

Protections Against Spousal Impoverishment

In 1989, Congress amended the Medicaid laws to address the financial problems of the spouses of individuals in nursing homes (community spouses). These laws provide protections to prevent spousal impoverishment when an individual qualifies for nursing home care.

Income: The community spouse is entitled to a monthly maintenance needs allowance of up to \$2931/month (2014). This means that the income of the spouse in the nursing home can be given to the community spouse to make up the difference between her income and the monthly allowance amount, before payment is made to the nursing home.

Resources: The community spouse is entitled to a resource allowance of up to \$117,240 (2014). (A greater amount can be protected through a fair hearing or by a court order.)

Once an individual enters a nursing home, his spouse's income is no longer considered available to him, and will not disqualify him for Medicaid. Once an institutional spouse has entered the nursing home, the couple or a representative can request that the Medicaid Regional Office advise them in writing as to how their combined resources will be counted for eligibility purposes, called an "assessment for resources".

Medicaid Eligibility Rules

To qualify for Medicaid coverage of nursing home care, an individual must be age 65 or older, blind or disabled. A physician must certify that the nursing facility level of care is needed. The nursing home must be a qualified Medicaid provider.

Income Eligibility Guidelines

Financial eligibility standards for Medicaid vary from state-to-state. Mississippi is an 'income cap state.' People who have monthly income of no more than 300% of the monthly Supplemental Security Income limit may qualify for Medicaid coverage of nursing home care and

home and community based waiver care (up to \$2163/month (before deductions in 2014). (Note: Income limits change each March). If an individual's income exceeds \$2163 per month, she can place the excess income into a trust to qualify for Medicaid long term care benefits for nursing home or home and community based care under a waiver program. The amount placed in trust must be paid to the state for reimbursement of Medicaid payments for nursing home or HCB waiver care made on behalf of the individual. The individual's income up to \$2163 (2014) is paid to the nursing home, after certain allowed deductions. This is called patient pay amount or share of cost. Medicaid pays the difference between the patient's share and the Medicaid rate.

Resource Guidelines

Individuals seeking to qualify for Medicaid to pay for nursing home or home and community based waiver care may have total countable resources of up to \$4000. Some resources are not counted in determining eligibility. These include, among other things, the homestead of up to \$500,000 in value, household possessions; two vehicles; family burial plots; a fund for funeral expenses up to \$6000; whole life insurance up to \$10,000 face value; term life insurance of any value, income producing property if net annual return of 6% of the equity value is produced; personal property if the equity value is \$5,000 or less. Also, the spouse has the income and resource protections under the spousal impoverishment rules.

Deductions from income from patient share of cost include, but are not limited to:

1. Personal needs allowance of \$44 (\$90 for veteran)/mo..
2. Allowance for spouse and dependent children
3. Medical expenses incurred: (1 health insurance premium, necessary medical and remedial care.



North Mississippi Rural Legal Services

2014 Medicaid Coverage for Nursing Home Care in Mississippi

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Nursing home charges are outside the reach of most families. More than half of all nursing home care is paid for by Medicaid. Medicaid coverage is available for custodial care that consists of observation and helping the patient with activities of daily living in the nursing home setting, as well as for the higher level of care,

called skilled care. Medicaid coverage currently is unlimited in terms of the number of days of coverage.



Medicaid Estate Recovery

Many people have heard of the federal law that requires that the State of Mississippi attempt to recover payments made for nursing home services and related hospital and prescription drug services from the estate of a deceased person who received Medicaid long term care benefits during his lifetime. The Division of Medicaid must be notified as a creditor in estate proceedings in these cases. Estate recovery became mandatory in 1994.

Estate property includes any real property owned by the recipient in its entirety or by shared ownership. This includes homestead and any other real property. Estate property also includes personal property owned by the recipient such as cash reserves, stocks, bonds, automobiles, RV's, mobile homes or any other property owned in full or in part which is included in the person's estate under state law.

