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WHAT IT MEANS TO NEED ‘NURSING HOME LEVEL OF CARE’ FOR MEDICAID ELIGIBILITY

When applying for Medicaid’s long-term care coverage, in addition to the strict income and asset limits, you must demonstrate that you need a level care typically provided in a nursing home.

Whether you are applying for nursing home coverage or through a Medicaid waiver program for coverage at home, you must meet the level-of-care requirement set by the state. Each state has its own criteria for determining if you meet the mandated level of care, and the criteria is not always clear.

The state looks at an applicant’s functional, medical, and cognitive abilities to determine if care in a nursing home is called for. In general, you must be unable to care for yourself or

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pose a danger to yourself without outside help. The following are the factors usually considered when making a level-of-care determination:

- You need help with two or more “activities of daily living” (such as bathing, dressing, eating, moving, and going to the bathroom).
- You need frequent medical care, such as assistance with medication, injections, IVs, or other medical treatment.
- Your cognitive ability is impaired by Alzheimer’s disease or another form of dementia, you have trouble making decisions on your own, or you are unable to process information.
- You have behavior problems, such as wandering away from home or aggressiveness.

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When assessing a Medicaid applicant, the state will conduct the evaluation. The state may require a doctor's diagnosis, but it will also likely require the applicant to answer a series of questions about his or her ability to perform activities of daily living as well the applicant's mental abilities and behavior problems and the applicant's family's ability to provide support.

To apply for Medicaid, contact your local Medicaid office. An elder law attorney can help you navigate the Medicaid application process, which is not easy. To find an attorney near you, click here.

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MEDICARE PREMIUMS TO INCREASE DRAMATICALLY IN 2022

Medicare premiums are rising sharply next year, cutting into the large Social Security cost-of-living increase. The basic monthly premium will jump 15.5 percent, or $21.60, from $148.50 to $170.10 a month.

The Centers for Medicare and Medicaid Services (CMS) announced the premium and other Medicare cost increases on November 12, 2021. The steep hike is attributed to increasing health care costs and uncertainty over Medicare's outlay for an expensive new drug that was recently approved to treat Alzheimer's disease. Because most recipients have their Medicare premium deducted from their Social

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Security check, the upswing in Medicare premiums means that the Social Security cost-of-living increase of 5.9 percent, which was the largest in 39 years, will be smaller for most people.

While the majority of beneficiaries will pay the added amount, a “hold harmless” rule prevents Medicare recipients' premiums from increasing more than Social Security benefits. This “hold harmless” provision does not apply to Medicare beneficiaries who are enrolled in Medicare but not yet receiving Social Security, new Medicare beneficiaries, seniors earning more than $91,000 a year, and “dual eligibles” who get both Medicare and Medicaid benefits.

Meanwhile, the Part B deductible will rise $30, from $203 to $233 in 2022, while the Part A deductible will go up by $72, to $1,556. For beneficiaries receiving skilled care in a nursing home, Medicare's coinsurance for days 21-100 will increase from $185.50 to $194.50.

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Medicare coverage ends after day 100. (For more information about Medicare's nursing home coverage, click here.)

- Here are all the new Medicare payment figures:
- Part B premium: $170.10 (was $148.50)
- Part B deductible: $233 (was $203)
- Part A deductible: $1,556 (was $1,484)
- Co-payment for hospital stay days 61-90: $389/day (was $371)
- Co-payment for hospital stay days 91 and beyond: $778/day (was $742)
- Skilled nursing facility co-payment, days 21-100: $194.50/day (was $185.50)

So-called “Medigap” policies can cover some of these costs. For more information about Medigap, click here.

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Premiums for higher-income beneficiaries ($91,000 and above) are as follows:

- Individuals with annual incomes between $91,000 and $114,000 and married couples with annual incomes between $182,000 and $228,000 will pay a monthly premium of $238.10.
- Individuals with annual incomes between $114,000 and $142,000 and married couples with annual incomes between $228,000 and $2846,000 will pay a monthly premium of $340.20.
- Individuals with annual incomes between $142,000 and $170,000 and married couples with annual incomes between $284,000 and $340,000 will pay a monthly premium of $442.30.
- Individuals with annual incomes above $170,000 and less than $500,000 and married couples with annual incomes above $340,000 and less than $750,000 will pay a monthly premium of $544.30.

