

**STRATEGIC**  
TAX & INSURANCE SERVICES, INC.

**THE MEDICAID ELIGIBILITY AND**  
**TRANSFER RULES**











**EXAMPLE**

Karen's sister Betty died six months before Karen applied for Medicaid. Under Betty's Will, Karen is entitled to one-half of Betty's estate which is worth \$200,000.00. Karen has not yet received any money from Betty's estate. The \$100,000.00 Karen expects to receive from Betty's estate is an inaccessible asset. Once Karen receives the \$100,000.00, it is no longer inaccessible.

C. Countable Assets

All assets not considered noncountable or inaccessible are counted towards the \$2,000.00 asset limitation. In some cases both jointly held assets and assets in a trust will be viewed as countable assets.

1) Jointly held assets

Medicaid presumes that all funds held in joint bank accounts are the applicant's assets. This presumption can be overcome if the joint owner can demonstrate that he or she contributed part or all of the funds to the account. The proof needed to overcome the presumption can be in the form of an affidavit (a sworn statement) if no other records exist to support the claims of the joint owner.

**EXAMPLE**

Andy owns a joint bank account with his daughter which totals \$10,000.00. When Andy applies for Medicaid, it is presumed that Andy owns all of the \$10,000.00 in the joint account. If, however, Andy can prove that \$8,000.00 of this account is attributable to his daughter, only \$2,000.00 will be counted as Andy's assets.

Other assets held jointly, such as real estate, stocks, and bonds, are presumed to be owned equally. This presumption can also be overcome.

**EXAMPLE**

Edna and Charley are joint owners of a sailboat with a value of \$20,000.00. The certificate of title to the boat does not specify the percentage of each person's ownership. If Edna applies for Medicaid it will be presumed that she owns 50% of the sailboat, or \$10,000.00.

2) Trusts<sup>3</sup>

If a Medicaid applicant is the beneficiary and grantor of a trust, and the applicant may receive payments of interest or principal from the trust, the income or principal that the applicant can receive is considered a countable asset. These assets are considered countable even if distributions from the trust to the applicant are never made.

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<sup>3</sup>Specific rules pertaining to trusts vary according to the date the trust was established and the specific terms of the trust.

**EXAMPLE**

Sam is the beneficiary of a trust set up by himself. The trust holds \$100,000.00 in assets and the trustee makes distributions of interest and principal to Sam on a regular basis. Sam applies for Medicaid. Medicaid will consider the entire \$100,000.00 as a countable asset of Sam.

If the applicant or his or her spouse is the grantor of a revocable trust (a trust that can be terminated), all assets in the trust are considered countable assets. The result is the same even if the applicant or spouse is not a beneficiary of the revocable trust.

**EXAMPLE**

Jim sets up a revocable trust with \$50,000.00 he received as an inheritance from his father's estate. Jim's children are the beneficiaries of the trust. Medicaid would consider the entire \$50,000.00 as Jim's countable assets.

For testamentary trusts (trusts established under a Will), the Medicaid trust rules are different. For assets in a testamentary trust, only distributions that must be made to the beneficiary or that the beneficiary can force the trustee to distribute are considered available to the beneficiary.



**EXAMPLE**

Jim's wife signs a Will with a testamentary trust for Jim's benefit. Under the terms of this testamentary trust, Jim can receive distributions of principal and income in the discretion of the trustee. Medicaid would not consider the income and principal of this trust as available to Jim.

**III. Income Limitations**

In addition to the asset limitation, Medicaid places a limit on the monthly income an applicant can receive. The income limit for an applicant living in the community is currently \$1,294.00 per month. Medicaid considers both earned income (wages) and unearned income (interest on investments, pensions, gifts) when it calculates an applicants total income.

If an applicant living in the community has income in excess of this limit, he or she may still be eligible for Medicaid through a "spend-down procedure." This procedure involves calculating the applicant's total income which exceeds \$522.00 per month for a six month period. When (and if) the applicant's medical expenses reach the excess amount, Medicaid will pay the remainder of the applicant's medical bills for that six month period.

