

Starting Soon...

Medicaid Monday: The Potential 2025 Medicaid Lookback: Are You Ready?

September 9, 2024

Louis W. Pierro, Esq.
Founding Partner

Frank E. Hemming III, Esq.
Partner



Welcome

- ▶ **Your Lines Are Muted**
- ▶ **Type Questions in the Q&A Section at the Bottom of Your Screen**
- ▶ **Presentation is Posted: Pierrolaw.com/Resources Under Medicaid Planning**
- ▶ **Fill Out Our Survey with Feedback**





Our Team Of Attorneys



Louis Pierro



Aaron Connor



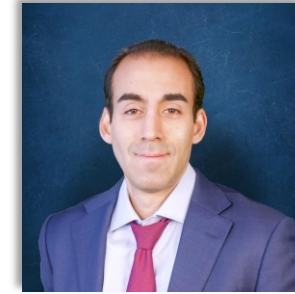
Frank Hemming



Peter Strauss



Richard Rothberg



Anthony Khatchoui



Theresa Skaine



Arkley Mastro



Robert Bosman



Michael Mullaney



Verley Brown



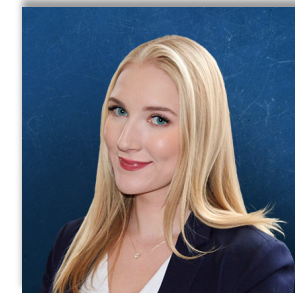
Brent Stack



Tommaso Marasco



Kristen Peck



Patricia Whelan

Serving New York State Residents Through Offices in:

Albany, New York City, Ronkonkoma, Garden City, Hudson, Lake Placid, Utica

Agenda 9.9.24

- ▶ Proposed changes to NYS Medicaid Home Care rules enacted 10/1/20
- ▶ Latest word on the implementation date –Summer '25?
- ▶ What the changes will mean to you
- ▶ The issue of “unknowns” and what is being done to clarify the rules
- ▶ Implementing strategies to receive Medicaid Home Care and protect assets
- ▶ Managing the next three months (October – December)
- ▶ Opportunities for individuals who want to “Age in Place”
- ▶ Legislative initiatives to repeal the changes



NEW 2024 MEDICAID ELIGIBILITY NUMBERS

Monthly Income

	2024	2023	Difference
Individual (at home)	\$1,732 +\$20	\$1,677 +\$20	\$ 55
Couple (both at home)	\$2,351 +\$20	\$2,268 +\$20	\$ 83
Community Spouse Income Allowance	\$3,853.50	\$3,715.50	+\$138
Institutionalized Spouse Income Allowance	\$ 50		

NEW 2024 MEDICAID ELIGIBILITY NUMBERS

	Resources		
	2024	2023	Difference
Individual	\$31,175	\$30,182	\$ 993
Couple	\$42,312	\$40,821	\$1,491
Comm. Spouse Resource Allowance	\$74,820 ¹		

1 - \$74,820 (or the spousal share of 1/2 combined resources up to a maximum of \$154,140)

Medicaid Basics – Financial Eligibility

Medicaid LTC Services Are Divided Into Two Categories:

Chronic Care

- Care provided in nursing home
- 5-year lookback
- Transfer penalties
- “Rule of Halves” planning

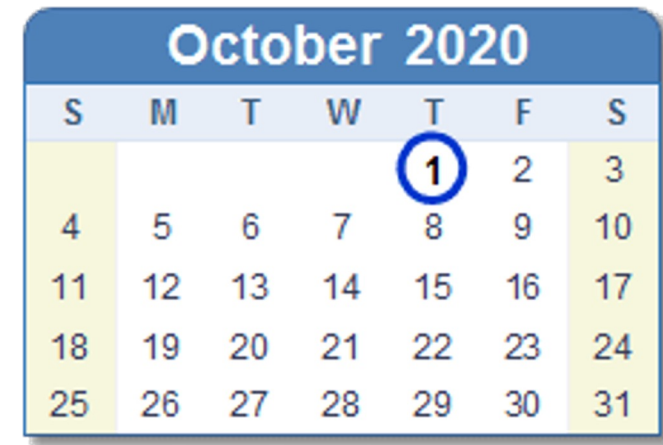
Community

- *Home health care*
- Assisted living facility
- Medicaid managed long-term care
- Adult day care
- No lookback under current rules

**What We Will Be Focusing On Today
Changes Effective Beginning ?????**

When Does the Change Take Effect?

