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Medicaid Eligibility For Nursing Home And Other Long-Term Care

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Medicaid Eligibility Rules:

DHS Employees' Manual 8-I-3

1. Applicant must meet level of care requirements.
2. Applicant's income, not including the income of the applicant's spouse, must be \$2,199 per month or less in 2015. Income up to \$5,833 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 & Spousal Income Allowance:

1. The spouse receiving Medicaid keeps a personal needs allowance of \$50/month (\$140 for veterans receiving certain pensions). DHS Employees' Manual 8-I-30.
2. The spouse who lives at home, the community spouse, can keep part of the applicant's income as a maintenance allowance if the community spouse's income is less than \$2,980.50 per month in 2015. DHS Employees Manual 8-I-38. Other dependents of the applicant can also receive allowances. DHS Employees' Manual 8-I-41.
3. The applicant can also get a deduction for unmet medical needs. DHS Employees' Manual 8-I-44
4. The Medicaid spouse's remaining income is used to pay for nursing home care. DHS Employees' Manual 8-I-22.
5. The community spouse's income does not have to be used to pay for the nursing home expenses. DHS Employees' Manual 8-I-24.

Community Spouse Resource Allowance:

DHS Employees' Manual 8-D-1

1. Certain assets are exempt; e.g., one car, furniture, pre-paid funeral plans, a home. The equity value in a home is limited to \$552,000 (in 2015) if the applicant's 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, DHS will allow the community spouse to keep one-half of all non-exempt resources owned by one or both spouses, with two exceptions. The community spouse will receive a minimum of \$24,000 and a maximum of \$119,220 in 2015.
4. The Medicaid application will be denied until all except \$2,000 of the resources that are attributed to the applicant are spent for the benefit of the applicant or spouse, or are legally transferred.
5. In many cases, but fewer than before 2-8-2006, appealing the initial attribution of

resources will increase the community spouse's resource allowance.

Appealing the Initial Attribution of Resources:

DHS Employees' Manual 8-D-7

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, which is \$2,980.50 in 2015. 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 \$2,980.50 per month in 2015 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, 2006, only the community spouse's income is used in determining the amount of resources needed to provide income of \$2,980.50 per month. The community spouse of a person who enters a nursing home on or 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
Income: \$1,000/mo.

Wife - Age 85
Income: \$1,000/mo.

Home - \$140,000
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 an annuity to increase her income to \$2,980.50/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 \$2,980.50/mo. is less than what was initially attributed to wife. Husband is not eligible until \$43,000 is spent.

Spending Down Resources to Become Eligible for Medicaid

DHS Employees' Manual 8-D-14

DHS Employees' Manual 8-D-17

DHS Employees' Manual 8-D-36

1. After the attribution of resources, the Medicaid applicant will not be eligible until all of the resources attributed to the applicant are spent down to \$2,000 or less.
2. The applicant's excess resources over \$2,000 do not have to be spent on nursing home care. They can be spent on anything that benefits the applicant or the 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 the spouse;
 - Buy specific types of annuities to provide additional income for the community spouse; and
 - Make gifts to specific people in very limited situations that are exceptions to the transfer of asset rules.

4. It is often advisable to make these expenditures only 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 expenditures listed above. This 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.

Transfer of Asset Rules:

DHS Employees' Manual 8-D-26

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, which is \$5,103.24 through June 2015).
- B. Transfers that affect eligibility include 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; placing assets in certain types of trusts; disclaiming an inheritance; failing to make a spousal election against a will and purchases of certain annuities, promissory notes, loans, mortgages and life estates.

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 the 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. DHS Employees' Manual 8-D-35.

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, or while the person is receiving Medicaid, 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.

Iowa's Estate Recovery Law

DHS Employees' Manual 8-D-21

1. Requires people to repay the State for certain 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 the second before death.
3. Assets in a Miller Trust are paid to DHS as a remainder beneficiary of the trust by payment to the estate recovery office. Miller Trust assets cannot be used for funeral or other expenses and the estate recovery waiver

provisions do not apply to them.

4. Life insurance proceeds are not recoverable by the state unless the person's estate is the beneficiary.
5. Except for funds in a Miller Trust, assets can be used to pay funeral and burial expenses, expenses of last illness, certain taxes and estate costs.
6. 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.
7. 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 Needed 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 exempt assets to community spouse; and
 - Change community spouse's will to exclude spouse, and/or convert assets to assets not subject to applicant's spousal election rights.

