 12/2025)
- **Uncompensated Transfer**: an asset transfer for less than fair market value during the look-back period (ie: a gift)
- **Penalty Period**: penalty imposed for all uncompensated transfers made during the look-back period

Transfer Penalties

- **Length of penalty period**: The total value of all uncompensated transfers divided by your "regional rate" (Slide 18) equals your penalty in months
- Penalty period does not begin until the IS is:
  1. In a skilled nursing facility;
  2. Has applied for Medicaid; and
  3. Is "otherwise eligible" for Medicaid.

Case Study 6:

Chronic Care Medicaid Transfer Penalties

- October 2020 – IS gives her son $25,000
- October 2021 – IS gives her son $25,000
- November 2025 – IS enters skilled nursing and applies for Medicaid with the following:
  - Vehicle - $50,000
  - Bank Accounts - $30,000
  - PreNeed Funeral Account - $15,000

Case Study 7:

Chronic Care Medicaid Transfer Penalties

- December 2018 – IS and CS transfer ownership of the house ($500,000) to a Medicaid Asset Protection Trust (MAPT)
- December 2022 – son's business receives $10,000 for material and labor to replace IS's roof
- June 2023 – IS buys a car for $50,000
- November 2025 – IS and CS own the following:
  - Two Vehicles - $10,000 and $50,000
  - Bank Accounts - $75,000
- November 2025 – IS enters skilled nursing and applies for Medicaid

Spousal Protections.

- **Exempt Transfers –** can transfer assets between spouses with no penalty
- **Primary Residence** – Exempt, and no lien can be placed on the property if the CS still lives there
- **Community Spouse Resource Allowance** - the amount of assets the CS can keep (page 19)
- **Spousal Budgeting** – the CS can bring his/her income up to the minimum monthly maintenance needs allowance ($3,948 in 2025).
- **Spousal Refusal** – All non-exempt assets are transferred to the CS who then refuses to make those assets and/or income available to the IS
  - CS must still provide info on resources/income
  - CS can be sued by the State for contribution

Case Study 8:

Chronic Care Medicaid Spousal Refusal

- November 2025 – IS and CS own the following:
  - House ($500,000)
  - Lake House ($250,000)
  - Vehicles ($50,000 - $50,000)
  - Bank Accounts and Investments ($532,396)
- November 2025 – using a full gifting power of attorney, the CS transfers the House, Lake House, and all excess resources to herself, signs Spousal Refusal letter, and applies for Medicaid
- December 2025 – assuming there are no uncompensated transfers during the lookback period, IS is Medicaid eligible
- Eventually CS should expect to receive a letter from the County asking for reimbursement for Medicaid services rendered to the IS

Medicaid Planning

- **Long Range Planning**
  - Application for *Chronic Care* Medicaid is "not likely" within the next five years
  - Goal is to beat the five-year look-back on asset transfers
- **Short Range ("Crisis") Planning**
  - Admission to a facility is pending or already happened
  - This type of planning must be done BEFORE a Medicaid application is filed

Things to Consider

- What is your current health outlook?
- How much money will you need?
- Are there certain assets you want to protect?
- What is the cost (financial/emotional) of the plan?
- How will your Medicaid planning impact your appeal to the nursing home?
- What is the likelihood that the gifts are still available if you don't make five years?
- Would you trust a family member or friend to do Medicaid planning for you if you lose capacity?
- No two situations are the same.

Long Range Planning

- Estate planning & organizing documents
- Home health care and *Community* Medicaid
- LTC Insurance and private pay
- Purchasing a life estate in real property
- Personal care contracts – paying a family member to care for you
- Make uncompensated transfers
  - Outright Gifts vs. Gifts with “strings attached”
  - Pros and Cons to each

Documents Needed to Apply for Medicaid

1. **Personal Information** - to prove that you are who you say you are, and that you are entitled to benefits
2. **Asset/Resource Information** – copies of all statements and information to show assets (5 years of statements for Chronic Care Medicaid)
3. **Income Information** – Information needed to prove your income

Personal Service Contracts

- Formal **written** agreement between caregivers and their family members in need of assistance
- Caretaker must be paid at fair market value
- NOT viewed favorably by Medicaid
- Expect a Fair Hearing with Medicaid
- Different from CDPAP, which is a Community Medicaid program that can pay for family caregivers.

