# AN OVERVIEW OF MEDICAID AND LONG-TERM CARE PLANNING

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# MEDICAID AND LONG-TERM CARE PLANNING

## I. INTRODUCTION TO MEDICAID AND HEALTH CARE PLANNING

A. Statistics

A report published by the U.S. Centers for Medicare & Medicaid Services, entitled "National Health Expenditure Projections 2019-2028" states, in part, as follows:

1. National health spending is projected to grow at an average annual rate of 5.4 percent for 2019-2028 and to reach $6.2 trillion by 2028.

2. Because national health expenditures are projected to grow 1.1 percentage points faster than gross domestic product per year on average over 2019-2028, the health share of the economy is projected to rise from 17.7 percent in 2018 to 19.7 percent in 2028.

3. Price growth for medical goods and services (as measured by the personal health care deflator) is projected to accelerate, averaging 2.4 percent per year for 2019-2028, partly reflecting faster expected growth in health sector wages.

4. Among major payers, Medicare is expected to experience the fastest spending growth (7.6 percent per year over 2019-2028), largely as a result of having the highest projected enrollment growth.

5 The insured share of the population is expected to fall from 90.6 percent in 2018 to 89.4 percent by 2028.

Additionally, the Michigan Department of Health & Human Services estimates the average monthly cost for private long-term care in Michigan to be approximately $12,216.30 per month for 2026. These statistics demonstrate the harsh reality of the ruinous cost of long-term nursing home care for an incapacitated adult.

B. The Medicaid Program

I. Medicaid is a health care program jointly controlled and funded by Federal and State governments.

2. In Michigan, Medicaid is administered by the Michigan Department of Health & Human Services (MDHHS).

C. Difference Between Medicaid and Medicare

I. Medicare is wholly administered and paid for at the Federal level and is under the umbrella of Social Security.

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2. Virtually all Americans over 65 years of age who receive Social Security retirement benefits also have Medicare coverage. Medicare Part A covers hospital services and Medicare Part B covers outpatient services that are deemed medically necessary, including doctor services.

3. Medicare is not based on "need."

4. Medicaid is restricted to those who can show that their assets and income are below certain limits.

5. Although Medicare pays for hospital and doctor services, it does not pay for long-term nursing home care.

6. Medicaid pays for long-term nursing home care.

D. Basic Medicaid Eligibility

1. There are several categories of people who qualify for Medicaid, including those individuals who are:

a. Disabled;

b. Blind;

c. Receiving supplemental security income **("SSI");** and

d. Over 65 years of age.

2. To be eligible for Medicaid, the patient must require nursing home-level care pursuant to the State's Level of Care (LOC) determination. Medicaid does not pay for stays in an assisted living home, nor does it pay for someone who is housebound and merely receiving home healthcare, if they do not first meet this LOC determination.

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E. Asset Limit

1. A single Medicaid applicant cannot own more than $9,950.00 (for 2026) of countable assets in his or her name.

2. Some assets are not countable.

3. If the Medicaid applicant has a spouse at home (the "community spouse"), the community spouse can keep a portion of the couple's countable assets (the "Protected Spousal Amount," see below).

F. Income Criteria

1. In Michigan, if the individual's monthly income exceeds their nursing home care cost then Medicaid will be denied. If income is less, all of the

income must be used to pay nursing home expenses, except for certain potential allowances, which may include: personal needs of $60.00 per month, health insurance premiums (including vision and dental), community spouse income allowance, and guardianship/conservatorship expenses of $83.00 per month.

## II. NON-COUNTABLE ASSETS

A. Definition of Non-Countable Assets

1. The value of certain assets are not counted against an applicant's assets limit in determining a person's eligibility for Medicaid. These are called "non-countable" or "excluded" assets.

B. List of Non-Countable Assets

1. Homestead:

a. A homestead is where a person lives or lived there at some time in the past and includes the home, all adjoining land and any buildings on the land. The exempt value is limited to $752,000.00 for 2026.

b. A homestead in which a person formerly lived is non-countable if the person intends to return to the homestead or is receiving care in a long-term care facility, hospital or hospice.

c. If a person sells his or her homestead, cash from that sale will be non-countable for twelve (12) months if: (i) there is a written agreement to purchase another homestead; and (ii) the cash is placed in a separate account.

