

# Medicaid Overview

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Medicaid, also known as medical assistance is a joint federal-state program that provides health insurance coverage to low-income children, seniors and people with disabilities. In addition, it covers care in a nursing home for those who qualify. Medicaid is a state administered program and provides more comprehensive coverage than Medicare, particularly with regard to nursing home care. However, not all nursing homes participate in the Medicaid program. There are no limits on the maximum length of a Medicaid recipient's stay at a facility. The Federal government pays roughly one-half of the costs, while the State covers the remainder. In Illinois, the agency that administers Medicaid is the Illinois Department of Public Aid (IDPA). In the absence of any other public program covering long-term nursing home care, Medicaid has become the default nursing home insurance of the middle class.

While Congress and the federal Health Care Financing Administration set out the main rules under which Medicaid operates, each state runs its own program. As a result, the rules are somewhat different in every state, although the framework is the same throughout the country. The following describes some of the basic rules regarding Medicaid in Illinois.

## Resource (Asset) Rules

In order to be eligible for Medicaid benefits in Illinois a nursing home resident may have no more than \$2,000 in "countable" assets. While a Medicaid applicant may be eligible even if these assets exceed the limits, the applicant will be required to "spend down" these assets. This means that the cost of care must be paid for by the Medicaid applicant to the extent that the assets exceed the \$2,000 limit.

The spouse of a nursing home resident--called the 'community spouse'-- is limited to one half of the couple's joint assets up to \$84,120 (in 2000) in "countable" assets (see Medicaid, Protections for the Healthy Spouse). The \$84,120 figure changes each year to reflect inflation. In addition, the community spouse may keep the first \$17,400, even if that is more than half of the couple's assets. These figures change annually and are found in the Department of Human Services policy manual. Basic Medicaid information is also available at <http://www.state.il.us/dpa/mednews.htm>. All assets are counted against these limits unless the assets fall within the short list of "non countable" assets. These include:

(1) Personal possessions, such as clothing, furniture, and jewelry with an equity value of no more than \$2000. However, wedding rings, engagement rings and items required because of an individual's medical or physical condition are exempt regardless of value.

(2) One motor vehicle if it meets any one of the following criteria: A) If it is necessary for employment B) If it is necessary for transportation for medical treatment of a specific or regular medical problem C) If it is modified for operation by or transportation of a handicapped person or D) If it is necessary because of terrain, remoteness or similar factors to provide necessary transportation to perform essential daily activities.

A motor vehicle owned by a nursing home resident is also exempt if transferred to a spouse. In all other cases the exemption is limited to \$4,500.

(3) The applicant's principal residence, provided it is in the same state in which the individual is applying for coverage although some limitations, discussed below, exist.

(4) In Illinois, up to \$1,500 of revocable burial expenses are exempt and up to \$4,120 in irrevocable prepaid expenses are exempt. However, the amount of the revocable expense exemption is reduced by the amount of irrevocable expenses. In all cases, expenses for burial space or plots and other customary items such as a casket or headstone are completely exempt.

(5) Assets that are considered "inaccessible" for one reason or another. These assets often come in the form of specific types of trusts.

## The Home

Nursing home residents do not have to sell their homes in order to qualify for Medicaid. In Illinois, the home will not be considered a countable asset for Medicaid eligibility purposes as long as the nursing home resident intends to return home. The home may also be kept if the Medicaid applicant's spouse, sibling, minor or disabled child lives there. However, if the applicant leaves the home with no intention of returning, the property must be counted as an asset.

## The Transfer Penalty

The second major rule of Medicaid eligibility is the penalty for transferring assets. Congress does not want you to move into a nursing home on Monday, give all your money to your children (or whomever) on Tuesday, and qualify for Medicaid on Wednesday. So it has imposed a penalty on people who transfer assets without receiving fair value in

return.

