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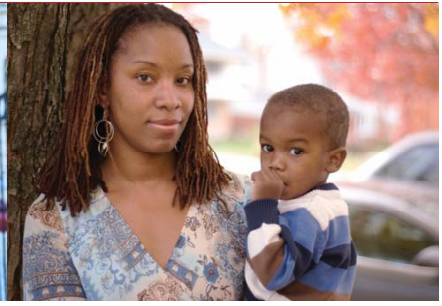
When is a Pooled Trust NOT Needed? Special Medicaid Budgeting Strategies

Valerie Bogart, NYLAG May 2016



Credits

- Contributions to the Material in this Presentation were made by the following people – thanks for their assistance.

- Marie Vaz, Esq., NYLAG
- Peter Travitsky, Esq., NYLAG

- Amy Lowenstein, Esq., Empire Justice Center

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Agenda

- SNT's are a wonderful strategy for Medicaid eligibility, but first check to see if any of special Medicaid budgeting rules make use of an SNT unnecessary for:
  1. Married MLTC enrollees
  2. Younger people with disabilities
  3. Those without Medicare or who may have a dependent child/grandchild living with them
  4. Those who were in an adult home or nursing home prior to enrolling in MLTC

- MLTC enrollment delays caused by spenddown

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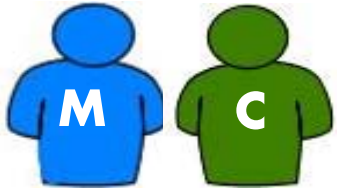
Case Scenario: Morgan & Chris



- Morgan and Chris are married
- Morgan receives Social Security Disability (SSD) & Chris gets SS Retirement. Both receive Medicare.
- Morgan needs community-based long term care
- Morgan's Medicaid budget – Since he receives SSD and Medicare and has no children, "Disabled, Aged, Blind" (DAB or "SSI-related") budgeting is used at application

	Morgan	Chris
Income	$2,000	$1,500
Medicare Part B premium	$121	$121

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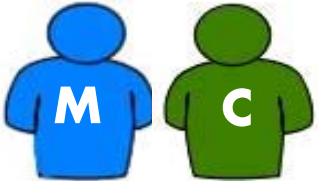
Morgan's Regular Medicaid Budget



- Morgan's "SSI-related" community Medicaid budget **includes** Chris' income as spouse
- Morgan's spend down is **$2,029**/month if **does not use spousal refusal**

	Morgan	Chris
Income	$2,000	$1,500
Chris' income	$1,500	
Medicare Part B premium	- $242	$121
Income disregard	- $ 20	
Net Countable Income	***$3,238***	
Medicaid standard (couple)	- $1,209	
Excess Income/Spenddown	***$2,029***	

Strategy 1: Spousal Refusal

- NY State law has long provided that Medicaid eligibility must be determined just based on the applying spouse's income and resources if the other spouse refuses to make his/her own resources and income available or does not live with the applicant. Soc. Serv. L. § 366.3(a)
- 2016-17 NYS Budget survived the 27th attempt to repeal that statute, and require deeming of spouse's income and resources if spouse lives with applicant.
- Must weigh risk of suit for support by local DSS.
- Consider options - may not need spousal refusal

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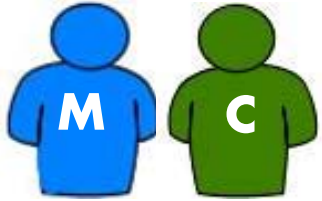
Morgan's Medicaid Budget with Spousal Refusal



- Morgan's "SSI-related" Medicaid budget does not **include** Chris' income
- Morgan's spend down with spousal refusal is **$1,034**/month - better than $**2,029.**

	Morgan	Chris
Income	$2,000	~~$1,500~~
Medicare Part B premium	- $121	~~$121~~
Income disregard	- $ 20	
Net Countable Income	***$1,859***	
Medicaid standard (single)	- $825	
Excess Income/ Spenddown	***$1,034***	

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Strategies to Reduce Spend-down

- A pooled trust can be used – for Morgan alone or for Morgan and Chris both to qualify for Medicaid.
- Here are some other strategies, some unique to MLTC
- Facts needed to use any of these strategies:
  - Does Morgan take care of a child/grandchild or other relative < age 18 or < age 19 and in school?
  - Was Morgan in a nursing home or adult home that Medicaid paid for for 30+ days?
  - Is Morgan < 65 and able to work even 1 hour/mo?

