

MEDICAID INFORMATION FOR LONG TERM CARE



INTRODUCTION

There are often many questions about eligibility for Medicaid. Since the changes in the Federal Law in 1993 concerning what is allowed and what is not allowed for transfer of assets under Medicaid rules, the Federal Deficit Reduction Act of 2005 and the changes in Georgia's Burial Exclusion rules, the landscape may be even more confusing.

This document attempts to clarify and simplify some of those areas. It is not to be taken as legal advice and it is not information that can be easily applied outside of the State of Georgia since state implementation of the Federal Law may be different in each state. It is also not meant to be viewed as an Estate or Medicaid Planning tool but an educational guide to clarify some of the questions one might want to ask an attorney, an estate planning specialist or a Medicaid specialist with your County Department of Family and Children Services.

The eligibility numbers in this document will change on at least an annual basis, usually effective January 1st. Therefore, it is absolutely necessary that persons using this document check the last revision date to make sure that they have the latest edition.

For additional copies of this document, contact the Georgia Department of Human Resources Division of Aging Services at 1-866-55-AGING (or 1-866-552-4464). For information about this document, contact the State Legal Services Developer at the Division of Aging Services, the Georgia Senior Legal Hotline at (404) 657-9915 or 1-888-257-9519 or the Department of Family and Children Services office located in your county.

What is it people usually want to know?

Several questions are normally asked as people begin to think about long-term care and Medicaid. Generally, those questions include:

- **What does it take to become financially eligible for Medicaid?**
- **How much money and property can I have and still be eligible for Medicaid?**
- **Can I give away my money and property or some of it and still be eligible for Medicaid?**
- **Do I have to spend all of my money before I can become eligible for Medicaid?**
- **What will my spouse live on if I have to go into a nursing home on Medicaid?**
- **Who will pay for my burial if all of my money has to go to the nursing home?**
- **I promised to help send my grandchild to college; do the Medicaid rules prevent me from doing that?**

This publication will answer some of these questions for you, some will just be addressed briefly and you will have to seek counsel for answers for your particular situation and fact pattern. Remember, this document is just for educational purposes and **not** for ***estate or Medicaid planning*** or for ***legal advice***.

Will this document tell me all about Medicaid?

No. There are a number of different types or classes of Medicaid. This document will only discuss a few classes that will pay for nursing home care for which one might become eligible. Because the same rules apply, this information can also be applied to those who seek to become eligible for Medicaid for certain home and community based programs such as the Community Care Services Program.

Is this the same as Medicare?

No. Medicaid should not be confused with Medicare. Medicare is the health insurance program funded and operated completely by the Federal Government. One is eligible for Medicare when they turn 65 years old, or they have been disabled for 24 consecutive months or because they have a particular kind of kidney disease. Medicare is applied for at the Social Security Administration and is one of the taxes you pay through your employer as you work throughout your career. Medicare operates under the same rules in every state.

What do you mean by "classes of Medicaid"?

Medicaid, a federal and state funded program administered at the state level by the Georgia Department of Community Health, has several different categories of Medicaid that offer coverage for different reasons. There is Medicaid for children, pregnant women, the blind, the disabled, the aged and others who meet certain eligibility requirements. Each Medicaid program or class has its own set of rules and requirements. Programs offered in one state may not necessarily be offered in another state and if they are, they may operate under different rules.

What "classes" of Medicaid provide Nursing Home coverage?

- Nursing Home Medicaid, and,
- SSI Medicaid

are the classes of Medicaid that will be dealt with in this document. To keep from making this document extremely long and very confusing, it is best that the requirements for just these classes be addressed here. Another class will not be covered in detail here, except to mention that it was formerly known as the Adult Medically Needy (AMN) Spenddown Program for Nursing Facility Care for those with income over the maximum amount, which allowed them to spenddown the excess amount to the required levels to become eligible for long-term facility care. **See Page 7 for Important Information on that type of AMN.**

What about the transfer of money and property, will that be discussed here too?

Yes. Since transferring money and property can have a direct impact on whether or not someone is eligible for Medicaid for long term care, that issue will be addressed in this document.

What does it take to become eligible for the Medicaid that pays for Nursing Home care?

First, for an individual to be eligible for Medicaid, it is necessary to know that person is financially eligible for Medicaid either through SSI (Supplemental Security Income) or Nursing Home Medicaid. The rules are different for each one and they are addressed later in this document.

Second, there is a required level of care. In order for Medicaid to pay for a person's stay in a nursing home and the care they receive, a person must first meet the required "Level of Care". This means that the state has established certain medical requirements that one through his/her doctor must prove have been met in order to be deemed eligible. Next, the person must already be a resident in a nursing home that is certified to accept Medicaid as payment and must have been there for at least thirty (30) days.

What is the level of care that must be met in order to be eligible for Medicaid to pay for your nursing home stay?

The person must have a physical and/or mental impairment, which requires continued nursing care, monitoring and supervision, under the direction of a licensed doctor. The person must be unable to provide this nursing care to him/herself.

