

LIFE PLANNING BASICS

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Services Committee, Inc.

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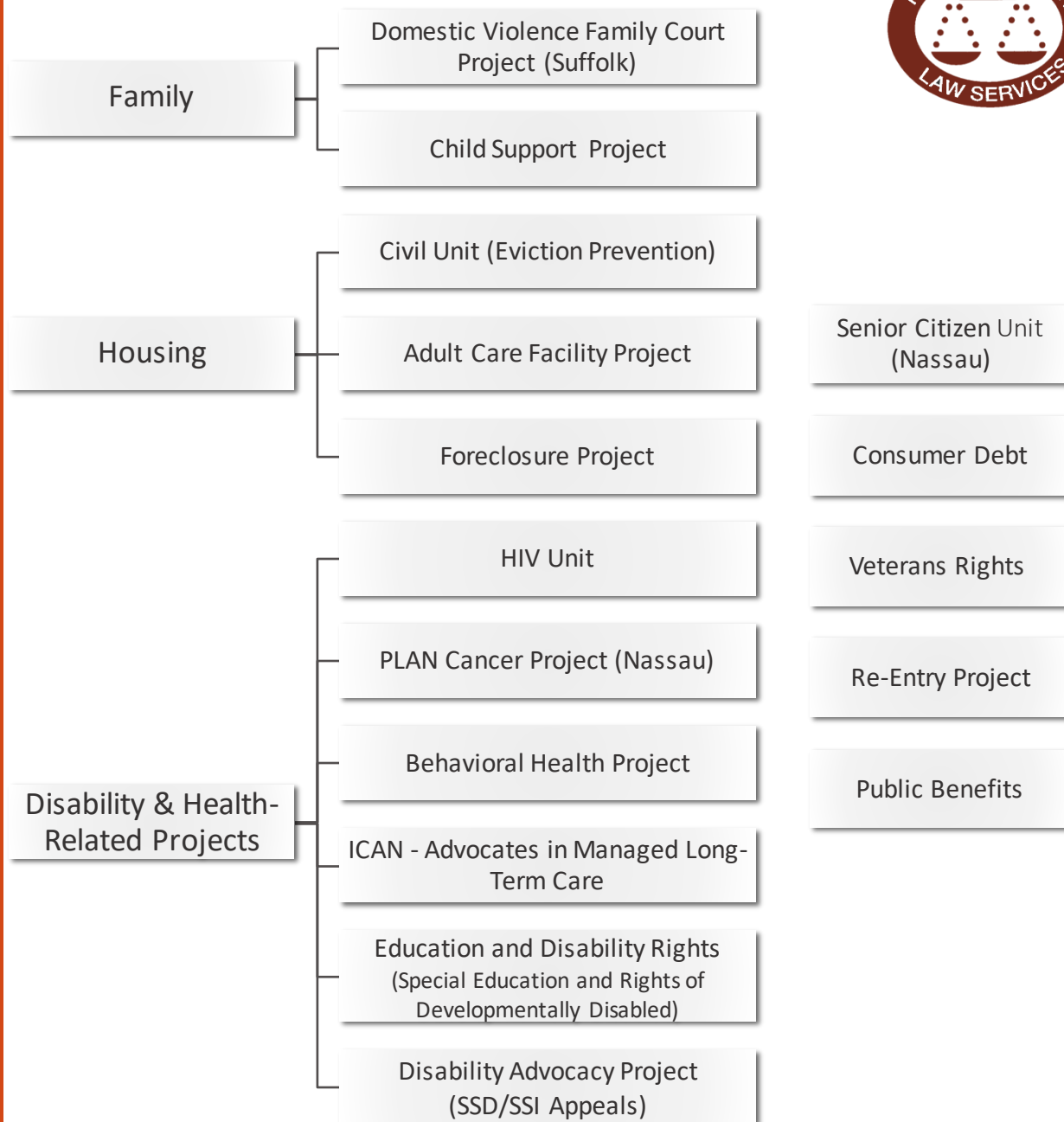


Partnerships with Community
Agencies

About Nassau Suffolk Law Services



Specialized Units





Agenda

Understanding Medicaid

Basic Estate Planning – Wills

Advanced Directives

- Health Care Proxy
- Power of Attorney
- Disposition of Remains



Understanding Medicaid

What is Medicaid?

- Medicaid is a government-sponsored health insurance program for people with high health care costs who generally have low incomes and low financial resources.
- It is controlled by a combination of federal and state laws.
- Each state has its own Medicaid program and the eligibility rules vary from state to state.



