Medicaid and Your Family:

Using Medicaid to Pay for Long Term Care

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Medicaid is a program run by the State of Idaho through the Department of Health and Welfare. It helps pay for long-term care. Depending on circumstances, that care may be at home, in an Assisted Living Facility, a Memory Care Facility or in a Nursing Home.

If a person qualifies, Medicaid may help pay for very expensive care.

Not everyone is eligible for Medicaid — in order to qualify, individuals or couples must meet strict eligibility rules. Those rules deal with how much money or assets the person, or couple has, how much monthly income the person or couple has, and whether the person or couple has given anything away.

Generally, Medicaid requires that an applicant have limited assets and limited income and penalizes applicants for having given away money or assets.

This pamphlet outlines those rules and how to navigate some pitfalls associated with Medicaid applications.

First Things First:
Understand What You Have

Only some assets count in deciding whether someone can use Medicaid.

Non-Countable Assets

These assets usually **do not count** toward Medicaid Eligibility:

- Residence (Up to $750,000 of equity; or unlimited if either spouse lives there)
- Retirement accounts like IRA, Roth, 401k
- 1 vehicle, if single (or 2 vehicles, if a married couple)
- Burial funds

Countable Assets

These assets usually **do count** toward Medicaid Eligibility:

- Bank accounts
- Investment accounts
- Annuities
- Extra vehicles
- Life insurance with cash surrender value
- IOUs (where you loaned someone money and they owe it back to you)
- Cash in hand, etc.

Red Flag: Assets

These assets might not count toward Medicaid Eligibility, but MUST be addressed with an attorney prior to applying for Medicaid:

- Rental homes
- Business property
- Family farm, ranch, or land
- Trusts
- Annuities
- Promissory Notes (where you loaned someone money and they owe it back to you)

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Once You Know What the Countable Assets Are, What Next?

Single Person Applying for Medicaid

You must be at or under

$2,000 of Countable Assets

on the

first day of the month

in which you are applying.

Married Person Applying for Medicaid

You can have at LEAST

$31,724 of Countable Assets

and sometimes more

***There is a formula for a married couple, see the following pages to learn more.

Red Flag: Both Members of a Married Couple Need Medicaid

***This situation is complicated. You must meet with an elder law attorney if both members of a couple are trying to apply for Medicaid.

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How Does Medicaid Decide How Much Countable Assets a Married Person Can Have?

There is a formula for determining how much a married couple can have:

1. Start with the amount of Countable Assets in the name of either or both spouses on the day the long-term care spouse enters care.

> *Example*
>
> *Robert enters a nursing home on June 15th. On that date, Robert and Susan have a house, a car, and $100,000 in the bank. The house and the car are not Countable Assets. Medicaid will determine that the total amount of Countable Assets of the couple is $100,000.*

2. Divide Countable Assets by 2 and add $2,000.

> *$100,000 divided by 2 = $50,000*
>
> *Add $2,000 = $52,000*
>
> ***Countable Asset Limit** for Robert & Susan = $52,000*

3. The Countable Asset Limit is the amount of Countable Assets the couple gets to keep and have one of them approved for Medicaid. However, if the couple's Countable Asset Limit is less than $31,724, the couple can still keep $31,724 as a minimum. If the couple's Countable Asset Limit is above $150,620, the couple is still limited to a maximum of $150,620. So, under these rules, the maximum Countable Assets a couple can ever have is $150,620.

> *Robert & Susan's Countable Asset Limit ($52,000) is between $31,724 and $150,620. Because it is between the minimum and maximum, Robert and Susan will be able to keep $52,000 and use Medicaid.*

4. For the nursing home spouse to be eligible for Medicaid, the couple must be down to their Countable Asset Limit on the first day of the month of application.

> *Robert & Susan must be down to $52,000 or less in Countable Assets on the first day of the month to be able to apply for Medicaid. If they are over, they must wait an entire month before applying again!*

Some Notes About Spending Down to the Countable Asset Limit

If you are being told that you need to spend down or split assets to get down to your Countable Asset Limit, a good elder law attorney can help to preserve assets. In some cases, elder law attorneys can use little-known Medicaid rules to the couple's advantage to preserve all of the assets that otherwise would need to be spent down. This can be immensely important to protect those assets for the non-Medicaid spouse's retirement needs.

Red Flag: Annuities

Sometimes advisors will suggest using a "Medicaid Compliant Annuity" in order to spend down and become eligible for Medicaid.

