

There is no good news when it comes to Medicaid. The rules restricting eligibility are designed to limit access to public benefits. The elderly and disabled who need it the most are the least able to understand the regulations, and they are confronted by this daunting task at the worst possible time in their lives. How could this situation get any worse? Each year the staff at Health and Human Services changes, the number of applicants increase, and the rules are different. Nevertheless, we have to play the cards as they are dealt, and the first step is to understand the regulations as they exist today.

General Requirements to Qualify:

- a. U.S. Citizenship or resident alien status and residency in Texas;
- b. 65 or older, blind, or disabled according to the Social Security Disability definition; and
- c. There must be a "medical necessity" determined by an assessment, and there is a 30 day in residence requirement.

Monthly Income limits for 2016:

- a. \$2,199.00 for a single person.
- b. \$2,199.00 for a married person with an ineligible spouse.
- c. \$4,398.00 for a married couple if both apply.

Limits on Countable Assets for 2016:

- a. \$2,000.00 for a single person.
- b. For a married person with a spouse who is not in a medical institution, the limit is one-half of the couple's combined resources, with a minimum protected resource amount of \$ 23,844.00 and a maximum of \$119,220.00.
- c. If both spouses apply for nursing home Medicaid the limit is \$3,000.00, unless they are in separate facilities in which case resources in the name of each are limited to \$2,000.00.
- d. If both spouses are in a nursing home, but only one applies for Medicaid, the resource limit for that spouse is \$2,000.00. The resources and income of the non-applicant spouse are not counted against the applicant spouse.

Countable assets means all assets except:

- a. One principal place of residence in Texas (i.e., a home)
- b. Burial spaces and prepaid burial contracts.
- c. One automobile (two under certain circumstances).
- d. Personal property with a \$500 per item limit.

- e. Term Life Insurance.
- f. Resources essential to self-support.
- g. Some very limited retirement benefits.
- h. Livestock.
- i. Reverse mortgage lines of credit.
- j. Qualified Annuities.

Methods for dealing with the income and property limits include:

- a. Miller Trusts (aka Qualified Income Trust) are used when an applicant's income exceeds the monthly limit. They allow an individual to qualify for Medicaid regardless of his or her income.
- b. Special needs Trusts (aka Supplemental Needs Trust) are used to receive and manage assets for the benefit of a Medicaid recipient without violating the limits on countable assets.
- c. Converting countable assets into non-countable assets requires a clear understanding of the regulations, and any mistake will lead to some period of ineligibility.
- d. In some cases, transferring assets can be a short cut to eligibility, but the transfer penalty is serious and careful calculations are required.

- e. Expanding the protected resource amount is only available to an applicant with a spouse at home when their combined monthly income (less a \$60 personal needs allowance for the applicant) is less than the minimum monthly maintenance needs allowance which is \$2,980.50 in 2016.

Under the Estate Recovery Rules, the State of Texas will file a claim to recover all Medicaid payments from the estate of a deceased recipient, unless one or more of the following exceptions apply:

- a. The value of the estate is \$10,000.00 or less.
- b. The recoverable amount of Medicaid costs is \$3,000.00 or less.
- c. The cost of the sale of the property would be equal to or greater than the value of the property.
- d. There is a surviving spouse.
- e. There is a surviving child under 21 years of age.
- f. There is a surviving child of any age who is blind or permanently and totally disabled under Social Security requirements.

- g. There is an unmarried adult child residing continuously in the Medicaid recipient's home for one year before the recipient's death.
- h. Recovery would cause an undue hardship.

Recovery claims may be avoided by transferring a remainder interest in the home using a specially designed life estate deed.

Penalties for Transfers:

There are rules to penalize applicants for transfers made within five years of the date of application. For every \$162.41 transferred, an applicant loses one day of Medicaid eligibility, and the period of ineligibility begins to run on the date the applicant would have otherwise been eligible to receive Medicaid.

For example: A woman transferred \$29,233.80 to her children on January 1, 2013. She applies for Medicaid on February 1, 2016, and she meets all of the income, asset and other requirements for eligibility. She will be denied Medicaid benefits for six months (\$29,233.80/\$162.41=180 days), during which time she must continue to be eligible for Medicaid and reside in a nursing home. There are ways to minimize the impact of these new transfer penalty rules, but they require very careful planning.

Additional Sources of Information:

Medicaid Hotline – (800) 252-8263

Puts you in touch with the Health and Human Services Commission (HHSC) which handles Medicaid for the State of Texas.

www.hhsc.state.tx.us/medicaid

This is the website for the HHSC which can provide a wealth of information and links to other useful sites.

www.cms.gov

This is the Federal counterpart to the HHSC website.

www.medicare.gov

This is also a Federal website, but here you can obtain specific information about individual nursing homes including evaluation reports.

www.naela.org

National Academy of Elder Law Attorneys – This is a nonprofit organization which, among other things, provides a locator service for elder law attorneys nationwide.



This information is not intended to replace competent professional advice, and inevitably the rules and regulations will change. It's just a matter of time.

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Our practice focuses on issues concerning the elderly such as estate planning, asset protection, wills, probate, guardianships, powers of attorney, Medicaid qualification, Miller Trusts, and Special Needs Trusts. We also provide Veterans Pension Benefits assistance.

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**2016 GUIDE
To Medicaid Eligibility
For Nursing Home Care,
The Estate Recovery Rules,
and Transfer Penalties**

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