- ▶ The law provides for an effective date of October 1, 2020;
 - However, the Director of the Budget may, in consultation with the Commissioner of Health, delay the effective date for a period of time not to exceed ninety days.
- ▶ According to DOH –
 - Full Implementation of the new law will commence sometime in 2025



A calendar for October 2020. The days of the week are listed at the top: S, M, T, W, T, F, S. The dates are arranged in a grid. The number 1 is circled in blue, indicating the start of the month. The calendar shows that October 1st is a Thursday.

October 2020						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

Thursday, Oct 1st 2020

Programs Impacted by Changes

1. Personal Care Services Program (PCSP)
2. Consumer Directed Personal Assistance Program (CDPAP)
3. Private Duty Nursing Services
4. Assisted Living Program Services
5. Probably Covered - Managed Long-Term Care (MLTC), PACE
6. Not Covered - TBI Waiver, OPWDD Waiver, Nursing Home Transition and Diversion Medicaid Waiver Program (NHTD)
- DOH statement in from presentation dated 4/17/20

Changes Already Implemented

- New York Independent Assessor
- Independent Review Panel
 - See last month's Medicaid Monday for more information!



Financial Change – 30 Month Lookback

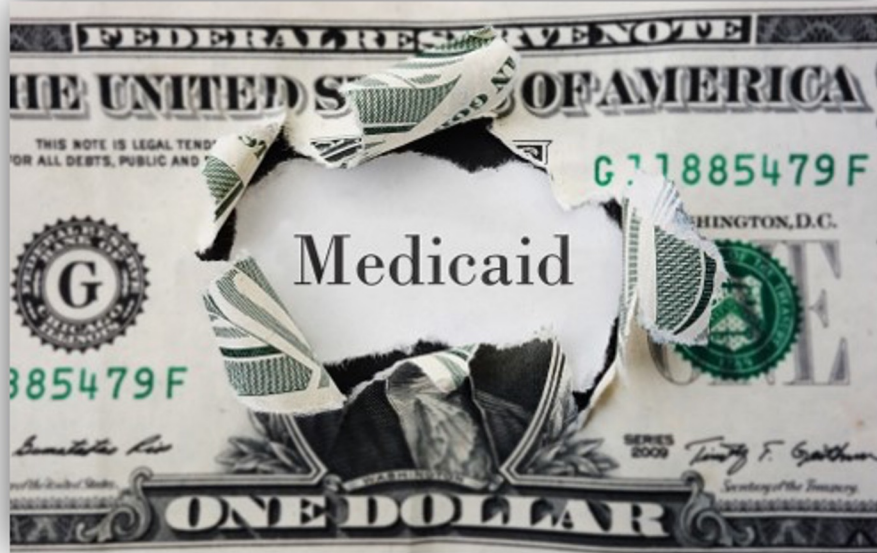
- The biggest proposed change would be the implementation of a 30-month lookback period for community Medicaid.
 - This would require all applications to be accompanied with 30 months of financial documents which would need to be audited by the local Medicaid office.
 - If there are gifts and/or transfers found within the lookback period, a penalty period will result and the applicant will have to wait to obtain Medicaid services.
 - Calculation of penalty would be the same as in nursing home cases.

Medical Changes – 3 ADL Requirement after 10/1/20

- Applicants for personal care or CDPAP after Oct. 1, 2020 must need:
 - “Limited assistance with physical maneuvering with more than two” ADL’s (3+ ADLs) or
 - Persons with dementia or Alzheimer’s diagnosis must need “at least supervision with more than one ADL” (2+ ADLs).
- People already receiving personal care, housekeeping or CDPAP services as of 10/1/20 “grandfathered in”

The Medicaid Penalty

The Penalty is a Number of Months of Ineligibility



- Example: Transfers of \$158,820
(in Northeast NY Region)
 $\$158,820 / \$13,235 = 12$ months without Medicaid
- Application before Implementation of New Rules
 - NO PENALTY FOR HOME CARE
- Application after Implementation of New Rules
 - 12-MONTH PENALTY
- Penalty begins to run when the applicant is "otherwise eligible" to receive services were it not for the penalty period, and actually applies.

2024 NYS Medicaid Regional Rates

Region	Counties	2024	2023
New York City	Bronx, Kings (Brooklyn), NY (Manhattan), Queens, Richmond (Staten Island)	\$14,273	\$14,142
Long Island	Nassau, Suffolk	\$14,668	\$14,136
Northern Metropolitan	Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester	\$14,165	\$13,906
Western (Buffalo)	Alleghany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming	\$12,241	\$12,130
Northeastern (Albany)	Albany, Clinton, Columbia, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington	\$13,235	\$12,744
Rochester	Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, Yates	\$14,419	\$13,421
Central (Syracuse/Utica)	Broome, Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, Tompkins	\$12,196	\$11,726

Issue: Will the Lookback be Retroactive?