Simply put, the person must meet at least one requirement from column A and one requirement from either column B or C:

A. Medical	B. Mental	C. Functional
Nutritional status	Memory deficiencies	Moving around is a problem
Skin care needed	Trouble making decisions	Needs help with feeding and actually setting up meals
Catheter care	Behavior problems	Direct assistance needed to help maintain continence
Physical, speech or other therapy needed	Undetermined cognitive problems	Communication deficiencies
Specialized nursing services needed to restore person to previous state of health		Personal hygiene, dressing require direct assistance
Vital signs need to be monitored		
Help needed managing medications		

NOTE: These categories are being stated simply and generally; more detail on them must be obtained for an actual determination of eligibility.

What are the rules for Medicaid eligibility under SSI?

SSI or Supplemental Security Income is a federal entitlement program available from the Social Security Administration for persons who are 65 years old, blind or otherwise disabled and meet a certain income requirement. In Georgia, SSI entitles a beneficiary to a monthly check and Medicaid eligibility.

When an individual or a couple is in a nursing home or a long term care situation, these are the general income and resource rules that must be met in order to be eligible for SSI Medicaid to pay for that long term care:

**2011 Maximum Income Limit: \$674.00 per month for an individual
\$1,011.00 per month for a couple**

(Income is money that comes into the household during the month)

Maximum Resource Limit: **\$2,000 for an individual**
\$3,000 for a couple

(Think of resources as property of value that is owned for more than 1 month, such as houses, land, cars, cash in checking accounts, savings accounts, IRAs, CDs)

What are the rules for Medicaid eligibility under Nursing Home Medicaid?

2011 Maximum Income Limit: **\$2,022.00 per month for an individual**

Maximum Resource Limit: **\$2,000 for an individual**
\$3,000 for a couple

If my loved one's income is over the eligibility amount, is it still possible to become eligible for Nursing Home Medicaid?

There used to be an Adult Medically Needy Spenddown Program for Nursing Home Residents, but it was eliminated effective 9/1/04. It enabled those whose income exceeded the Maximum Level to still be eligible for Medicaid.

Now, in order for those persons whose income exceeds the Maximum Income Limit to become eligible for Medicaid for long-term care, they can create a Qualified Income Trust, commonly known as a "Miller Trust" for the excess income. For more information about a "Miller Trust" or to obtain assistance with creating a "Miller Trust", call the **Georgia Senior Legal Hotline at 1-888-257-9519** or your local Area Agency on Aging for the number of your Elderly Legal Assistance Program provider or contact a private attorney.

What if I'm already the Trustee of a QIT, what do I do every month?

If you have already been named Trustee of a QIT, it is most important that you manage the deposit of money into and withdrawal of money out of the QIT properly so that the nursing home resident will continue to be eligible to receive Nursing Home Medicaid. If the Trustee fails to properly handle the QIT, this may result in the termination of Medicaid benefits for the resident, as well as an obligation to repay the program for

payments made on the resident's behalf those months that the QIT was improperly managed.

Here are some helpful pointers to remember when handling the proceeds of a QIT to ensure that Medicaid benefits are not jeopardized.

Monthly QIT Process - This process must be repeated each month that the resident remains in the nursing home under Nursing Home Medicaid.

1. The QIT is unlike other Trusts that you may have heard about. The QIT is an Income Trust, meaning money flows into and out of the QIT each month. Handled properly, the QIT will always have a zero (\$0) balance at the end of each month. The only exception to this is if the bank requires a minimum balance to hold the account open.
2. Direct deposits of any monies into the QIT are **not** permitted.
3. Each month, DFCS will advise the nursing home what the resident's *Patient Liability* is for that month and the nursing home will inform the Trustee. 'Patient Liability' is usually all of the resident's gross income, minus allowable deductions (see below), and minus the **\$50** Personal Needs Allowance (**\$90** for Veteran's Benefits), which the resident keeps.
4. The money deposited into the QIT must be taken from the resident's income, not from the Trustee's income or any one else's income. The resident must be income eligible for Nursing Home Medicaid in the month in which the QIT is funded. This means, that the first month some of the resident's money is deposited into the QIT, that deposit must be an amount sufficient to reduce the resident's gross income below the maximum income limit of **\$2022**.
5. The Trustee will make 3 financial transactions each month: 1) deposit a sufficient amount of the resident's income into the QIT to reduce the resident's gross income to below **\$2,022**. (It is recommended that the gross income be reduced to **\$1900**, so you don't cut it too close.); 2) withdraw all of the money you just deposited into the QIT and pay it to the Nursing Home. This will reduce the balance in the QIT to zero, (or the minimum the bank requires, if applicable); and, 3) pay the balance of the resident's Patient Liability to the nursing home from the remainder of the resident's personal income for the month.

Deductions allowed from 'Gross Income' include:

State and Federal Income Taxes that are required to be withheld by the paying agency are allowable deductions.

Medicare premiums for Part B and Part D are allowable deductions from gross income until the second month following the resident's approval for Nursing Home Medicaid.