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Strategies for Dealing with a Spend Down in MLTC

1. MBI-WPD – if < 64 and can work
2. MAGI Budgeting (if not yet on Medicare or have a dependent child/relative)
3. MLTC Housing Allowance*
4. Spousal Impoverishment Budgeting
5. Pooled Income Trust
6. Negotiate with MLTC or pay spend-down

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Strategies for Dealing with a Spend Down in MLTC

1. Medicaid Buy-In for Working People with Disabilities (MBI-WPD)

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Medicaid Buy-In for Working People with Disabilities (MBI-WPD)

Family Size	1	2
Monthly Income (250% FPL)	$2,475	$3,338
Resources	$20,000	$30,000

- Uses higher Medicaid income / resource limits for working people with disabilities
- Eligibility
  - Age 16-64 – ENDS AT 65!!
  - Certified disabled (including on SSD)
  - Working (no minimum no. of hours – even 1 hr/mo)
  - Income & Resources under MBI-WPD limits
- Not just for people on MLTC!

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More about MBI-WPD

- Enacted 2002, exercising federal option to create work incentives for people with disabilities under age 65 by giving higher income limits. NY SSL 366.1(a)(12)-(13).
- Initial NYS DOH Directive 04 OMM/ADM-5. Many subsequent directives listed at http://www.wnylc.com/health/entry/59/.
- State website http://www.health.ny.gov/health_care/medicaid/program/buy_in/index.htm
- **HOW MUCH WORK:** No minimum amount – even one hour/month – filing/ dog walking/child care. Just need a letter from employer – can be a friend. No requirement that Social Security taxes withheld. 09 ADM/MA015
- **Must meet Social Security's Disability standard** – if not receiving SSD, may ask Medicaid to determine disability. Unlike regular SSD, may earn > Substantial Gainful Activity ($1130/mo 2016). 04 OMM/ADM-5

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MBI-WPD Income & Resources

- **INCOME -** Use "SSI-related" Medicaid income counting and deduction rules, including:
  - $20 disregard +health insurance premiums deducted
  - Earned income – disregards > ½ of gross income
    - Subtract impairment related work expenses (IRWE)
    - Subtract $65/month
    - Subtract 1/2 remainder/month (example next slide)
- **RESOURCES** –
  - Retirement funds disregarded. DOH 11 ADM-07. Do not have to take distributions.
  - Higher limits - $20,000 singles, $30,000 couples

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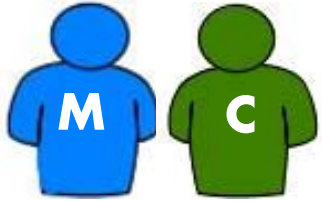
Morgan's MBI-WPD Budget



- Morgan gets a job that pays $163/month – prove with letter from employer
- Determine MBI-WPD Budget:
  1. Determine countable **unearned** income
  2. Determine countable **earned income, after** subtracting disregards
  3. Apply **MBI-WPD standard** for a couple
  4. If still too high, may use Spousal Refusal or SNT

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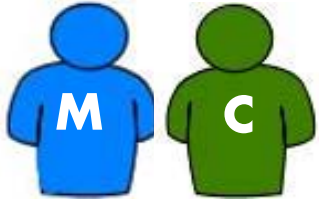
MBI-WPD Budget
Step 1: Morgan's Net Unearned Income



	Morgan	Chris
Unearned Income	$1,500	$2,000
Chris' Unearned Income	$2,000	
Income disregard	- $20	
Medicare Part B premium	- $242	$121
Net Unearned Income	***$3,238***	

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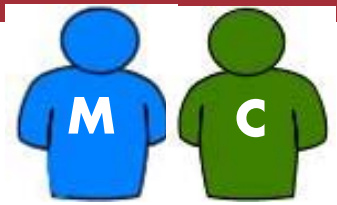
MBI-WPD Budget
Step 2: Morgan's Net **Earned** Income



	Morgan	Chris
Earned Income (gross monthly)	$163	$0
- Income disregard	- $ 65	
	$ 98	
- ½ remainder	÷ 2	
Net Earned Income	***$49***	

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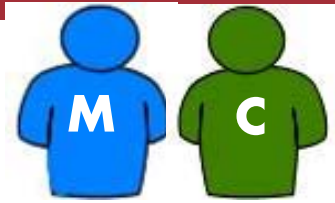
Step 3: Add earned + unearned income



	Morgan	Chris
Net Unearned Income	$3,238	
Net Earned Income	$49	
Total Net Income	***$3,287***	
MBI-WPD Standard (couple)	- $3,338	
Excess Income	**$0**	

- ***May*** not spend down to the higher MBI-WPD level
- ***May*** put income above MBI-WPD into a pooled trust. GIS 15 MA/013

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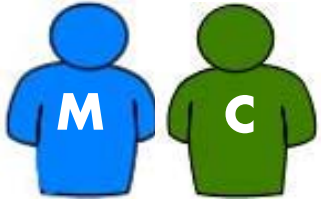
Step 2 – If Morgan's monthly earned income was higher - $1000/ month



	Morgan	Chris
Unearned income - gross	2,000	1,500
- $20 + Medicare premium	-141	-141
Net Unearned income	**$1,859**	$1,359
Earned Income (gross monthly)	$1,000	$0
- Income disregard	- $ 65	
	$935	
- ½ remainder	÷ 2	
Net Earned Income	***$468***	

