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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 \$2,094 per month or less in 2012. 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). 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 \$2,841 per month in 2012. 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 \$525,000 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 \$113,640 in 2012.
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'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 \$2,841 in 2012. 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 \$2,841 per month in 2012 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 \$2,841 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 \$2,841/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 \$2,841/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 except \$2,000 of the resources that were attributed to applicant are spent.

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.

4. **It is often advisable to make these types of 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 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.

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 \$4,853.36 through June 2012).
- 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 that kept the applicant out of a nursing home 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. Transfers 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. 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 exempt assets to community spouse; and
 - Change community spouse's will to exclude spouse, and/or convert assets to assets that are 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 \$2,094 in 2012, must set up a Medical Assistance Income Trust, known as a Miller Trust, to become eligible for Medicaid. The Miller Trust reduce's the applicant's countable income so they can qualify for Medicaid.

2. The trust can generally only be used by people whose income is \$4,594 or less, 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.
 - www.dhs.state.ia.us/policyanalysis/ - The Iowa Department of Human Services Rules and Policy Manual.
-
- www.cms.hhs.gov - Centers for Medicare & Medicaid Services

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 (\$2,094 per month in 2012)

If income is over the limit, but less than \$4,594 (through 6-30-12) per month, 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?

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?
 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.

APPENDIX B

SAMPLE MEDICAL ASSISTANCE INCOME TRUST

**[NAME OF SETTLOR]
IRREVOCABLE TRUST AGREEMENT**

This irrevocable trust agreement is made this ____ day of _____, 2012, by [Name of Settlor], Grantor, and [Name of Trustee], as trustee.

ARTICLE I - NAME OF TRUST

1. This trust is a Medical Assistance Income Trust and shall be known as the [Name of Settlor] Irrevocable Trust. The beneficiary of this trust is [Name of Settlor]. The State of Iowa is the residuary beneficiary.

ARTICLE II - TRUST ESTATE

2. Trustee acknowledges receipt, in trust, of the Grantor's property described in the attached Schedule A. Only income shall be used to fund this trust.

ARTICLE III - APPOINTMENT OF TRUSTEE

3. Grantor appoints [Name of Trustee] as trustee of this trust.

ARTICLE IV - DISPOSITION OF INCOME AND PRINCIPAL

4.1. If the beneficiary's total monthly income is less than the average statewide charge for nursing facility services to a private pay resident of a nursing facility, then, during the life of the beneficiary, any property received or held by

the trust shall be expended only as follows, as applicable, and in the following order of priority:

- a. A reasonable amount may be paid or set aside each month for necessary expenses of the trust, not to exceed ten dollars per month without court approval.
- b. From the remaining principal or income of the trust, amounts may be paid for expenses that qualify as required deductions from income pursuant to 42 C.F.R. Sections 435.725(c) or 435.726(c) for purposes of determining the amount by which medical assistance payments under Iowa Code chapter 249A for institutional services or for home and community-based services provided under a federal waiver will be reduced based on the beneficiary's income.
- c. If the beneficiary is an institutionalized individual, or receiving home and community-based services provided under a federal waiver, the remaining principal or income of the trust shall be paid directly to the provider of institutional care or home and community-based services, on a monthly basis, for any cost not paid under paragraph b, to reduce any amount paid as medical assistance under Iowa Code chapter 249A.
- d. Any remaining principal or income of the trust may, at the trustee's discretion or as directed by the terms of the trust, be paid directly to providers of other medical care or services that would otherwise be covered by medical assistance, paid to the state as reimbursement for medical assistance paid on behalf of the beneficiary, or retained by the trust.

4.2. If the beneficiary's total monthly income is at or above the average statewide charge for nursing facility services to a private pay resident of a nursing facility, then, during the life of the beneficiary, any property received or held by the trust shall be expended only as follows, as applicable, in the following order of priority:

- a. A reasonable amount may be paid or set aside each month for necessary

expenses of the trust, not to exceed ten dollars per month without court approval.

b. All remaining property received or held by the trust shall be paid to or otherwise made available to the beneficiary on a monthly basis, to be counted as income or a resource in determining eligibility for medical assistance under Iowa Code chapter 249A.

4.3. If the beneficiary meets any of one of the medical assistance levels of care requirements specified in Iowa Code subsection 633C.3(3)(a,b,c or d), then the applicable amount specified in section 633C.3(3) shall be applied in this Article in lieu of the average statewide charge for nursing facility services to a private pay resident.

