

Medicaid: The Basics

Presented by

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Medicaid Overview

- Large government health insurance with cooperative federal and state programs (ground rules versus administration)
 - In Michigan, implemented by the Department of Health & Human Services
- Different from Medicare: age or disabled + financial eligibility
- Many different programs under the Medicaid umbrella
- LTC Medicaid program includes:
 - PACE
 - MI Choice Waiver
 - Nursing Home Medicaid

MDHHS MANUALS

- BEM = Bridges Eligibility Manual
- BAM = Bridges Administrative Manual
- BRG = Bridges Reference Glossary



Eligibility

- 1) 65+, disabled by Social Security Administration, or legally blind,
- 2) Establish medical need by meeting one of seven tests in level of need screening
- 3) Income
- 4) Assets



Income Eligibility

- Nursing Home Medicaid: income does not exceed medical expenses
- For MI Choice Waiver and PACE: arbitrary **gross** income cap of \$2,901 per **month**.



Income Planning

- There is no ability to spend down or otherwise change your income
- MI Choice Waiver and PACE benefits covers all care expenses but does NOT cover your room and board, allowing the applicant to retain 100% of their gross monthly income to cover housing expenses.
- Nursing Home Medicaid benefit covers everything your income cannot, and your income contribution is called a patient pay amount



Patient Pay Amount

- Once eligible for Medicaid, an applicant may be required to pay an income obligation toward their nursing home expense
- The PPA for a single person is calculated as total income minus:
 - \$60 per month personal needs allowance
 - Supplemental health insurance premiums
 - \$83 per month guardian/conservator fee
- The PPA for a married person is calculated as above, but subtract a Community Spousal Income Allowance (CSIA) if applicable

Patient Pay Amount: CSIA

- BEM Item 546 Pages 4-6
- The Community Spouse's income is compared to the annual basic allowance increased by their own excess shelter allowance (expenses minus a standard) and the CSIA will be the difference
- The minimum CSIA is \$2,555
- The maximum CSIA is \$3,948



Patient Pay Amount: Offsets

- Pre Existing Medical Exception: the PPA can be reduced by outstanding medical bills which were
 - 1) incurred in the three months prior to application,
 - 2) were from a month where applicant was NOT eligible for Medicaid and a divestment penalty was not imposed, and
 - 3) are reported prior to the first redetermination
- Homestead Maintenance Disregard: the PPA can be reduced to cover homestead expenses for up to 6 months if a physician has certified the individual is likely to return home within 6 months, the applicant is currently Medicaid eligible and residing in a nursing facility, and this disregard has not been previously used
- LTC facilities may deduct the cost of certain medically necessary services not covered by Medicaid or the Medicaid co-payments for covered services

Asset Eligibility

- \$9,660 or less of “countable assets.”
- Met at least one day in month being tested.
- “Countable Assets” = everything a person owns, except “excluded” assets.



Excluded Assets: Homestead

- Home occupied by Community Spouse, or formerly occupied by NH resident “prior to the time the individual left the property”
- Includes all “contiguous” land but not other residences on the property
- Does not need to be in Michigan
- Not held in Trust
- Value cap: \$730,000 in equity value, but no cap if occupied by blind or disabled child, or child under age of 21, or if occupied by Community Spouse



Excluded Assets: Funeral Contracts & Burial

- Burial Fund Exclusion \$1500
- Burial Space Items (BEM Item 400 page 51-54)
- Funeral Contracts
 - Revocable Contract – countable asset
 - Guaranteed Price Contract –
 - \$15,870 limit or life insurance regulation
 - DHS 8A Form or irrevocable assignment
 - Non-Guaranteed items may jeopardize entire contract



Excluded Assets: Life Insurance

- If all life insurance policies owned by the same owner for the same insured life do not exceed \$1,500 in total face value, then the policies are exempt
- Example #1: Policy #1 has \$500 in FV and \$3,000 in CSV while Policy #2 has \$1,000 in FV and \$3,000 in CSV. Both policies are exempt.
- Example #2: Policy #1 has \$1,000 in FV and \$3,000 in CSV while Policy #2 has \$1,000 in FV and \$3,000 in CSV. Both policies are countable. You should cash out policy #1 and spend down prior to application, leaving policy #2 as an exempt asset.



Excluded Assets: Other



- Vehicle (the most valuable of all vehicles owned)
- Personal belongings and household items
- Some business and employment assets
- Pets
- Livestock which you intend to eat



Valuing Countable Assets: Joint Assets

- Joint with spouse = all counts
- Joint with non-spouse
 - For bank accounts = all counts unless demonstrate contribution
 - Real estate, stocks and mutual funds = valued in proportion to ownership



Valuing Countable Assets: Real Property

- The value of the person's share is counted unless the co-owner lives in the property and the co-owners would have to move if the property was sold and there is no other readily available housing
- Unsalable: listed for 90+ days prior and no "reasonable" offer has been received
- Two knowledgeable experts indicate a lower marketable value



Valuing Countable Assets: Annuity

- If the owner can make a withdraw, the value is the amount that can be withdrawn, reduced by any withdrawal penalty but not reduced for taxes owing (*consider with qualified funds*)
- Annuity in pay status or pension that pays monthly benefit with no right of withdrawal, is income, not a countable asset

Valuing Countable Assets: Trusts

- Revocable trust established by applicant or spouse = 100% available
- Irrevocable trust established by applicant or spouse = available to the maximum extent distributions can be made to applicant or spouse*
- If created by third party for benefit of applicant or spouse, available to extent applicant or spouse can enforce demand for distribution

*Exception: SNT are trusts that allow the property in the trust to be used to pay for supplemental needs of a beneficiary who is receiving SSI and/or Medicaid, but which assets do not count as resources in determining eligibility.