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Step 3: If higher income –
-Eligible with Spousal Refusal

	Morgan	Chris
Net Unearned Income	$1,859	~~$1,359~~
Net Earned Income	+$ 468	
Total Net Income	***$ 2,327***	
MBI-WPD Standard (single)	- $2,453	
Excess Income	**$0**	

- ***May*** not spend down to the higher MBI-WPD level
- ***May*** put income above MBI-WPD into a pooled trust. GIS 15 MA/013

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Strategy #2 for Dealing with a Spend Down in MLTC

2 MAGI MEDICAID

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MAGI Medicaid

- Affordable Care Act - New York Medicaid expansion covers adults up to 138% Federal Poverty Level – **NO ASSET TEST**
- $1,367 single, $1,843 couple in 2016
- WHO: Under age 65 and without Medicare.. with exceptions
- MAGI= “Modified Adjusted Gross Income” = federal income tax concept using federal income tax rules, with some modifications, to determine Medicaid eligibility.
  - **PRO:**
    - No asset test
    - Higher income limits than Disabled, Aged, Blind Medicaid
  - **CON:** No spousal refusal, spend-down or SNT’s
  - **Different income rules –** better for some people

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MAGI Medicaid – Who has choice of MAGI or Non-MAGI?

- **Disabled individuals under 65** may choose MAGI budgeting, *but only if they are not yet receiving Medicare*
- **Parent/caretaker relatives of any age including > 65** may choose MAGI budgeting, *even if they receive Medicare*
  - *Child must be < 18 or < 19 and in school*
- **Disabled children** may choose MAGI budgeting, *unless they are in a waiver program (e.g. OPWDD HCBS waiver)*

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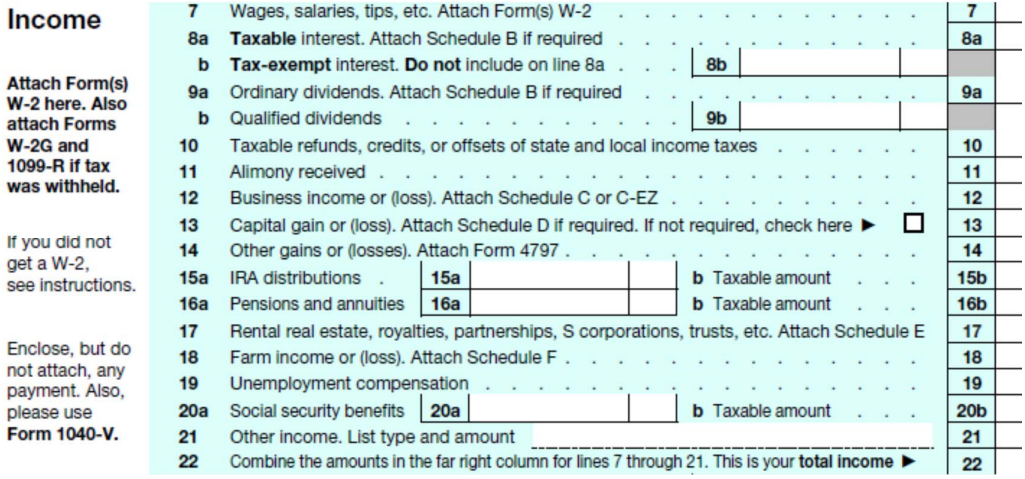
What is income for MAGI? Modified Adjusted Gross Income



Income					
Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.	7	Wages, salaries, tips, etc. Attach Form(s) W-2			7
	8a	**Taxable** interest. Attach Schedule B if required			8a
	b	**Tax-exempt** interest. **Do not** include on line 8a	8b		
	9a	Ordinary dividends. Attach Schedule B if required			9a
	b	Qualified dividends	9b		
	10	Taxable refunds, credits, or offsets of state and local income taxes			10
	11	Alimony received			11
	12	Business income or (loss). Attach Schedule C or C-EZ			12
	13	Capital gain or (loss). Attach Schedule D if required. If not required, check here ► ☐			13
	14	Other gains or (losses). Attach Form 4797			14
If you did not get a W-2, see instructions.	15a	IRA distributions	15a	b Taxable amount	15b
	16a	Pensions and annuities	16a	b Taxable amount	16b
	17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E			17
	18	Farm income or (loss). Attach Schedule F			18
	19	Unemployment compensation			19
Enclose, but do not attach, any payment. Also, please use **Form 1040-V.**	20a	Social security benefits	20a	b Taxable amount	20b
	21	Other income. List type and amount			21
	22	Combine the amounts in the far right column for lines 7 through 21. This is your **total income** ►			22

Gross Income = Wages, taxable interest and dividends, Unemployment, pensions, IRA distributions, alimony, and net income from self-employment.

