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# Medicaid Eligibility For Nursing Home And Other Long-Term Care

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# Medicaid Eligibility Rules:

1. Applicant must meet level of care requirements.
2. Applicant's income, not including the income of the applicant's spouse, must be \$2,022 per month or less in 2011. Income up to \$4,594 is permitted with a Medical Assistance Income Trust (Miller Trust). An even higher income is allowed with a Miller Trust if the applicant receives specialized care such as Alzheimer's care.
3. Applicant's non-exempt resources must be \$2,000 or less.
4. Applicant must need care for 30 or more consecutive days.

# Client Participation and Community Spouse Income Allowance:

1. The spouse receiving Medicaid keeps a personal needs allowance of \$50/month (\$140 for veterans receiving certain pensions).
2. The spouse who lives at home, the community spouse, can keep part of the applicant's income if community spouse's income is less than \$2,739 per month in 2011.
3. The Medicaid spouse's remaining income is used to pay for nursing home care.
4. The community spouse's income does not have to be used to pay for the nursing home expenses.

# Community Spouse Resource Allowance:

1. Certain assets are exempt: one car, furniture, pre-paid funeral plans, home (equity value limited to \$500,000 if spouse or certain children do not live in the home)
2. All non-exempt assets of **both** spouses are available to pay long term care expenses.
3. In the initial attribution, or division, of resources, the Iowa Dept. of Human Services (DHS) will allow the community spouse to keep one-half of all non-exempt resources owned by one or both spouses, but the community spouse will receive a minimum of \$24,000 and a maximum of \$109,560 in 2011.
4. The Medicaid application will be denied until all of the resources that are attributed to the applicant are spent down to \$2,000 or less.
5. In many cases, but fewer than before 2-8-2006, appealing the initial attribution of resources will increase the community spouse resource allowance.

# Appealing the Initial Attribution of Resources:

1. Either spouse has 30 days to appeal the initial attribution of resources. If an appeal is not filed, but the Medicaid application has been denied, a new application can be filed and the new attribution can be appealed. Only one appeal of the attribution is allowed.
2. The community spouse can keep the resources needed to increase the income available to her to the minimum monthly maintenance needs allowance in effect when the appeal is filed (\$2,739 in 2011). Income from assets is not included in this determination.
3. DHS uses the cost of a single-premium lifetime annuity that will provide the community spouse with total income of \$2,739 per month (in 2011) to determine the resources that the community spouse can keep.

4. The attribution rules drastically changed on February 8, 2006. For a person who entered a nursing home prior to February 8, only the community spouse's income is used in determining the amount of resources needed to provide income of \$2,739 per month. The community spouse of a person who enters a nursing home after February 8, 2006 must include as part of the community spouse's income the income allowance that is received from the Medicaid applicant.

# Attribution of Resources Example

Husband in nursing home applies for Medicaid.

Husband - Age 85

Wife - Age 85

Income: \$1,000/mo.

Income:\$1,000/mo.

Home - \$110,000

Car - \$10,000

Savings - \$40,000

Savings - \$50,000

**Initial Decision:**

Wife keeps exempt home and car. Husband attributed one-half of all non-exempt resources, or \$45,000 and is denied Medicaid until \$43,000 is spent.

**Appeal Decision:**

If husband entered nursing home before February 8, 2006, wife keeps the exempt property and the \$90,000 in savings since annuity to increase her income to \$2,739/mo. exceeds their non-exempt assets of \$90,000. Husband is eligible.

If husband entered nursing home on or after February 8, 2006, wife keeps the exempt property and only \$45,000, since the cost of an annuity to increase her income, including her husband's income that she can keep, to \$2,739/mo. is less than what was initially attributed to wife. Husband is not eligible until \$43,000 is spent.

# Using Resources to Become Eligible for Medicaid

1. After the attribution of resources, the Medicaid applicant will not be eligible until he has used all except \$2,000 of the resources that were attributed to him.
2. The applicant's excess resources over \$2,000 do not have to be spent on his nursing home care. They can be spent on anything that benefits the applicant or his spouse.
3. The excess resources can be used to:
  - Pay debts of either spouse;
  - Buy prepaid funeral plans for both spouses;
  - Buy exempt assets, such as a house, car, household furnishings, etc.;
  - Repair or remodel the homestead, or pay down the mortgage;
  - Pay travel expenses of the community spouse who wants to take a vacation;
  - Buy chairs, TV's, clothes, or other items that the applicant can use in the nursing home;
  - Buy anything that benefits the applicant or his spouse;
  - Buy specific types of annuities to provide additional income for the community spouse; and
  - Make gifts to specific people in very limited situations.

4. **It is often advisable to make these types of expenditures after the applicant has been admitted to the nursing home or has been found to meet the level of care requirements for the Elderly Waiver services.** Doing so will maximize the joint resources that are used to calculate the attribution of resources between the spouses, thereby increasing the amount of resources protected for the community spouse. The resources attributed to the applicant can then be used to make the above expenditures. This method of planning is especially important after February 8, 2006, since the income-first test required by the Deficit Reduction Act of 2005 will greatly increase the number of couples who will only have one-half of their assets protected for the community spouse.

## Iowa's Estate Recovery Law

1. Requires people to repay the State for the Medicaid benefits they have received if they own assets when they die.
2. Repayment is due at death from the person's estate, including real and personal property, funds in a burial trust, jointly held property, life estates, IRAs, annuities, and other assets in which the person had any legal interest.