Personal Service Contracts

- Presumption is that family members provide services out of “love and affection,” and without expecting payment. Must provide evidence to the contrary (96 ADM-8)
- You must prove that the applicant received fair market value for any payments. If that can’t be done, then a transfer penalty is imposed by Medicaid (GIS 07 MA/019)

Personal Service Contracts

- Recommendations/Considerations:
  - Contract **must** be in writing and updated as needed
  - **Keep detailed records!!** – dates and hours worked, the services provided, etc.
  - Must be clear how the fair market value of the services was calculated
  - Must be clear on the number of hours or services needed, and how you came to that conclusion (ex: Doctors note)
  - Provide for payback of money if services are not earned
  - Payments to caregivers are taxable income
  - **Keep detailed records!!**

Long Range Planning - Gifting

- Outright Gifts
  - Deed the house to the kids
  - Change ownership on accounts
  - Write a check to family or friends
  - Give away money or other property
- Pros and Cons to each

Long Range Planning - Gifting

- Gifts with “Strings Attached”
  - Deed the house with a retained life use
  - Gift assets to a Medicaid Asset Protection Trust (MAPT) or other *Irrevocable* Trust
- Pros and Cons to each

Case Study 9:

Chronic Care Medicaid Gifting

- November 2025 – A/R has the following:
  - House ($500,000)
  - Vehicle ($50,000)
  - Bank Accounts and Investments ($500,000)
  - Retirement Accounts in “payout status” ($1,000,000)
- December 2025 – A/R writes a $100,000 check to each of his 5 children and moves the house into a MAPT
- December 2030 – Gifts are protected from a Medicaid lookback

Case Study 10:

Chronic Care Medicaid Gifting

- November 2025 – A/R has the following assets:
  - House ($500,000)
  - Cottage ($250,000)
  - Bank Accounts and Investments ($500,000)
  - Retirement Accounts in “payout status” ($1,000,000)
- December 2025 – house, cottage, and some cash assets into a MAPT
- February 2027 - more cash into the MAPT
- December 2030 – house, cottage and first gift of cash assets in the MAPT are protected from a lookback
- February 2032 – second gift of cash protected

Short Range "Crisis" Planning

- Medicare may cover some of your initial rehab
- Begin payouts from LTC Insurance
- Private pay
- Asset Transfers
  - Maximize exempt assets (slide 21)
  - Ensure retirement accounts are in "payout status"
  - Make exempt asset transfers – transfers that do not incur a penalty
  - Gift/Note and other techniques can allow you to save **approximately** half of your remaining assets
- Spousal Refusal

Exempt Asset Transfers

- Transfers between spouses
- Transfers to a disabled child or to a supplemental needs trust for a disabled person's benefit
- Transfers of the Home
  - To a spouse
  - To a child under 21, disabled, or blind
  - To a caretaker-child who lived there for the past 2 years
  - To a sibling with an equity interest who lived there for the past 1 year

Case Study 11:

Chronic Care Medicaid Exempt Asset Transfers

- November 2025 – IS owns the following on admission:
  - House ($500,000) where she lived with her daughter
  - Vehicle ($10,000)
  - Bank Accounts and Investments ($30,000)
  - Retirement Accounts in “payout” status ($500,000)
- November 2025 – IS transfers house to her “caregiver child” and qualifies for Medicaid because she is otherwise eligible.

Case Study 12:

Chronic Care Medicaid Gift/Note Planning

- November 2025 – IS owns the following on admission:
  - Bank Accounts and Investments ($532,396)
  - Income of $3,000 per month
- November 2025 – With her Elder Law Attorney, IS creates a Gift/Note plan and "gifts" **approx.** ½ ($250,000) of her excess resources to a MAPT, and "loans" the other ½ to his child in exchange for a properly drafted "promissory note" in which the child must pay it back over time.
- December 2025 – IS applies for Medicaid
  - Penalty Period of 16.5 months = $250,000 (gift) / $15,127 (Rochester's regional rate in 2025)
  - IS's monthly income plus the promissory note payment will be used to pay the nursing home during the 16.5 months
- May 2027 – IS receives full Medicaid benefits and the $250,000 in the MAPT is protected

The Application Process

- Step 1 – Consider Long Range or Crisis Options
- Step 2 – Start collecting Documentation
- Step 3 – Complete the Application
- Step 4 – File it with Local Department of Social Services
  Monroe County Department of Human Services (MCDHS)
- Step 5 – Reply promptly to all inquiries from DSS
- Step 6 – Receive Determination Notice
  - It will define your NAMI and the pick-up date
  - Penalty period (if any) will be on the notice
  - If you disagree you have the option to request a “Fair Hearing”
- Step 7 – Post Eligibility Planning
- Step 8 – Annual Recertification

Post-Eligibility Best Practices

- Pay NAMI every month
- Pay on Promissory Note for gift/note plan (if any)
- CS should review own Estate Plan - Health Care Proxy, Power of Attorney, Will/Trusts
- Keep detailed records
- Update beneficiary designations to avoid estate recovery by Medicaid

Other Common Myths and Mistakes

- “Grandma was just admitted to the nursing home, so it’s too late to do anything”
- “I heard that you could give away $15,000 per person per year and the government won’t care”
- “I have a trust already, so Medicaid can’t touch it”
- “I was told to just give everything to my kids if I ever go into a nursing home because Medicaid is too busy to go after anyone”
- “All Medicaid plans are the same”

Questions?

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Thank You

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It is not to be considered as legal advice.
Laws can change often, and information may become outdated.