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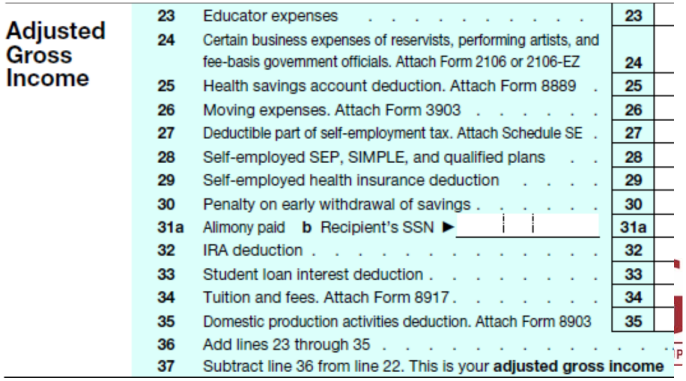
Adjustments from Gross Income

DEDUCT:

- Alimony paid,
- certain moving expenses,
- student loan interest, and
- self-employed health insurance contributions,
- self-employment tax,
- IRA deduction
- Contributions to a flex spending plan



Adjusted Gross Income	23	Educator expenses	23
	24	Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ	24
	25	Health savings account deduction. Attach Form 8889	25
	26	Moving expenses. Attach Form 3903	26
	27	Deductible part of self-employment tax. Attach Schedule SE	27
	28	Self-employed SEP, SIMPLE, and qualified plans	28
	29	Self-employed health insurance deduction	29
	30	Penalty on early withdrawal of savings	30
	31a	Alimony paid **b** Recipient's SSN ▶	31a
	32	IRA deduction	32
	33	Student loan interest deduction	33
	34	Tuition and fees. Attach Form 8917	34
	35	Domestic production activities deduction. Attach Form 8903	35
	36	Add lines 23 through 35	36
	37	Subtract line 36 from line 22. This is your **adjusted gross income**	37

Comparison Income Rules

	MAGI	NON-MAGI (Disabled, 65+)
MAGI BETTER		
Gift or inheritance/ cash gifts	*Not counted*	Cash gifts COUNT as income. In-kind payments do not (direct pay rent, utilities etc.)
Workers Comp	*Not counted*	COUNT as income
VA benefits	*Not counted*	COUNT as income
	Not counted	COUNT as income
Structured settlements*	*Not counted*	COUNT as income
NON-MAGI BETTER		
Earned income	Gross income counts	$65 + HALF of gross earned income is disregarded
Income, dividends	COUNTS	*Does not count*
SAME - Count as Income		
IRA distributions, pensions, Social Security, unemployment, alimony		

*IRS Rev Ruling 85-97

Can Client use MAGI?

- Since MAGI has higher income limit, and no asset limit, some clients may qualify with MAGI – and have no spend-down.
- No spousal refusal or SNT – so income must be under MAGI limit.
- If Morgan & Chris' child or grandchild lived with them, and was < 18 or < 19 and in school, Morgan could use MAGI even though he has Medicare.
- **Household size** – different rules. See 13 ADM-03. Generally, include Tax filer + all persons whom taxpayer expects to claim as a tax dependent. Must include spouse if living with tax filer – even if would be filing separately. But many exceptions!

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Resources on MAGI

- Household Size and other rules are complicated:
- See National Health Law Program, *Advocates Guide to MAGI*. http://www.healthlaw.org/publications/agmagi#.VxA-OHrLloZ (revised 10/2015)
- NYS directives on MAGI - http://www.wnylc.com/health/entry/193/
- Various explanations of NYS MAGI - http://www.wnylc.com/health/entry/195/

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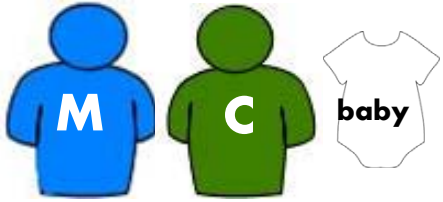
Morgan's MAGI Budget



- Morgan and Chris are parents now!
  - FACTS: Chris receives VA benefit instead of SSD and is working earning $800 per month, paying $500 to an IRA & flex plan at work.
- Morgan is eligible to choose MAGI Medicaid budgeting, because even though he is disabled and receives Medicare, he is also a parent (child < 18 or <19 in school)
- Morgan's MAGI household size is based on his tax filing household: Married with 1 kid = 3
  - 138% FPL for a HH of 3 in 2016 is $2,319 (Baby uses 223% FPL for MAGI Medicaid) – See budget next page

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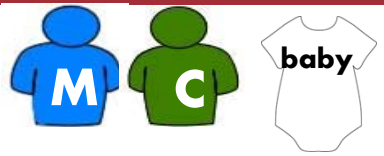
Morgan's MAGI Budget

Different facts: **Chris is a vet -$1000**
VA benefit + earns $800/mo. Not on SSD.



