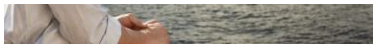


NY Medicaid Home Care Law Changes

For years, New York has offered a wide range of Medicaid home care programs and services geared toward differing needs. But the regulations surrounding these programs have undergone a dramatic—and largely unwelcome—transformation, which begins to take effect next month.



The changes, which will impact tens-of-thousands of NY Medicaid recipients, involve stricter criteria for financial eligibility, greater restrictions on health eligibility, and a loss of certain previously-covered services for all new home care applicants.

Until now, NY Medicaid recipients who applied for Community Medicaid services, which include home care and other forms of assisted living, could transfer assets with relative ease, becoming eligible for needed services almost immediately.

Next month, however, many New Yorkers will find themselves unable to qualify for these programs; for the first time, Community Medicaid applicants must provide comprehensive financial records for a newly-implemented “look-back period.” Gift transfers to trusts and family members, along with any other “uncompensated transfers” may disqualify applicants from obtaining Medicaid home care services for an extended period of time.

But take heart. If you or a loved one would benefit from these home care services within the next two years, there are steps you can take to ensure eligibility. The legal team at Lissner & Lissner LLP has been helping New Yorkers protect their rights, assets, and quality of life for decades.

Contact a New York City Medicaid planning attorney today at [\(212\) 307-1499](tel:2123071499) for a confidential consultation about your case.

Types of Medicaid Home Care Services Available in New York

Due to its relatively easy eligibility criteria, Community Medicaid programs in NY have long been an attractive alternative to facility care for many New Yorkers in need. The three primary home care programs available to eligible applicants include:

- **Medicaid Personal Care or Home Attendant Services (PCS)**—This program provides the recipient with in-home personal care services, which may include assistance with basic tasks, such as grocery shopping and meal preparation, as well as personal care needs, such as toileting, bathing, and feeding.
- **Certified Home Health Agencies (CHHA)**—This program includes what is more commonly referred to as “visiting nurse” services, along with speech, physical, and occupational therapy, home health aides, and durable medical equipment. These services are provided on a part-time basis; full-time nursing is provided through a difference Medicaid program.
- **Consumer Directed Personal Assistance Programs (CDPAP)**—This program allows a family member (other than spouse), friend, or guardian to perform the home care duties normally performed by an agency-sponsored aide. Anyone eligible for home health services is eligible for a CDPAP. In times of COVID-19, this program may provide an opportunity for out of work-individuals to earn income as a CDPAP Personal Assistant to an in-need family member or friend. To qualify as a personal assistant, the individual must be an adult other than the patient’s spouse, who does not live with the patient.

Managed Long Term Care Plans

Managed Long Term Care (MLTC) plans are insurance plans to which NY Medicaid pays a monthly premium in exchange for approving applicants for community-based care and providing associated services.

By contracting out the process for approving and providing these services, MLTC Plans relieve local Medicaid offices of the need to evaluate individuals for community-based care, determine how many hours they are eligible to receive, and coordinate the care. As such, Medicaid recipients of home care services must first be enrolled in an MLTC plan before obtaining these services.

In order to be enrolled in an MLTC plan and obtain Medicaid home care services, you must first qualify for Medicaid based on current income guidelines. If you don't qualify, you may be able to utilize Medicaid's spend-down program to reduce income or assets in excess of the limits. In some cases, excessive assets may be deemed "exempt" from the calculations, or non-exempt assets may be transferred out of your name in order to qualify.

However, the ability to transfer assets in order to immediately qualify for home care benefits is quickly coming to an end. An experienced Medicaid planning lawyer can review your finances to determine if you qualify and how to proceed.

What are the Changes and When Do they Take Place?

Unfortunately, due to New York's recently-enacted state budget, beginning January 2, 2021, there will be a look-back period on asset transfers for anyone applying for Community Medicaid benefits. Without a significant spend-down on assets, many in need of this type of care will no longer qualify.

The look-back will apply to any non-exempt transfers made on or after October 1, 2020, which is right around the corner. As such, it is crucial to consult with an experienced estate planning attorney immediately to prepare.

This look-back period will be instituted in phases, eventually reaching a period of two-and-a-half years. When the look-back first begins on January 2, it will start at three months. Each month, it will increase by one month, until it caps out at 30 months.

Applicants will need to submit records of all assets within that period. If transfers of any non-exempt assets are found, the applicant will be denied home care services for a “penalty” period. Although the duration of this period has not yet been confirmed, if it mimics the penalty period for nursing homes, home care in NYC would be denied for one month per every \$12,844 in non-exempt asset transfers.

The look-back period will apply to the following programs, and more may be added:

- Home health services
 - Private duty nursing
 - Personal care services, likely including CDPAP
 - Assisted living services

This newly-implemented look-back period is also likely to cause a serious backlog and extensive delays to an already over-taxed system. If you or a loved one will be impacted by the upcoming look-back, it is in your best interest to consult with an experienced NY elder law attorney today.

It is important to note that current Medicaid community-based care recipients will be “grandfathered” in. Only new applicants are subject to the increased restrictions.

