



Family Care Connections, LLC

ELDERCARE GUIDE

NEW YORK NURSING HOME MEDICAID



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Nursing Home Medicaid

Individuals who are experiencing a long-term catastrophic illness may need to explore Long Term Care Medicaid as an option to finance the care because Medicare does not pay for long term care in a nursing home. In order to qualify for Nursing Home Medicaid in New York State an individual cannot have more than \$15,750.00 in resources/assets (2020). Resources include savings, stocks, real estate, investments, life insurance, annuities, etc. Once an individual qualifies, all income is paid to the nursing home. If the nursing home resident has a community spouse some or all of the income may be paid to the spouse. In addition, the home may be protected (see discussion below).

If an individual has more than \$15,750.00 in assets, he/she must “spend down” or “transfer the assets” before being eligible for Nursing Home Medicaid. There is a (60) month look back period when applying for Nursing Home Medicaid. This means that all assets and financial activity must be reported when applying for Nursing Home Medicaid. If a transfer of assets was made during the (60) month period, it may affect the applicant’s eligibility. All transfers of assets beyond the (60) month look back will not affect eligibility.

Example #1:

Mr. Jones applies for Nursing Home Medicaid in the month of July 2018. He is looking for an eligibility “pick up” date of July 1, 2018. He will be required to provide all asset/financial activity on his accounts for the period of July 1, 2013 through June 2018. If there were non-exempt transfers of assets, he may be subject to a period of ineligibility. This period is determined by the size of the transfer, when the transfer was made and to whom the transfer was made. The penalty period is determined by the value of the transfer divided by the average regional monthly cost of a nursing home stay. The average regional cost for a nursing home stay is established annually by the New York State Department of Health. The average regional cost is \$13,053 in Nassau County and \$12,319 in New York City (2018). Note: The regional cost is the adjusted annually. Check for the most recent regional rates when computing the actual penalty.

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Example #2:

Mr. Jones transferred \$120,000.00 in June of 2017.

The regional cost in Mr. Jones' area (Nassau County, NY) is \$13,053.

\$120,000.00 divided by \$13,053 = Approximately 9.2 months of a penalty

However, the penalty period does not begin until Mr. Jones enters a nursing home or 60 months elapses.

Note: Individuals who have excess resources should consult with a Medicaid expert before making significant transfers of assets because these transfers can result in significant penalty periods.

- For the most recent updates to Resources and Income, see the Medicaid Update attached to this publication.

Spend down – an alternate approach to excess resources. This is accomplished by paying for care or other medical expenses until the individual has “spent down” the resources to \$15,750.00.

Example:

Mr. Jones is in need of Nursing Home Care. He has \$100,000 in savings. He has to spend down the excess funds of \$84,250.00 (\$100,000-\$15,750 (resource limit) on his care at the nursing home then apply for Nursing Home Care Medicaid.

Note: There are options for transferring assets even within the (60) month look back period. Consult with a knowledgeable advocate in order to maximize the protection of the excess assets/resources.

Community Spousal Rights under Nursing Home Medicaid

When an individual enters a nursing home the spouse who remains in the community is considered a community spouse. The spouse has specific rights with respect to the marital assets plus income and assets. All transfers to spouses are exempt from the (60) month penalty period.

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Example #2:

Mr. Jones enters a nursing home. He and his wife jointly own a home valued at \$500,000.00 and they have a savings account valued at \$200,000.00. All of these assets are transferred to Mrs. Jones. This transfer will not affect his Medicaid eligibility because they are spousal transfers. Mr. Jones will be eligible for Nursing Home Medicaid once the transfers are complete. The (60) month penalty period will not apply.

In addition, the community spouse can claim a significant portion of the household income (up to \$3,216.00/month (2020)), even if the source of the income is from the spouse residing in the nursing home.

Example #3:

Mr. Jones enters the nursing home and is in need of Medicaid. His income consists of Social Security and Pension totaling \$3,500.00/month. Mr. Jones' wife does not have any income of her own. Therefore, she will keep \$3,216.00 (2020) of the \$3,500.00/month once Mr. Jones is on Medicaid.

In addition to income, the community spouse can keep title to the house as well as up to \$128,640 (2020) of assets. The community spouse can keep more assets under a "spousal refusal" law. This law allows the community spouse to keep all marital assets. However, the Department of Social Services reserves the right to sue the community spouse for support contribution for any excess amount above the community resource allowance as described above. The criteria is usually based on ability to pay and other circumstances such as the health and other economic needs of the community spouse. The practice of pursuing spousal contribution varies from county to county. Individuals facing a potential spousal support proceeding should consult with a knowledgeable attorney.