	Morgan	Chris
Social Security	$2,000	0
VA benefits - EXCLUDED as income		~~$1000~~
Earned Income (gross/mo.		$ 800
- Contribution to IRA, flex spending plan		- $500
Net Earned Income		$300
Total Income	***$2,300***	
138% Income level – HH of 3	***$2,319***	
154% FPL income level - child age 1-5	***$2,604***	
All 3 are eligible for MAGI Medicaid		

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Strategy #3 for Dealing with a Spend Down in MLTC

3 MLTC Housing Allowance

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Housing Allowance for MLTC Enrollees Leaving a Nursing Home or an Adult Home

- NH or Adult Home residents discharged home with MLTC can get a higher community Medicaid income limit if:
  1. Resident was in a nursing or adult home for **30 days** or more, not counting the day of discharge,
  2. **Medicaid made *a* payment** toward the nursing home care, and
  3. Resident has a **housing expense**
- Allowance is regionally standardized by county
- Gets added to the $845 income limit
- Couples may not use this and also use spousal impoverishment. Choose one that's best
  - Married individuals in PACE cannot use this.
- Plan or consumer must submit MAP 3057

- N.Y. Dep't of Health, ADMINISTRATIVE DIRECTIVE: SPECIAL INCOME STANDARD FOR HOUSING EXPENSES FOR INDIVIDUALS DISCHARGED FROM A NURSING FACILITY WHO ENROLL INTO THE MANAGED LONG TERM CARE (MLTC) PROGRAM, 12 OHIP/ADM-5 at 2-4 (Oct. 1, 2012); GIS 14 MA/17 (Aug. 5, 2014); **MEDICAID ALERT (FEB. 14, 2013)—FORM MAP 3057(E) IN NYC -** HTTP://WWW.WNYLC.COM/HEALTH/DOWNLOAD/398/

2016 Housing Allowance Amounts

Region	Counties	Deduction
Central	Broome, Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, Tompkins	$384
Long Island	Nassau, Suffolk	$1,060
NYC	**Bronx, Kings, Manhattan, Queens, Richmond**	**$1,094**
Northeastern	Albany, Clinton, Columbia, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington	$440
North Metropolitan	Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester	$837
Rochester	Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, Yates	$400
Western	Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming	$341

N.Y. Dep't of Health, GENERAL INFORMATION SYSTEM MESSAGE: GENERAL INFORMATION SYSTEM MESSAGE: 2016 MEDICAID ONLY INCOME AND RESOURCE LEVELS AND SPOUSAL IMPOVERISHMENT STANDARDS, GIS 15 MA/021 (Dec. 22, 2015). *See also* attachment 1

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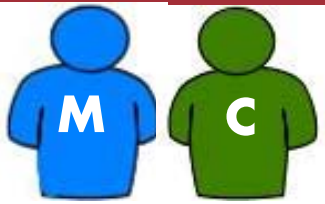
Maintaining the Housing Allowance

- No end date once the allowance is approved!
- Beware of Renewals: If consumer had allowance in the last coverage period, then loses it at renewal resulting in a spend down or an increase to her spend down, consumer's benefits have been reduced—the notice should say so, but might just say "acceptance"
  - LDSS may want consumer to submit new MAP 3057, but there is no authority for this—governing ADM only says you lose the allowance upon disenrollment from MLTC
  - Allowance should be automatically renewed if case is coded correctly
- Effective date: allowance is available as of the day that the MLTC enrollment becomes effective. DOH 12-ADM-05.

Housing Allowance



- Applying the housing allowance lowers Morgan's spend down (using Spousal Refusal)

	Morgan
Income	$2,000
Part B premium	- $121
Income disregard	- $20
Housing allowance (NYC – 2016)	- $1,094
Net Countable Income	***$765***
Medicaid standard (single)	- $825
Excess Income/Spenddown	**$0**

(NOTE: Since he's married, choice of using this allowance or Spousal Impoverishment allowance. Can't use both.

Strategies for Dealing with a Spend Down in MLTC

4

Spousal Impoverishment Budgeting

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Spousal Impoverishment Budgeting

- Option for married couples where one spouse is in MLTC, a waiver program or nursing home
  - Different budgeting methodology than community Medicaid for Disabled/Aged.
  - Section 2404 of the Patient Protection and Affordable Care Act (PPACA), part of the Affordable Care Act, effective January 1, 2014, required all States to expand spousal impoverishment protections to Managed Long Term Care (MLTC) or other Home-and-Community-Based Services under a waiver
- MLTC applicant with a **Community Spouse** may shelter:
  - Up to $2,980.50/month of joint income for community spouse
  - $384/month personal needs allowance for MLTC recipient
  - $668 family member allowance (maximum 3 people)
  - Higher of $74,820 of assets or half of assets up to $119,820