While these can be powerful tools, they are not always necessary and, if used when not needed, can cause unnecessary costs to the family. If someone advises you to buy an annuity, talk to an elder law attorney before purchase. A good elder law attorney should be willing to give you a second opinion about the purchase of an annuity without charge!

Red Flag: Facility Payments

If you prepay the facility for the upcoming month, Medicaid will count the amount you paid as if it were still an asset and you may not be eligible.

If you are paying the facility to get down to your Countable Asset Limit, you should discuss timing of that payment with an elder law attorney prior to making the payment.

Red Flag: Alternative Eligibility for Some Couples

If you have high housing expenses and low income, there may be a different set of rules that allows you to protect more assets than the rules described above. BEFORE you agree to "spend down" or purchase an annuity or other financial product by people claiming to be certified as Medicaid Planners, you should consult with an Elder Law Attorney who specializes in Medicaid eligibility to see whether an "Increased Community Spouse Resource Allowance Appeal" might work for you.

How Much Will Medicaid Make the Person Pay Each Month?

Medicaid is a cost sharing program. Medicaid requires that the couple use some of the monthly income of the Medicaid spouse to help pay for care – similar to a co-pay.

Red Flag: Income Payments

Most people think that Medicaid takes the income of the Medicaid spouse. This is not true. The income of the nursing home spouse still goes into the couple's checking account. But Medicaid may require that the couple pay some of it to the nursing home.

How does Medicaid decide how much the couple has to pay toward care (sometimes called a "share of the cost")?

The starting point is the gross monthly income belonging to the Medicaid spouse must be paid toward the Medicaid spouse's care. Medicaid then deducts some things:

1. Some medical insurance premiums;
2. Personal needs allowance (determine by where the Medicaid spouse is receiving care: $40 for nursing home, $125 for an assisted living facility, and either $914 or $1,646 for at home care); and
3. A spousal allowance (sometimes the non-Medicaid spouse gets to keep some income from the Medicaid spouse if she or he does not meet their monthly needs allowance).

Red Flag: Share of Cost Calculation is not Always Correct

If you apply for Medicaid and are told that the Medicaid spouse must pay a "share of cost" and you would like to make sure that the couple is getting proper credit for all their deductions, you should contact an elder law attorney who can walk you through the numbers and make sure that you are being charged the least amount possible.

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Example Showing How Share of Cost Can Change

Robert is in a nursing home and his wife Susan is living with her daughter. Susan does not have enough income to meet the amount that Medicaid says she needs to live on, which, for a person without any housing cost, is $2,288.75 per month. Medicaid deems Susan to be short $988.75 per month of income, so Medicaid lets Robert give Susan $988.75 per month, and that reduces how much Robert pays in Share of Cost.

Robert (in nursing home)

Robert Medicaid Share of Cost:	
Social Security	$1,540
- Personal Needs Allowance	-$40
- Monthly gift to Susan	-$988.75
= Share of Cost	$511.25

Susan (living with daughter, but not paying rent)

Susan Calculation of Medicaid Allowance:	
Social Security	$1,300
Medicaid Allowance:	-$2,288.75
Robert can give Susan:	$988.75 per month

BUT…WHAT IF?

If Susan's daughter charged her an appropriate rent, Susan's rent expense would change how Medicaid determines Susan's needs, so Robert would be able to give more of his income to Susan, reducing what he pays each month as his Share of Cost. See the next page for an Illustration of this happening.

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Example Showing How Share of Cost Can Change

Robert (in nursing home)

Robert Medicaid Share of Cost:	
Social Security	$1,540
- Personal Needs Allowance	-$40
- Monthly gift to Susan	-$2,415.50
= **Share of Cost**	**$0**

Susan (living with daughter, **AND paying rent**)

Susan Calculation of Medicaid Allowance:	
Social Security	$1,300
Medicaid Allowance:	**-$3,715.50**
Robert can give Susan:	**$2,415.50 per month**

If Susan's daughter charged her an appropriate rent, Susan's rent expense would change how Medicaid determines Susan's needs. Robert would be able to give more of his income to Susan, reducing what he pays each month as his Share of Cost.

Because Susan is now paying rent, Robert's share of cost is reduced (in this example all the way to $0). Susan needs to make sure that she has an appropriate rent contract in place that meets Medicaid requirements.