For applicants living in nursing homes, the income limit is \$72.80 per month. Nursing home residents, however, can deduct the cost of the nursing home care from their total income to remain under the \$72.80 limit. All income remaining after the resident keeps a \$72.80 "personal needs allowance" and deducts money spent on



health care must be paid to the nursing home. Medicaid covers the difference between what the resident can pay and the cost of the nursing home care.

**EXAMPLE**

Owen lives in a nursing home that costs \$9,000.00 per month. Owen has \$1,200.00 in monthly income comprised of Social Security benefits and a pension. Owen spends \$140.00 per month on his Medex premiums. From his \$1,200.00 monthly income Owen can deduct and keep \$72.80 for his personal needs allowance and can also deduct the \$140.00 he spends on health care. The \$987.20 in income that remains must be spent on the cost of Owen's nursing home care. Medicaid will pay the additional cost needed to cover Owen's bill to the nursing home.

**IV. Community Spouse Resource Allowance**

Under the Medicaid rules, a couple's assets are pooled (added together) for the purpose of determining eligibility. At the time an applicant is institutionalized (the first day of a stay in a long term care facility or hospital which lasts thirty days or more), Medicaid calculates the couple's total "countable assets." The couple's assets are pooled without regard to which spouse actually owns the assets. The spouse still living in the community (the "community spouse") is allowed to keep a portion of the couple's countable assets. This portion of the countable assets is called the "community spouse resource allowance." The community spouse resource allowance is the countable assets up to a limit of \$120,900.00.

**EXAMPLE**

On the date Mr. Jones enters a nursing home he has \$150,000.00 in countable assets and Mrs. Jones has \$20,000.00 in countable assets. The Jones' pooled assets are \$170,000.00. Of this total, Mrs. Jones, as the community spouse, is allowed to keep \$120,900.00 as the community spouse resource allowance. The assets attributed to Mr. Jones, therefore, total \$49,100.00 (pooled assets - community spouse resource allowance). Of this \$49,100.00, Mr. Jones is allowed to keep \$2,000.00 and still be eligible for Medicaid. Thus, the Jones' must spend-down \$47,100.00 before Mr. Jones is eligible for Medicaid. (See Section VII. on spend-down procedures).

In order to distribute assets between a couple to ensure that an institutionalized spouse has only \$2,000.00 in his or her name, Medicaid allows a ninety-day period after an eligibility determination within which transfers between spouse can be made.

**EXAMPLE**

In the previous example, assume that the Jones' have spent-down \$47,100.00 to make Mr. Jones eligible for Medicaid. There remains, however, \$20,000.00 in assets in Mr. Jones' name. The Jones' are allowed ninety days within which to transfer the \$20,000.00 into Mrs. Jones' account.

**V. Minimum Monthly Maintenance Needs Allowance**

Under the Medicaid rules, the spouse of an individual in a nursing home is entitled to a portion of the institutionalized spouse's income under certain

circumstances. This sharing of income is allowed when the community spouse has monthly income below a minimum level set by Medicaid. This minimum monthly income level is called the "minimum monthly maintenance needs allowance." This minimum level is \$2,002.50 plus an excess shelter allowance. The excess shelter allowance is the community spouse's actual monthly housing costs, including mortgage payments, rent, property taxes, and a standard amount for utilities, less 30% of \$2,002.50.

The community spouse is entitled to as much of his or her spouse's income as is needed to bring the community spouse's income up to the minimum level. If the couple's combined income does not reach the minimum level, the community spouse is entitled to the couple's total income (less \$72.80 per month for the institutionalized spouse's personal needs allowance). There is a cap on the spousal maintenance allowance of \$2,980.50.

