

## **The Basic Rules of Nursing Home Medicaid Eligibility**

For all practical purposes, in the United States the only "insurance" plan for long-term institutional care is Medicaid. Medicare only pays for approximately 2 percent of skilled nursing care in the United States. Private insurance pays for even less. The result is that most people pay out of their own pockets for long-term care until they become eligible for Medicaid. While Medicare is an entitlement program, Medicaid is a form of welfare - or at least that's how it began. So to be eligible, you must become "impoverished" under the program's guidelines.

Despite the costs, there are advantages to paying privately for nursing home care. The foremost is that by paying privately an individual is more likely to gain entrance to a better quality facility. The obvious disadvantage is the expense; in Rhode Island, nursing home fees average approximately \$6,612 a month. Without proper planning nursing home residents can lose the bulk of their savings.

For most individuals, the object of long-term care planning is to protect savings (by avoiding paying them to a nursing home) while simultaneously qualifying for nursing home Medicaid benefits. This can be done within the following rules of Medicaid eligibility.

### **THE ASSET RULES**

In Rhode Island Medicaid is administered by the Department of Health and Human Services (the "DHS"). However, in order to qualify for federal reimbursement, the state program must comply with applicable federal statutes and regulations. So the following explanation includes both - and federal law as applicable.

The basic rule of nursing home Medicaid eligibility is that an applicant, whether single or married, may have no more than \$4,000 in "countable" assets in his or her name. "Countable" assets generally include all belongings except for (1) the home and associated land, regardless of value; (2) household goods and personal effects, regardless of value; (3) one motor vehicle, regardless of value (4) life insurance with a face value less than \$4,000; (5) a burial site or burial plot; (6) irrevocable burial contracts or trusts; and (7) assets that are considered inaccessible for one reason or another.

There are also special rules which are applicable if the applicant is the beneficiary of a trust. If the applicant is the settlor of a revocable trust, the assets transferred to the trust are countable assets. If the applicant (or the applicant's spouse, unless the trust is funded via the spouse's will) is the settlor of an irrevocable trust and the applicant is a permissible beneficiary of the trust then the maximum amount which may permissibly be distributed to the applicant will be deemed to be a countable asset. If the applicant is the settlor of an irrevocable trust but under no circumstances may receive any distribution from the trust, then the trusts' assets will not be deemed to be countable assets, although the transfer of assets to the trust may violate the asset transfer rules to be discussed later.

## Joint Assets

If assets are jointly held with someone else, the ownership interest deemed to the applicant for Medicaid depends on the type of asset. All assets held in banks under joint names are presumed to belong totally to the applicant for Medicaid. Other property held jointly, such as stocks, bonds, and real estate, are deemed to belong to the applicant in proportion to the number of owners. These deeming rules are presumptions and may be rebutted with evidence of different ownership interests or contributions. Despite these deeming rules, under OBRA-93 any transfer of joint property will be treated as having been caused by the applicant for Medicaid, no matter who in fact effected it.

## The Home

The home will not be considered a countable asset and, therefore, will not be counted against the asset limits for Medicaid eligibility purposes as long as the nursing home resident intends to return home or his or her spouse or other dependent relatives live there. It does not matter if it does not appear likely that the nursing home resident will ever be able to return home; the intent to return home by itself preserves the property's character as the person's principal place of residence and thus as a noncountable resource. As a result, for all practical purposes nursing home residents do not have to sell their homes in order to qualify for Medicaid. However, it should be noted that this rule only applies to principal residences as opposed to summer residences or vacant lots and, as of August 10, 1993, the State of Rhode Island has been encouraged by the federal government to sell homes of individuals who have no chance of returning to them due to poor health.