This penalty is a period of time during which the person transferring the assets will be ineligible for Medicaid. The penalty period is determined by dividing the amount transferred by what Medicaid determines to be the average private pay cost of a nursing home in Illinois. The period of ineligibility starts on the first day of the month of the transfer. Example: If a Medicaid applicant made gifts totaling \$90,000 in a state where the average nursing home bill is \$5,000 a month, he or she would be ineligible for Medicaid for 18 months ( $\$90,000 \div \$5,000 = 18$ ). Another way to look at the above example is that for every \$5,000 transferred, an applicant would be ineligible for Medicaid nursing home benefits for one month.

In theory, there is no limit on the number of months a person can be ineligible.

Example: The period of ineligibility for the transfer of property worth \$400,000 would be 80 months ( $\$400,000 \div \$5,000 = 80$ ). However, the IDPA may look only at transfers made during the 36 months preceding an application for Medicaid (or 60 months if the transfer was made to certain trusts). This is called the "look-back period." Effectively, then, there is now a 36-month limit on periods of ineligibility resulting from transfers. This means that people who make large transfers must be careful not to apply for Medicaid before the 36-month look-back period passes.

Example: To use the above example of the \$400,000 transfers, if the individual made the transfer on January 1, 1998, and waited until February 1, 2001, to apply for Medicaid -- 37 months later -- the transfer would not affect his or her Medicaid eligibility. However, if the individual applied for benefits in December 2000, only 35 months after transferring the property, he or she would have to wait the full 80 months before becoming eligible for benefits.

#### 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 a transfer to anyone else as long as it is for the spouse's benefit);
- (2) A blind or disabled child;
- (3) A trust for the benefit of a blind or disabled child;
- (4) A trust for the sole benefit of a disabled individual under age 65 (even if the trust is for the benefit of the Medicaid applicant, under certain circumstances).

In addition, special exceptions apply to the transfer of a home. The Medicaid applicant may freely transfer his or her home to the following individuals without incurring a transfer penalty:

- (1) The applicant's spouse;
- (2) A child who is under age 21 or who is blind or disabled;
- (3) Into a trust for the sole benefit of a disabled individual under age 65 (even if the trust is for the benefit of the Medicaid applicant, under certain circumstances);
- (4) A sibling who has lived in the home during the year preceding the applicant's institutionalization and who already holds an equity interest in the home; or
- (5) 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 care that allowed the applicant to avoid a nursing home stay.

Congress has created a very important escape hatch from the transfer penalty: the penalty will be "cured" if the transferred asset is returned in its entirety, or it will be reduced if the transferred asset is partially returned.

Is Transferring Assets Against the Law? You may have heard that transferring assets, or helping someone to transfer assets, to achieve Medicaid eligibility is a crime. Is this true? The short answer is that for a brief period it was, and it's possible, although unlikely under current law, that it will be in the future. As part of a 1996 Kennedy-Kassebaum health care bill, Congress made it a crime to transfer assets for purposes of achieving Medicaid eligibility. Congress repealed the law as part of the 1997 Balanced Budget bill, but replaced it with a statute that made it a crime to advise or counsel someone for a fee regarding transferring assets for purposes of obtaining Medicaid. This meant that although transferring assets was again legal, explaining the law to clients could have been a criminal act. In 1998, Attorney General Janet Reno determined that the law was unconstitutional because it violated the First Amendment protection of free speech, and she told Congress that the Justice Department would not enforce the law. Around the same time, a U.S. District Court judge in New York said that the law could not be enforced for the same reason. Accordingly, the law remains on the books, but it will not be enforced. Since it is possible that these rulings may change, you should contact our office before filing a Medicaid application.