Red Flag: Make Sure that the Share of Cost is the Correct Amount

If you think it is possible that your loved one may be paying too much as the Share of Cost, you should consult with an Elder Law attorney who can help ensure that the person's rights and the rights of the person's family are protected and that the amount being paid is the correct amount. A good elder law attorney should be able to tell you if the appropriate amount is being paid and whether anything could be changed to reduce the current Share of Cost.

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Medicaid Monthly Income Cap: $2,762 per month (2023 Amount)

If the person going on to Medicaid has more than $2,762 of **gross** income each month, Medicaid requires that person put some of his or her income into a Miller Trust Account each month. The Miller Trust Account must then be used only for the share of cost payment to the nursing home, or for a few other things Medicaid permits (such as the amount that the Medicaid spouse gets to give each month to the non-Medicaid spouse).

Red Flag: Income Test Is on Gross Income

*The income test is based on **gross income**, not the amount deposited into someone's checking account. For example, Social Security regularly withholds $164.90 for Medicare Part B premium. That means that most people need to add $164.90 to the amount that is hitting the checking account to calculate gross social security.*

Miller Trust Steps

1. *Have an elder law attorney create a Miller Trust Agreement for the person going on to Medicaid (this is a legal document that an attorney will draft for you, and you will take to a bank in order to open a Miller Trust Account). Someone needs to be willing to act as trustee (responsible for opening the account and making sure that the appropriate amount gets deposited each month and then paid to the facility).*
2. *Take the completed Miller Trust Agreement to a bank and open a checking account in the name of the Miller Trust.*
3. *Deposit the required amount into the Miller Trust **in the month of application**.*
4. *Submit the Trust Agreement, the bank account paperwork and the deposit slip showing the deposit of the funds to Medicaid along with the Medicaid Application.*
5. *Each month afterward, deposit the appropriate amount into the Miller Trust Account and then use the funds in the Miller Trust Account to pay toward the share of cost at the facility that month.*

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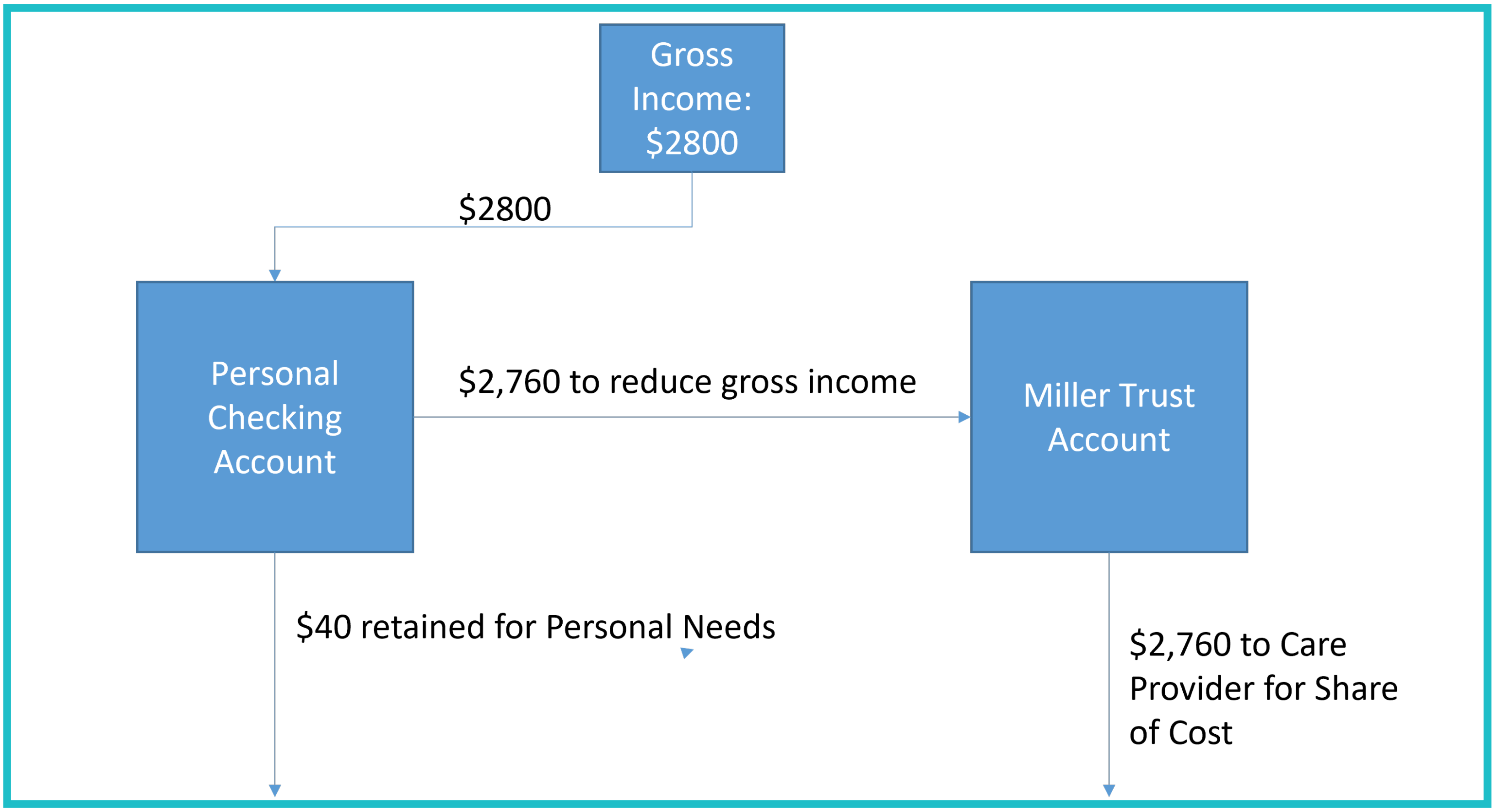
Example of the Miller Trust Process