## THE TRANSFER PENALTY

The other major rule of Medicaid eligibility is the penalty for transferring assets. If an applicant (or his or her spouse) transfers assets, he or she will be ineligible for Medicaid for a period of time beginning on the date of the transfer. The actual number of months of ineligibility is determined by dividing the amount transferred by \$6,612. For instance, if an applicant made gifts totaling \$125,628, he or she would be ineligible for Medicaid for 19 months (\$125,628 divided by \$6,612). *Another way to look at this is that for every \$6,612 transferred, an applicant will be ineligible for nursing home Medicaid benefits for one month.*

For transfers made on or before August 10, 1993, Medicaid provides for an upper limit of 30 months of ineligibility. For transfers made after that date, there is no cap on the period of ineligibility. . So, for instance, the period of ineligibility for the transfer of property worth \$661,200 is 100 months (\$661,200 divided by \$6,612). However, DHS may only consider transfers made during the 36-month period (60 months in the case of some trusts) preceding an application for Medicaid, the "look back" period. Effectively, then, there is now a 36-month cap on periods of ineligibility resulting from transfers. (However, it's not yet clear what will happen to people who mistakenly apply for Medicaid before the 36-month look-back period passes.)

## **Rules Applicable to Transfers to Trusts**

If an applicant transfers assets to a trust, he or she will be subject to special rules which are invoked whenever a transfer of assets is made to a trust (whether revocable or irrevocable). In this case, the "look back" period is extended from 36 months to 60 months. This 60-month period also applies to the transfer to an irrevocable trust of assets which cannot be paid under any circumstances to the individual making such transfer, and to income from those assets, payment of which to the such individual is prohibited. Thus, the effective cap on periods of ineligibility resulting from the transfer of assets to a trust is 60 months.

## **Exceptions to the Transfer Penalty**

Transferring assets to certain recipients will not trigger a period of Medicaid ineligibility. These exempt recipients include:

- (1) A spouse (or anyone else for the spouse's benefit);
- (2) A blind or disabled child (or anyone else for the benefit of such child);
- (3) A trust for the benefit of a blind or disabled child; or
- (4) A trust for the benefit of a disabled individual under age 65 (even for the benefit of the applicant under certain circumstances).

Special rules apply with respect to the transfer of a home. In addition to being able to make the transfers without penalty to one's spouse or blind or disabled child, or into trust for other disabled beneficiaries, the applicant may freely transfer his or her home to:

- (1) A child under age 21;
- (2) A sibling who has lived in the home during the entire year preceding the applicant's institutionalization and who already holds an equity interest in the home; or
- (3) A "caretaker child," who is defined as a child of the applicant who lived in the house for at least two years prior to the applicant's institutionalization and who during that period provided such care that the applicant did not need to move to a nursing home.

**Recently enacted legislation provides a very important escape hatch concerning the transfer penalty. A transfer can be cured by the return of the transferred asset in its entirety. Returning even one dollar less than the original gift will provide no cure.**

## **ESTATE RECOVERY**

The state has the right to recover whatever benefits it paid for the care of the Medicaid recipient from his or her probate estate. Given the rules for Medicaid eligibility, the only property of substantial value that a Medicaid recipient is likely to own at death is his or her home. Under recently enacted Rhode Island law, upon the death of a recipient of medical assistance, the total sum of assistance paid on behalf of a recipient who was fifty-

five (55) years of age or older at the time of receipt of such assistance shall constitute a lien upon the estate of the recipient. The term "estate" is specifically defined in the law as "real or personal property and other assets included or includable within the individual's probate estate." The lien does not attach against the estate of a recipient who is survived by a spouse, a child who is under the age of twenty-one (21) or a child who is blind or permanently disabled as defined in the applicable federal statute. DHS interprets the statute in such a way as to preclude a lien in every case in which the recipient is survived by a person enumerated therein regardless of whether the survivor resides in the home.

### **TREATMENT OF INCOME**

When a nursing home resident becomes eligible for Medicaid, all of his or her income (i.e. Social Security, annuity, promissory note payments), less certain deductions, must be paid to the nursing home. The deductions include a \$60-a-month personal needs allowance, a deduction for any uncovered medical costs (including medical insurance premiums). Therefore, all of the nursing home resident's income less the personal needs allowance must be paid to the nursing home in the event that a spouse enters such a home.