**Treatment of Income** The basic Medicaid rule for nursing home residents is that they must pay all of their income, minus certain deductions, to the nursing home. The deductions include a \$30-a-month personal needs allowance, a deduction for any uncovered medical costs (including medical insurance premiums), and, in the case of a married applicant, an allowance for the spouse who continues to live at home if he or she needs income support. A deduction may also be allowed for a dependent child living at home. A deduction is also allowed for community spouse maintenance needs. The allowance in 2000 was \$2,103 and is adjusted annually. This allows the Medicaid recipient to exempt some of his/her income for the purpose of spouse maintenance. Example: if Mr. X resides in a long term care facility such as a nursing home and has monthly income of \$1,600 and his spouse has income of \$800 a month (from pension or social security for example) then the difference between the spouse's \$800/mo. Income and the \$2,103 allowance (in 2000) may be contributed by Mr. X to his spouse and he may deduct that amount, up to the total allowance, from his income for asset calculation purposes. Under the facts of the example, this would allow Mr. X a

\$503 community spouse deduction and \$30 personal needs deduction. The amount of Mr. X's income in excess of the deductions (\$1,600-\$503-\$30= \$1,067) must be "spent down" or paid to cover the medical expenses each month. A similar deduction exists for dependent family members including dependent adult children, dependent parents or dependent siblings.

For Medicaid applicants who are married, the income of the community spouse is not counted in determining the Medicaid applicant's eligibility. Only income in the applicant's name is counted in determining his or her eligibility. Thus, even if the community spouse is still working and earning \$5,000 a month, she will not have to contribute to the cost of caring for her spouse in a nursing home if Medicaid covers him.

#### Protections for the Healthy Spouse

The Medicaid law provides special protections for the spouse of a nursing home resident to make sure she has the minimum support needed to continue to live in the community. The so-called "spousal protections" work this way: if the Medicaid applicant is married, the countable assets of both the community spouse and the institutionalized spouse are totaled as of the date of "institutionalization," the day on which the ill spouse enters either a hospital or a long-term care facility in which he or she then stays for at least 30 days. In Illinois, the community spouse may keep one half of the couple's total "countable" assets up to a maximum of \$84,120 (in 2000). Called the "community spouse resource allowance," this is the most that Illinois allows a community spouse to retain without a hearing or a court order. Example: If a couple has \$100,000 in countable assets on the date the applicant enters a nursing home, he or she will be eligible for Medicaid once the couple's assets have been reduced to a combined figure of \$52,000 -- \$2,000 for the applicant and \$50,000 for the community spouse.

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. But what if most of the couple's income is in the name of the institutionalized spouse, and the community spouse's income is not enough to live on? In such cases, the community spouse is entitled to some or all of the monthly income of the institutionalized spouse as described above in "treatment of income."

In exceptional circumstances, community spouses may seek an increase in the income allowance either by appealing to the IDPA or by obtaining a court order of spousal support.

**Estate Recovery and Liens** Under Medicaid law, following the death of the Medicaid recipient a state must attempt to recover from his or her estate whatever benefits it paid for the recipient's care. However, no recovery can take place until the death of the recipient's spouse, or as long as there is a child of the deceased who is under 21 or who is blind or disabled.

The IDPA is permitted to seek recovery of paid benefits in all of the benefit recipient's probate property. Given the rules for Medicaid eligibility, the only probate property of substantial value that a Medicaid recipient is likely to own at death is his or her home. In addition to the right to recover from the estate of the Medicaid beneficiary, IDPA must place a lien on real estate owned by a Medicaid beneficiary during her life unless certain dependent relatives are living in the property. If the property is sold while the Medicaid beneficiary is living, not only will she cease to be eligible for Medicaid due to the cash she would net from the sale, but also she would have to satisfy the lien by paying back the state for its coverage of her care to date. The exceptions to this rule are cases where a spouse, a disabled or blind child, a child under age 21, or a sibling with an equity interest in the house is living there. Whether or not a lien is placed on the house, the lien's purpose should only be for recovery of Medicaid expenses. The IDPA may seek to enforce the lien at any time there is a transfer of the real property, in cases of fraud, or at the time of death of the owner. Nicolosi & Associates - Attorneys at Law Since 1948. Skilled in the law. Experienced in business. <http://www.nicolosilaw.com>