

Nursing Home Medicaid Basics & Trouble-Shooting

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Legal Hotline for Older Iowans

- Statewide intake unit for callers 60 and over at Iowa Legal Aid
- Advice and referrals (including to our 10 regional offices and various special projects) on a broad range of civil law topics
- 2504 cases closed in 2021, serving clients in all 99 counties
- Current staffing: Managing Attorney Josh Gaul, 3 attorneys, 2 intake paralegals, volunteer attorneys, AmeriCorps member
- For intakes, call 1-800-992-8161 or visit www.iowalegalaid.org

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Medicare vs. Medicaid

Medicare	Medicaid
<ul style="list-style-type: none"> • 65 and Older • Disabled under Social Security Disability rules for 2 years or longer • End-Stage Renal Disease 	<ul style="list-style-type: none"> • In general – for low income individuals • MANY different “coverage groups” 

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Most Common Medicaid Programs for Disabled & Older Iowans

Under 65	Over 65
<ul style="list-style-type: none"> • SSI-Based Medicaid • Home & Community-Based Service Waivers* (*waitlists) • Medicaid for Employed People with Disabilities (MEPD) • Iowa Health and Wellness 	<ul style="list-style-type: none"> • SSI-Based Medicaid • Elderly Waiver • Medicaid for Nursing Home Care • Medicare Savings Programs/Limited Medicaid (QMB, SLMB, ESLMB)

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Medicare Coverage for Nursing Home Care

- Qualifying hospital stay
- Referral to Skilled Nursing Facility
- Coverage *up to 100 days*:
 - Day 1 - 20: \$0 co-insurance
 - Day 21 - 100: Up to \$194.50 coinsurance

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Medicare Coverage for NH Care: *Jimmo*

Medicare coverage up to 100 days as long as:

- The beneficiary requires skilled care for the services to be provided safely and effectively; and
- An individualized assessment of the patient’s condition demonstrates that the specialized judgment, knowledge, and skills of a qualified therapist are needed for a safe and effective maintenance program.

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Medicare Coverage: Notice of Noncoverage

- Individuals have a right to request review of determination that they are no longer covered by Medicare.
- Quality Improvement Organization – independent review
- Right to appoint representative
- Expedited process

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Medicaid Application Tips & Hazards



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A Complete Application is Required

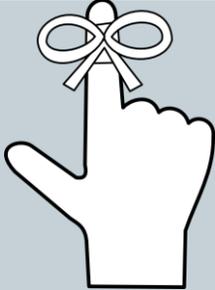
PRACTICAL QUESTIONS:
 Is a power of attorney needed or advisable?
 Is a conservatorship required?
 Should tax withholdings be stopped?

- Financial records are key
 - Must prove gross income and all resources
 - Frequently overlooked resource: cash value in life insurance policy
 - Expect delays when requesting information from pension plans and insurance companies. (See sidebar.)
 - Must provide documentation of pre-paid, irrevocable funeral contract
 - DHS will provide extensions
 - Communicate with facility
 - Keep a copy of the entire submission

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Follow-Ups/Recertification/Change in Circumstances

- Remind clients about the importance of recertification or responding to DHS inquiries about financial changes
- If a deadline is missed, send in documents during grace period or reapply



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Nursing Home Eligibility Basics

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NH Medicaid Eligibility Rules

- Applicant must meet level of care requirements.
- Applicant must be income- and resource-eligible.
- Applicant's **income**, *not including the income of the applicant's spouse*, must be **\$2,522 per month** or less in 2022. Income up to **\$9,201.25** (and sometimes higher) is permitted with a Medical Assistance Income Trust (Miller Trust).
- Applicant's non-exempt **resources** must be **\$2,000 or less**.
- Applicant must need care for 30 or more consecutive days.

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Client Participation & The Community Spouse

- The Medicaid spouse keeps a personal needs allowance of **\$50/month** (\$140 for veterans receiving certain pensions).
- The community spouse (who lives at home) can keep part of the nursing home resident's income as a maintenance allowance if the community spouse's income is less than **\$3,435** per month in 2022. Other dependents can also receive an allowance.

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Client Participation & Community Spouse (cont'd)

- Client participation may be reduced for "unmet medical needs," including delinquent nursing home and medical bills.
- The Medicaid spouse's remaining income is used to pay for nursing home care.
- **IMPORTANT:** The community spouse's income does not have to be used to pay for the nursing home expenses.

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Community Spouse Income Protection - MMMNA

- Minimum Monthly Maintenance Needs Allowance (MMMNA)
- 2022: \$3435
- Medicaid spouse must divert as much of his/her income as is needed to bring the community spouse's income up to the MMMNA.
- Example:

○ Medicaid Spouse Income:	\$3,000
○ Community Spouse Income:	\$2,435
○ Income Diversion:	\$1,000

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Income Protection – MMMNA (cont'd)

- Income diversion is mandatory unless community spouse asks for less. (Consider Miller Trust scenario.)
- DHS Employee Manual calls for referral to Adult Protective Services if referral is not made.
- Income not diverted = client participation
- MMMNA amount can be appealed based on "substantial financial duress" or changed through action for separate maintenance.
- Referral to Medicaid Planning/Family Law specialist

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Community Spouse Resource Allowance

- Certain assets are exempt; *e.g.*, one car, furniture, pre-paid funeral plans. The equity value in a home is limited to \$603,000 if the applicant's spouse or certain children do not live in the home.
- All non-exempt assets of **both** spouses are considered to be available to pay long-term care expenses.