Medical expense(s) that are not covered by third parties or by Medicaid are allowable deductions.

Deductions not allowed from 'Gross Income' include:

- Deductions within the control of the resident for State and/or Federal taxes
- Mortgage payments on the resident's home
- Property insurance on the resident's home

The response to the question above is included courtesy of a Fact Sheet prepared by Attorney Mary Winklejohn with the Georgia Senior Legal Hotline.

The resource limits are really low; does that mean that I have to use up every penny that I have saved?

No, not necessarily. Some resources are included when eligibility is being determined, which means that the total value of those resources must fall within the resource limit. Some resources are excluded when eligibility is being determined, which means that although they fit the definition of a resource, there is a special rule which allows you to own or possess that resource and it doesn't count against you when you're trying to become eligible for Medicaid. **See the following chart.**

Medicaid Resources Chart

RESOURCES	RULES
<p>Cash; stocks; bonds; money market accounts; certificates of deposit; etc.</p>	<p>Must not exceed the maximum resource limit for SSI Medicaid or Nursing Home Medicaid</p>
<p>Real property (land)</p> <ul style="list-style-type: none"> ♦ Non institutionalized applicant/recipient (A/R) homeplace is excluded from resources regardless of the value ♦ Effective as of 10/1/06, but for applications and reviews starting 2/1/07, the homeplace of the institutionalized A/R is counted as a resource but the equity value (EV) is treated as follows: <ul style="list-style-type: none"> – if the EV is \$500,000 or less, the property is excluded – if the EV is over \$500,000, the A/R no longer is eligible for Medicaid payment to the nursing home and Institutionalized Hospice agency – if the EV is over \$500,000, the A/R no longer is eligible for Medicaid for home and community based waived services. The A/R's case is denied/closed 	<p>The house you live in and all the land the house is on and any other buildings on that land as long as the A/R states in writing an intention to return home or if a dependent family member or spouse is still living in the home while the A/R is absent.</p> <p>Other instances when real property may be excluded as a resource include the following:</p> <ul style="list-style-type: none"> • If the property is business property or is income producing (rental property is excluded as a resource but the rent is treated as income) up to \$6000 of the EV may be excluded if the property produces at least a 6% annual return on the excluded portion. • If the property is used to produce goods or services for home use or home consumption, only up to \$6,000 of equity value is excluded regardless of the rate of return. Everything over \$6,000 is a countable resource.
<p>IRAs <i>A countable resource if there is an option to withdraw the fund as a lump sum even if ineligible for periodic payments</i></p>	<p>IRAs from which payments are being made to the Medicaid recipient are excluded as a countable resource as long as they include part of the principal. Some IRAs may be a countable resource or considered as a transfer of assets.</p>
<p>Annuities</p> <ul style="list-style-type: none"> – <i>Under the DRA changes, annuities are considered in determining eligibility</i> <ul style="list-style-type: none"> ○ An irrevocable, non-assignable actuarially sound annuity providing for equal monthly payments is treated as income to the A/R or spouse. 	<p>Purchased before 2/8/06 - if actuarially sound, are treated as retirement funds.</p> <p>Purchased on or after 2/8/06- the A/Rs must name the State of Georgia as the remainder beneficiary if there is no spouse, minor or disabled child. If either exists, the State may be named after them.</p>
<p>Burial accounts</p>	<p>\$10,000 LIMIT (see following charts)</p>
<p>Household goods/personal property</p>	<p>Regardless of value, they are excluded, as long as they are not held as an investment.</p>

How is a person supposed to pay for burials and funerals if they can't save any money?

There is a way of setting aside some money for burial.

Some resources are treated so differently for SSI than they are for Nursing Home Medicaid that it is necessary to provide additional information about them. Those resources include burial contracts, burial accounts, life insurance policies, automobiles and property other than the homeplace.

See the following tables.

Treatment of Resources under SSI Rules

Resource	Rules
Automobile	<p>The value of one car up to \$4,650 is excluded from consideration of eligibility. If one of the following is true, then the entire value is excluded regardless of the amount:</p> <ul style="list-style-type: none"> • The automobile is needed for employment transportation • The automobile is needed for transportation back and forth for medical treatment • The automobile is needed for handicapped accessibility • The automobile is necessary for the particular climate, terrain or for the performance of activities of daily living
Life insurance	<p>Policies with a face value (FV) of up to \$1,500 are excluded</p>
Burial contracts	<p>Burial contracts or pre-need contracts which one has with a funeral home to take care of burial arrangements of self, spouse or immediate family members are excluded from consideration of eligibility if the following are true:</p> <ul style="list-style-type: none"> • It has been paid in full • It is itemized • It is owned by the Medicaid recipient and is for the benefit of him/her or the spouse or an immediate family member (spouse; minor/adult natural, adopted or step children and their spouses; parents and their spouses; and siblings and their spouses)
Burial accounts	<p>Recipients are allowed to have up to \$1,500 in a burial account. If one does have a burial account, the total face value of the life insurance policies must be subtracted from that amount as well as any non burial space portions of an irrevocable burial trust or contract</p>