### **SPOUSAL PROTECTIONS**

#### **Assets**

Medicaid law provides for special protections for the spouse of a nursing home resident, known in the law as the "community" spouse. Under the general rule, the spouse of a married applicant is permitted to keep one-half of the couple's combined assets (as of the date of institutionalization) up to \$95,100 as of January 1, 2005. In addition, there is a minimum resource allowance for the community spouse of \$19,020. The amount the community spouse is allowed to keep is known as the Community Spouse Resource Allowance (CSRA).

So, for example, if a couple owns \$50,000 in countable assets on the date the applicant enters the hospital, he or she will be eligible for Medicaid once their assets have been reduced to a combined figure of \$29,000: \$4,000 for the applicant and \$25,000 (one-half of \$50,000.00) for the at-home spouse. If the couple owned \$325,000 in assets, the spouse in need of care would not become eligible until their savings were reduced to \$99,100 (\$4,000 for the nursing home spouse plus a maximum of \$95,100 for the community spouse). In that case, it means that the non-institutionalized spouse must spend down approximately \$225,900 for the institutionalized spouse to be eligible for Medicaid.

**The determination of the level of the couple's assets is made as of the date of institutionalization of the nursing home spouse.** That date is the day on which he or she enters either a hospital or a long-term care facility in which he or she then stays for at least 30 days. It is advantageous for the couple to try to have as much money as possible in their names

on that date up to \$190,200 so that the amount the community spouse is allowed to keep will be as high as possible.

### **Income**

In all circumstances, the income of the community spouse will continue undisturbed; he or she will not have to use his or her income to support the nursing home spouse receiving Medicaid benefits. In some cases, the community spouse is also entitled to share in all or a portion of the monthly income of the nursing home spouse. The DHS determines an income floor for the community spouse, known as the minimum monthly maintenance needs allowance, or MMMNA, which, under a complicated formula, is calculated for each community spouse based on his or her housing costs. (Where the community spouse can show hardship, the DHS may award a larger MMMNA, but only after an appeal to fair hearing.) The MMMNA may range from a low of \$1,562 to a high of \$2,377.50 a month. If the community spouse's own income falls below his or her MMMNA, the shortfall can be made up from the nursing home spouse's income.

### **Increased Resource Allowance**

Those community spouses whose own income is less than their MMMNA have an alternative to receiving the shortfall from the nursing home spouse. Instead, they may petition the DHS for an increase in the standard resource allowance so that these additional funds may be invested in order to generate income to make up the shortfall. Given current low rates of return, this often can permit the community spouse to retain a substantial level of savings. In some instances, even with the award of the higher resource allowance the community spouse will need to draw on the nursing home spouse's income to some extent. Unfortunately, the DHS may not award an increased resource allowance upon application. The intake worker must award the standard allowance described above and the applicant must appeal the determination to a fair hearing.

## **THE MEDICAID APPLICATION**

Applying for Medicaid is cumbersome and tedious. Every fact asserted in the application must be verified by documentation. The application process can drag on for several months as the DHS demands more and more verifications regarding such issues as the amount of assets and dates of transfers. If the applicant does not comply with these requests and deadlines on a timely basis, DHS will deny the application. In addition, after Medicaid eligibility is achieved, it must be redetermined every six months.

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## **0382.15.35      Annuities**

REV:12/2000

An annuity is an investment of funds from which an individual is paid or promised regular payments over a lifetime or a fixed period of time. Generally an annuity is established with a lump sum of money which is paid to a bank, insurance company, or other entity.

A deferred annuity is one under which payments begin at some date to be specified in the future. Once an individual selects a periodic payment option (frequency, amount and duration of payments), the annuity has been annuitized.

An annuity may guarantee periodic payments for a stated period (termed period certain) or guarantee periodic payments for the remainder of the life of the individual, without regard to how long the individual lives (termed life annuity).

When determining eligibility for MA, COUNT AS AN AVAILABLE RESOURCE:

The cash value of an annuity which can be surrendered or "cashed in." The cash value is equal to the amount of money used to establish the annuity, plus any earnings, minus any earlier withdrawals and surrender fees. No consideration in determining cash value is given for income tax withheld or tax penalties for early withdrawal.