Spousal Impoverishment Budgeting Terminology

- **Community Spouse** (**CS**) – Spouse that is not in need of MLTC (Here, Chris)
- "**Institutionalized**" or **MLTC Spouse** – Spouse that needs MLTC (Here, Morgan)
- **Minimum Monthly Maintenance Needs Allowance** (**MMMNA**) - Maximum income the community spouse may keep, net of health insurance ($2,980.50 in 2016)
- **Community Spouse Monthly Income Allowance** (**CSMIA**) – Amount the MLTC spouse may shift to the community spouse to bring CS income up to MMMNA
- **Personal Needs Allowance** (**PNA**) – Amount the MLTC spouse may keep ($384 in 2016)

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Spousal Impoverishment Budgeting Terminology con'd

- **Dependent or Family Member Allowance -** Minor children and dependent children or parents (defined as having over 50% of their needs met by the community or "Institutionalized" spouse) also get an allowance from the Institutionalized spouse - $668/mo in 2016.
  - Maximum $2,003 per family(150% FPL)
- A **family member** is a minor child, or dependent child, parent or sibling of the institutionalized spouse or community spouse. The family member must be residing with the community spouse and have over 50% of his/her maintenance needs met by the community spouse and/or the institutionalized spouse.

18 NYCRR §360-4.9 - 4.10, N.Y. Dep't of Health, MEDICAID REFERENCE GUIDE: INCOME at 278-282, GLOSSARY (June 2010). 2016 amounts – NYS DOH GIS 16 MA/007 - 2016 Federal Poverty Levels

Step 1: Determine Max CSMIA

CSMIA = MMMNA – CS's Net Income

How much of Morgan's income can be allocated to Chris?

1. Determine Community Spouse's Net Income
2. Subtract Community Spouse's Net Income from MMMNA

1. Chris's Net Income	
SSD	$1,500
Part B	-$121
Net Income	$1,379

2. Chris's CSMIA	
MMMNA	$2,980.50
Net income	-$1,379
CSMIA	$1,601.50

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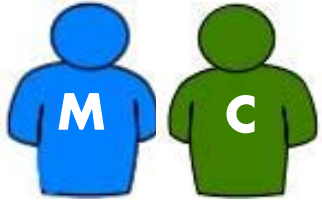
Step 2: Apply CSMIA & PNA



- Morgan & Chris keep all of their income
- Chris gets less than the max CSMIA ($1601.50), because the couple's income is not high
- Chris will have no spenddown, but could if their income were higher

	Morgan	Chris
Net Income	$1,879	$1,379
PNA (amount Morgan keeps)	-$384	
CSMIA ("transferred" to Chris)	-$1,495	$1,495
Excess Income/Spenddown	$0	

Problem: Spousal Impoverishment only available AFTER on Medicaid

- Spousal Impoverishment is a "post-eligibility" budgeting methodology, as NYS has implemented it. GIS 14 MA/025 - Spousal Impoverishment Budgeting with Post-Eligibility Rules Under the Affordable Care Act.
- Married person must initially APPLY for Medicaid using regular community Medicaid rules. Applying spouse must transfer assets to other spouse if over single asset limit.
  - This would require use of **SPOUSAL REFUSAL** if spouse's income would create a large spenddown, or if spouse's assets disqualify the applicant spouse from Medicaid. Soc. Serv. L. § 366.3(a).
  - CMS arguably says budgeting should be used at applica-tion if need long term care. SMD 15-001, May 7, 2015*

*http://www.medicaid.gov/federal-policy-guidance/downloads/SMD050715.pdf

Initial Budget: Regular Medicaid – No SNT.

- The applicant may have a high spend-down using regular community Medicaid rules. Even if the "community spouse" Chris did a spousal refusal, so Chris' $1,500/ month income isn't counted, Morgan's (Applicant's) income of $2,000 would create a high spenddown.
- But this is just for one month, because right after she enrolls in an MLTC plan, she can request Spousal Impoverishment budgeting and will have NO spenddown.
- A pooled trust wouldn't be worth the trouble just for a month.

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Converting to Spousal Impoverishment Budgeting

- Enrolling in MLTC doesn't automatically change the budgeting!
- As soon as applicant is enrolled in an MLTC → submit DOH Request for spousal Impoverish-ment Assessment Form to LDSS / HRA
  - HRA and some other counties prefer MLTC Plan, not Member, submit this request
- Form available at page 9 of NYS Medicaid Update, March 2014 –- next slide.
- Warning –local DSS and plans still unfamiliar!