3. Life insurance proceeds are not recoverable unless the person's estate is the beneficiary.
4. Assets can be used to pay funeral and burial expenses, expenses of last illness, certain taxes and estate costs.
5. Repayment may be waived if:
  - collection would cause an undue hardship
  - estate goes to surviving spouse, or to offspring who are disabled, blind or under age 21. Repayment waived until their death, or the offspring becomes 21, to the extent of any inheritance.
6. The personal representative of the Medicaid recipient, defined as the person who manages the recipient's financial affairs, and the institution in which the recipient resided, must report the death of the recipient to DHS within 10 days. The personal representative is personally liable for the amount due DHS if the recipient's estate is distributed without repayment.

# Additional Actions to Take to Protect Assets:

1. After the final attribution of resources, all of the resources allocated to the community spouse must be placed in the name of the community spouse in order for the Medicaid applicant to become and maintain eligibility.
  
2. Because of Iowa's Estate Recovery law, the following actions should also be taken to maximize the resources for the community spouse:
  - Transfer to the community spouse the assets attributed to the community spouse;.
  
  - Transfer exempt assets to community spouse; and
  
  - Change community spouse's will to exclude spouse, and/or convert assets to non-probate property.

# Transfer of Asset Rules:

## 1. Eligibility Rule:

If a person or their spouse transfers assets for less than fair market value within five years before the Medicaid application is filed, or at any time after the application is filed, the person is ineligible for Medicaid for a period of time beginning at the time they would otherwise be eligible. Transfers made prior to February 8, 2006 have a three-year look-back period and the period of ineligibility begins at the time of the transfer.

- A. The period of ineligibility is the number of months computed by dividing the value of the transferred assets by the average cost of nursing home care (\$4,853.36 through June 2012).
- B. A transfer includes gifts to people other than your spouse; transfers to churches and charities; removing a name from an asset; selling an asset for less than its fair market value; and disclaiming an inheritance.

- C. Spending money is not a transfer.
- D. Certain transfers do not cause Medicaid ineligibility:
- Transfer of your home to a child who lived with you and provided care for two years;
  - Transfer of any asset to a disabled child;
  - Transfer of assets that would have been attributed to community spouse;
  - Transfer of home to a sibling with an equity interest who has lived in the home one year;
  - Transfer to a spouse;
  - Transfer in exchange for support, maintenance or services; and
  - Transfer was exclusively for another purpose.
- E. If denying eligibility because of a transfer would cause the applicant an undue hardship, then Medicaid benefits must be approved. Hardship generally requires that the denial of Medicaid would deprive the applicant of food, clothing, shelter, medical care, or other necessities such that the applicant's health or life would be endangered.

2. Claims against people who receive assets:

If a person or their spouse transfers assets for less than fair market value within five years before the Medicaid application is filed, with the intent on the part of the person who receives the assets to gain Medicaid eligibility for the transferor, the DHS may file a claim against the person who received the assets for the amount of the Medicaid benefits, up to the uncompensated value of the transferred assets. Claims that do not result in ineligibility generally do not result in a claim against people who receive the assets.

## Medical Assistance Income Trust (Miller Trust)

1. A Medicaid applicant who does not qualify for Medicaid because his income is over the maximum income allowed for eligibility (\$2,022 in 2011) must set up a Medical Assistance Income Trust, known as a Miller Trust, to become eligible. The trust can only be used by people whose income is \$4,594 or less. The trust reduces the applicant's countable income so they qualify for Medicaid.
2. The income of the applicant's spouse is not counted in determining whether a Miller Trust is required.

3. Only the applicant's income goes into the trust.
4. The Trust pays the Medicaid applicant the amount of his personal needs allowance.
5. The Trust also pays the community spouse and other qualified dependents their appropriate income allowances for maintenance needs.
6. The remaining balance (less \$10 fee to trustee) in the trust each month goes to the nursing home or for medical expenses. The Trust balance at the applicant's death goes to state under the Estate Recovery Law.

### Miller Trust Example

1. Medicaid applicant's social security and pension checks that total \$2,500 are assigned to the trust.
2. Trust pays:     \$50 to client;  
                      \$10 to trustee; and  
                      \$2,440 to nursing home, if not diverted to spouse or dependents or used to pay medical bills.
3. Medicaid pays remaining bill to nursing home.

# Information on the Internet

- [www.iowalegalaid.org/](http://www.iowalegalaid.org/) - Iowa Legal Aid's website which has numerous articles written for older Iowans that explain various aspects of Medicaid rules for long-term care.
- [www.dhs.state.ia.us/policyanalysis/](http://www.dhs.state.ia.us/policyanalysis/) - The Iowa Department of Human Services Rules and Policy Manual.
- [www.cms.hhs.gov](http://www.cms.hhs.gov) - Centers for Medicare & Medicaid Services
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This information was correct when it was printed, (November 1, 2011). The laws may have changed. Do not assume this information is correct after the date it was printed. See a lawyer to get complete and up-to-date legal advice. **If you have questions, contact the Legal Hotline for Older Iowans at 1-800-992-8161**, 1111 Ninth St., Ste. 230, Des Moines, IA 50314. The Legal Hotline is a project of Iowa Legal Aid and is partially funded by the U.S. Administration on Aging and the Lawyer Trust Account Commission. ©2011 Iowa Legal Aid. Permission to reprint this article is granted provided that it is reprinted in its entirety and is distributed free of charge.