How is Medicaid funded and administered?

- In New York State, the Medicaid program is funded with federal, state, and county funds.
- In most of NYS, each county's Dept. of Social Services (DSS) administers the Medicaid program in that county. In NYC, the Medicaid program is administered by the city's Human Resources Administration (HRA).





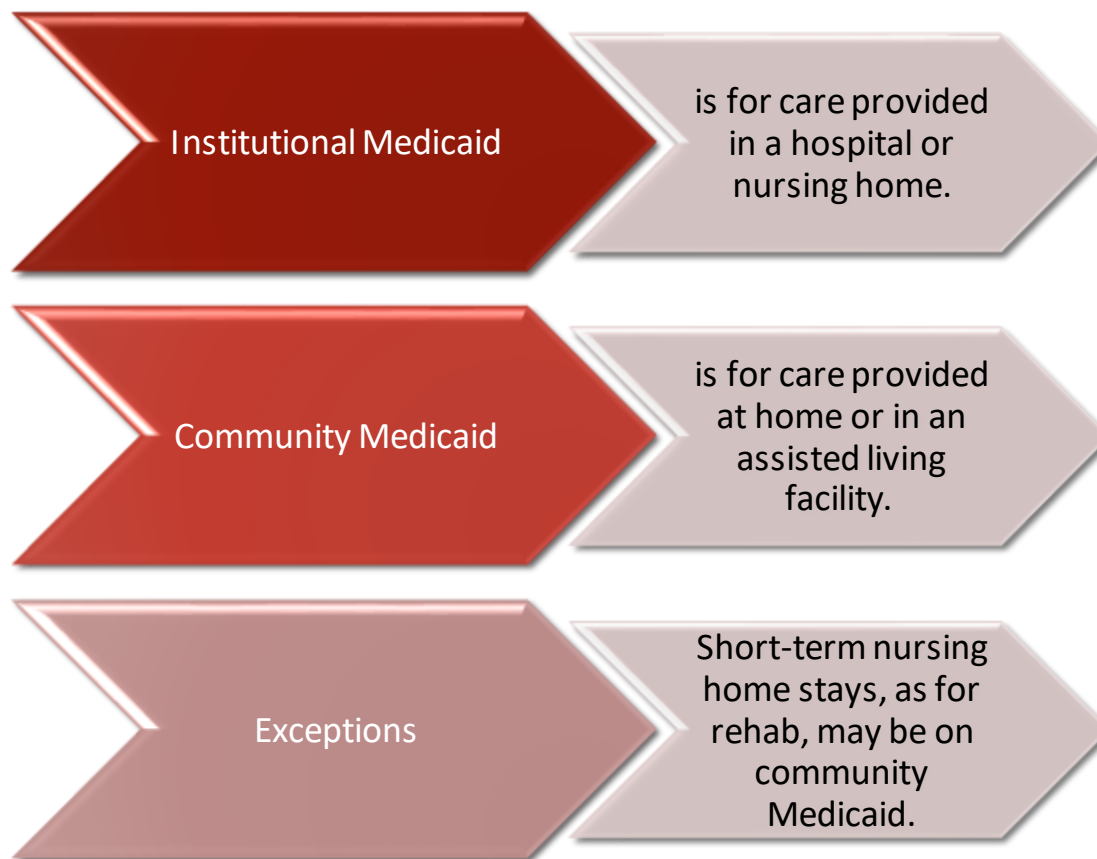
Who needs Medicaid?

Key reasons for needing Medicaid:

- Nursing home care, especially long-term care
- Personal care aide services
- Medicare co-pays and deductibles
 - Alternatives: Medigap plan or MSP/QMB
- High prescription drug costs
 - Alternatives: Medicare Part D and EPIC
- Anyone with high medical costs and/or low income