- Originally, the Lookback Period was to be phased in commencing on the effective date (10/1/20)
 - Example of Phase-In
 - Three-month lookback for applications filed 3 mos. after effective date
- Now – Lookback will be 30 months
 - Example – Application filed 10/1/24
 - Lookback – 4/1/22 – 10/1/24

Which Medicaid Transfer Exemptions Still Apply?

Transfers to the following individuals/trusts are EXEMPT:

- a spouse
- a disabled or blind child, or a trust for the benefit of such child
- a trust established solely for the benefit of an individual under sixty-five years of age who is disabled

Remedies That Will Be Available As to the Asset Transfer Penalty

Transfer penalties may not apply if a satisfactory showing is made that...

- the individual or the individual's spouse intended to dispose of the assets either at fair market value, or for other valuable consideration; or
- the assets were transferred exclusively for a purpose other than to qualify for medical assistance; or
- all assets transferred for less than fair market value have been returned to the individual

...if the burden of proof is met, then the transfer is exempt.

Issue: How will Transfers of the Homestead be Treated?

- Homestead Exempt
- Exempt Transfers to:
 - Spouse
 - **Minor Child** under age 21 or **Child certified Blind or Disabled** of any age
 - **Sibling** of the individual who has an equity interest in the home, and who has been residing in the home and using it as their primary lawful residence for a period of at least one year immediately **before the date the individual becomes institutionalized**
 - **Adult Child** who was residing in the homestead, using it as their primary lawful residence for a period of at least two years immediately **before the date the individual becomes Institutionalized, and who provided care to the individual which permitted the individual to reside at home, rather than in an institution or facility.**

Pooled Trusts Exempt (Pre Law Change)

- **Pooled Trusts – Exempt Assets and Income**
 - OBRA 1993
 - 96 ADM - 8
 - GIS 19 MA/04
 - GIS 20 MA/03
- **Pooled Trusts – Exempt Transfer of Income**
 - 1997 letter from NYS DOH regarding treatment of income
 - 2005 -05 OMF/Inf-1
- **Pooled Trusts – Exempt Transfer of Assets**
 - Not chronic Care
 - Not a transfer for less than full consideration

Issue: Are Transfers to a Pooled Trust Exempt?

- DOH “Informal” Position
 - Transfers by an individual age 65 or older to a Pooled Income/Asset Trust will be subject to a penalty
 - Unless there is a satisfactory showing that the funds will be utilized for the benefit of the Beneficiary (for full fair market value)
 - Ongoing Advocacy
 - NYSBA Elder Law and Special Needs Section
 - NAELA NY Chapter
 - Pooled Trust Coalition

The Rule of Halves

- Planning strategy for non-exempt assets – gift a portion of assets and loan a portion of assets to a family member under a promissory note (some states use an annuity) to create Medicaid eligibility after a period of ineligibility
- The loan payments are calculated to private pay for care while the penalty period runs- **complex calculation**
- **Q – How will this work for Home Care?**



Case Study - Bob A.

Bob has:

- \$4,500/month of income
- \$280,000 of non-exempt assets
- Home health care costs of \$9,000/month, \$108,000/year.

(12 hours of help per day at \$25.00 per hour =
\$300.00 x 30 days = \$9,000)



Case Study - Bob A.

- Bob's family pre-pays his funeral (could pay for others), buys him a television, clothes, a home communication system, furniture and pays legal fees- a total spend down of \$30,000
 - Non-exempt assets = \$250,000
- Bob keeps \$20,000; gifts \$158,820 to a Medicaid Asset Protection Trust (see May 2024's Medicaid Monday for details) and loans \$71,180 to his son, Robert Jr., all on June 27, 2025

When is Bob eligible for Medicaid, and how much has he saved?

Example (cont.)

- Income \$4,500 - \$1,752.00 allowance = \$2,748 net

Home Health Care Cost		\$9,000.00
-Income		-\$2,748.00
Needed from Assets/ Month		\$6,252/mo.
Total Non-Exempt Assets		\$280,000
-Spend-Down		- \$30,000
-Bob's Resources		- \$20,000 (must be less than \$31,175)
At Risk Capital		\$230,000

Example (Cont.)