Medical Assistance Income Trust (Miller Trust)

1. A Medicaid applicant whose income is over the maximum income allowed for eligibility, which is \$2,199 in 2015, must set up a Medical Assistance Income Trust, known as a Miller Trust, to become

eligible. The Trust reduces the applicant's countable income so they qualify for Medicaid.

2. The trust can generally only be used by people whose income is \$5,833 or less in 2015, but an applicant with a higher income can use a Miller Trust if the applicant receives specialized care such as Alzheimer's care.
3. The income of the applicant's spouse is not counted in determining whether a Miller Trust is required.
4. Only the applicant's income goes into the trust.
5. The Trust pays the Medicaid applicant the amount of his personal needs allowance.
6. The Trust also pays the community spouse and other qualified dependents their appropriate income allowances for maintenance needs.
7. The remaining balance in the trust, less a monthly \$10 fee to trustee goes to the nursing home or for medical expenses. The Trust balance at the applicant's death goes to the state under the Estate Recovery Law.

Miller Trust Example

1. Medicaid applicant's social security and pension checks that total \$2,300 are assigned to the trust.
2. Trust pays: \$50 to client; \$10 to trustee; and \$2,240 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.probono.net/iowa - the online resource created by Iowa Legal Aid and other legal assistance providers for attorneys helping meet the civil legal needs of low-income Iowans. The web site contains a more fully developed analysis of Medicaid eligibility for long-term care.
- 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.

- <http://dhs.iowa.gov/policy-manuals/income-maintenance> - The Iowa Department of Human Services Rules and Policy Manual.
- www.cms.hhs.gov - Centers for Medicare & Medicaid Services
- www.immediateannuities.com – web site used by DHS to estimate the cost of a single-premium annuity in the attribution or resources process.

APPENDIX A

FRAMEWORK FOR ANALYZING MEDICAID NURSING HOME ELIGIBILITY

1. Is the individual income eligible?

- Is all income known?
- Use gross income, including the Medicare premiums deducted from Social Security checks.
- Is any income exempt (e.g., VA Aid and Attendance)?
- Is income less than the income limit (\$2,199 per month in 2015)

- If income is over the limit, but less than the average cost of nursing home care, which is \$5,833 through 6-30-15, or higher if specialized care is needed and charged for, the individual can become income eligible by establishing a Medical Assistance Income Trust (Miller Trust)? 441 Iowa Admin. Code §75.24(3)(b); Employees Manual 8-D-72; See Iowa Code §633C.

2. Is the individual resource eligible?

- Are all resources known?
- What was the fair market value of the client's countable resources as of the first day of the month for which eligibility is desired?
- Are any or all resources exempt?
- Is there a community spouse? (see No. 3 below)
- What is the total fair market value for the countable resources?
- Does the value of countable resources exceed \$2,000.00?

3. Is there a spouse at home?

- What is the community spouse's income

allowance?

- What is the community spouse's resource allowance?
- Is an appeal necessary?

4 Is there a disqualifying transfer of an asset?

- Was there a transfer within the last 60 months?
- What was the date of the transfer?
- What is the proper "Look Back" Period?
- Was the transfer within the "Look Back" Period?
- Was the transfer for less than fair market value?
- Do any exemptions to the transfer of assets rule apply?
- Was the transfer to attain Medicaid eligibility?
- If potentially a disqualifying transfer:
 - What is the uncompensated value of the transfer?
 - What is the average cost of nursing facility care at the time of application?
 - What is the penalty period?
 - Can the asset be recovered?
 - When does the penalty start/finish?
 - Is there a transfer debt?

5 Are there any other factors that may affect eligibility?

- Is the client an Iowa resident?
- Is the client a citizen or otherwise eligible?
- Is the client in need of nursing home level of care?
- Any other factors?

6. If countable resources exceed \$2,000, can they be transferred or spent to reduce them to \$2,000 so that client can be eligible?