Treatment of Resources under Nursing Home Medicaid

Resources	Rules
Special Information :	Only 1 burial contract and 1 cemetery contract per person may be excluded from resources.
<p>Life insurance FV must equal the purchase price of the burial contract;</p> <p>Any life insurance policy used to fund a burial contract that itemizes each item purchased will be treated as a burial contract;</p> <p>Life insurance policies used to fund a burial contract that do not itemize the cost of each item are treated as life insurance policies.</p>	<p>The cash surrender value of all life insurance policies having a face value of \$10,000 or less may be excluded.</p> <p>The cash surrender value (CSV) of a policy is excluded as a resource only if the FV of the policy is used as part of the burial exclusion. If the FV is not used in the burial exclusion, the CSV, regardless of the amount, counts as a resource and can not be designated for burial.</p>
<p>Burial contracts</p> <ul style="list-style-type: none"> • The entire refund value of non-itemized contracts counts as a resource or may be applied to the burial exclusion. • The refund value of all non-burial space items in a paid in full, itemized burial contract counts as a resource or may be applied to the burial exclusion. • The entire refund value of a burial contract, for someone other than the recipient or the immediate family, counts as a resource. 	<p>The value of a burial contract may be excluded as a resource only if it is:</p> <ul style="list-style-type: none"> • <i>for the benefit of the Medicaid recipient, spouse or immediate family</i> • <i>Paid in full</i> (partially paid for contracts are a resource that count toward the \$10,000 exclusion total) • <i>Itemized</i> (the refund value of burial space items are exempt from resources and the burial exclusion policy)
Burial accounts	Up to \$10,000 each is allowed for the Medicaid recipient and his/her spouse but cannot be comingled with non-burial funds and is a part of the \$10,000 total for each.
<u>TOTAL BURIAL EXCLUSION</u>	<p><u>\$10,000 includes:</u></p> <ul style="list-style-type: none"> • Life Insurance • Burial Contract and • Burial Account

Treatment of Automobiles under Nursing Home Medicaid

Resource	Rules
AUTOMOBILES	<p>Automobile – is any vehicle normally used for transportation even if it is broken down and junked</p> <p>Automobile – Includes recreational vehicles</p> <p>Adaptive equipment used for handicapped vehicles does not add to the value for resource purposes.</p>
<p><u>Equity value</u> is the current market value minus any amount owed on the automobile.</p> <p><u>Current market value:</u></p> <ul style="list-style-type: none"> • <i>Tax value assessed by the county tag office multiplied by 2.5;</i> • <i>The trade in value; or</i> • <i>A dealer's statement of value</i> 	<p>The equity value of one automobile per household (even if one member is in a nursing facility) is excluded from consideration of eligibility for transportation.</p> <ul style="list-style-type: none"> • If more than one automobile is owned, the applicant chooses to which automobile the exclusion will apply; but the exclusion most advantageous to the applicant will be applied and all others are a resource. • As long as the car is used for transporting the eligible Medicaid recipient or a member of that recipient's household, the automobile is excluded.
	<p>Leased vehicles are not a resource</p> <p>Automobiles registered to or owned by others are not a resource. However, if purchased by the long term care recipient or spouse, it may be considered as a transfer of assets.</p>
	<p>Automobiles may never have their value designated for burial.</p>

What if I have a spouse, how is my spouse supposed to live if all the income and savings has to be spent because I'm going on Medicaid to pay for my nursing home care?

There is a program which is considered a companion to the Nursing Home Medicaid program. It is called the **Spousal Impoverishment Program**. This program is available only to couples when one is on Medicaid and the other continues to live in the community without the assistance of Medicaid.

The benefits of this program keep the community spouse (the spouse not in the nursing home or Medicaid funded long term care facility/program) from being completely without resources and income to maintain living expenses. In order to be eligible under the spousal impoverishment program, the following is allowed:

NO CHANGES FOR 2011

The community spouse keeps his/her own income **and** the income of the nursing home Medicaid resident **up to a total of \$2,739.00 per month**, minus the nursing home resident's personal need allowance of **\$50.00** in the nursing home or **\$90.00** if the income is Veterans Benefits. **Any amount over \$2,739.00 must be used to pay the Medicaid spouse's long-term care expenses.** (There are some exceptions for excess medical expense not paid for by Medicaid.)

The community spouse may keep up to \$109,560.00 in resources and may have his/her own life insurance, burial contract and/or burial account of up to a total of \$10,000 in addition to the **\$109,560.00** resource limit. **The nursing home Medicaid spouse may still have up to \$2,000 in resources** and may still have his/her own burial contract, burial account and/or life insurance coverage limited to **\$10,000**.

The community spouse may continue to live in the home place and once he/she applies for spousal impoverishment program, has up to 12 months to legally transfer the house into his/her name without a penalty for transfer of assets.

What if it doesn't look like I'm eligible under any of these programs listed here, does that mean that I can't qualify for Medicaid?

