



## The Makofsky Minute | April 13, 2020

### Take Action NOW: Big Changes to Medicaid Looming



Provisions of the recently passed New York State Budget will make it far more difficult for many to become eligible for services under the Community Medicaid program. The new rules impose a lookback period. This is a major change to the current regulations, which allow access to home care Medicaid benefits without the imposition of any penalty period for transfers made any time prior to the application. The new rules are scheduled to go into effect on October 1, 2020, meaning applications made within the next 5 ½ months will not be subject to the new restrictions.

Here are some of the most notable changes to Medicaid eligibility criteria:

1. There will be a 30-month lookback period imposed on community Medicaid applications. Applications made between now and October 1, 2020 will be evaluated under the current regulations, which impose no penalty period for transfers made prior to an application for Community Medicaid. Under the new rule, any non-exempt transfer made during the lookback period will result in the imposition of a penalty period; individuals will be responsible for privately paying for care during the length of the penalty period;
2. Under the new rules, in order to be eligible for long-term care services in the community (home care) using the Consumer Directed Program (CDPAP) or personal care services (PCS), an individual must require assistance with 3 activities of daily living (ADLs) instead of the current rule which allows eligibility if the individual needs assistance with only 2 ADLs. Thankfully under the new rule, those individuals with Alzheimer's or Dementia will only need to demonstrate a need for assistance with one ADL; and
3. For PCS and CDPAP services, a "qualified independent physician selected or approved by the Department of Health" (not the treating physician) must determine the plan of care for the individual.

These new regulations will have a tremendous impact on Medicaid planning in New York State. One piece of good news, however, is that transfers to a non-applying spouse continue to be an exempt transfer, and spousal refusal can still be employed to access benefits. Transfers of a residence to certain individuals without the imposition of a penalty are still a possibility under the new rules.

Elder Law attorneys are still digesting these changes, but it seems clear that if you or a loved one anticipates needing Medicaid services at home in the near future, now is the time to consider making an application. Give us a call and we can discuss the available options with you.

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