Spousal Protections



Spousal Protections

In addition to the assets that a Medicaid applicant can keep and qualify for Medicaid assistance, if the applicant is married, their spouse can keep additional assets, called the “protected spousal amount.”

The applicant must not only file a Medicaid application to establish Medicaid eligibility, but they must also file an asset declaration to calculate the PSA.

When both spouses are in LTC, there is no protected spousal amount.



Protected Spousal Amount

The PSA is calculated by taking the amount of “countable assets” owned by the couple on the “snapshot date” and dividing in half

- The minimum protected spousal amount is: **\$31,584.00**
- The maximum protected spousal amount is **\$157,920.00**
- Unless a higher amount is established by court order

Examples:

- Couple has \$30,000 on snapshot date. PSA is \$31,584 and eligibility is \$41,244.
- Couple has \$140,000 on snapshot date. PSA is \$70,000 and eligibility is \$79,660.
- Couple has \$350,000 on snapshot date. PSA is \$157,920 and eligibility is \$167,580.

Protected Spousal Amount: Snapshot Date

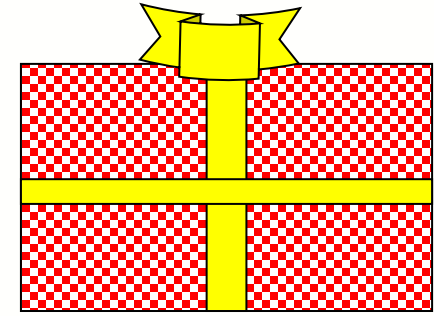
The snapshot date is the first day of 30+ days of LTC for the applicant

- LTC is NOT inclusive of in-home care, an AFC Home, or ALF but is inclusive of a hospital stay if followed by rehabilitation then a nursing home admission and is inclusive of approval for MI Choice Waiver or PACE services
- Not earlier than September 30, 1989



Divestment





Divestment

Giving assets away or selling assets for less than full value during applicable 5 year “look-back period” that is not subject to an exception

- or purchasing or modifying a non-confirming annuity
- or a non-compliant care contract

Divestment is NOT paying off debt, improving homestead, buying a vehicle, furniture, or personal belongings

Divestment penalties only apply to NH Medicaid, Mi Choice Waiver, Adult Home Health and PACE

Divestment: Annuity

- The purchase or modification of an annuity is a divestment unless it is made:
 - Irrevocable and issued by commercial insurance company
 - With equal monthly payments to annuitant within their life expectancy (no balloon)
 - State is primary remainder beneficiary up to value of Medicaid services provided, unless there is a spouse or minor or disabled child, in which case the state is secondary beneficiary
- If the purchase or modification is made by the applicant with their own qualified funds, there is flexibility in the first two bullet points
- If the purchase or modification is made by the spouse, the third bullet point is not a requirement

Divestment: Caregiver Contract

- Relatives who provide care are presumed to do so for love and affection
- Compensation to relatives for care shall be treated as divestment unless a contract exists and meets the following requirements:
 - Contract exist prior to performance and payment of services
 - Signatures notarized
 - Client not in a NH, AFC or on Waiver
 - Contract must include type, duration and frequency of the service
 - If the contract is signed by an agent the agent must not be the provider
 - Physician must certify in writing all services were required to prevent the transfer of a client to a residential care or nursing facility

Divestment: Exceptions

- For Another Purpose: transfer was done at a time when the need for LTC was not anticipated and it was done solely for a purpose other than to qualify for Medicaid.
- Transfers to a spouse
- Transfers to a blind or disabled child
- Transfers to a trust solely for the benefit of a disabled person
- Transfer of a homestead to a caregiver child

NOTE: Transfer of an exempt asset can still be a divestment



Divestment: Penalty

- The penalty for divestment is a period of ineligibility.
- To calculate, combine the value of all divestments during the look-back period and divide by applicable divestment divisor for number of months and days of ineligibility
- Penalty period begins to run when applicant is eligible for Medicaid, but for divestment penalty
- Example: Client gifted \$25,000 to child within lookback period before applying for Medicaid with \$9,000 in countable assets in August. Penalty calculation is $\$25,000 / \$11,842 = 2.11$ or 2 months 3 days. Client is eligible for Medicaid beginning August 1, but will not receive LTC benefits until October 4.

