

COMPARISON OF MEDICAID HOME CARE PROGRAMS IN NEW YORK STATE

	Personal care/ Home Attendant	CHHA - Certified Home Health Agency	CDPAP - Consumer Directed Personal Assistance Program	Private duty nursing	Waivers (Lombardi, etc.)	Managed Long Term Care [MLTC]
What insurance pays?	Medicaid only	Medicare covers limited care with stricter criteria than Medicaid.	Medicaid only	Medicaid only	Medicaid only	PACE is both Medicare & Medicaid. Other MLTC is Medicaid only.
Who administers/ where apply?	Local DSS [LDSS]	CHHA – refer to CHHA directly, which has authority to authorize care (but still need to apply for Medicaid eligibility with LDSS). In some cases CHHA's decisions are reviewed by local Medicaid district (Catanzano).	Local DSS	8 counties ¹ – LDSS NYC & rest of state – State DOH in Albany - Bureau of Medical Review & Evaluation	Varies with waiver. Lombardi – LDSS or directly with waiver program. TBI, NHTDW - RRDC ²	Apply with LDSS or with MLTC plans directly. MLTC plan determines type and amount of services.
Type of agency that provides service	In NYC - “exempt” non-licensed “vendors.” Outside of NYC - mostly LHCSAs (see fn 3)	Certified Home Health Agencies provide part of care plan directly (usually nursing visits) and sometimes sub-contract to LHCSAs ³ to provide the home health aides. Only CHHAs, not LHCSAs, may bill Medicare or Medicaid. Find CHHAs by county at http://homecare.nyhealth.gov/ (also hospices)	Counties/HRA contract with organizations to administer. See list. ⁴	Nursing “registries” or independent nurses that obtain a Medicaid provider number. NOT CHHA's though a CHHA may have an affiliate or subsidiary provide this service.	Usually sponsored by nursing homes, though newer waivers (TBI, NHTDW) sponsored by non-profit advocacy organizations.	Usually sponsored by CHHAs. See list. ⁵

¹ Broome, Chemung, Erie, Oneida, Schenectady, Tompkins and Westchester.

² Acronyms: TBI= Traumatic Brain Injury, NHTDW=Nursing Home Transition & Diversion Waiver, RRDC = Regional Resource Development Center

³ Licensed Home Care Services Agency = LHCSA

⁴ List at <http://onlineresources.wnylc.com/kbase/afile/40/43/>

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Age criteria?	None	None	None	None – commonly used for young children	TBI 18 – 64 but can stay in. Some for children < 18	Varies with program, PACE is > 55, some are > 18
Maximum hours of service?	Up to 24 hrs/day in 2 12-hour shifts x 7 days depending on need	Up to 24 hrs/day in 2 12-hour shifts x 7 days depending on need	Up to 24 hrs/day in 2 12-hour shifts x 7 days depending on need	Up to 24 hrs/day in 2 12-hour shifts x 7 days depending on need	Service must be “cost-neutral” – less than Nursing Home. Waivers have different limits: Lombardi 75% cost of NH, others have aggregate cost limits. Usually < than 8 hrs/day aide care	No limit in regulations but since cost is “capitated” some incentive by MLTC plan to limit services. Some plans have higher capitation rates and are more willing to provide 24-hr. care.

⁵ http://www.health.state.ny.us/health_care/managed_care/mltc/mltcplans.htm

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Appeal rights	Right to appeal all denials, reductions, terminations to State DOH/ hearing administered by OTDA ⁶ .	Limited right to appeal denials/reductions/terminations by CHHA to State DOH – treating physician must disagree with CHHA to trigger appeal right. <i>Catanzano</i> rights codified in Appendix to 18 NYCRR 505.23.	Right to appeal all denials, reductions, terminations to State DOH/ hearing administered by OTDA	Right to appeal all denials, reductions, terminations to State DOH/ hearing administered by OTDA	Right to appeal all denials, reductions, terminations to State DOH/ hearing administered by OTDA <i>Bernard v. Novello</i> ⁷	Developing area. Full appeal rights have been found in some individual hearings, but some view that appeal rights limited under “managed care” regulations. 42 CFR § 438.420
Spousal Refusal	In all 6 programs, Soc. Serv. L. § 366.3(a) entitles applicant/recipient to receive Medicaid services if spouse refuses or fails to contribute support. Local districts vary to degree they bring actions against “refusing” spouse for support/cost of services.					

⁶ Acronyms: DOH = Department of Health. OTDA = NYS Office of Temporary & Disability Assistance, which administers all Medicaid fair hearings

⁷ *Bernard v. Novello* (E.D.N.Y. No. 00 CV 260) – Settlement incorporated in 02 OMM/ADM-4 (May 28, 2002)

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Transfer of Assets	In all 6 programs, there is no penalty or delay in qualifying for eligibility for these services, if individual transferred assets. Eligible in month following transfer. Until 9/07, the transfer penalty did apply in the Waiver programs.					
Use of Supplemental Needs Trust to eliminate spend-down	Yes -- may use a pooled trust (people of any age) or individual trust (if under age 65 only) to deposit "excess" income and eliminate the spend-down				Gray area. Under <i>Wong</i> ⁸ , may not use this strategy in waivers with "institutional" budgeting. Lombardi still has institutional budgeting, but as of 9/08, both TBI and NHTDW waivers use community budgeting, so should be able to use SNT.	Yes - same as for personal care, etc.

⁸ In *Wong v. Daines*, 2008 U.S. Dist. LEXIS 75453, 2008 WL 4450262 (S.D.N.Y. Sept. 29, 2008), *appeal filed*

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Spousal impoverishment protections	None – Uses “community” budgeting where couple income limit is \$1117 (2009). Non-Medicaid spouse may do “spousal refusal,” but is not entitled to keep Medicaid spouse’s income for support. Counties vary on pursuing claims against “refusing” spouse.				In flux. Until 9/08, all waivers had these protections, so that “community spouse” could keep up to \$2739 of her own and waiver spouse’s income. This was eliminated for TBI waiver in 9/08 and for new NHTDW. Lombardi still has spousal protections but CMS has refused to renew the waiver with these protections. Waiver was extended to 7/14/09 for State and CMS to try to work out a resolution.	None -- Same as for personal care, etc.

Created by Valerie J. Bogart, Esq. Selfhelp Community Services, Inc. Evelyn Frank Legal Resources Program, November 12, 2008, updated May 09.