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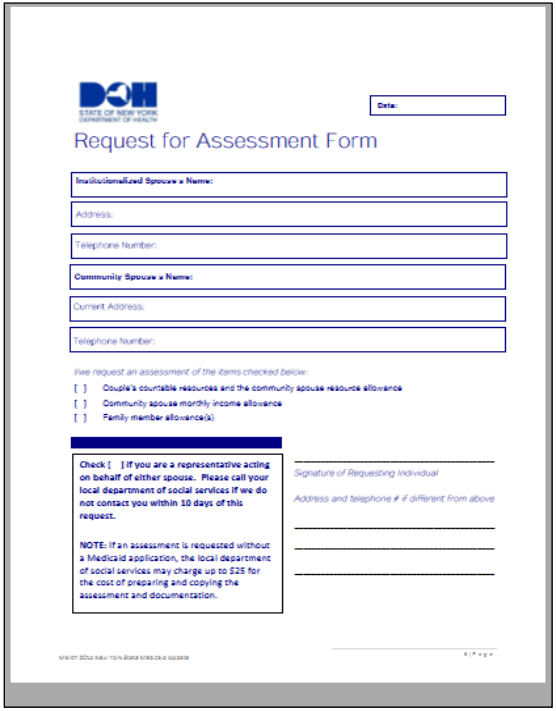
NYS DOH Medicaid Update March 2014 p. 9



DOH
STATE OF NEW YORK DEPARTMENT OF HEALTH

Date:

Request for Assessment Form

Institutionalized Spouse s Name:

Address:

Telephone Number:

Community Spouse s Name:

Current Address:

Telephone Number:

I/we request an assessment of the items checked below:

[ ] **Couple's countable resources and the community spouse resource allowance**
[ ] **Community spouse monthly income allowance**
[ ] **Family member allowance(s)**

Check [ ] if you are a representative acting on behalf of either spouse. Please call your local department of social services if we do not contact you within 10 days of this request.

NOTE: If an assessment is requested without a Medicaid application, the local department of social services may charge up to $25 for the cost of preparing and copying the assessment and documentation.

Signature of Requesting Individual

Address and telephone # if different from above

March 2014 New York State Medicaid Update

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www.health.ny.gov/health_care/medicaid/program/update/2014/mar14_mu.pdf

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Strategies for Dealing with a Spend Down in MLTC

5

Pooled Income Trust

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Pooled Income Trust

- A type of Supplemental Needs Trust
- Only for people with disabilities (including age 65+ with disability)
- Shelter monthly income from consideration by Community Medicaid
  - Deposit excess income into the trust
- Trust can pay third parties for shelter, food, clothing, recurring bills, etc. (Different trusts have different rules)
- No direct payments to beneficiary

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Pooled Income Trust (cont'd)

- Must be established by a non-profit that pools deposits of multiple beneficiaries
  - List of pooled trusts in NY: **http://www.wnylc.com/health/entry/4/**
- Pooled trusts have start up costs and monthly fees. Amounts vary by trust.
- Trustee (nonprofit) is remainderman
- Can use pooled trust instead of spousal impoverishment budgeting if more favorable

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Pooled Income Trust (cont'd)

- People 65+ must obtain a disability determination if they don't already have one
  - Requires several forms to be submitted to LDSS with trust. See **http://www.wnylc.com/health/entry/44/**
- How much to contribute?
  - Spenddown Amount + Amount of Medicare Part B premium
  - Less than Spenddown → If low monthly bills and concerns about accumulating a balance
- Accumulating a large balance in trust account could cause a transfer penalty for nursing home care

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Morgan's Budget with a Pooled Trust

- In the following example, Morgan is SINGLE (If married to Chris, Morgan would not need a trust because of spousal impoverishment protections)

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Morgan's Single Budget with a Pooled Trust

- A pooled trust eliminates Morgan's spend down.

	Morgan
Income	$2,000
Income disregard	- $20
Net Countable Income	***$1,980***
Medicaid standard (single)	- $825
Spenddown	**$1,155**
Pooled trust contribution	- $1,155
Spenddown with Trust	***$0***

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Trust Tip – Medicare Savings Program (MSP)

- Perk: Pooled trust can make someone eligible for the Medicare Savings Program (MSP)
  - MSP pays the Medicare Part B premium
- Normally Morgan's income of $2,000/mo. is too high to qualify for an MSP. But the budget on the previous slide calculates his spenddown with NO deduction for the Part B premium. By putting the spenddown of $1,155 into the trust, the "countable income" for MSP as well as Medicaid is only $825.
- MSP puts $121/month into Morgan's pocket – and offsets the monthly fees of the trust.

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Extra Perk of using SNT to Qualify for MSP

- Save Part B premium - $104.90 or $121/month.
- If you have a Late Enrollment Penalty for Part B, enrollment in MSP can ELIMINATE the penalty for LIFE, even if you later lose eligibility for MSP
- Automatically qualify for Extra Help – Low Income Subsidy for Part D (May just need that subsidy, not Medicaid) – pays Part D monthly premium, reduces co-insurance, eliminates deducible & Donut hole
- One of the MSP programs – QMB – also pays Part B coinsurance (20% approved charge) to providers who accept Medicaid.

