
◆ ELDER LAW REVIEW ◆TM

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MEDICAID AND ASSISTED LIVING

A common concern among many clients is finding the appropriate living arrangements for aging family members who can no longer live at home, but want to live in a lower cost, less restrictive setting than a nursing home. Assisted living facilities can be a good option for these individuals.

An assisted living facility (ALF) is a residence that provides room and board, some therapy, nursing, and supervision. ALFs are less costly than nursing homes and are generally for people who don't require the higher level of care provided in a nursing facility. Some ALFs, which are known as Assisted Living Programs (ALP), are licensed by the state to accept Medicaid residents. Most assisted living facilities in the state are not licensed as ALPs, and they generally accept only private pay residents. However, residents in ALFs can still qualify for Medicaid home health services that can be provided to them while they live in the ALF, which are provided independently from the ALF facility.

Managed long-term care programs (MLTCs) in New York do not cover assisted living facility fees. To qualify for an ALP, you must qualify for the level of care, which means, among other things, that you cannot require 24-hour nursing care, be bedridden, or have psychiatric issues that would result in harm to other ALP residents.

ALPs are required by New York State to provide resident services, including room, board, housekeeping, supervision, personal care (other than personal care services included in the Medical Assistance program), case management services, home health services and Medical Assistance services. Medical Assistance services include personal care services, home health aide services, personal emergency response services, nursing services, physical therapy, occupational therapy,

speech therapy, medical supplies and equipment not requiring prior approval.

ALPs are considered community-based facilities, and Community Medicaid rules are utilized in order to determine eligibility. This means that there are no penalties on transfers of assets, and that community (not institutional) budgeting is used. The income limit for a single person, however, is the same limit used for Supplemental Security Income (SSI) Congregate Care Level III, which for 2016 is \$1,427 per month, rather than the community Medicaid limit of \$825 per month. The SSI asset limit for a single person is \$2,000, plus burial arrangements, a burial fund, and some other exceptions. If the individual's assets are within the SSI limits, and if her income is under the income level, she may also be eligible for SSI to supplement her own income up to \$1,427. The same is true for a couple, who would be allowed to supplement their combined income up to \$2,854 per month (in 2016).

ALP residents are eligible for a Personal Needs Allowance (PNA) of \$193, which comes out of their income. The remainder of their income in excess of the \$193 allowance is paid directly to the ALP facility. SSI recipients in an ALP are automatically enrolled in Medicaid, which will pay the remainder of the ALP bill (whatever remains outstanding after the income amount has already been paid to the facility). SSI recipients in an ALP are also automatically enrolled in the Medicare Savings Program so that Medicaid will pay their Part B premiums.

For example, Jane, who is single, has assets totaling \$1,500.00 in a bank account, and receives \$1,300 per month gross Social Security retirement income. The SSI program has a \$20 disregard when calculating a recipient's income, making her countable income for SSI purposes \$1,280. She is eligible for SSI income of \$147 which represents the difference between \$1,280 and

\$1,427.

In our example, Jane will pay all of her income consisting of \$1,280 in Social Security retirement benefits and \$147 in SSI benefits, to the ALP facility, and the ALP will return \$193 to her as her PNA. Medicaid will then pay the rest of the ALP bill, in excess of the \$1,234 already paid to the facility.

There are also ALP residents who qualify for Medicaid without SSI. Residents will find themselves in this position if they have assets in excess of the SSI limit of \$2,000, but below the Medicaid limit of \$14,850. Someone in this situation would have to pay privately for residential services. Their excess income will go directly to the facility; however the income limit would again be the same limit used for Supplemental Security Income (SSI) Congregate Care Level III, which for 2016 is \$1,427 per month, rather than the regular community Medicaid limit of \$825 per month.

For example, John receives \$1,700 gross monthly Social Security retirement income, has assets of \$13,000, and is single. He is ineligible for SSI because his assets exceed the \$2,000 SSI limit. However, he is eligible for Medicaid because his assets are below the \$14,850 Medicaid limit. His spenddown, which will go to the facility, will be \$253 (\$1700 income - \$20 disregard - \$1,427 Income Level = \$253). Under the Congregate Care Level III rules, he is allowed to keep a PNA of \$193 a month. John will be responsible for the residential portion.

As evidenced from the examples above, ALPs can provide appropriate living arrangements for many people who want the benefits of nursing and care on site, while avoiding the higher cost and more restrictive setting of a nursing home. However, there are other variables to consider when looking into an ALP for long-term living. We advise you to contact an elder law attorney to determine whether an ALP is the right place for you or your loved one.

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