2. Life Estates: a true-life estate in any person's homestead is non-countable, as they do not own the property and normally cannot sell it. If a person holds an enhanced life estate with the right to sell, the property is non-countable up to the exempt value of $752,000.00.

3. Vehicles: one vehicle, with a reasonable value, is non-countable.

4. Household and personal goods: these are non-countable. This includes furniture, clothing, jewelry, etc.

5. Funeral related assets: this includes an irrevocable funeral contract of up to $15,870.00 (as of June 1, 2025) and segregated burial funds up to $1,500.00.

6. Life insurance: the cash surrender value of life insurance policies is

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non-countable on the total cash surrender value of all policies of

$1,500.00 or less. Term life insurance policies with no face value are non-countable.

7. Income producing real property: Up to $6,000.00 in equity in real property that provides rental income is non-countable if the total proceeds, minus actual operating expenses, are at least 6% of the person's equity in the property.

8. Annuities: certain types of annuities may be deemed non-countable assets. An actuarially sound, irrevocable annuity, which names the state of Michigan as the remainder beneficiary is becoming a viable planning option for married couples. The annuity must be commercially issued by an agency licensed in the United States.

C. Trusts

1. Irrevocable Trusts: any part of the Trust principal or income in an Irrevocable Trust that is not available for the benefit of applicant or his or her spouse is non-countable, subject to the divestment rules, explained below.

2. Trusts created by third parties: if the Trust was not established by the Medicaid applicant or his or her spouse and the Medicaid applicant cannot direct the use of the Trust assets for his or her needs (including direct distributions or discretionary distributions under any ascertainable support standard), the amount in the Trust shall be non-countable.

3. Revocable Living Trust: any assets in a Revocable Living Trust are countable.

4. Special Needs Trust: can be established to provide resources for a person who is under age 65 and is disabled. There are very specific requirements such as it must be irrevocable and there are specific rules restricting the use of the trust assets.

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## III. TRANSFERRING ASSETS - THE DIVESTMENT RULES

A. Definition of Divestment: divestment is the transfer of a resource for less than fair market value for the purpose of qualifying for or remaining eligible for Medicaid within a certain time period.

B. Application of Divestment Rules: the divestment rules apply to a person applying for Medicaid coverage and apply to a transfer by an applicant's legal guardian, conservator or agent.

C. Consequences of Divestment: the divestment rules provide that a transferred asset shall be considered a countable asset for a Medicaid applicant. The divestment divisor is one month for every $12,216.30 divested.

D. Time for Divestment:

1. The divestment "look-back" period is 60 months (5 years) for the following:

   a. Payments from a Revocable Trust to a person who is not the Medicaid applicant or his/her spouse;

   b. Assets placed in an Irrevocable Trust which cannot be used for the Medicaid applicant; and

   c. All other non-exempt transfers of countable assets to a non-spouse for less than fair market value.

2. The divestment penalty period runs from the date of application / eligibility.

E. Transfers That Are Not Divestments

1. Homestead transfers to a spouse, a blind or disabled child, a child under 21 years of age, or a child age 21 years of age or older who lived in the homestead for at least 2 years immediately before the parent's admission to a nursing home.

2. Transfers to a spouse.

3. Converting a countable asset to a non-countable asset of equal value.

4. Payments of an individual's personal debts and expenses.

F. Criminal Penalties for Divestments

1. The Kennedy-Kassebaum Health Insurance Portability and Accountability Act of 1996 ("HIPAA") makes it unlawful to provide false information on an application or to knowingly and willingly dispose of assets in order to become eligible for Medicaid.

2. It is also unlawful for professionals (e.g., attorneys, financial advisors) to assist a client in unlawfully becoming eligible for Medicaid.

3. Penalties include incarceration and fines of up to $25,000.00 (and might also have an impact on professional licensing requirements).

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## IV. RULES RELATING TO SPOUSES

A. Special Rules for Married Couples When One Spouse Is in a Nursing Home and the Other Spouse Is Not

1. For purposes of determining asset eligibility, all assets held under either or both names, or jointly with anyone else, will be added together to comprise an initial assessment amount.

2. The initial assessment amount is then divided by two (2) to produce two (2) spousal shares.

B. Community Spouse Protected Spousal Amount

1. The protected spousal share includes the home and other exempt assets, plus a certain share of property known as the "protective spousal amount".