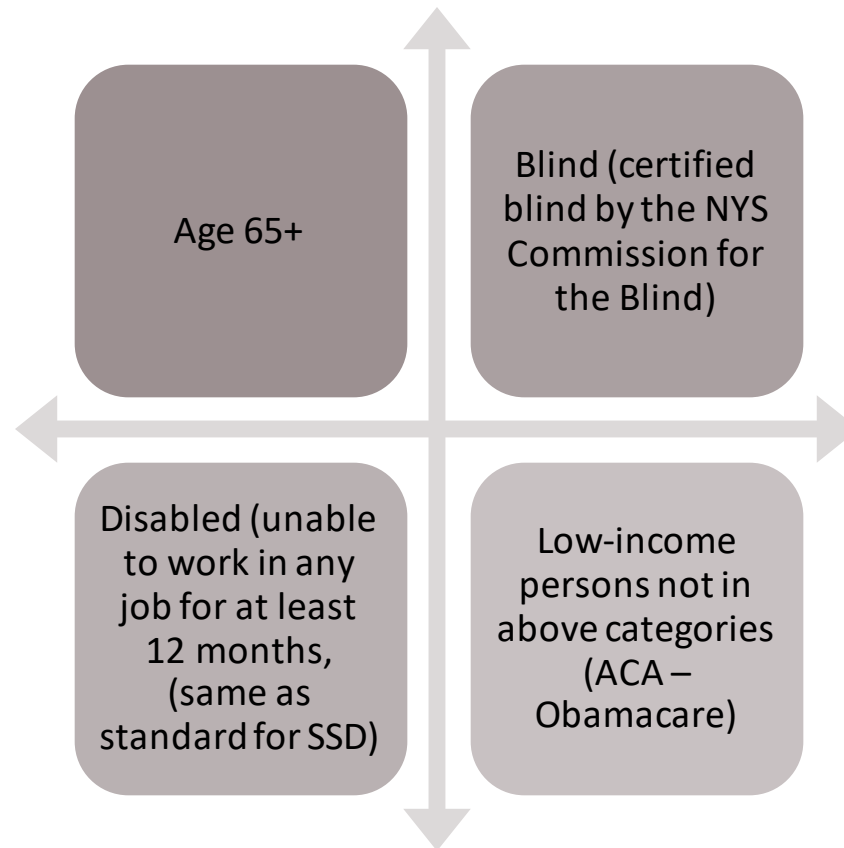


What is institutional Medicaid and what is community Medicaid?





Who is eligible for Medicaid in NYS?





Medicaid Income and Resource Limits for Community Medicaid

Family Size	Medicaid for Income Level for Single People & Couples without Children		Net Income for Individuals who are: Blind, Disabled or Age 65+		Resource Level (Individuals who are Blind, Disabled or Age 65+ ONLY)
	Annual	Monthly	Annual	Monthly	
1	\$17,609	\$1,468	\$10,600	\$884	\$15,900
2	\$23,792	\$1,983	\$15,600	\$1,300	\$23,400
3	\$29,974	\$2,498	\$17,940	\$1,495	
4	\$36,156	\$3,013	\$20,280	\$1,690	
5	\$42,339	\$3,529	\$22,620	\$1,885	

Some Medicaid Planning Tools we have in the tool bag

Purchases

- Purchase of cemetery plot
- Purchase of prepaid funeral
- Purchases of clothing, furniture and appliances
- Purchase of home improvements



Allowable Transfers

- Transfer of home to caregiver child
- Transfers to spouse
- Transfer of ownership of life insurance policy



Other tools

- Spousal refusal
- Paying debts
- Use of pooled trusts for excess income





Spousal Impoverishment Protections: Spousal Refusal

- Medicaid presumes that a married couple is applying as a couple, BUT one spouse has the right to apply alone.
- The non-Medicaid spouse can advise Medicaid that he/she refuses to contribute the cost of the applicant spouse's medical care.
- This is done through a simple and short "spousal refusal" letter.
- ***Still, every spouse has a legal obligation to support his/her spouse, and DSS may sue the non-supporting spouse in the future.***

Spousal Impoverishment Protections: Community Spouse Allowance



- ***Who is an institutionalized spouse?*** A person receiving care in a hospital or nursing home and expected to remain for 30 days or more.
- ***Who is a community spouse?*** A person married to an institutionalized spouse and not receiving Medicaid.
- The community spouse resource allowance:
 - Resources/assets that a spouse who is not on Medicaid and is living in the community can keep if the other spouse is institutionalized.
 - There is a minimum and a maximum. For 2021, the Community Spouse may have up to the greater of
 - \$74,820 OR
 - One-half of the couple's total combined assets up to \$130,380
 - Community spouse income allowance. **\$3,259.50/ month in 2021.**



Medicaid application was denied.

A second application was required, resulting in delay in getting Medicaid benefits.

Client needed to pay the spenddown for several months because she delayed in applying for a pooled trust.

Medicaid assumed that a couple was applying for Medicaid instead of only one of the spouses, resulting in incorrect Medicaid budgeting.

Client failed to take Required Minimum Distributions from his/her IRA or the distributions were too small, resulting in being over-resourced for Medicaid.

Common Problems



Medicaid myths:

My income is too high to get Medicaid.