4.4. If future changes in federal or state laws or regulations would allow the beneficiary to receive additional benefits from the principal or income of the trust while maintaining Medicaid eligibility, then the beneficiary shall receive the maximum benefits allowed by law.

ARTICLE V - TERMINATION OF TRUST

5. This trust shall terminate on the death of the beneficiary, and thereupon the trustee shall distribute and deliver the remainder of this trust to the residuary beneficiary, the State of Iowa, for reimbursement of medical assistance provided by the Iowa Medicaid program to the beneficiary. If the remainder of this trust exceeds the medical assistance paid to the beneficiary by the Iowa Medicaid program, then the excess shall be paid to the beneficiary's heirs or devisees who are entitled to receive the beneficiary's residual estate.

ARTICLE VI - IRREVOCABLE TRUST

6. This trust is an irrevocable trust.

ARTICLE VII - ADMINISTRATIVE PROVISIONS

7. This trust shall be administered expeditiously consistent with its terms, free of judicial intervention and without order, or approval of other action by any Court, subject only to the jurisdiction of a Court being invoked by the trustee or other interested parties or as otherwise allowed by law.

8. Inalienability. No beneficiary shall have the right to anticipate, sell, assign, mortgage, pledge, or otherwise dispose of or encumber all or any part of the trust estate nor shall any part of the trust estate including income, be liable for the debts or obligations, including alimony, of any beneficiary or be subject to attachment, garnishment execution, or other legal or equitable process. This provision does not bar any remedy available to the State of Iowa to enforce its remainder interest under the terms of this trust and applicable law.

9. Benefits Payable to Trustee: Trustee shall not be required to undertake litigation for collection of any benefits or assets payable by reason of the death of the beneficiary, including but not limited to benefits under life insurance policies, employee benefit plans or other contracts, plans or arrangements providing for payment or transfer at death which are payable directly to the trustee. Any benefits or assets payable to the trust shall not be subject to claims against the estate of the beneficiary nor shall such benefits be subject to the control of the personal representative of the beneficiary nor be included in the property administered as part of the estate of the beneficiary.

10. Reports. Periodic reports to the Court are not required, but may be required pursuant to the regulations of the Iowa Department of Human Services. The records of the trustee with respect to the trust estate shall be open at all reasonable times to the inspection of the beneficiaries of this trust and their accredited representatives.

ARTICLE VIII - POWERS OF TRUSTEE

11. The trustee may exercise all powers of a trustee as provided in the Code of Iowa.

12. In the exercise of the trustee's fiduciary duties, the State of Iowa shall be considered a beneficiary of this trust and the trustee shall not take any action that is not prudent in light of the State of Iowa's interest in the trust.

ARTICLE IX - TRUSTEE SUCCESSION AND ADMINISTRATIVE PROVISIONS

13. A trustee may resign by giving 30 days' written notice to each beneficiary, effective at the end of 30 days.

14. If any trustee resigns or is unable to act, another person may be appointed as trustee by an instrument delivered to and signed by the beneficiary or their attorney-in-fact, guardian or conservator, if any. Any successor trustee, with the written approval of the person or persons appointing such successor trustee, shall accept without examination or review, the accounts rendered and the property delivered by or for a predecessor trustee, without incurring any liability or responsibility for doing so.

ARTICLE X - BOND

15. No bond shall be required of the trustee named herein, or any successor trustee.

ARTICLE XI - GOVERNING LAW

16. This agreement has been executed and delivered in the State of Iowa and all questions of law arising under this agreement shall be determined under and according to the laws of the State of Iowa.

Signed by [Name of Settlor], Grantor herein, and by [Name of Trustee] who by his/her signature accepts the office of trustee of the [Name of Settlor] Trust.

[Name of Settlor], Grantor

[Name of Trustee], Trustee

STATE OF IOWA)
) ss:
COUNTY OF _____)

This instrument was acknowledged before me by [Name of Settlor] and [Name of Trustee], on this _____ day of _____, 2012

Notary Public in and for the State of Iowa

**SCHEDULE A TO THE
[NAME OF SETTLOR] IRREVOCABLE TRUST**

Grantor's income being placed in trust:

- a. Benefits from _____ payable on or after _____, 2012. Current benefits are approximately \$_____ per month.

- b. Social Security benefits payable on or after _____, 2012, including all future cost of living adjustments. Current benefits are approximately \$_____ per month.

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