Qualifying for Community Medicaid Home Care May Take Longer Than You Think with New Penalty Period Rules

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Is your estate plan up to date? Now is the time to make sure it is because sizable changes have occurred to the New York Community Medicaid program.

The new rules altered how applicants can qualify and receive assistance with Community Medicaid Home Care. During the 2020 New York state budget approval process, new rules were passed that enact severe cuts to Medicaid eligibility and access to home care services - including a two-and-a-half-year (or, 30-months) lookback period and much more stringent restrictions to access to home care services.

Applications for Community Home Care benefits filed on or after January 1, 2022, will be subject to the new lookback rules; assets transferred past October 1, 2021, will be scrutinized. Each month after January 1, 2022, the lookback will increase by one month until the full 30 months will be realized in April of 2023. This means you still have time to properly prepare and avoid losing thousands of dollars to the high cost of long-term care. In the Coronavirus era, home care has been vital to family members taking action to keep their loved ones at home as long as possible rather than moving them to a care facility.

These new rules will be added to already existing 5-year, or 60-months, lookback period for Nursing Home Medicaid already in place in New York.

To best understand the importance of these changes, The Law Offices of Vlad Portnoy, P.C., will provide you with a Medicaid check-list, an overview of the Community Medicaid Home Care Program, the new changes to the program, and an example to give economic context for the need to act now.

Do You Qualify for Medicaid in New York?

START WITH OUR MEDICAID CHECKLIST

The Medicaid process can be complicated, but the first step you or a loved one should take is to seek legal guidance from an experienced elder law attorney, like The Law Offices of Vlad Portnoy, P.C.

We can help you build a Medicaid plan for your future healthcare needs instead of spending your life savings on nursing home care or in-home care. This brief Medicaid Planning Checklist can help you or a loved one navigate some of the necessary qualification steps to ensure your assets are protected with the Medicaid coverage you need.

Do you meet the following criteria for Medicaid benefits? • Are over the age of 65; or • Are blind or disabled; or • Have a child, parent, or spouse in your household who is blind or disabled	☐ Yes ☐ No ☐ Unsure
Do you meet or exceed the annual household income limit? (Before taxes $884 for single; $1,300 for a couple)	☐ Yes ☐ No ☐ Unsure
Do you have more than the asset limit? (Before taxes $15,900 in assets for single; $23,400 in assets for a couple)	☐ Yes ☐ No ☐ Unsure
Do you have long-term care insurance?	☐ Yes ☐ No ☐ Unsure
Do you have any other coverage for nursing home care?	☐ Yes ☐ No ☐ Unsure
Can you afford nursing home care or other medical costs?	☐ Yes ☐ No ☐ Unsure
Do you have a list of assets that you want to be protected?	☐ Yes ☐ No ☐ Unsure
Do you have an irrevocable trust established?	☐ Yes ☐ No ☐ Unsure

Whether you answered YES, NO, or UNSURE to any of the about questions, we are here for you!

A much deeper dive into your current situation will need to be taken during the initial consultation to more fully ascertain your needs and the scope of work required to address them.

Your health care needs are one-of-a-kind, and your Medicaid planning should be unique as well. Timing is everything. Don't let your retirement funds, life savings, or home become depleted by the cost of care in New York.

Overview of the New York Community Medicaid Home Care Program

The Community Medicaid Home Care program is for New York residents seeking home care financial assistance. Medicaid home care allows healthcare professionals in the community to assist older adults with activities like bathing, eating, and essential mobility. This type of care can be costly and in many instances not affordable if paid out-of-pocket, and it may be a primary avenue for the elderly to avoid nursing homes during COVID-19 and beyond. The Community Medicaid Home Care Program helps qualified seniors receive home health care paid for by Medicaid and save thousands of dollars per month while staying safe and comfortable at home.

The New Community Medicaid Lookback Rules Will Delay Qualification

If you file an application for the Community Medicaid program on or after January 1, 2022, you may be penalized if you transferred assets before filing the application. If you have too much property to qualify for assistance, you

may have to wait to qualify for financial help. If you transfer the ownership of your property, it will cause a delay in your ability to qualify for assistance. The delayed time frame will depend on the value of the transferred property.

Example of the Community Medicaid Program Change

Meet James, a 78-year-old man who lives alone and has for the last ten years. His health is declining, and he has trouble performing his basic activities of daily living (ADLs). His kids live nearby and drop by to help him, but they are working during the day and cannot be there all the time. James is looking into having a home care agency visit for 8 hours a day to help him with meals, cleaning, bathing, and other basic household chores. The cost for this service is approximately $7,300.00 per month. James owns his home and has saved up some money. It is important to James that he leaves something to his family when he passes away and be not spend it all on his care.

COSTS FOR HOME CARE UNDER OLD RULES: James sees an elder law attorney. He transfers most of his property to an irrevocable trust to qualify to get financial help with his $7,300 per month bill. In the trust and transferred without a lookback penalty period, his property is protected and will pass to his family per his desires. He can then qualify for assistance right away and have the help he needs to be safe at home and not deplete his life's savings.

The out-of-pocket math: $0 x 12 months = $0

COSTS FOR HOME CARE UNDER NEW RULES: James waits and doesn't meet with an elder law attorney to plan. He finally meets with the elder law attorney next year. He transfers some of his property to an irrevocable trust but must leave a substantial amount of money outside of the trust to pay for his home care. James cannot qualify for financial assistance right away. He will have to pay the $7,300 per month all on his own. James cannot qualify for assistance right away. Medicaid may look back to October 1, 2020, to see if he has made any transfers. Based on the amount transferred, he will pay the home care bill all on his own until the requisite time has passed to qualify for assistance. During that time, he is paying $7,300 per month. If his penalty period is twelve months, that would result in a lot of money James must pay for this own care.

The out-of-pocket math: $7,300 x 12 months = $87,600.

While James was wise to do some planning, as doing something is still better than doing nothing, he missed an opportunity to save a significant amount of money by waiting too long to see his attorney. James could have had significant help paying his home care bill had he only seen his elder law attorney, done his planning, and submitted his Medicaid application earlier.

The Medicaid rule has a significant impact on Medicaid-managed home care recipients in New York. It is vital to seek guidance from your attorney on your situation and educate yourself on how these changes may impact you or your loved one's future care.

Questions to ask yourself if you have or are planning to apply for the Community Medicaid Program, as your coverage might be affected:

- Do you have assets over $15,900 (for a single person) and $23,400 (for a couple)?
- Do you own your home and/or other properties, including those out-of-state or even out-of-the-country?
- Are you in need of home care services or do you need an informal caregiver?
- Do you have income that exceeds the Medicaid threshold?

If you answered yes to any of the questions above, it is in your best interest to contact an attorney to have the best results of your Medicaid benefits for future care. The Law Offices of Vlad Portnoy, P.C. is here for you!

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Take the first step and contact our New York office at 212-920-6371 and schedule an appointment with us. The Law Offices of Vlad Portnoy, P.C. has locations in Midtown Manhattan, Brooklyn, and Northern New Jersey to serve your legal needs.

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