- **Planning tools are available to help many people qualify for Medicaid.**

I have too much money in the bank or in an IRA to get Medicaid.

- **Planning tools are available to help many people qualify for Medicaid.**

A person on Medicaid cannot own a home.

- **Your home generally does not count towards your total assets.**

If I go on Medicaid, they'll take away my house.

- **NY will sometimes try to recover the cost of your care from your estate after your passing, but there are exceptions and planning tools to prevent this.**



Medicaid myths *(...continued):*

There is a 5-year lookback for Community Medicaid.

- **FALSE – NY just adopted a lookback period for long term care in the community (like assisted living facilities or home health attendants) but implementation is delayed due to COVID. There is no lookback for other Community Medicaid.**

Undocumented noncitizens are eligible for Medicaid.

- **FALSE - Undocumented noncitizens are only eligible if they are pregnant or need emergency services.**

Medicaid will consider my actual living expenses for eligibility purposes.

- **FALSE.**



Medicaid myths *(...continued):*

The Medicaid income limits vary by region, depending on where you live in New York State and depending on the cost of living in your region.

- **FALSE.**

Any transfers or gifts of money or property that I make to my relatives will result in a penalty period for Medicaid.

- **FALSE – There are exceptions where transfers and gifts are allowed.**



Basic Estate Planning - Wills



Thinking about a Will

What is a will?

What is the purpose of a will?

Why do a will?

What happens if I die without a will?

What are heirs and beneficiaries?

What is an estate?

"I'm too young to do a will"

"I'm not ready to die"

Is a will about dying?

When should you do a will?

What do I own?

Who do I want to give it to?

What are my debts?

What form of ownership is this asset in?

Is there a beneficiary designation for this asset?



Drafting a Will – Express Yourself

- You don't have to be right or fair in your will.
 - It just has to be what you want.
 - Most people will consider the effects that their decisions will have on their beneficiaries, to avoid creating anger and resentment.
- Make the language in your will crystal-clear and free from ambiguity.
 - Be exacting with grammar and punctuation.
 - Although some people draft their own will, an attorney-at-law is recommended.
 - Positively identify the people in your will by name, relationship and sometimes by home address. Include middle names if you know them.



Drafting a Will – Be Specific Where it Matters

- Consider using percentages of your estate instead of fixed dollar amounts. You don't know how much money your estate will have when you die.
- Be specific about your property items.
 - If you are giving your home to someone in your will, specify the full street address of the home.
 - If it's a piece of jewelry, describe it, not just "my engagement ring".
 - If you are giving a car in your will, specify the make, model and year of the car. Also consider that this car may have been scrapped or sold by the time you die!
- Don't make your will lengthy by listing a lot of minor items of little value.
 - Instead, leave a separate list with your will, although it will not be legally enforceable.
 - Or, simply hand-deliver the item to your intended beneficiary.



Drafting a will – Plan for Change

- It's fine to think about and plan for the future, but your will should be the best it can be even if you die next month.
- Remember, you can always do a new will if circumstances change.
- Considerations
 - What if a person named in my will predeceases me?
 - What if they all predecease me?
 - What if my executor resigns or dies or becomes disabled and unable to serve?
- Always provide for alternate beneficiaries and alternate executors, especially if your primary choices are your age or older.



Drafting a will – Executors

- Choosing an executor
 - Trustworthy
 - Responsible
 - Organized
 - Some financial knowledge & numerical abilities
 - In-state vs. out-of-state.
 - Ask beforehand if he/she is willing to serve.
 - Remember: The executor has no power or authority until the testator is dead!
- Don't try to control people and their money from the grave.
- Executors' commissions



Executing your Will

- All wills must be signed and witnessed.
 - NYS requires two witnesses
 - Some states require three.
- To avoid any future challenges to the execution of your will, although it is not legally required, have a licensed attorney supervise the execution of your will.
- Choosing your witnesses
 - If someone is named in the will in any way (as executor, beneficiary, trustee or in any other capacity), he/she should not be a witness to the will.
 - Always choose completely independent, disinterested witnesses.
- Witnesses Responsibilities
 - Watch the testator sign the will.
 - Must be satisfied that the person was competent to make a will at the time and not under any restraint or duress.



Storing and Revising Your Will

- Don't put your will in a Safe Deposit Box at a bank. Keep it with your important papers.
- Don't give out copies of your will. It will cause confusion if there are later wills.
- Don't unstaple your will or mark it up in any way. If it needs to be revised, do a new will.
- If you want to revoke your will, shred it, burn it or cut it up.
- When you make a new will, destroy all old wills if possible.