- Exempt transfers
- Prepaid funeral plans
- Personal needs of client in nursing home
- Paying debts or expenses of either spouse
- Buying exempt assets such as a house or car
- Annuities for community spouse

7. Estate Recovery Law Considerations

- Transfer exempt property to spouse.
- Transfer property attributed to spouse to spouse.
- Change spouse's will to eliminate bequests to Medicaid applicant.
- Consider methods of protecting spouse's assets from Medicaid applicant's spousal election rights.

This information was correct when it was printed, (April 6, 2015). 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 Iowa's Lawyer Trust Account

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Typical Medicaid Planning Scenarios and Questions

- A. Husband is in a nursing home and the couple's non-exempt assets of \$300,000 are slowly dwindling to pay for his care. At what point should they apply for Medicaid to ensure that they do not spend more of their assets than they need to? Would it be when the value of their non-exempt assets equals double the community spouse's resource ceiling, which is \$119,220 in 2015?
- Apply when first enter nursing home? Possibly.
 - Community spouse may be entitled to more than \$119,220.
 - Need to know when husband entered nursing home (before or after 2-6-2006)
 - Need to know age of wife and income of both spouses to determine the cost of a single premium annuity.
 - Use www.immediateannuities.com to determine cost of annuity.
- B. If a couple has \$100,000 to spend down before husband is eligible for Medicaid, can they buy an annuity for the wife that converts the asset into a stream of income for her, or would this violate the transfer of assets rules?
- Buying an annuity is an exception to the transfer rules
 - The annuity must meet specific Medicaid rules regarding irrevocability, assignability, actuarial soundness, and amount of payments.
 - An annuity must also name the state as the remainder beneficiary.
 - Use this planning tool to increase the community spouse's income instead of using assets to pay for nursing home care, although it may affect the diversion of income to the community spouse.
 - The annuity can be bought from an insurance company, or from a family member.
- C. A daughter has been spending more than 15 hours per week for the past three years providing various services for her elderly mother. The mother may be entering a nursing home in the near future and has \$20,000 in her bank account. Can mother give her daughter the \$20,000 for the services that she provided in the past?

- Generally no. DHS will consider the daughter to have been a good daughter who provided the services as a gift to her mother. If the mother gives the \$20,000 to daughter now, it would be an invalid gift.
 - If the mother and daughter had an agreement that daughter would be paid for the services, then paying pursuant to the agreement would be okay. Best to have the agreement be in writing. See DHS Employee Manual Title 8, Chapter D, pages 39-41.
- D. Client is in a nursing home and his income is \$2,800 per month. Once he becomes eligible for Medicaid, \$1,000 of his monthly income will be able to be diverted to his wife, leaving him with \$800. Does this mean that client does not need a Miller Trust since his effective income is below the level for which he would need a Miller Trust?
- Client does need a Miller Trust.
 - The diversion of income to his wife does not occur until client has been determined to be eligible.
 - Client cannot be eligible until he establishes a Miller Trust since his actual income in 2015 exceeds \$2,199 per month.
- E. Client is in a nursing home and has paid for her care for the past four years. It is now May 20 and she only has \$200 left. She needs to become eligible for Medicaid on June 1 to pay the June nursing bill, but she needs a Miller Trust established since her monthly income is \$2,700. Should client use her last \$200 to establish a Trust?
- No, she should delay her eligibility until July, which allows her to use the \$300 and the \$2,700 of income she will receive in June to pay for the Trust, and to get her assets up to the \$2,000 level that she is entitled to have and still be eligible for Medicaid.
 - She will then become delinquent with her nursing home bill, but her client participation, the amount of her income that she would normally need to pay to the nursing home when getting Medicaid, in July and subsequent months can first be used to pay the delinquent June nursing bill until it is fully paid and Medicaid will pay the total bill for those future months. See DHS Employee Manual Title 8, Chapter I, page 44.
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- F. Client is in a nursing home. His monthly income is \$5,000. Can he be eligible for Medicaid to pay his monthly \$4,800 nursing home bill?
- The normal income eligibility standard for Medicaid is \$2,199 per month in 2015. A person with more income can be eligible by establishing a Miller Trust, but the maximum, monthly, income limit for Miller Trusts is normally \$5,833 per month. Client's income is less than \$5,833, so he can establish a Miller Trust and be eligible.
 - There is an exception to the \$5,833 for people who receive specialized care, such as in an Alzheimer's unit, in which case client can be approved for

Medicaid if their income is less than the cost of care. See Iowa Code section 633C.3(3). If client's income was \$6,000 and the cost of specialized care was \$6,200, he could establish a Miller Trust and be eligible.

