What to do About that Spenddown in MLTC?

Special Medicaid Budgeting in MLTC

Amy E. Lowenstein, Empire Justice Center
Valerie J. Bogart, New York Legal Assistance Group

New York Association on Independent Living
September 16, 2015

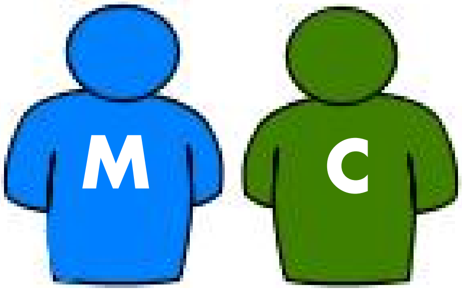
Empire Justice Center
Making the law work for all New Yorkers

NYLAG
NEW YORK LEGAL ASSISTANCE GROUP

Agenda

- Medicaid budgeting rules unique to MLTC
- Strategies for MLTC enrollees to deal with a Medicaid spenddown
- MLTC enrollment delays caused by spenddown
- Questions

Case Scenario: Morgan & Chris



- Morgan and Chris are married
- Both are on Social Security Disability (SSD) & receive Medicare
- Morgan needs community-based long term care
- Morgan applies for Medicaid

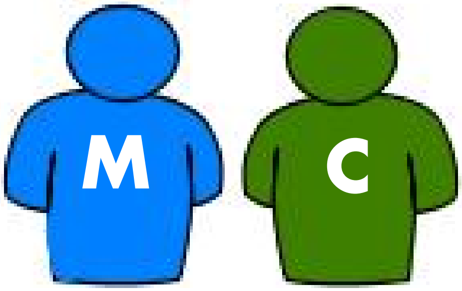
	Morgan	Chris
Income	$2,000	$1,500
Medicare Part B premium	$105	$105

Empire Justice Center
NYLAG NEW YORK LEGAL ASSISTANCE GROUP

MLTC Medicaid Budgeting

- Once a person enrolls in MLTC, their Medicaid budget may be able to change in ways that are more beneficial than Medicaid community budgeting
- Medicaid Budgeting in MLTC includes:
  - MLTC Housing Allowance (limited application)
  - Married MLTC recipients have a choice:
    1. Retain previous budget, OR
    2. Count MLTC recipient's income only, OR
    3. Use spousal impoverishment budgeting

Morgan's Medicaid Budget <u>Without</u> MLTC



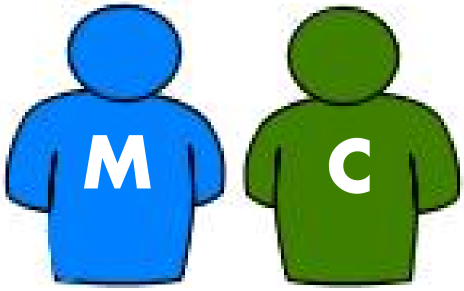
- Morgan's community Medicaid budget includes Chris' income
- Morgan's spend-down is **$2,061**/month

	Morgan	Chris
Income	$2,000	$1,500
Chris' income	$1,500	
Medicare Part B premium	- $210	$105
Income disregard	- $ 20	
Net Countable Income	***$3,270***	
Medicaid standard (couple)	- $1,209	
Excess Income/Spenddown	***$2,061***	

Different Budgeting Rules Can Be Applied in MLTC

- When Morgan joins an MLTC, budgeting rules specific to MLTC can be used instead
- Morgan will need to request to the LDSS that budgeting be changed to either:
  1. Budgeting based on a single person, OR
  2. Spousal impoverishment budgeting
- Until new budgeting is effective, it may be necessary to use **Spousal Refusal** to reduce or eliminate the spenddown

Morgan's Single MLTC Medicaid Budget



Single budget based only on Morgan's Income

	Morgan
Income	$2,000
Part B	- $105
Income disregard	- $20
Net Countable Income	***$1,875***
Medicaid standard (single)	- $825
Excess Income/Spenddown	***$1,050***

Yikes! That spenddown is still pretty big!
What can Morgan do?

