

Medicaid Eligibility For Nursing Home And Other Long- Term Care

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Medicaid General Eligibility Rules:

1. Applicant must meet level of care requirements.
2. Applicant must need care for 30 or more consecutive days.
3. Applicant's income, not including the income of the applicant's spouse, must be \$2,313 per month or less in 2019. Income up to \$7,506.25 (in 2019) 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.
4. Applicant's non-exempt resources must be \$2,000 or less.

Client Participation

Client participation is the amount of the resident's income that must be paid to the nursing home each month. It is determined by deducting from the resident's income:

- The personal needs allowance;
- The income allowances for the community spouse and other dependents;
- The costs of other medical expenses, such as for Medicare supplement insurance and Medicare Part D insurance, and unmet medical expenses such as delinquent nursing home and medical bills.

The resident's remaining income is used to pay for nursing home care.

IMPORTANT: The community spouse's income does not have to be used to pay for the nursing home expenses.

Personal Needs Allowance

Nursing home residents who receive Medicaid keep a personal needs allowance out of their income of \$50/month as a personal needs allowance to pay for haircuts and other expenses that are not covered by Medicaid.

Some veterans who receive specific VA pensions receive an additional \$90 out of their income.

Community Spouse Income Allowance

The spouse of a nursing home resident who still lives in their home is called the community spouse. The community spouse can keep part of the nursing home resident's income as a maintenance allowance if the community spouse's income is less than \$3,160.50 per month in 2019.

Other dependents can also receive an allowance.

Community Spouse Resource Allowance

The resource allowance is the amount of assets that are protected for the community spouse to pay living expenses.

1. Certain assets are exempt; e.g., one car, furniture, pre-paid funeral plans, and a home and contiguous land. The equity value in a home is limited to \$552,000 (in 2019) 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,

the community spouse keeps one-half of all non-exempt resources owned by one or both spouses, with two exceptions. The community spouse will receive a minimum of \$25,284 and a maximum of \$126,420 in 2019.

4. All other non-exempt resources are attributed to the applicant. The Medicaid application will be denied until all of the resources that are attributed to the applicant are spent down to \$2,000.
5. In many cases, appealing the initial attribution of resources will increase the community spouse's 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, which is \$3,160.50 in 2019. 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 \$3,160.50 per month in 2019 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 \$3,160.50 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 \$3,160.50/mo. exceeds their non-exempt assets of \$90,000. Husband is eligible for Medicaid.

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 \$3,160.50/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

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. Medicaid eligibility begins the first day of the month after the excess resources have been spent down.

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.

The excess resources can be used to:

- Buy chairs, TV's, clothes, or other items that the applicant can use in the nursing home;
- 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 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.

It is generally important to spend down resources only after the applicant has been admitted to the nursing home or has been found to meet the level of care requirements for 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

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.

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 \$6,447.54 through June 2019.

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
- Purchasing certain annuities, promissory notes, loans, mortgages and life estates.

C. Spending money for the benefit of the applicant or the community spouse 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 you 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 your home to a sibling with an equity interest who has lived in the home for at least one year;
- Transfer to a spouse;
- Transfer in exchange for support, maintenance or services; and
- Transfer was exclusively for a purpose other than qualifying for Medicaid.

E. If denying eligibility because of a transfer would cause the

applicant an undue hardship, then Medicaid benefits must be approved. A hardship exists if:

- Imposing a penalty would deprive the resident of food, shelter or other necessities of life;
- All means to recover the transferred resource have been exhausted;
- Remaining assets other than a home, household goods, a vehicle and \$4,000 of burial funds are less than the average monthly cost of nursing home services.

Hardship will not be found if resources were transferred to the person handling the financial affairs of the resident, or to that person's spouse or children, unless the resident demonstrates that payments cannot be obtained from the person handling the resident's financial affairs.

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.

Estate Recovery Law

Iowa's Estate Recovery Law requires people to repay the State for certain Medicaid benefits they have received **only if the Medicaid recipient owns assets when they die.**

1. 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 they die.
2. If the Medicaid recipient does not own anything at death, then nothing is ever paid back to the state by the recipient's spouse or anyone else.
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 from the Medicaid recipient.
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 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 such as the home and car to the community spouse; and
 - Change the community spouse's will to exclude spouse,

and/or convert assets to assets not subject to applicant's spousal election rights if the community spouse dies first.

Medical Assistance Income Trust (Miller Trust)

1. A Medicaid applicant whose income is over the maximum income allowed for eligibility, which is \$2,213 in 2019, must set up a Miller Trust, to become eligible. The Trust reduces the applicant's countable income so that they qualify for Medicaid.
2. The trust can generally only be used by people whose income is \$7,506.25 or less in 2019, 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 \$2,400 are assigned to the trust.
2. Trust pays: \$50 to client;
\$10 to trustee; and
\$2,340 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.

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