- If part of client's income is a pension or other asset that could be the subject of a QDRO, client and spouse could divorce or get a separate maintenance agreement and give part of the pension, and the resulting income, to the spouse in order to reduce the client's monthly income.

G. Client recently died and his Miller Trust has \$1,200 remaining in it. He also had a prepaid funeral plan and there is \$800 left in it to go to his heirs. Client's spouse would like to have the entire \$2,000 to help her live on for the rest of her life. Is she entitled to a spousal waiver of estate recovery so that she can keep the \$2,000?

- The spouse can get a waiver for the \$800 in the funeral plan because it is subject to the estate recovery law. The funds remaining in the Miller Trust must be paid to the state because the state is the remainder beneficiary of the Trust. The Trust is not subject to the estate recovery law, including its waiver provisions.

H. Client gave \$90,000 to her son 4.5 years ago, prior to entering a nursing home. She has paid for her nursing home care since then, but is now out of money. Will she be eligible for Medicaid?

- Since the son is not disabled and there is no other exception to the transfer of assets rules that apply, client will not be eligible since the gift was within the five-year look-back period prior to her need for Medicaid.
- Son could pay for client's care for another six months, then the remaining part of the gift could be kept by him without affecting client's eligibility.
- If son will not pay for the care, client can probably get Medicaid under the hardship rules, but the state will pursue the son for the value of the assets he was given.

I. Client is in a nursing home and has a piece of non-homestead real estate that is assessed for tax purposes at \$100,000. He has been trying to sell it for \$100,000 for eight months, but has received no offers. He has no other assets and owes the nursing home \$25,000. Can client sell the property at auction to get rid of it and pay his nursing home bill?

- Yes, but it must be sold at current fair market value, which is the amount it can be sold for on the open market.
- When property is sold at auction, the current fair market value is considered to be the highest bid, as long as the client provides verification that attempts to sell the property at fair market value have been unsuccessful, and the auction was advertised to the public. See DHS Employee Manual Title 8, Chapter D, pages 84b-84c.
- Auctions can be used to sell any assets, including life estates or other partial

interests in real estate.

- J. Clients live on a farm worth \$500,000. Husband will soon need to move to a nursing home and wife, who never really liked the farm, wants to sell the farm and move to town. What should they do?
- Clients should continue living on the farm until husband moves into the nursing home and applies for and is approved for Medicaid. This allows the farm to be an exempt homestead when the Medicaid eligibility determination is made. Clients can then transfer the farm to wife and she can sell it, move into town, and use the proceeds for other housing and other expenses.
 - If clients sell the farm prior to husband becoming eligible for Medicaid, they will have \$500,000 in the bank that would be a countable, non-exempt asset. Assuming wife's age and the couples' income are such that she would be limited to keeping the normal spousal resource allowance, she would only be allowed to retain \$119,220 (in 2015) and the remaining \$380,780 would need to be spent down before husband would be eligible for Medicaid.
- K. Clients live in a mobile home worth \$10,000 and they have \$200,000 in cash. Wife will need nursing home care soon and husband may need to move to assisted living. What can clients do anything to help ensure that husband will have enough assets to keep him in assisted living as long as possible?
- If wife moves into a nursing home and husband moves directly to an assisted living, they could very well be paying out \$9,000 per month and their cash will be gone within two years.
 - Clients should use their cash and mobile home proceeds to buy a house or condo that is exempt as a homestead. They can then move wife into a nursing home and get her eligible for Medicaid. Once she is eligible, husband can sell the condo, move to an assisted living facility, and will have enough cash to live there for an extended amount of time.
- L. Client has no spouse, owns a farm worth \$1,000,000, and needs to go into nursing home. Can client give anything to his children or must he keep everything and possibly have to spend it all on nursing home care?
- Unlike people with few assets, wealthy people can keep assets for their family and still be eligible for Medicaid.
 - If \$400,000 would be enough to pay for his care for five years, he can transfer the remaining \$600,000 to his children or to anyone else without penalty and be eligible for Medicaid at the end of five years.