As an example, this illustration shows what happens to the monthly income of a *single person* who is applying for Medicaid for nursing home care, who receives $2,800 of gross income each month.



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Giving Away Funds = Medicaid Penalty

Some people believe that they can give their money or assets away and still be eligible for Medicaid. This is not true. Medicaid imposes penalties for **any gifts** that have been made within the 5 years prior to the date of the Medicaid application.

Example

Robert is applying for Medicaid and 3 years ago Robert gave $20,000 to his grandson for college, Robert will be denied Medicaid eligibility and will be penalized by Medicaid. The penalty is a waiting period before Robert can reapply. For every $9,943.51 that Robert has given away, he will be assessed a 1 month waiting period. Robert will have to wait 2 months before he is eligible.

Red Flag: Penalty Period for Gifts

The penalty period does NOT start to run until someone proves that he or she is eligible for Medicaid but for the prior gift AND submits a proper Medicaid Application.

The penalty period does NOT run all by itself. DO NOT WAIT to resolve prior gifts.

Red Flag: No Exception for Small Gifts

Medicaid penalizes all gifts. Many people have heard of the annual amount you can give away tax free for IRS purposes. In 2023 this amount is $17,000. This is NOT a Medicaid rule and Medicaid penalizes all gifts, even gifts below $17,000.

If your loved one that is applying for Medicaid, or their spouse, has given away any property, funds, or assets in the last 5 years, then you must talk to an experienced Elder Law Attorney. It is possible to deal with these issues in a good way, but you must not wait, because resolving issues involving gifts takes time.

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Red Flag: Medicaid and your House

Medicaid does NOT take someone's house when they apply for Medicaid.

Many people believe that Medicaid seizes someone's house when they apply for Medicaid. This is NOT TRUE.

HOWEVER,

Medicaid has a process called Estate Recovery. That means that Medicaid can collect from the estate of the person on Medicaid and from the estate of the spouse of a person on Medicaid, to pay Medicaid back for what Medicaid pays for care.

In order to protect their claim, in some circumstances Medicaid can put a kind of legal lock on the house called a lien. A lien is just a way to make sure that the house cannot be sold or given away without Medicaid's claim being paid. Usually, liens are not placed during the life of the person who is on Medicaid if a spouse is living in the property.

It is critical that any family that has a loved one applying for Medicaid talk to a good elder law attorney about estate recovery to plan ahead to protect the assets that can be protected and be prepared for estate recovery when it happens. Medicaid does not have a right to just take any property it wants. The rules that Medicaid must abide by give opportunities for good attorneys to protect as much assets as possible.

These materials are intended for general discussion, informational purposes only, and to provide families with useful ideas and guidance in the areas of Medicaid Eligibility and Planning. The materials do not constitute and should not be treated as legal advice of any kind. Although we have made every effort to ensure the accuracy of these materials, neither Ahrens DeAngeli Law Group LLP, nor lawyers David Wilson or Joshua Reams, assumes any responsibility for any individual's reliance on the information presented. You must consult with an Elder Law Attorney to fully understand how these issues may affect your personal situation. Do not attempt to navigate the Medicaid process without legal advice. Contact us directly if you need legal advice.

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