No, not necessarily. It just means that this document probably doesn't address the class of Medicaid for which you might be eligible. If you are interested in applying for Medicaid, you should contact the Department of Family and Children Services Office in your county and let a Medicaid worker determine whether or not there is a class of Medicaid for which you might be eligible.

I don't have a spouse who can use my resources and I don't want to have to spend all of my money on long-term care because I have children and grandchildren who could use my money more. Why can't I just put in my Will that all of my money is supposed to go to them?

While you can leave that instruction, remember that a Last Will and Testament has absolutely no affect on anything while one is alive. It is a legal document that states how you want your property distributed after you are dead. Eligibility is affected by resources that you own or have an interest in while you are alive.

If that's true, then I'll just give away everything I have so there won't be anything left to go to the nursing home and just let Medicaid take care of it. Who'll know the difference?

Simply giving away your money and your property so that you can become eligible for Medicaid to pay for your long-term care expenses can be a problem. Federal law requires states to impose a penalty against those who apply for Medicaid within a certain time after they have transferred some or all of their money and/or property for the purpose of becoming eligible for Medicaid.

TRANSFER OF ASSETS

Two critical times to remember:

Before the Deficit Reduction Act (DRA) 2005 – **8/11/1993 to 2/7/2006**

And,

After the Deficit Reduction Act (DRA) 2005 – **2/8/2006 forward**

The rules that were in place prior to 2/8/2006 still apply to Transfers of Assets made before 2/8/2006.

NEW RULES

- ♦ The new rules affect all transfers made on 2/8/2006 and beyond.
- ♦ The new rules apply to any new or pending Medicaid application for nursing facility services or home and community based waiver programs beginning 2/1/2007 or later.
- ♦ The new rules apply to any review of current recipients cases taken on or after 10/1/2006 and affect transfers made on or after 6/1/2005.

Simply *giving* away your money and/or your property to become eligible for Medicaid to pay for your long-term care expenses or to avoid Estate Recovery is a problem. The following sections provide some of the changes that Federal law required states to make to strengthen the policy and penalties available for just such actions.

To give away or transfer assets without receiving the fair market value (FMV) of the worth of those assets is strictly prohibited and is likely to incur penalties.

NOTE: A penalty can be avoided if the assets that were transferred are returned to the Medicaid recipient.

If I transfer assets, how long will it affect my eligibility for Medicaid?

Before the DRA 2005:

36 months or 3 years unless the transfer is into a Trust, then the look back period is 60 months or 5 years.

And,

After the DRA 2005:

*60 months or 5 years **for all transfers** for less than FMV*

The look back period begins the date the applicant applies for Medicaid.

What is the penalty?

For Transfers Prior to 2/8/2006

The penalty is disqualification from receiving Medicaid for as many months as it takes to use the amount of money or value of property transferred. The amount that is transferred is divided by the average Georgia private pay nursing home billing rate to come up with the number of months of your penalty.

Example: \$10,000 transferred ÷ \$4,916.55 (the avg. Georgia private pay nursing home billing rate since 4/2009) = 2.03 months.

The penalty would be **2 months** (the number is rounded down and no partial months are applied)

Multiple Transfers:

Each transfer will be considered a separate one and a penalty will apply to each transfer, although some attorneys note that separate transfers made to different people within the same month have been added together to be treated as one transfer. Transferring assets **for reasons other than becoming eligible for Medicaid** is allowable but make sure that you receive sound advice before doing so.

For Transfers After 2/8/2006

The penalty is eligibility for Medicaid for institutionalized A/Rs but disqualification from receiving Medicaid to pay the vendor portion to the nursing home for as many months as it takes for you to use the amount of money or value of property that you transferred. The amount that you transfer is divided by the average Georgia private pay nursing home billing rate to come up with the number of months of your penalty.

Example: \$10,000 transferred ÷ \$4,916.55 (the avg. Georgia nursing home rate since 4/2009) = 2.03 months.

The penalty would be **2.03 months** (*partial months are now applied*)

The A/R would be responsible for paying the Medicaid rate for two months and for the partial month the A/R would pay the **.03** share. For the remainder (**.97**), Medicaid would pay.

For home and community-based waivers (i.e. CCSP, ICWP, non-institutionalized hospice), the applicant is simply not eligible and the case is denied or closed.

Multiple Transfers:

For applications on or after 2/1/2007, transfers for less than FMV made after 2/8/2006 and within the 60-month look-back period in more than one month will be combined and treated as one transfer.

Transferring assets for reasons other than **becoming eligible for Medicaid or avoiding estate recovery** may be allowable; but be sure **before** making such a transfer.

When does the penalty take effect?

Before the DRA 2005

The penalty runs the month the assets were transferred. Penalties are applied consecutively (one after the other) instead of being applied concurrently (together).

After the DRA 2005

The month the asset was transferred or the month that the A/R requests Medicaid and is in the long-term care setting, whichever is later. This includes the “three months prior” to the application date that is usually covered by Medicaid.