Reviewing Your Will

- Review your will about every 5 years.
 - Have you moved to another state?
 - Has anyone named in your will died?
 - Has anyone been born that you want to include in your will?
 - Have your wishes changed?
 - Have you acquired or disposed of valuable property since your last will was executed?
 - Have you become significantly richer or poorer?
- If the answers to any of these questions is “yes”, consider the need to make a new will.



Advance Directives

- HEALTHCARE PROXY
- POWER OF ATTORNEY
- DISPOSITION OF REMAINS



What are Advance Directives?

Documents that you prepare in advance that outline your directions about health care, financial, business and other matters if you should become incapacitated or incompetent.

1. Health Care Decisions: Health Care Proxy
2. Financial, Business, and Other Matters: Durable Power of Attorney
3. Disposition of Remains after Death: Appointment of Agent to Control Disposition of Remains



Health Care Proxy

Appoints someone to carry out all of your medical treatment, including your wishes regarding routine medical treatment, hydration and feeding tubes, and other life sustaining treatment if you are unable to make your own health care decisions.

Also has a provision for organ donation.

In New York, your health care agent has the right to see your medical records and to receive information about your conditions from medical personnel.



Health Care Proxy

- Everyone has the right to refuse medical treatment
- But how can one refuse medical treatment if one is unconscious, incapacitated or unable to decide?
- NY courts have ruled: All measures must be taken to sustain life unless there is clear and convincing evidence that the person would not have wanted it that way
- What does this standard mean and how can we prove it?
- The Health Care Proxy includes all types of medical treatment, not just life-sustaining treatment
- What does withhold or withdraw mean in terms of medical treatment?
- Difference between HCP and DNR order



Signing a Health Care Proxy

An attorney-at-law is not necessary; this document is very simple. However, most attorneys provide the HCP as part of an advance directive package.

Need 2 witnesses over the age of 18, but a notary is not required.

Witnesses should not be agents or alternate agents appointed in the health care proxy.



Important Tips About the Health Care Proxy

Need accurate and current contact information for the agent and alternate agent, including telephone numbers.

Never appoint two co-agents to serve at the same time in a Health Care Proxy. Appoint an alternate agent instead. Why?

Give copies of your health care proxy to your agent and alternate agent. Why? Also take a copy of your health care proxy with you if you are admitted to a hospital or nursing home.

Need to tell your agent and alternate agent your wishes in advance. They can only carry out your wishes if they know what they are.

Specific instructions re: artificial nutrition and hydration must be made known to the agent, or the agent will not have authority to make such decisions, for example: “My agent knows my wishes regarding artificial nutrition and hydration.”

Durable Power of Attorney

Enables you to appoint an agent to manage your financial, business and other affairs if you are unable to do so AND to authorize your agent sign his/her name where your signature would be required.

A carefully drafted POA may obviate the need for a guardianship proceeding.

Can provide for co-agents, alternate agents, compensation of agents, and a multitude of contingencies.

What does “Attorney” mean in this situation?

What does “Durable” mean in this situation?





Important Tips about the Durable Power of Attorney

The law requires financial institutions to accept a POA that meets the requirements of the statutory short form.

Requires a notary. Most, but not all, attorneys are notaries, but many notaries are not attorneys.

In choosing your agent, always appoint someone you trust with everything you have. POA's can be abused!

When signing something as agent, always sign your name, not the principal's name. Add the words: "as agent for" [principal's name].

Power of Attorney is not valid after the principal's death.



Important Tips about the Durable Power of Attorney

An attorney-at-law is strongly recommended for drafting and execution. **Why?**

- To make sure that the principal on the POA is mentally competent and capable of understanding what he/she is signing. This is an important legal document.
- To explain what the terms in the POA mean
- To advise on the selection of powers to be given to the agent
- To make sure that the POA is properly drafted and properly executed.
- Extensive revisions were made to the NYS statutory form in 2009-2010, which added additional complexity to this document.
- A new NYS POA (statutory short form) will go into effect on June 13, 2021, but the old forms can continue to be used until then. Also, any POA's that were previously executed will be grandfathered in.



Disposition of Remains

Appointment of Agent to Control Disposition of Remains is a little-known NYS form.

This document enables you to appoint an agent who has final authority to determine what happens to your body after death. It may be particularly useful in case there are family disagreements about this matter.

You can include specific instructions to your agent re: burial or cremation, donations of body or organs, place of burial, etc.



Thank you for your
attention.



If you have any
questions, please call
(516) 292-8088.

Thank you
for
attending!