Annuity contracts that do not allow for cash surrender but instead allow the owner to sell the annuity on the open market are assignable. Annuity contracts that are silent regarding assignability are presumed to be assignable. Assignable annuities are countable resources. The countable value of the resource is equal to the outstanding principal balance, unless the individual can furnish evidence from a reliable source which shows that the annuity is worth a lesser amount. Reliable sources include banks, other financial institutions, insurance companies, brokers, viatical settlement companies, etc.

COUNT AS AVAILABLE INCOME:

Payments made to the individual from an annuity are counted as unearned income.

TRANSFER OF ASSET PROVISIONS FOR INSTITUTIONALIZED INDIVIDUALS MAY APPLY WHEN:

A non-cashable, non-assignable annuity was purchased by the individual (or the individual's spouse) within thirty-six (36) months immediately prior to or anytime after the date the individual was both institutionalized and applied for MA. In this case, a determination must be made as to whether its purchase constitutes a transfer of assets for less than fair market value.

To be considered a valid transfer for fair market value, an

annuity must:

- \* provide regular payments, in both frequency and amount, to or for the sole benefit of the individual; and,
- \* be actuarially sound. Scheduled payments must return at least the principal within the number of years of expected life remaining for the individual. Life expectancy tables compiled from information by the Office of the Actuary of the Social Security Administration and published by the Health Care Financing Administration (HCFA) for this purpose are used to determine the number of years of expected life remaining for an individual.

If based on life expectancy tables compiled by the Social Security Administration's Office of the Actuary and published by HCFA, the individual is not expected to live longer than the guaranteed period of the annuity, the annuity is not actuarially sound, and a transfer of assets for less than fair market value has taken place. The transfer is considered to have taken place at the time the annuity was purchased. The uncompensated value of the transfer is based on the amount projected to be paid beyond the individual's reasonable life expectancy. (See Section 0384-Resource Transfers)

Cases involving annuities are referred by field staff to the LTC Administrator for evaluation. The agency representative forwards a copy of the annuity document, including date of purchase to the LTC Administrator.

The LTC Administrator consults, as needed, with the Office of Legal Counsel, and determines:

- \* whether the annuity is an available or unavailable resource;
- \* the countable amount of the resource (i.e., the cash surrender value and/or negotiable value of the annuity); and,
- \* whether a transfer of assets for less than fair market value has occurred as well as and the amount of the uncompensated value and date of the transfer.

EXAMPLE 1:

Mr. Jones, age 65, purchases a \$10,000 annuity. The annuity makes regular monthly payments of \$100 per month over the course of 10 years. The annuity is not assignable and has no provision for cash surrender.

Because the annuity has no cash surrender or saleable value, it is not a countable resource.

The monthly payments are countable as unearned income

both in the determination of MA eligibility and in the post-eligibility process.

Mr. Jones life expectancy according to the table is 14.96. Payments scheduled over his life expectancy total \$17,952. ( $\$1,200$  per year  $\times$  14.96 years = \$17,952). He is expected to: 1) live longer than the guaranteed payment period of 10 years; and, 2) receive payments totally at least the amount invested over that period. Thus the annuity is actuarially sound and no transfer of assets for less than fair market value has taken place.

EXAMPLE 2:

Mr. Smith, age 80, purchases the same \$10,000 annuity which pays \$100 per month over 10 years. However, his life expectancy is only 6.98 years. Thus a payout of just under three years is considered a transfer of assets for less than fair market value. That amount is subject to a penalty if the annuity was purchased within thirty-six months prior to the date Mr. Smith was both institutionalized and applied for MA.

EXAMPLE 3:

Mr. Fisher, age 88, purchases a \$25,000 annuity six months prior to entering a nursing facility and applying for MA. The annuity pays him \$200 per month for "life." The annuity has no cash value and is not assignable. His nephew is named beneficiary and will receive a lump sum or periodic payment upon Mr. Fisher's death.

The monthly payments to Mr. Fisher are counted as unearned income both in eligibility and post-eligibility determinations.