For reviews, transfer penalties will be assessed on transfers made **on or after 2/8/06**. The penalty will begin with the month following the month in which notice can be given.

If a penalty was already assessed on the transfer under the old rules, the transfer will not be reassessed under the new rules.

Transfers made by a spouse to someone other than the A/R, will result in a penalty to the A/R.

What if my money is in a joint account or my property is in my name and someone else's and that person takes the money or property without my permission or knowledge?

The fact that another person jointly owns an asset such as a bank account, certificate of deposit or a deed to real property (land) is not a transfer in and of itself. However, if the person who is on the account or deed with you takes money from the account or transfers the property, with or without your knowledge or consent, a penalty may be applied.

POINTS TO REMEMBER

Transferred assets **may** be recovered to avoid penalties;

Proof may be required to show what steps have been taken to recover transferred assets before any relief is given;

Generally, the **burden of proof** (the responsibility to convince others that what you say is true) is on the A/R. There is no "benefit of the doubt" that what you say is true.

Evidence that health or age indicated a need for long-term care may affect how a transfer is treated.

So is there no way that I can provide for my family who depends on me?

Resources may in certain and limited situations be properly used to provide for dependents. Some exceptions under the Federal law allow individuals to legally transfer property and money without being penalized.

See some of the acceptable and nonacceptable transfers in the tables that follow.

TRANSFERS WHEN PENALTIES DO NOT APPLY

- ✓ Transfer of the home from the A/R to the spouse, dependent children (under age 21), disabled children, siblings who were living in the home for 1 year before you went into the nursing facility and has equity in the home, or to your children if they were living in your home for at least 2 years and taking care of you before you went into the nursing home.
- ✓ Transfer to the spouse or to another person for the **sole benefit** (“no other person or entity can benefit from this transfer”) of the spouse.
- ✓ Transfer from the spouse to someone else for the sole benefit of the spouse.
- ✓ Transfer to a Trust for the benefit of your blind or disabled child.
- ✓ Transfer to a Trust for the benefit of a disabled person who is under the age of 65 years old. (The law does not require that this person be a relative)
- ✓ There is proof that the transfer was intended for fair market value or other valuable consideration but it was not received due to fraud or exploitation.
- ✓ The asset that was transferred was owned by the community spouse and transferred by the community spouse **after** eligibility was established. **(Exception: annuities and homeplace property)**
- ✓ The transfer was made to pay a valid debt.
- ✓ The asset transferred was a valid loan.
- ✓ The asset was **excluded** under Nursing Home Medicaid rules and it was transferred into a Trust. For SSI Medicaid, the transferred resource was excluded **(not including the homeplace which has specific transfer rules)**.
- ✓ Assets were transferred but fair market value was received for them.
- ✓ The assets were transferred **exclusively for a reason other than** to qualify for Medicaid. **(not including the homeplace which has specific transfer rules)**
- ✓ **The transferred assets have been returned.**

TRANSFERS WHEN PENALTIES DO APPLY

- ✓ The spouse of an A/R transfers assets including income to anyone for purposes other than the **sole benefit** of the spouse during the applicable look back period.
- ✓ An A/R gives away or sells an asset for less than its current market value (CMV) or refuses an inheritance, during the applicable look back period or anytime after that.
- ✓ The A/R or his/her spouse purchases a life estate interest in another person's home without living in the home for at least 12 consecutive months after the date of purchase, gives away the life estate or pays less than FMV for it.
- ✓ The A/R transfers non-excluded assets into a trust during the look back period or anytime after that.
- ✓ The A/R transfers the homeplace to someone other than those persons listed in the previous chart.
- ✓ Assets owned by the A/R jointly with another person are considered transferred by either person when the A/R's ownership or control is eliminated or reduced. This is true regardless of whether the A/R had knowledge of the action or gave his/her consent. This includes withdrawals from joint accounts by the other account holder.
- ✓ The community spouse transfers an annuity or homeplace to anyone for purposes other than the sole benefit of the community spouse during the 60 month look back period. **(This affects transfers made on or after 2/8/2006.)**
- ✓ The A/R's asset is transferred or given away to someone (other than the spouse) who provided free care to the A/R. The transfer to a relative or others for this care provided at no cost to the A/R in the past will be considered transferred for less than FMV. Evidence can be presented to rebut this presumption.

HARDSHIP PROVISIONS

Undue hardship provisions *only* protect the A/R. They *do not* apply to or protect the community spouse unless he/she is applying for the classes of Medicaid previously discussed in this information.