Empire Justice Center

NYLAG
NEW YORK LEGAL ASSISTANCE GROUP

Strategies for Dealing with a Spenddown in MLTC

- MBI-WPD
- MLTC Housing Allowance*
- Spousal Impoverishment Budgeting
- Pooled Income Trust
- Negotiate Spenddown with MLTC
- Meet the Spenddown

* Available in limited circumstances

Strategies for Dealing with a Spenddown in MLTC

- MBI-WPD

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

- Uses higher Medicaid income / resource limits for working people with disabilities.

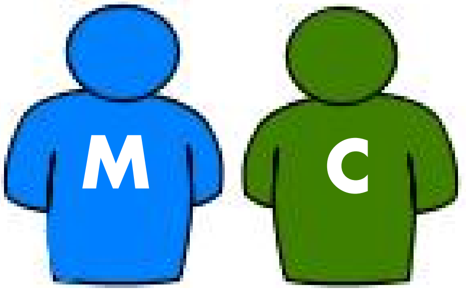
Family Size	1	2
Monthly Income (250% FPL)	$2,453	$3,319
Resources	$20,000	$30,000

- Eligibility
  - Age 16-64
  - Certified disabled (including on SSD)
  - Working (no minimum number of hours)
  - Income & Resource under MBI-WPD program limits
- (Not just for people on MLTC!)

MBI-WPD Income & Resource Eligibility

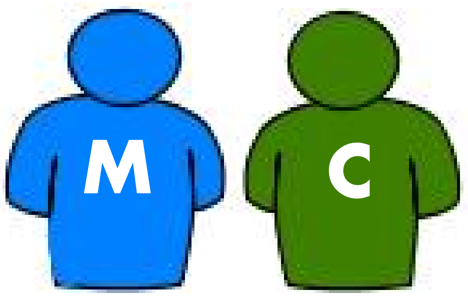
- Use "Disabled-Aged-Blind" Medicaid income counting and deduction rules, including:
  - Unearned income: $20 disregard
  - Earned income:
    - Subtract impairment related work expenses
    - Subtract $65
    - 1/2 remainder

Morgan's MBI-WPD Budget



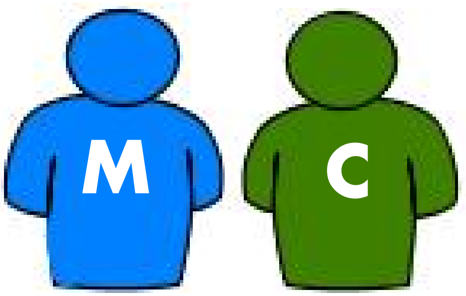
- Morgan gets a job that pays $163/month
- Determine MBI-WPD Budget:
  1. Determine countable unearned income
  2. Determine countable earned income
  3. Apply MBI-WPD standard for a couple

Step 1: Morgan's Net Unearned Income



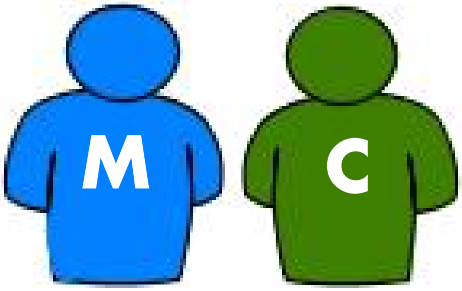
	Morgan	Chris
Unearned Income	$1,500	$2,000
Chris' Unearned Income	$2,000	
Income disregard	- $20	
Medicare Part B premium	- $210	$105
Net Unearned Income	***$3,270***	

Step 2: Morgan's Net Earned Income



	Morgan	Chris
Earned Income	$163	$0
Income disregard	- $65	
½ remainder	÷ 2	
Net Earned Income	***$49***	

Step 3: Morgan's MBI-WPD Budget



	Morgan	Chris
Net Unearned Income	$3,270	
Net Earned Income	$49	
Total Net Income	***$3,319***	
MBI-WPD Standard (couple)	- $3,319	
Excess Income	**$0**	

- Cannot spend down to the higher MBI-WPD level
- Can put income above MBI-WPD into a pooled trust