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Trust Tip – Married Couples

- Morgan and Chris are married again. But now Chris' income is $3,000/month (instead of $1,500).
- Since the MMMNA is $2,980.50, less than Chris' income, Chris isn't entitled to a CSMIA, so spousal impoverishment budgeting isn't helpful
- Morgan will have a high spend-down and may instead use a pooled trust. **GIS 14 MA/025**
  - How much should be put in the trust monthly?
  - He is budgeted as single. GIS 12 MA/013. "SSI-related" community budgeting is used. Net income over $825/mo. = Spend-down = Trust deposit

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Strategies for Dealing with a Spend Down in MLTC

6

Negotiate Spend Down with MLTC or Pay the Spend-down

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Negotiate Spend Down Amount with MLTC

- MLTC may be willing to accept lower monthly spend down
- Information on cost of living expenses may be persuasive
- Full spenddown amount is still a legal debt

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Meeting the Medicaid Spend Down

- **What <u>Should</u> Happen (See GIS 13 MA/018):**
  1. Paid and unpaid bills for out-of-pocket medical expenses submitted to LDSS
  2. LDSS informs MLTC of remaining spend down using LDSS 3183 form: **https://www.health.ny.gov/health_care/medicaid/publications/docs/gis/13ma018atta.pdf**
  3. MLTC bills remainder of spend down to enrollee
  4. If do not pay spend down to MLTC, may be disenrolled (following notice with appeal rights)

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Meeting the Medicaid Spend Down

- **What is Happening Depends on the County:**
  - At least one LDSS applies the accumulated, submitted paid and unpaid bills to the spend down at renewal, which reduces or eliminates the amount the MLTC bills for the upcoming year
  - Another LDSS attempts to follow the process in GIS 13 MA/018, but reports that timing issues have resulted in people paying the spend down to the MLTC and then having to seek reimbursement with the LDSS's help

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SPEND DOWN & MLTC ENROLLMENT DELAYS

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Spend Down & MLTC Enrollment Delays

- **The Problem**
  - Client approved for Medicaid with a spend down but trust not yet submitted or approved.
  - Approval for Medicaid with a spend down does not mean active coverage. Medicaid coverage is not active till:
    - Spend down is met with incurred or paid bills or
    - MLTC bills client for spend down
  - MLTC refuses to assess or enroll client till it sees Medicaid is coded as active
  - This is a Medicaid coding problem

Spend Down & MLTC Enrollment Delays (cont'd)

- **Advocacy**
  - NYC: See NYLAG article at
    - http://www.wnylc.com/health/download/534/
    - Helpful guidelines for others as well
  - Advocate with LDSS upon application
    - Put in writing that applying for MLTC
    - See if there are ways of avoiding the spend down issue. E.g., spousal refusal, using old bills to meet spend down

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Spend Down & MLTC Enrollment Delays (cont'd)

- **Advocacy (cont'd)**
  - **Advocate with MLTC**
    - Ask to speak to a supervisor at the MLTC → Explain that client has a Medicaid spend down
    - Give MLTC a copy of the notice approving Medicaid with a spend down
    - Ask MLTC to seek from LDSS "conversion" of case to full Medicaid
    - If MLTC refuses → complain to DOH, ICAN
  - **Advocate with DOH**
    - Seek DOH intervention on coding problems
  - **Contact ICAN** – Independent Consumer Advocacy Network – Ombudsprogram for MLTC and FIDA

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For more information & assistance:

- **Visit**

  http://nyhealthaccess.org

- **New York Legal Assistance Group**
  Evelyn Frank Legal Resources Program
  212-613-7310 **eflrp@nylag.org**
  (EFLRP is also part of ICAN)

- **ICAN –** 1-844-614-8800 ican@cssny.org – statewide Ombudsprogram for MLTC and FIDA

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NY Health access

Online Resources on MLTC

- All About Managed Long Term Care **http://www.wnylc.com/health/entry/114/**
- The Medicaid Buy-In for Working People With Disabilities (MBI-WPD) **http://www.wnylc.com/health/entry/59/**
- Special Housing Disregard for People Returning Home from Nursing Homes or Adult Homes and Enrolling in MLTC Plans **http://www.wnylc.com/health/entry/212/**
- Spousal Impoverishment Protections for Married Couples where One Spouse is in a Managed Long Term Care Plan - Pooled Trusts Allowed as an Option **http://www.wnylc.com/health/entry/165/**

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Online Resources on MLTC

- How to use a pooled SNT to eliminate the Medicaid spend-down **http://www.wnylc.com/health/entry/6/**
- You Were Approved for Medicaid – Now What? Avoiding and Troubleshooting Enrollment Delays in Managed Long Term Care for People with a Medicaid Spend-Down and People Being Discharged from Nursing Homes **http://www.wnylc.com/health/download/534/**
- **MAGI materials and "navigators" –**
  - http://www.wnylc.com/health/entry/193/
  - http://www.wnylc.com/health/entry/195**/**
  - http://communityhealthadvocates.org/
  - https://nystateofhealth.ny.gov/

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