October 1st Medicaid Home Care Law Changes

In addition to the look-back period that begins with applications made on or after October 1, new legislation makes significant changes to non-financial eligibility criteria and covered services. Prior to October 1, if an applicant needed

assistance with any aspect of “Activities of Daily Living” (ADL) for at least 120 days, he/she could qualify for home care services through NY Medicaid.

And if no ADL assistance was needed, the applicant could still get assistance for general housekeeping needs, such as grocery shopping, meal preparation, and laundry. But as of October 1, housekeeping services are no longer covered as a Medicaid PCS.

Furthermore, to be eligible even for the non-housekeeping tasks of PCS (bathing, feeding, toileting), the applicant must show a need for assistance with *multiple* ADLs. The new legislation also requires that the health assessment to determine eligibility be conducted by a NY Department of Health-approved doctor and not the applicant’s personal physician.

What Does Medicaid Home Care Cover?

The type of services covered by Medicaid Home Care vary depending on the needs of the recipient.

Personal Care Services (PCS)

PCS are currently split into two categories—Level 1 and Level 2.

- **Level 1** includes general housekeeping tasks, such as cleaning, grocery shopping and meal preparation, and laundry. In New York, these services are limited to eight hours per week.
- **Level 2** includes all of the level 1 tasks, plus services related to personal needs, such as bathing, toileting, feeding, dressing and grooming, walking, and administering medications.

As of October 1, however, **Level 1** services will no longer be covered by Medicaid.

Certified Home Health Agency Services (CHHAs)

Individuals with serious medical conditions who need close medical supervision will likely require a CHHA, which provides a higher level of care than available

through a PCS. Home health aides and registered nurses perform skilled and semi-skilled medical care for individuals who need short-term care after a hospital stay or long-term care for chronic conditions.

How to apply for Medicaid Home Care Services

The process of applying for Medicaid home care services varies depending upon the type of service, whether the applicant currently has Medicare, where the applicant resides, and whether the applicant is found to have an immediate need for personal care or CDPAP services.

If you don't currently have Medicaid, it can take up to four months before you are active with Medicaid, enrolled in an MLTC, and can begin receiving home care services. If you miss the monthly enrollment deadline, it can take even longer. If, however, an immediate need is established, Medicaid is required to process and approve your home care application within seven days and authorize CDPAP services within 12 days.

Am I eligible for expedited Medicaid/Home Care services?

You may be eligible to get your application for Medicaid approved in seven days and home care services authorized in 12 days if you:

The process to expedite Medicaid and home care approval can be complex and confusing, and even minor errors can result in denials and unnecessary delays. This is why it is so important to work with skilled legal counsel.

An experienced Medicaid planning lawyer in New York City can help you determine how to proceed if you need to get enrolled with Medicaid *and* apply for home care simultaneously. This is particularly important now, with the new restrictions on asset transfers and eligibility fast approaching.

If your income is over Medicaid's limits, you can still become eligible by utilizing its spend-down program, which acts as a deductible, allowing applicants to reduce their income by the amount of medical bills they have incurred.

But Medicaid coverage does not become active until after you have met that spend-down "deductible." If you wish to enroll in an MLTC but you have a spend-down requirement, the MLTC plan will bill you for the total amount rather than waiting for you to incur medical bills in that amount.

However, it is common for individuals enrolling in MLTCs through the spend-down program to run into complications. MLTC employees who may not fully understand this complex enrollment process often inaccurately tell applicants that they are not active in the system or ineligible to enroll. These unnecessary delays can be frustrating, time-consuming, and—with the approaching look-back deadline—they can prevent you from obtaining the home care services you so desperately need.

How an Attorney can Help

If you or a loved one may need to take advantage of Medicaid's home care services within the next two years, it is in your best interest to consult with an experienced Medicaid planning attorney immediately.

If your assets are in excess of Medicaid's limits, there are steps you can take to prepare yourself for the future. With proper estate planning, you can protect your income and assets and ensure that you qualify for Medicaid when you need it.

If you are currently in need of Medicaid home care services, the clock is ticking at hyper-speed. You have until October 1, when the upcoming look-back period for home care services begins, to transfer assets in excess of Medicaid's limits. At Lissner & Lissner, LLP, we will thoroughly analyze your finances to determine the most appropriate legal strategy for moving forward, and our experienced, compassionate elder law attorneys will ensure that you fully understand your rights and options.

Contact Lissner & Lissner LLP Today

If you are concerned about how the new Medicaid legislation will affect you or a loved one, the skilled legal team at Lissner & Lissner LLP can help. With more than five decades of experience, we have the skill, knowledge, and compassion to help our clients navigate the most complex issues surrounding aging, disability, and illness.

The increased restrictions affecting Medicaid's home care services in New York is going to negatively impact thousands of Medicaid recipients throughout the state. But you may be able to avoid some of the extra headache and expense with proper estate planning. Time is of the essence.

Contact Lissner & Lissner LLP Today at [\(212\) 307-1499](tel:2123071499) for a confidential consultation about your case.