Exemptions From Recovery

Estate recovery does not apply to a deceased Medicaid recipient's estate if at the time of death the recipient had a legal surviving spouse, or a surviving dependent child under the age of 21, or a dependent blind or disabled child of any age provided this individual is dependent on the Medicaid recipient for a home or income.

The Division of Medicaid will not seek to recover from the estate of an individual to the extent that the Medicaid recipient owns only a life estate in real property.

Undue hardship: States are required under the law to establish procedures for determining when recovery will be waived due to undue hardship. Examples of situations where undue hardship will be found in Mississippi include cases in which the estate subject to recovery is the sole income producing asset of the survivors, such as a family farm and income is limited; a homestead of modest value; or other compelling circumstances.

Other compelling circumstances include a situation in which an adult relative has lived in the home of the decedent, dependent upon that home for her principle place of residence for at least one year before the decedent entered the nursing

home/ began receiving home and community based waiver care, and gave care so that the person did not have to receive nursing home care or home care under a waiver program during that year.

The Division of Medicaid also allows \$6000 for funeral and burial expenses to be taken out of the value of the estate if there are no funds already set aside for that purpose at the time that eligibility is determined.

There are also homestead exemptions which apply to prohibit Medicaid from claiming against the estate.

Mississippi has established administrative procedures that include sending a recovery notice to members of the decedent's family affected by the recovery action. The family is granted an opportunity for a hearing before an impartial hearing officer.

Transfer of Assets: Civil Penalty

Transfers of assets for less than fair market value by an individual or spouse within 60 months of application for Medicaid for nursing home or waived home care services result in denial of Medicaid coverage during a penalty period. The penalty is calculated by dividing uncompensated value of the assets transferred by a statewide average monthly cost of nursing home care. Penalties run from the date of application for Medicaid long term care benefits. Interestingly enough, penalties apply only to Medicaid coverage for nursing facility care or care under the home and community based waiver programs.

Assets affected include all income and resources of the individual and spouse. Assets include those to which the individual or spouse was entitled but did not receive due to action on their part. Examples of such action are waiving pension income or right to receive an inheritance, not 'accepting or accessing' a personal injury settlement, having a tort settlement diverted into a trust, or refusing to take legal action to obtain court-ordered support.

Fair Market Value: The care provided by family members is presumed to be free, absent a written agreement made at the time the care was given that compensation was intended.

Exception to Transfer Penalties

Certain transfers are exempt from penalties: Transfer of the home to: spouse, dependent or disabled child; a brother or sister who has equity interest in the home and was

residing in the home for at least a year before the individual's admission to the nursing home; child of the individual who was residing in the home for at least two years prior to the individual's admission and who provided care which allowed the person to live at home rather than in an institution.

Transfers to a spouse or to another for the sole benefit of the spouse; transfers from the spouse for the sole benefit of the spouse; transfer to a trust solely for the benefit of the individual's dependent or disabled child, and transfers to a trust solely for the benefit of a disabled individual under age 65.

Transfers where a satisfactory showing is made to the state that (a) the individual intended to dispose of the asset for fair market value, (b) the assets were transferred exclusively for a purpose other than to qualify for Medicaid, or the transferred assets were returned to the individual.

Hardship criteria include cases where (1) the applicant is unable to pay, (2) the transfer was not knowingly authorized, or (3) the individual assigns rights to recover the transferred assets to the State. At minimum, states must allow hardship waiver if the absence of the Medicaid would deprive the individual of medical care so that his life would be endangered, or if necessities of life would be denied. The state must provide notice, a hearing process and a separate process for appealing an adverse decision.

Jointly-held assets: An asset held with another person is considered to be transferred when any action is taken that reduces the individual's ownership or control of it. The addition of another name to an account may not necessarily constitute an impermissible transfer, unless that action actually restricts the applicant's rights concerning the property. But, withdrawal of funds by another joint tenant, not considered a transfer in the past, is now viewed as such. Recent regulations concerning joint ownership of bank accounts (but not other jointly held property) establish a rebuttable presumption of complete ownership of the joint account by the Medicaid recipient.