2. The protective spousal amount (adjusted annually) is the greater of:

a. The "Floor Amount": $32,532.00 (for 2026); or

b. The "Ceiling Amount": One-half (1/2) of the spouses' assets up to a maximum allowance of $162,660.00 (for 2026).

C. Examples

1. Mr. and Mrs. Smith have $32,532.00 in countable assets. Mr. Smith enters a nursing home. Mrs. Smith is able to retain all $32,532.00 (i.e., all assets up to the "Floor Amount" of $32,532.00).

2. Mr. and Mrs. Smith have $150,000.00 in countable assets. Mr. Smith enters a nursing home. Mrs. Smith is able to retain $75,000.00 in assets (i.e. one-half of countable assets between the "Floor" and "Ceiling" amounts).

3. Mr. and Mrs. Smith have $400,000.00 in countable assets. Mrs. Smith enters a nursing home. Mr. Smith is able to retain $162,660.00 (the "Ceiling Amount").

## V. MEDICAID PLANNING ALTERNATIVES

A. Pre-Planning

1. Durable Power of Attorney - an effective planning tool. This allows an individual to act on behalf of a Medicaid applicant to implement planning techniques prior to the admission to a nursing home.

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2. The Durable Power of Attorney should contain specific powers that permit the appointed agent to effectuate Medicaid Planning Techniques.

B. Owning and Converting Exempt Property

1. If the applicant owns exempt property, it should remain exempt property.
Example: If an applicant owns a residence, the residence should not be sold. If the residence is sold or if the residence is transferred to a trust, the proceeds (or the actual residence is owned by a trust) become a countable asset.

2. An applicant should consider converting countable assets into non-countable assets.
Example: A potential nursing home resident owns a home with a fair market value of $150,000.00 with a mortgage of $50,000.00. The same applicant owns a certificate of deposit worth $30,000.00. The applicant may transfer the $30,000.00 to the pay down on the mortgage, thereby converting a countable asset (the CD) into a non-countable asset (equity value of a primary residence).

C. Purchasing Exempt Assets

1. The Medicaid applicant may purchase a motor vehicle, household furnishings, a burial space, and/or a pre-paid irrevocable funeral contract in the amount of $15,870.00 (as of June 1, 2025).

2. You may use countable assets to purchase a non-countable asset.

D. Divesting Assets

1. Divestment, simply stated, means the transfer of resources for less than fair market value. Divestment was an effective Medicaid planning tool. This technique has been severely restricted by the Deficit Reduction Act of 2005. The look-back period has been lengthened to 60 months (5 years) for all transfers. The look-back period is the period oftime within which Medicaid is permitted to review financial transactions of the applicant to determine whether any such transactions trigger a disqualification. The look-back period begins with the date of application for Medicaid and goes back in time. Transactions that are further back in time are outside of the look-back period and do not trigger Medicaid disqualification.
Since the maximum divestment penalty is 60 months (5 years), it may be prudent to begin giving away assets to start the clock running.

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Example: Mr. Smith owns $500,000.00 in countable assets. Mr. Smith anticipates that he will enter a nursing home at some future date. It may be prudent for Mr. Smith to transfer all of his assets in anticipation of needing Medicaid, and applying for Medicaid 5 or more years after. Other options may also be available to Mr. Smith.

2. Divestments are considered as of the Medicaid application date.

E. Establishing an Irrevocable Trust

1. Please note that the implementation of an Irrevocable Trust in most cases would be considered divestment.

2. If the trust is established far enough in advance, the assets in the trust may not be countable assets.

F. Long-Term Care Insurance

1. Long-term care insurance is the best available option to provide coverage for a potential nursing home stay. Government assistance (e.g., Medicaid) cannot and should not be relied upon to cover a nursing home stay.

2. Our offices recommend, in writing, long-term care insurance for each estate planning client. A financial advisor can assist in deciding if and when the policy should be implemented, and the amount of coverage, based on a thorough financial plan and the client's specific needs.

3. Our offices recommend that the long-term care policy have the following features:

a. Inflation rider; and

b. Cover the "tail" end or duration of the nursing home stay (e.g., month three (3) of the stay through the end of the stay), <u>not</u> for only a certain period of time or dollar amount.

This is a brief overview of Medicaid and Long-Term Care Planning. It should only be relied upon to familiarize you with the concepts in this complicated area of law and regulations. If you have any questions, we encourage you to contact a Morello Law Group, P.C. attorney.

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