Divestment: Undue Hardship Exception

- Rules for an Undue Hardship appear in BEM Item 401, page 10
 - Requires a doctor (M.D. or D.O.) to verify:
 - Necessary medical care is not being provided; and
 - The person needs treatment for a medical or psychiatric emergency
- A facility may apply for undue hardship on behalf of resident



Estate Recovery

- The State of Michigan claim against the property of a Medicaid Beneficiary after they die to recover the costs paid by Medicaid during their life
- Only applies to persons over the age of 55 on LTC Medicaid such as:
 - Nursing Home Medicaid
 - MI Choice Waiver Services
 - Home Help
 - Home Health
 - PACE
- 2007 Michigan law provides favorable exceptions:
 - Only applies to “probate assets”
 - Exclude 50% of average value of home in the county (case law issues)
 - Spouse or disabled child residing in home delays implementation
 - Caregiver relative residing in home delays implementation
- No Hardship Exemption (case law June 2017)



Estate Recovery: Planning

- Avoid probate assets by Ladybird Deed, beneficiary designations, and transfer on death assignments/designations for vehicles.
- Transfer home to disabled or caregiver children where possible
- Disallow the claim when filed



Medicaid Planning

- Advising clients about Medicaid eligibility rules including how to “spend down” assets to become eligible while preserving those assets for spouse or other beneficiaries
- Important thresholds: who is the client? If not directed by client, on what authority are directions made?



Medicaid Planning: Convert Countable to Exempt

- Common:
 - Pay down on debt
 - Purchase prepaid funeral contract(s) and/or burial space items
 - Purchase an exempt vehicle
 - Purchase additional personal property items for quality of life
 - Make improvements on the homestead
- Example: Client has \$31,000 of countable assets and admits to a nursing home. Client advised to prepay a funeral contract for \$7,000, trade in their vehicle and spend an additional \$12,000 on a replacement vehicle and spend \$3,500 on new windows for their homestead. Client can apply for Medicaid benefits to begin this month with \$8,500 in countable assets and allowable asset transfers.



Medicaid Planning: Control the Snapshot Date

In situations where you have:

- A married couple,
- With no established snapshot date, and,
- The countable assets are less than 2x the max PSA,

You can increase the PSA by increasing the countable assets to be owned on the snapshot date. The most popular way to do this by far is to put a homestead into a trust (making an exempt asset countable) prior to the anticipated snapshot date and then removing it before the application date (making it again an exempt asset).

Example: married client has \$70,000 of countable assets and a homestead worth \$100,000. Without planning their PSA would be \$35,000. They have no snapshot date but expect a nursing home admission soon. Attorney creates and funds a revocable trust for the CS with the homestead. Medicaid policy will count the full value of the homestead on the snapshot date increasing the couple's countable assets to \$170,000 and making their PSA \$85,000. Before applying, even the day after the snapshot date, the homestead can be removed from the trust and put in the CS's ownership to make it an exempt asset. This alone reduces the couple's countable assets to \$70,000 making them well under their eligibility allowance without any spend down.



Medicaid Planning: Court Orders

- BEMs allow for a court order to provide for a protected spousal amount above what policy's formula would provide (no limit) though the court order must also address income support
- BEMs allow for a court order to establish an amount of income diverted to needs of community spouse
 - There is significant case law on the use of a Protective Order for this purpose



Medicaid Planning: Annuitize Assets

- An annuity can convert liquid assets to a stream of income, effectively removing a countable asset
- If income is payable to the CS, it will not affect income eligibility but can reduce the CSIA
- The terms of an annuity must comply with BEM requirements to avoid a divestment determination
- Often used with qualified funds to stagger taxes, though still tax considerations to be weighed

Medicaid Planning: Solely For Benefit Trust

- A SBO Trust can hold liquid or non liquid assets as unavailable and thus, not counted towards eligibility
- Qualified funds cannot be held in a SBO Trust without full surrender (tax consequences)
- Transfers to a SBO Trust for the CS are expressly allowed in policy
- In August 2014, DHS changed their interpretation of the policy to count assets in a SBO Trust against eligibility, but the Michigan Supreme Court decided in 2019 that this was incorrect and SBO Trusts have been successful planning tools since

Medicaid Planning: Persons with Disabilities

- Divestment exceptions allow the transfer of assets to a legally blind or disabled child of the applicant or to a SBO Trust for a disabled person (not necessarily a relative of the applicant)
- A person with a disability receiving assets or becoming the beneficiary of a SBO Trust should have proper counsel on the impacts of that gift on their own benefits, if any



Medicaid Planning: Strategic Divestment

- Divest and wait out the 5 year look back period
 - Need to hold enough assets available to cover cost of care during the 5 year period without benefits
 - This is considered pre-planning as it is done 5 years from the need
- Divest some portion (roughly ½) of the assets and use the remaining amount to pay through the penalty period (“1/2 a loaf planning”)
 - This is considered immediate planning as it is done when Medicaid benefits will immediately be used, so access to benefit is an important factor to decide if appropriate
 - To keep eligibility while still using assets to cover the penalty period, the assets need to be converted to income for that term