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- Individuals with annual incomes above $500,000 and married couples with annual incomes above $750,000 will pay a monthly premium of $578.30.

Rates differ for beneficiaries who are married but file a separate tax return from their spouse. Those with incomes greater than $91,000 and less than $409,000 will pay a monthly premium of $544.30. Those with incomes greater than $409,000 will pay a monthly premium of $578.30.

The Social Security Administration uses the income reported two years ago to determine a Part B beneficiary's premium. This means that the income reported on a beneficiary's 2020 tax return is used to determine whether the beneficiary must pay a higher monthly Part B premium in 2022. Income is calculated by taking a beneficiary's adjusted gross income and adding back in some normally excluded income, such as tax-exempt interest, U.S. savings bond interest used to pay tuition, and certain income from foreign sources.

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This is called modified adjusted gross income (MAGI). If a beneficiary's MAGI decreased significantly in the past two years, she may request that information from more recent years be used to calculate the premium. You can also request to reverse a surcharge if your income changes.

Those who enroll in Medicare Advantage plans may have different cost-sharing arrangements. CMS estimates that the Medicare Advantage average monthly premium will be lower in 2022, from an average of $21 in 2021 to $19 in 2022.

For Medicare’s press release announcing the new premium, co-payment and deductible amounts for 2022, click here.

For more information about Medicare, click here.

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CLOSING OF SOCIAL SECURITY FIELD OFFICES DISRUPTED SSI BENEFITS FOR THOUSANDS, LAWSUIT CHARGES

Plaintiffs in a class-action lawsuit against the Social Security Administration (SSA) might describe it as an open-and-shut case. When the SSA closed its field offices at the onset of the COVID-19 pandemic, it remained open for the purposes of denying benefits. But, plaintiffs say, the agency was effectively shut for low-income elderly adults and people with disabilities who needed to validate claims, or who sought to challenge the agency's denial of their claims. The result: thousands of beneficiaries whose benefits were wrongfully reduced or discontinued, according to the suit.

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Supplemental Security Income (SSI) is the basic federal safety net program for the elderly, blind and disabled, providing them with a minimum guaranteed income. As of September 2021, some 2.3 million people aged 65 or older were receiving SSI payments.

SSI recipients are required to demonstrate that they meet income and resource limits each month in order to qualify for assistance, and they must promptly report any changes in their financial circumstances that might affect their status. Failure to perform this routine, which traditionally many have done in person at local field offices, can result in the denial of benefits and a demand for repayment of benefits already sent.

While the SSA made provisions for people to report their information by phone, fax or mail after closing its offices in March 2020, this was easier said than done for the elderly and people with disabilities, according to the lawsuit, filed in U.S. District Court, Eastern

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District of New York, by the advocacy group Justice in Aging and others on behalf of a group of SSI recipients whose benefits were unlawfully reduced or terminated.

“These recipients—who are disabled, elderly, or both—are at high risk for serious consequences from COVID-19, which limits their ability to venture into their communities to secure needed documentation, go to the post office or to send faxes to SSA,” the lawsuit reads. Furthermore, even when recipients did file their information on time, often the SSA failed to process it for months, only to rule later that the beneficiaries had been overpaid and would have their future benefits docked.

Even a no-fault waiver of overpayment debts that the SSA issued in August 2020 did not mitigate the issue, because it was too limited, the lawsuit argues. For instance, to qualify for the waiver, the overpayment had to have occurred before September 30, 2020, and

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must have been brought to the SSA's notice by the end of that year. Many people weren't informed about the waiver, the lawsuit claims, and therefore could not apply for it.

Nearly 300,000 people have stopped receiving SSI since the closure of the offices, during a pandemic that has hit the elderly and those with disabilities particularly hard, the lawsuit notes. "Adults 65 and older have been the most at risk of death from COVID-19 and have constituted almost 80 percent of COVID-19 deaths. In addition, the risk of death from COVID-19 for persons with disabilities has been three times that of the general population."

The plaintiffs, who are also represented by New York Legal Assistance Group and law firm Arnold & Porter Kaye Scholer LLP, have demanded a jury trial.

For Justice in Aging's press release on the litigation, click here.