

Medicaid Law Overview 2013

The following is a limited overview of the Medicaid rules related to eligibility for long term care in a nursing home. This outline is prepared primarily for Tennessee residents.

1. **Medical Requirements.** An applicant has to be sick enough to really need nursing home care before he can be approved for Medicaid. An applicant must be certified by a doctor as needing nursing home care in a document called the Pre-Admission Evaluation (PAE). The evaluation is usually made at the time the patient enters the nursing home. Receipt of a “PAE” from the Department of Human Services (DHS) means the medical requirement for Medicaid has been met.
2. **Asset Limitations.** There are strict limitations on assets the Medicaid recipient may own. In general, Medicaid rules allow an unmarried institutionalized individual to have a maximum of \$2,000 in available assets (for Tennessee; maximum is \$4,000 in Mississippi). For married couples, the well spouse is allowed to keep half of the couple’s available assets up to **\$115,920** (see below).

Some assets may be considered exempt or “not available.” For example, the following assets are protected, at least during the Medicaid recipient’s lifetime:

- family home,
- household furnishings,
- one car,
- burial plots and prepaid funeral arrangements,
- some life insurance (up to \$1,500 face value)

With proper planning, other assets may be protected, as well.

“Income Cap” Limitations. Tennessee, Mississippi, and a few other states have an “Income Cap” that disqualifies a Medicaid applicant who has too much income, even though his income is less than the cost of nursing home care. The Income Cap is **\$2,130** per month in 2013, based on the gross income of the applicant.

The applicant will not be eligible for Medicaid until the first month that all income above the Income Cap is transferred to a “qualified income trust” (“QIT” or “Miller trust”). A QIT is not an asset protection trust—it cannot be used to hold or protect any assets.

The QIT must be signed by the Medicaid applicant or his agent under a durable power of attorney, or a conservator. If the applicant is not competent to sign documents and has no power of attorney, the family must go to court to have a conservator appointed.

After the trust is signed, some or all of the applicant's monthly income must be transferred into a new trust bank account each month beginning with the first month the applicant needs Medicaid assistance. At least enough of the monthly income is put into the trust so that the amount that does not go into the QIT is less than the monthly Income Cap amount. The money does not stay in the trust. It is just a "pass-through" to the nursing home or other authorized purpose. This is a simple trust, but understanding how it works may require the assistance of an elder law attorney.

3. ***Eligibility for Married Couples*** (*not applicable if patient is unmarried*).
 - a. ***Spousal Asset Protections***. Medicaid rules allow some important planning options in to protect assets for the well spouse's own needs when the other spouse needs to be in a nursing home for an extended period. Half of the couple's countable assets, up to **\$115,920** can be protected for the well spouse, with a minimum of **\$23,184** being protected for the well spouse, plus up to \$2,000 for the institutionalized spouse. There are significant opportunities for an experienced elder lawyer to help the family plan to protect significantly more assets and income for the well spouse's use.
 - b. ***Spousal Income Allowance***. All of the well spouse's income is protected by federal law. If the well spouse does not have sufficient income in his or her own name, Medicaid rules might also allow some or all of the institutionalized spouse's income to be kept by the well spouse for her own support. Medicaid rules protect at least **\$1,891** per month of spousal assets for the well spouse's use, and up to about **\$2,898** per month. Planning with an experienced elder law attorney may help protect larger amounts for the well spouse under certain circumstances.
4. ***Changes to Federal Law Prohibits Most Gifts***. Federal law requires Medicaid applicants to disclose any gifts that the Medicaid applicant or the well spouse have made within 60 months prior to the date of Medicaid application. These gifts disqualify the applicant from receiving Medicaid except in limited situations. The penalty period for disqualifying gifts is potentially unlimited.

There are some limited exemptions from the gift penalty, for example, gifts to a "caregiver child" or a disabled person. Sometimes it is feasible "cure" some of the effects of the gifts to others, with proper planning. If disqualifying gifts have been made, the family should contact an elder law attorney who is experienced in Medicaid eligibility planning for help.

5. ***Estate Recovery***. The states each have "estate recovery" programs to recover amounts the state paid for Medicaid benefits paid to the nursing home or for home and community-based Medicaid. Tennessee and Mississippi have limited their estate recovery rights to the "probate estate" of a person who was over 55 years of age who received Medicaid in a nursing home. The family home is often the only asset that was exempt during the recipient's lifetime, and it will be subject to estate recovery subject to certain limitations. The state must go through the "probate estate" established for a deceased Medicaid recipient, and the state has the right to open a probate estate if one is not opened by the family, but the state is required to file its claim within one year after the death of the recipient. It is now common for the Medicaid agency to

contact surviving relatives and demand repayment of Medicaid benefits paid for the benefit of the deceased family member, but often the state does not bother to go through the steps required to have a legally-enforceable right to make these demands, which may not actually be the responsibility of the surviving family members. The family should consider contacting an elder law attorney who is experienced in Medicaid estate recovery issues before responding to estate recovery demands from the Medicaid authorities.

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