Protecting the Primary Residence

When an individual applies for Medicaid the home is also exempt up to \$893,000 (2020) for eligibility purposes. However, it can be a source for recovery. When the Medicaid recipient is no longer in the house or the recipient dies. Therefore, certain steps must be taken to protect the home. The home may be

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transferred to certain individuals without creating a penalty for Medicaid eligibility. The transfer can be made to the following:

1. To any person or Trust if the application is for Community Medicaid/Home Care Medicaid;
2. To a spouse;
3. To an adult disabled child;
4. To an adult child who has lived in the home for at least two years and is the primary caregiver for the Medicaid recipient;
5. To a sibling who holds an equity interest in the house and has lived there for at least one year.

Example #1:

Mr. Johnson needs Nursing Home care. He and his wife own a home. Mr. Johnson can transfer his interest in the home to his wife and the transfer will result in a penalty for Medicaid eligibility.

Example #2:

Mr. Johnson owns a home with his sister who also lives in the house. He needs to go to a nursing home. Mr. Johnson can transfer his half to his sister without penalty for Medicaid eligibility.

Example #3:

Mrs. Smith needs to go to a Nursing Home. Her daughter Susie has been living with Mrs. Smith for the past three years because she came home to care for her. Susie can document that she has lived at the home through driver's license and vehicle registration. Mrs. Smith can transfer the house to Susie without penalty under Medicaid eligibility rules. (Exception to above)

Note: It is important to try and protect the home when planning for Medicaid. Comprehensive planning might include the transfer of the home to an exempt individual or a Trust. This will help protect the primary residence from recovery down the road. Always consult with an expert who is knowledgeable about Medicaid planning and recovery.

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Recovery of Assets

When an individual receives Medicaid, it is important to also explore the potential for recovery from the Estate. Recovery is a recoupment for services provided to a Medicaid recipient. This is particularly true when there is a surviving spouse. Once the spousal transfers have been completed and the spouse has been approved it is important to create an Estate Plan for the non- Medicaid spouse. Otherwise Medicaid will recover against the non-Medicaid spouse in the event he/she predeceases the Medicaid spouse. This type of planning should be done with a knowledgeable Estate Planning/Elder Law Attorney because there are certain strategies that can be implemented to protect the non-Medicaid spouse's Estate from recovery from the Medicaid spouse's Medicaid bill. Under current New York Medicaid Law there is no right of recovery on an Estate that does not pass under the Probate/Administration Process. This means via Surrogate's Court by either Last Will and Testament (Probate) or no Will (Administration).

If the non-Medicaid spouse leaves his/her assets to individuals other than the Medicaid spouse outside of the Probate Estate the right of recovery is limited. All assets passing directly to another individual or individuals outside of the Probate Estate are not subject to recovery. Examples include named beneficiaries under life insurance, IRA accounts, annuities, joint accounts with right of survivorship, ITF (In Trust For) accounts, and beneficiaries under an Intervivos Trust. It is important to be mindful of the recovery issue; otherwise Medicaid will recover from the Estate for services provided to the Medicaid spouse. Proper planning will avoid or minimize the recovery.

Example #1:

Mr. Smith is a Medicaid recipient. He transferred all of his assets to his wife Mr. Smith when he applied for Medicaid. His wife never changed her Last Will and Testament which left all assets to Mr. Smith. She predeceased him and Medicaid made a claim against her Estate for the services Mr. Smith received. Because Mr. Smith was the beneficiary Medicaid could collect.

Example #2:

Mr. Smith received Nursing Home Medicaid. He transferred his assets to Mrs. Smith when he applied for Nursing Home Medicaid. Mrs. Smith then put all of assets into a Trust and did not provide for Mr. Smith under her Trust. She

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predeceased Mr. Smith. However, there was no right of recovery because Mrs. Smith changed her Estate distribution and her Estate did not pass under a Last Will and Testament or by administration. Medicaid had limited ability to collect against Mrs. Smith's Estate.

Frequently Asked Questions when Applying for Nursing Home Medicaid

Q: What is the look back period for Nursing Home Medicaid?