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Attribution of Resources

- DHS will allow the community spouse to **keep one-half** of all non-exempt resources owned by one or both spouses, with two exceptions. The community spouse will receive a **minimum of \$27,480**, and a **maximum of \$137,400** in 2022.
- The Medicaid application will be denied until all of the resources that are attributed to the nursing home resident are spent down to \$2,000 or less.

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Attribution of Resources (Cont'd)

- **General rule: 50/50 split of all marital assets, regardless of titled ownership, subject to two exceptions:**
 - Spousal Minimum: \$27,480 – Immediately Eligible
 - Spousal Reserve Maximum: \$137,400
 - Ex: >\$274,800 in assets = < 50% spousal allocation
 - Percentage goes down as assets go up
 - Ex: \$1M in countable assets:
 - \$1,000,000
 - (-) \$137,400 SPOUSAL MAXIMUM
 - (-) \$ 2,000 RESOURCE LIMIT
 - \$ 860,600 SPEND DOWN

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Attribution of Resources Appeal

- If the spouses combined gross income does not meet the MMMNA, may appeal within 30 days.
- **Standard for Appeal:** What is the cost of a single life annuity necessary to generate enough additional income to bring the community spouse up to the MMMNA?
- **Fact-specific:** depends on life expectancy of community spouse and amount of income needed to cover shortfall
- No requirement to buy the annuity**
- DHS relies on annuity calculator information
- Paper appeal in most cases

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Spend-Down Timing

- Spend down only after the Medicaid applicant has been admitted to the nursing home (or has been found to meet the requirements for Elderly Waiver services.)
- Maximizes the resources retained by the community spouse.



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Medicaid Spend-down

- **IMPORTANT:** Excess resources over \$2,000 do not have to be spent on nursing home care. Excess resources can be used to:
 - Buy items that can be used in the nursing home
 - Pay debts of either spouse;
 - Buy prepaid funeral plans for both spouses
 - Buy exempt assets
 - Repair/remodel homestead or pay down mortgage
 - Pay expenses for community spouse
 - Buy anything that benefits the nursing home resident or the community spouse
 - Buy specific types of annuities
 - Make gifts to people (in very limited situations)

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Gifting under the Medicaid Rules

The Medicaid application asks about transfers of assets for less than fair market value during the last 5 years.

- Transfer problem can be cured by return of the property
- Independent valuation may be necessary
- Hardship exception may be an option
- Penalty period measured by average cost of nursing home care
- Possible action against recipient
- Exceptions to transfer rules:
 - Gifts to disabled child
 - Customary gifts
 - 2-year rule for caregiver



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Marital Problems?

To determine eligibility, DHS considers the applicant's income and the married couple's household resources.

- Pre-Nuptial agreements
 - Not officially recognized
 - May be, in effect, enforceable in an action for separate maintenance
- Estranged spouse
 - Options:
 - Assign right to spousal support; and/or
 - Seek exemption based on hardship
- Common law marriage



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Frequently Asked Question: Should I Get a Divorce to Protect Assets from Medicaid?

- **Anyone considering this should get specific legal advice about their situation.**
- **May** benefit applicants with substantial resources & income
- Advantages to being married under the Medicaid rules:
 - Countable resources up to **\$27,480** are reserved for the community spouse
 - Countable resources between **\$27,481 - \$137,400** are split 50/50
 - Homestead is exempt and reserved for the community spouse
 - Community spouse can keep Medicaid spouse's income up to **\$3,435/month**
 - Estate recovery is waived during the spouse's lifetime

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Applicants Must Apply for Other Benefits

- VA Improved Pensions
 - War-time service
 - Need for services
 - Financial need (expenses are considered)
 - Higher asset limits
 - Aid & Attendance
 - Does not count as income for eligibility
 - Must be used as client participation
 - Reduced to \$90 for nursing home residents
- Private pensions
- Social Security Retirement

Policy justification:

Medicaid is a program of last resort and the applicant must tap into all other available assistance.

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Miller Trust/Medical Assistance Income Trust

Top two misconceptions about Miller Trusts:

1. A Miller Trust is a separate Medicaid program. (It's not).
2. A Miller Trust can be used to protect resources. (It's for income only.)

- A Miller Trust or Medical Assistance Income Trust (MAIT) is a tool to become income-eligible for nursing home Medicaid and Medicaid waiver programs.
- **2022 Eligibility Cut-Off: \$2,523/month**
- **Income range for eligibility with a Miller Trust \$2,523 - \$9,201.25/month**
- Special rules for two spouses in same nursing home room

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Miller Trust Basics

- Revocable or irrevocable
- Must be signed by Medicaid applicant or legal representative
- Must have a trustee
- A separate bank account should be opened
- Social Security and other federal pensions should not be direct-deposited into trust account
- Medicaid eligibility normally begins the month after the trust is established
- \$10/month trustee fee
- Trust account should be spent down to \$0 each month
- Trust account balance goes to the State at death
- New DHS form

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Estate Recovery

The most common estate recovery claim is made in probate court against the value of a home owned by the Medicaid recipient.

- Applies to full Medicaid benefits received after age 55 and to some nursing home Medicaid benefits received before age 55
- Can only be collected out of resources owned by the Medicaid recipient at the time of death
- **Married couples can avoid by transferring property to community spouse, after attribution**
- Collection waived during spouse's lifetime
- Heirs may apply for disability or hardship waivers within 30 days of notice

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Thank you for participating

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