#### **EXAMPLE**

Mr. and Mrs. Haywood have a total monthly income of \$2,500.00, \$2,000.00 of which comes in Mr. Haywood's name and \$500.00 in Mrs. Haywood's name. Mr. Haywood lives in a nursing home and Mrs. Haywood lives in the community. Mrs. Haywood's excess shelter allowance is \$100.00, giving her a minimum monthly maintenance needs allowance of \$2,102.50 (minimum level of \$2,002.50 + excess shelter allowance of \$100.00). Mrs. Haywood is entitled to a share of her husband's income that will bring her from her current income level of \$500.00 up to her \$2,102.50 allowance. Mrs. Haywood is therefore entitled to \$1,602.50 of Mr. Haywood's monthly income.

## VI. Transfer Rules

Medicaid was designed to benefit those individuals with little or no assets. Through a number of rules, Medicaid discourages individuals from intentionally impoverishing themselves to qualify for Medicaid. The most important of these rules involves transfer made within the 60-month period prior to applying for Medicaid.

The purpose of the 60-month "look-back period" is to determine if any transfers (gifts or sales) the applicant made in the 60 months prior to applying for Medicaid will act to disqualify him or her from Medicaid.<sup>4</sup> A disqualifying transfer will exist if in this period the applicant transferred a countable asset or principal place of residence for less than fair market value.

### **EXAMPLE**

Florence owns a house with a fair market value of \$300,000.00. On June 1, 2014, Florence transfers the house to her daughter as a gift. On June 1, 2016 Florence applies for Medicaid. The gift of the house is considered a disqualifying transfer because it was made within the 60-month period prior to Florence's application for Medicaid.

The period of ineligibility for Medicaid for a disqualifying transfer is obtained by dividing the fair market value of what was transferred by the average daily cost of a nursing home in Massachusetts. The average daily nursing home cost in Massachusetts is currently \$354.00 per day.

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<sup>4</sup>The look-back period for transfers made to individuals prior to February 8, 2006 is 36 months.



$$\text{INELIGIBILITY PERIOD} = \frac{\text{Fair market value of transferred asset}}{\text{Average daily cost of nursing home}}$$

**EXAMPLE**

In the previous example, Medicaid would take the fair market value of Florence's house, and divide it by the daily cost of a nursing home in Massachusetts.

$$\frac{\$300,000.00}{\$354.00 \text{ per day}} = 847 \text{ days of ineligibility}$$

This transfer rule does not apply to applicants living in the community, but will apply if the applicant living in the community is subsequently institutionalized. Also, transfers made to an applicant's blind or disabled child are not disqualifying transfers.

**VII. Spend-Down Process**

When an applicant has countable assets which exceed the amount allowed by Medicaid, he or she will want to reduce these assets below the \$2,000.00 limit. The process by which an applicant reduces his or her assets to \$2,000.00 is called a "spend-down." During the spend-down, the applicant will usually want to avoid making disqualifying transfers in order to qualify for Medicaid as quickly as possible.<sup>5</sup>

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<sup>5</sup>In some circumstances, a disqualifying transfer may be an effective Medicaid planning tool.



**EXAMPLE**

Jack has countable assets which total \$90,000.00. In order to become eligible for Medicaid, Jack will need to spend-down \$88,000.00 (Jack is allowed to keep \$2,000.00). Jack chooses to spend-down his assets in the following way:

Purchase of a pre-paid funeral contract -	\$ 8,000.00
Purchase of burial plot -	\$ 1,000.00
Pay off credit card debt -	\$ 5,000.00
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Total \$ spent-down =	\$14,000.00

Once Jack spends-down the remaining \$74,000.00 he will be eligible for Medicaid.