- Bob's Gift of \$158,820 / \$13,235 = 12-month penalty
- Bob's Loan of \$71,180 for 12 months = \$5,931.66/month
 - Combined with his Non-Exempt Income of \$2,748.00 per month results in Bob having a total Income of \$8,679.66 total income per month, which is slightly less than his \$9,000.00 cost of care
- Bob applies for Medicaid July 1, 2025
 - Penalty runs 7/1/25 - 6/30/26
 - Note pays 7/1/25 - 6/30/26
- **Bob is Medicaid Eligible July 1, 2026**

What has Bob Saved?

Bob's Remaining Assets

	Trust	\$158,820
	Bob's Resources	\$20,000
	Pre-Paid Contract	\$12,000
	Personal Property	\$8,000
		\$198,820

What Does Bob Receive?

- July 1, 2026 forward- Medicaid Pays the 12 hours/day of home care
- Bob's Trust- Protected from Medicaid, but his children can access it and use the money to supplement his care; upon death they inherit the balance.
- What happens to Bob's income on 7/1/26?

Income over \$1,752/mo.

- Under current law, Bob's excess income can be contributed to a Pooled Trust to avoid the Medicaid Spend-down
 - \$1,752 stays with Bob
 - \$2,748 goes into his Pooled Trust
- Pooled trust can pay any expense incurred for Bob – rent, mortgage, food, technology, etc.
- Will transfers of "Income" to the Pooled Trust after 7/1/26 create a penalty under the new rules? [Probably not – but we are seeking clarification.]

Will A Gift And Loan Or Gift And Annuity Strategy Work?

- Yes, BUT...
- Challenges: (i) determining the first month of eligibility to run the penalty, and (ii) calculating the monthly payback from the loan to private pay for services
- We need to hit a moving target each month – the variable cost of care
- Prior experience = Nursing Homes, a fixed monthly expense



Planning Differences for Home Health Care

Differences in the Calculation of traditional “Rule of Halves”

	<u>Nursing Home</u>	<u>Home Care</u>
Look-Back	60 Months	30 Months
Initial Transfer (Gift Amount)	Meant to establish the Period of Ineligibility (POI) to match term payments of the Promissory Note (<u>at the onset</u>) (<i>only 2 numbers to find = Gift & Note</i>)	Initially Overstated to purposefully increase the Initial Calculation of Period of Ineligibility (because this amount includes the unknown amount of the “Side-Fund”)
Post ‘05 DRA NNPN (Promissory Note)	Calculated to “Self-Pay” the Nursing Home for the Period of time that matches the POI Calculated by the Initial Transfer (Gift)	Initially Overstated because of the Initial Transfer Amount – Ultimately further reduced to match “Actual” POI, based on Monthly Retransfers
Monthly Excess Living Expenses (“Side-Fund”)	N/A (Nursing Home Costs are Fixed)	This figure is part of the Initial Transfer (Gift), however the amount is “Unknown” – Must account for the “Monthly” retransfer amounts to reduce Initial POI to “Actual” POI

MUST CONSIDER

Excess Living Expenses (Home Care)

- What do we do with the “Additional” Excess Living Costs which are not included in the calculation for the cost of Home Care?
- These additional qualified monthly living expenditures during the Period of Ineligibility will be deemed “Retransfers”
- As a result, this will reduce the Initial Calculation of POI
 - How do we account for this ???

Planning for the Variable

Options for Legal Strategies that can be Implemented

- Plan A: Gift/Promissory Note Strategy with a Side Fund
- Plan B: Gift of 100% of Excess Resources Outright w/Gift Back
- Plan C: Self-Pay for 30 months
- Plan D: Spousal Refusal

NEXT STEPS? Beat the Clock!



- If someone needs homecare – they MUST APPLY BEFORE implementation of these new rules in order to avoid the new look back period.
- If not in need for home care now – PLAN NOW ANYWAY – create MAPT and start the Medicaid Clock ticking to have assets be exempt when need arises

MONTHLY MEDICAID MONDAY WEBINARS

On the 3rd Monday of the Month Due to
Indigenous People's Day**

October 21, 2024
"CDPAP: What's the Story?"

REGISTER:

<https://www.pierrolaw.com/events/>
(518)459-2100

Watch the Entire Series!



<https://www.pierrolaw.com/videos/>



Thank You!
QUESTIONS?

**Schedule a
Consultation for
your Clients:
info@pierrolaw.com
(518) 459-2100**