A: The look back period is (60) months. This means that assets transferred within (60) months of a Nursing Home Medicaid application may result in a period of ineligibility. There is no look back beyond (60) months and there is no look back or penalty period for applications for Community Medicaid, Home Care Medicaid or Assisted Living Medicaid.

Q: What is the resource limit for Nursing Home Medicaid eligibility?

A: The current resource limit is \$15,750.00 (2020). The home does not count for eligibility up to \$858,000 in value. IRAs and other tax deferred assets do not count if they are in "payout" status.

Q: Can a Medicaid applicant protect his/her spouse in the community?

A: Yes, there are special provisions of the Medicaid Law designed to protect the community spouse. The community spouse can receive all assets from the Medicaid applicant without penalty. He/she can also keep up to \$3,216 monthly (2020) of income belonging to the Nursing Home applicant under certain circumstances. The home can also be transferred to the spouse without penalty.

Q: If assets are transferred to a community spouse should additional planning be established?

A: Yes, the community spouse should create a new Estate Plan that limits recovery for services provided by the Nursing Home to the spouse. Also begin to protect assets if the community spouse becomes ill because the (60) month rule will apply to the community spouse.

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Q: What is Spousal Refusal?

A: Under the New York law the community spouse can refuse to make his or her assets available when a spouse is applying for Medicaid. Once invoked the Department of Social Services can only count the applicant's assets and income when determining eligibility. The Spousal Refusal is done with a specific form giving notice to DSS that the community spouse is exercising his/her right to spousal refusal. This right was maintained in the 2020 New York budget.

Q: What if the Nursing Home applicant has a spouse or an adult disabled child?

A: There are special provisions of the law that protect spouses and adult disabled children. A knowledgeable Estate/Elder Law Attorney can help with this special planning including a Special Needs Trust which can protect assets from Medicaid and insure that loved ones are protected and provided for.

For more information on Medicaid planning and the application process call Family Care Connections at (516) 248-9323.



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Dear Reader,

Thank you for taking the time to review the Family Care Connections Eldercare Guide. Please note the information contained in this publication is to be used for information and educational purposes only. This publication is not intended to provide legal, financial or healthcare advice to any one individual. The information should be used as a resource to supplement all professional advice. Do not rely on this publication solely when confronting the issues addressed in the publication. Rather, seek the advice of knowledgeable and reputable professionals who can advise and guide you regarding your particular needs and concerns.

We hope you have found this publication helpful and we invite your feedback. Please contact us with any questions, concerns or to set up an appointment.

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Family Care Connections, LLC

ABOUT US

Family Care Connections, LLC, founded, owned and operated by Dr. Ann Marie D'Angelo and Frank G. D'Angelo, J.D., provides Senior Living Planning, Eldercare & Medicaid Consulting Services, as well as Comprehensive Health Care Management including PRI/SCREEN, Nursing Home Placement, Advanced Practice Nurse Care Management and Geriatric Care Management, Supportive Counseling and Advocacy. We also provide educational information in the context of seminars and written publications. The firm has offices in Garden City and New York City. In addition, home visits, as well as hospital and nursing home consultations may be arranged by appointment.

Dr. Ann Marie D'Angelo, is a Doctor of Nursing Practice and a Board-Certified Clinical Nurse Specialist with expertise in both geriatrics and psychiatric mental health. She received her Doctorate in Nursing Practice from Chatham University (2016), Masters in Psychiatric Mental Health Nursing from Columbia University (1990), Bachelor of Science in Nursing from Adelphi University (1987), and Associate Degree in Nursing from Nassau Community College (1980)

Dr. Ann Marie has been in private practice for over 30 years. She is an adjunct professor at Adelphi University in Garden City, New York. She has lectured and published in the areas of geriatric nursing, nurse care management, psychiatric/mental health and aging at home.

Frank G. D'Angelo, J.D., is a graduate of Brooklyn Law School Juris Doctor (1985), and Brooklyn College CUNY BS in Psychology (1981). For 30 years Frank was a practicing attorney in New York State concentrating in Elderlaw, Trusts and Estates, Estate Planning and Real Estate. Frank is Co-Founder of Family Care Connections, LLC and now serves full time as Director of Medicaid, Medicare & Eldercare Consulting Services. A licensed Real Estate Broker, he also coordinates on issues involving Housing Options for Aging. Frank has lectured and published extensively on the many challenging aspects of eldercare and aging.

Call for our complete list of free information brochures.

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