**VIII. Estate Recovery**

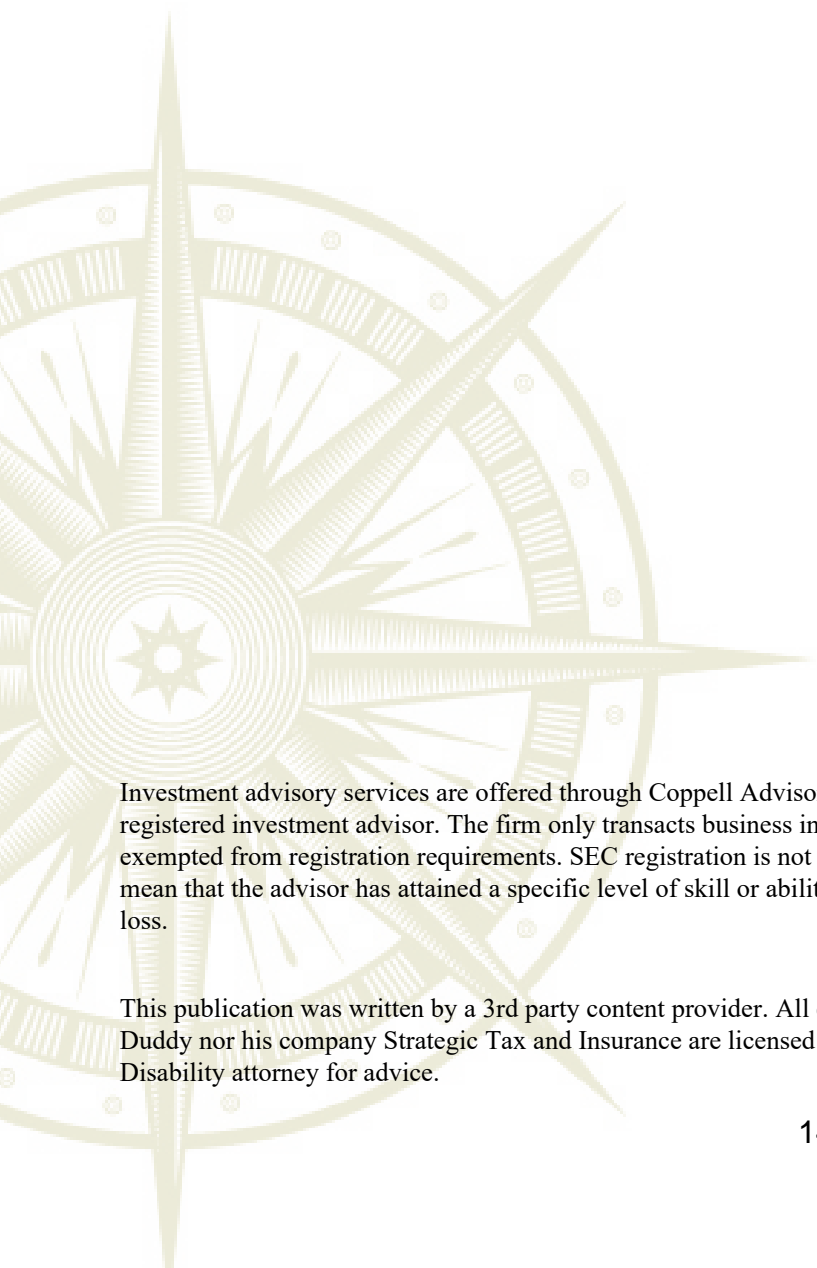
Medicaid has the right to recover money it paid on a recipient's behalf after age fifty-five and at any age for recipient's of nursing home care. Estate recovery is limited to a recipient's probate estate.

If the recipient owns a house, Medicaid may place a lien on the house for the amount of funds expended on the recipient's behalf. This lien may be placed on the house even before the recipient's death provided that the following conditions are met:

(1) the recipient permanently resides in a nursing home and is not expected to return home; (2) the recipient receives notice of the lien; (3) there is no surviving spouse, child under age 18, or disabled child of any age residing in the house. These pre-death liens are simply "notice" liens; Medicaid has no claim against the real estate until the recipient dies. (If the house is sold during the recipient's life, however, Medicaid can seek recovery from the proceeds of the sale).

## **IX. Medicaid Application**

The Medicaid application is often difficult and extremely time consuming to complete. The supporting documents needed for a successful application are substantial. Applications are submitted to a local office of the Division of Medical Assistance's Long Term Care Units. Decisions on applications usually take two to six months. The use of counsel in the preparation and submission of Medicaid applications is strongly recommended.



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