Empire Justice Center

NYLAG NEW YORK LEGAL ASSISTANCE GROUP

Strategies for Dealing with a Spenddown in MLTC

- MLTC Housing Allowance

MLTC Housing Allowance

- Income disregard for people discharged to the community with MLTC from:
  - A **nursing home,** or
  - An **adult home**
- Cannot already be in MLTC
- If married, can't use spousal impoverishment protections and MLTC Housing Allowance – must pick which budgeting is better

MLTC Housing Allowance Requirements

1. Nursing Home or Adult Home stay
   - Nursing Home for at least 30 days prior to day of discharge AND Medicaid made a payment towards nursing home stay

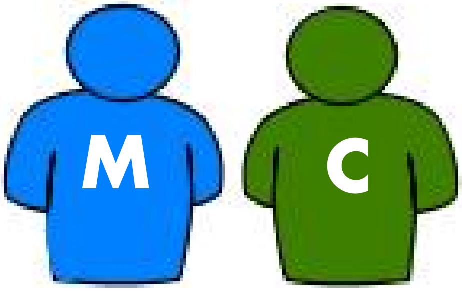
     OR

   - Adult Home stay prior to discharge AND on Medicaid while in the adult home
2. Have a housing expense

MLTC Housing Allowance (2015)

Region	Counties	Deduction
Central	Broome, Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, Tompkins	$382
Long Island	Nassau, Suffolk	$1,147
NYC	Bronx, Kings, Manhattan, Queens, Richmond	$1,001
Northeastern	Albany, Clinton, Columbia, Delaware, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington	$440
Northern Metropolitan	Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester	$791
Rochester	Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Wayne, Yates	$388
Western	Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans, Wyoming	$376

Housing Allowance



Applying the housing allowance lowers Morgan’s spend-down

	Morgan
Income	$2,000
Part B premium	- $105
Income disregard	- $20
Housing allowance (NYC)	- $1,001
Net Countable Income	***$874***
Medicaid standard (single)	- $825
Excess Income	**$49**

(Advocates interpret guidance as permitting application of the housing allowance to a married person budgeted as single)

Strategies for Dealing with a Spenddown in MLTC

Spousal Impoverishment Budgeting

Spousal Impoverishment Budgeting

- Option for married couples where one spouse is in MLTC
  - (also used when spouse is in a waiver program or nursing home)
  - Works almost the same as for nursing home with some minor variations
- MLTC applicant with a **Community Spouse** may shelter:
  - Up to $2,980.50/month of joint income
  - Plus retain $384/month personal needs allowance
  - Up to $74,820 of assets

Spousal Impoverishment Budgeting Terminology

- **Community Spouse** (**CS**) – Spouse that is not in need of MLTC
- "**Institutionalized**" or **MLTC Spouse** – Spouse that needs MLTC
- **Minimum Monthly Maintenance Needs Allowance** (**MMMNA**) - Maximum income the community spouse may keep ($2,980.50 in 2015)
- **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 2015)

Step 1: Determine Max CSMIA

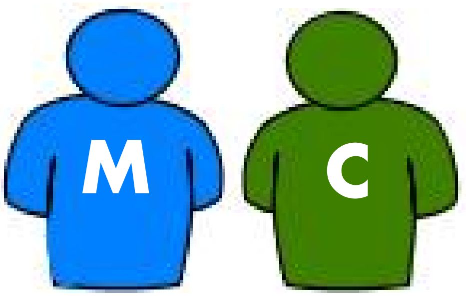
CSMIA = MMMNA – CS's Net Income

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

Chris's Net Income	
SSD	$1,500
Part B	-$105
Net Income	$1,395

Chris's CSMIA	
MMMNA	$2,980.50
Net income	-$1,395
CSMIA	$1,585.50

Step 2: Apply CSMIA & PNA



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

	Morgan	Chris
Net Income	$1,895	$1,395
PNA (amount Morgan keeps)	-$384	
CSMIA ("transferred" to Chris)	-$1,511	$1,511
Excess Income/Spenddown	$0	

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

Strategies for Dealing with a Spenddown in MLTC

- Pooled Income Trust

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

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

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

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)

Morgan’s Single Budget with a Pooled Trust

A pooled trust eliminates Morgan’s spenddown.