When It Is Not Undue Hardship:

- ◆ The application of the penalty only inconveniences or restricts the *lifestyle* of the A/R.
- ◆ After the institutionalized spouse transfers assets to his/her spouse, the community spouse refuses to use or make those assets available to the institutionalized spouse.
- ◆ If A/R's total available income and assets or the A/R and his/her spouse's income and assets, when combined, are sufficient to cover the costs of the A/R's medical care and food. (**remember, the spouse's protection is not a consideration for hardship**)
- ◆ A/R's health or life would **not** be endangered (**his/her health would not be irreparably harmed and a doctor can certify that application of the penalty will not kill the A/R**)

One Of These Three Must Be True To Qualify For Undue Hardship:

- ✓ An institutionalized spouse has excess resources/assets that would normally cause him/her to be ineligible for Medicaid, but to do so would cause an undue hardship **on the A/R.**
- ✓ Distribution is received from a Medicaid qualifying trust that would normally cause an individual to be ineligible for Medicaid and denial of Medicaid would cause an undue hardship **to the A/R.**
- ✓ Assets were transferred into a trust or for less than FMV, which would normally cause ineligibility for Medicaid for nursing facility services or home and community based services, but to do so would cause undue hardship **to the A/R.**

MEDICAID ESTATE RECOVERY

See www.dch.georgia.gov for the latest information

What Is Estate Recovery?

Estate recovery is a federally mandated and state operated program that seeks to recover from the estate of the person who received long-term care Medicaid benefits, dollars to reimburse the state for what the Medicaid Program spent on the recipient.

When Did This Change Occur?

Federal Law changed in 1993, and though a change was reflected in the Georgia Code, Georgia did not implement the program until the Georgia General Assembly in 4/2004 passed an appropriations bill requiring the implementation of Medicaid Estate Recovery by the Department of Community Health (DCH), Georgia's Medicaid agency. In the 2006 General Assembly, necessary changes were made to Estate Recovery and the final rules were completed to allow implementation of Estate Recovery effective May 2006.

Who Is Affected By Estate Recovery?

Affected by the recovery are those Medicaid recipients who received Medicaid payment and are:

- a. A resident of a nursing facility, regardless of their age;
- b. A resident of an intermediate care facility for the mentally retarded or other mental institution, regardless of age; or
- c. At least 55 years of age or older and received medical services consisting of home and community-based services, (this includes Medicaid waiver programs such as the Community Care Services Program), nursing facility services, personal care services, hospital services and prescription drug services provided in nursing facilities or while receiving home and community based services.

What Is Meant By Recovery?

The state will place a lien on the property that it identifies as eligible to be used to reimburse the state for the dollars spent on the Medicaid recipient. That property may include the house and any other property owned by the Medicaid recipient at the time of his or her death or in which s/he held an interest. This includes real property that passes by joint tenancy, right of survivorship, reserved life estate, trust, annuity, and any other arrangement. It also includes excess funds from a burial trust or contract, promissory notes, cash and personal property. The Rules allow for certain exemptions such as estates valued at \$25,000 or less.

When Does Recovery Take Place?

Federal law does not allow recovery to begin as long as:

- ✓ The Medicaid recipient is still alive;
- ✓ the Medicaid recipient's spouse is still alive whether or not the spouse is living in the home;
- ✓ the recipient's child (if under the age of 21) is alive, whether or not the child is living in the home; and,
- ✓ the recipient's child is alive, if that child is blind or permanently and totally disabled, regardless of whether or not that child is living in the home.

What is a lien?

A lien means a claim, encumbrance or charge against the Medicaid recipient's real or personal property because of Medicaid dollars paid to the recipient correctly under the State plan. A lien may be placed on the real property of a recipient who is an inpatient of a nursing facility, intermediate care facility for the mentally retarded, or other institution or a lien may be placed on both real and personal property of a recipient after his/her death.

Is There any Provision for the State Releasing a Lien?

The state may release a lien if a Medicaid recipient who was deemed permanently institutionalized leaves the institution and returns home or at the closing if the property upon which there is a lien is sold. A TEFRA (Tax Equity and Fiscal Responsibility Act of 1982, P.L. 97-248.) lien is an extra tool used to keep Medicaid recipients from selling their home while they are in the program. If a recipient is in a nursing home for 6 consecutive months he/she is considered permanently institutionalized and DCH will send him/her an ER letter stating they will put a TEFRA lien on the property. At that time the recipient may reply that there is a community spouse, sibling or child (exemptions) to keep DCH from placing the lien on the home. If the exemptions do not apply or the recipient does not request the exemptions then the TEFRA lien will be placed on the home. The TEFRA lien **must** be removed if the recipient leaves the nursing home or dies. DCH can place a different type of lien on the property after the recipient's death but they are more interested in working with the family or personal representative on figuring out how the debt will be paid.

What Are The Exceptions to Enforcement of a Lien On the Home?

The State may not enforce a lien under any of the following circumstances:

- ♦ While an adult child of the recipient is living in the home, if that child lived in the home for at least two years on a continuous basis prior to the recipient's admission to the nursing home and provided care that kept the recipient from entering the nursing home; or,
- ♦ While the brother or sister is living in the home, if he or she lived there at least one year prior to the recipient's admission to the nursing home.

When the notice is sent after the Medicaid recipient's death and there is no spouse, if the only property is legitimately held in joint ownership, will the state require that the property be sold to recover the accrued debt if the estate has no other assets and this interest exceeds \$25,000?