Mr. Fisher's life expectancy according to the table is 4.34 years. Paying \$2400 per year ( $\$200$ /month), the annuity payments over the term of his expected life (4.34 years) total \$10,416. Since the scheduled payments do not return at least the principal invested during Mr. Fisher's expected life, a transfer of assets for less than fair market value has occurred. The amount of the uncompensated value of the transfer is equal to the amount invested ( $\$25,000$ ) minus the amount scheduled to be paid during his expected life ( $\$10,416$ ).  $\$25,000 - \$10,416 = \$14,584$ . A transfer of assets penalty is assessed based on an uncompensated transfer of \$14,584 made on the date the annuity was purchased.

EXAMPLE 4:

Mrs. Findlay, age 65, purchases a \$10,000 annuity on January 1st. Under the terms of the contract, she has the right to cancel and receive the full amount of \$10,000 back within ninety (90) days of the purchase.

She applies for MA on February 15th.

Because the annuity provides for a \$10,000 cash surrender at the time of MA application, this amount is added to Mrs. Findlay's countable resources. Her MA application is denied.

**0382.15.35.05 Life Expectancy Tables**

REV:12/2000

LIFE EXPECTANCY TABLES  
TO BE USED WHEN EVALUATING ANNUITIES

Age	Male Life Exp.	Female Life Exp.	Age	Male Life Exp.	Female Life Expectancy
0	71.80	78.79	30	44.06	50.15
1	71.53	78.42	31	43.15	49.19
2	70.58	77.48	32	42.24	48.23
3	69.62	76.51	33	41.33	47.27
4	68.65	75.54	34	40.23	46.31
5	67.67	74.56	35	39.52	45.35
6	66.69	73.57	36	38.62	44.40
7	65.71	72.59	37	37.73	43.45
8	64.73	71.60	38	36.83	42.50
9	63.74	70.61	39	35.94	41.55
10	62.75	69.62	40	35.05	40.61
11	61.76	68.63	41	34.15	39.66
12	60.78	67.64	42	33.26	38.72
13	59.79	66.65	43	32.37	37.78
14	58.82	65.67	44	31.49	36.85
15	57.85	64.68	45	30.61	35.92
16	56.91	63.71	46	29.74	35.00
17	55.97	62.74	47	28.88	34.08
18	55.05	61.77	48	28.02	33.17
19	54.13	60.80	49	27.17	32.27
20	53.21	59.83	50	26.32	31.37
21	52.29	58.86	51	25.48	30.48
22	51.38	57.89	52	24.65	29.60
23	50.46	56.92	53	23.82	28.72
24	49.55	55.95	54	23.01	28.86
25	48.63	54.98	55	22.21	27.00
26	47.72	54.02	56	21.43	26.15
27	46.80	53.05	57	20.66	25.31
28	45.88	52.08	58	19.90	24.48
29	44.97	51.12	59	19.15	23.67
60	18.42	22.86	95	2.90	3.36
61	17.70	22.06	96	2.74	3.16
62	16.69	21.27	97	2.60	2.97
63	16.30	20.49	98	2.47	2.80
64	15.62	19.72	99	2.34	2.64

65	14.96	18.96	100	2.22	2.48
66	14.32	18.21	101	2.11	2.34
67	13.70	17.48	102	1.99	2.20
68	13.09	16.76	103	1.89	2.06
69	12.50	16.04	104	1.78	1.93
70	11.92	15.35	105	1.68	1.81
71	11.35	14.66	106	1.59	1.69
72	10.80	13.99	107	1.50	1.58
73	10.27	13.33	108	1.41	1.48
74	9.27	12.68	109	1.33	1.38
75	9.24	12.05	110	1.25	1.28
76	8.76	11.43	111	1.17	1.19
77	8.29	10.83	112	1.10	1.10
78	7.83	10.24	113	1.02	1.02
79	7.40	9.67	114	0.96	0.96
80	6.98	9.11			
81	6.59	8.58			
82	6.21	8.06			
83	5.85	7.56			
84	5.51	7.08			
85	5.19	6.63			
86	4.89	6.20			
87	4.61	5.79			
88	4.34	5.41			
89	4.09	5.05			
90	3.86	4.71			
91	3.64	4.40			
92	3.43	4.11			
93	3.24	3.84			
94	3.06	3.59			

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