	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***

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 $105/month into Morgan’s pocket – and offsets the monthly fees of the trust.

Trust Tip – Married Couples

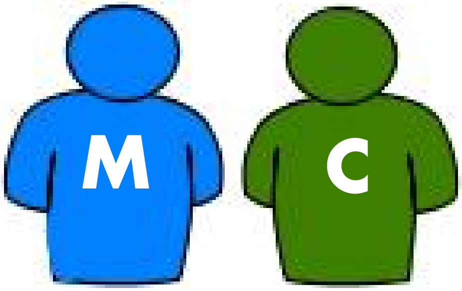
- Morgan and Chris are married again. But now Chris' income is $3,000/month (instead of $1,500).
- Since the MMMNA is less than Chris' income, Chris isn't entitled to a CSMIA.
- Morgan will have a high spenddown and should use a pooled trust.
- How much should be put in the trust monthly?
- Morgan can't use spousal impoverishment budgeting to determine the spenddown. Regular community budgeting is used.

Trust Tip – Married Couples (cont'd)

Options for how much Morgan should put into Trust if Spousal Impoverishment Budgeting is not Helpful:

1. In counties unlikely to sue for Spousal Support:
   → Chris can do Spousal Refusal to make Chris' income invisible. Spend-down is $1,155 – same as if Morgan was single. $1,155 goes in the trust
2. If risk that county will sue for Spousal Support:
   → use budget as couple. Next slide shows spend-down is $3,561/month. Add $210/month if want to qualify both spouses for MSP.

When is Pooled Trust Better than Spousal Impoverishment Rules?



If Chris' income is $3,000 instead of $1500/month

	Morgan	Chris
Income	$2,000	$3,000
Chris' income	$3,000	
Medicare Part B premium	- $210	$105
Income disregard	- $20	
Net Countable Income	***$4,770***	
Medicaid standard (couple)	- $1,209	
Excess Income/Spenddown	***$3,561***	

Strategies for Dealing with a Spenddown in MLTC

Negotiate Spenddown with MLTC

Negotiate Spenddown Amount with MLTC

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

Strategies for Dealing with a Spenddown in MLTC

Meet the Spenddown

Meeting the Medicaid Spenddown

What Should 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 spenddown using LDSS 3183 form: **https://www.health.ny.gov/health_care/medicaid/publications/docs/gis/13ma018atta.pdf**
3. MLTC bills remainder of spenddown to enrollee
4. If do not pay spenddown to MLTC, may be disenrolled (following notice with appeal rights)

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 spenddown 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 spenddown to the MLTC and then having to seek reimbursement with the LDSS's help

Spenddown & MLTC Enrollment Delays

Spenddown & MLTC Enrollment Delays

The Problem

- Client approved for Medicaid with a spenddown
- Approval for Medicaid with a spenddown <u>does not mean active coverage</u>. Medicaid coverage is not active till:
  - Spenddown is met with incurred or paid bills or
  - MLTC bills client for spenddown
- MLTC refuses to assess or enroll client till it sees Medicaid is coded as active
- This is a Medicaid coding problem

Spenddown & 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 spenddown issue. E.g., spousal refusal, using old bills to meet spenddown

Spenddown & 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 spenddown
  - Give MLTC a copy of the notice approving Medicaid with a spenddown
  - Ask MLTC to seek from LDSS "conversion" of case to full Medicaid
  - If MLTC refuses → complain to DOH, ICAN. LDSS
- Advocate with DOH
  - Seek DOH intervention on coding problems

Questions?

For more information & assistance:

ICAN Independent Consumer Advocacy Network (Consumer MLTC/FIDA Ombudsprogram)

(844) 614-8800

ican@cssny.org

Visit NY Health access

http://nyhealthaccess.org

Empire Justice Center

Health Technical Assistance: 800-724-0490 x 5822

HealthTechAssist@EmpireJustice.org

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/**

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/**