This is not clearly established. The only thing that is definite is that the state will try to collect the debt from the value of the deceased recipient's property (personal and real) if the value exceeds \$25,000. They are willing to work with the personal representative in any way possible.

Are There Any Provisions for a Waiver?

The Rules explain under what conditions a Hardship Waiver can be applied for and granted.

Some grounds for granting a waiver included:

- The asset to be recovered is an income producing farm of one or more of the heirs and the annual gross income is limited to \$25,000 or less, or
- Recovery of assets would result in the applicant becoming eligible for governmental public assistance based on need and/or medical assistance programs.

Who can apply for an undue hardship waiver and how is it done?

Undue hardship waiver requests may be made by the personal representative or heirs of the Medicaid recipient's estate within 30 days of receiving the Medicaid's notice against the estate, or upon the sale, transfer or conveyance of the real property subject to a TEFRA lien. The Estate Recovery Unit will provide detailed instructions on how to file for an undue hardship waiver in the Medicaid notice.

Where in the Line of Debts Does the State's Claim Fall?

The state will not pursue the recovery of an estate until the six month expiration of the date the personal representative is qualified by the Probate Court to handle matters of the estate. The following is a list of the debt priorities and where the Medicaid claim falls in this list.

- ✦ Year's Support
- ✦ Funeral expenses \$5,000 or less (\$0 if there was a prepaid funeral contract covering the expenses)
- ✦ Administration expenses for the estate
- ✦ Reasonable expenses of the Medicaid recipient's last illness
- ✦ State and/or Federal taxes

- ✦ Medicaid Estate Recovery is a debt due the state and is equal with state taxes

When Does the State's Claim Against the Estate Expire?

It does not expire, nor is it barred for lack of timeliness or because the Probate of the estate is closed.

What expenses must be reimbursed?

In accordance with the State's plan, expenses incurred by Medicaid, for any service provided in a long-term care facility and for individuals receiving institutional services in the home, Medicaid payments for nursing facility services, home and community based services, related hospital services and prescription drug services are recoverable. Recovery is for medical expenses incurred beginning August 1, 2001 or the first month of Medicaid eligibility, whichever is later.

What assets are considered subject to recovery?

Estate includes all real and personal property (i.e. homes, real estate, vehicles, cash and other financial instruments) held individually or jointly. Assets subject to recovery also includes property held with a life estate interest.

How will the value of the property be determined?

Regarding real property, DCH will review the tax appraisals and allow family members to help them determine the value through clear and convincing evidence.

How will Medicaid go about recovering assets?

Estate Recovery will occur when the State files a notice of claim against the estate of a deceased Medicaid recipient. No action to recover debt due by the deceased recipient will be taken against the personal representative or heirs until six months after personal representative or heirs have been notified.

Can I transfer my assets to avoid the Estate Recovery Program?

If you are thinking of transferring your assets, you should contact your county Department of Family and Children Services (DFCS) case worker prior to the transfer to evaluate how the transfer may affect your Medicaid eligibility to find out what penalties may be applicable.

Since for eligibility, Medicaid recipients with spouses legitimately had up to 12 months to make the transfer prior to the implementation of this program does the state intend to recover property that was transferred by a recipient to his/her spouse after qualifying for Medicaid?

Whatever the recipient does under the eligibility rules is still allowed. DCH simply recommends that the recipient confirm any transfer with the Caseworker (CW) because

DCH will speak to the CW after the recipient's death and if the CW did not know about the transfer, did not authorize it and indicates that it was not done under the eligibility rules then DCH will also have a problem with it. DCH's look-back for ER to determine sales and/or transfers is 36 months.

How much money will my estate owe back to the Medicaid program?

If you meet the criteria for Estate Recovery, your case will be evaluated to establish the exact amount owed to Medicaid at the time of death. The amount requested will be limited to the amount that Medicaid has paid on qualified expenses and the available assets.

How do I find out how much has been paid for Medicaid services?

Recipients may request this information by fax at (678) 569-0066 or call the Estate Recovery Unit at (770) 916-0328.

Does this program apply to me if I am not receiving home and community based waiver services or nursing home services?

No. However, if in the future you enroll in one of these services, yes it will apply to you.

For additional information, contact the Medicaid Estate Recovery Office at 770-916-0328 or visit www.dch.georgia.gov Questions on Medicaid Estate Recovery can be submitted to GAEstateRecovery@dch.ga.gov

CAUTION!!!

This is not all there is to Medicaid for long-term care; other issues/factors may need to be considered.

Each situation could be different from another person's situation; what works for your neighbor may not work for you.

Even if it looks like you may be eligible because of what you read in this document, for other reasons, you may not be eligible.

Even if it looks like you may not be eligible because of what you read in this document, for other reasons, you may be eligible.

For legal advice specifically tailored to your situation, speak with an attorney knowledgeable about this subject.

For other information about how the Division of Family and Children Services applies the rules of Medicaid, call the county office.

Remember that laws and rules change from time to time so always check your information before making major decisions.

NOTES

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