TEXAS MEDICAID ELIGIBILITY: INCOME AND ASSETS

TEXAS MEDICAID ELIGIBILITY: WHAT YOU CAN KEEP

Texas is one of the unlucky 13 states with a Medicaid eligibility income cap with no allowance for medical expenses. In 2018 it is $2,250/month. The average Texas nursing home cost is about $6,000/month. For almost everyone in between $2,250 and the cost of nursing home care, even selling every last thing does not help for long.

And those with an income of $2,251/month will never meet the eligibility cap. They may qualify medically. They may need Medicaid for nursing home or home health care. But they will not qualify for it financially.

Since “income” is defined more broadly than for federal income tax purposes, many people who think they qualify based on income may not. The rules can be complicated.

Fortunately, in 1993 the federal Omnibus Budget and Reconciliation Act allowed people to transfer part or all of their income to a **Qualified Income Trust**.

A **Qualified Income Trust** pays a personal needs allowance for someone receiving Medicaid benefits ($60/month in Texas). It pays for unreimbursed medical expenses such as dentistry and health insurance premiums. It pays up to $3,090 per month to maintain the spouse who remains in the community, and then pays a co-pay to the nursing home. There is rarely enough to pay the nursing home in full. Medicaid, funded by taxes collected by Texas and the federal government, pays the rest.

Medicaid is a profoundly discriminatory and sometimes arbitrary system. Someone who receives Medicaid-paid nursing and other care at home, providing their own room and board, has a $2,250 per month personal needs allowance. Someone receiving Medicaid in a nursing home, only $60. The $60/month personal needs allowance forces people to choose among ordinary items such as cell phone service or cable television and forego birthday gifts, magazine subscriptions and modest hobby materials such as knitting needles and yarn or a pack of playing cards.

Medicaid also varies remarkably from state to state. Texas, where 78% of people qualify for Medicaid, is one of only seven states which does not supplement the federal Medicaid benefit.

Financial eligibility for Medicaid is determined by examining both income and assets. Some assets, including your home, are not counted. In addition, although Texas is a community property state, the concept of community property is ignored in determining financial eligibility for Medicaid.

Medicaid long term care benefits are actually a loan. While many states put a lien on the home when you apply for Medicaid, in Texas your home is yours as long as you have an intent to return. Your spouse, minor or disabled or, in some circumstances, other children can inherit your home without fear of the Medicaid Estate Recovery Program.

ASSETS WHICH ARE NOT COUNTED IN DETERMINING FINANCIAL ELIGIBILITY for a Medicaid- or Medicaid-and-Medicare eligible bed in a Medicaid-certified facility.

Personal residence. The residence must generally be in the same state in which the person applies for Medicaid. Texas Medicaid policy manuals and Texas Medicaid practice is that the *intent* to return home is sufficient. Some other states require proof of the *likelihood* of returning home.

Transferring your home may result in a penalty period during which you will not be eligible for Medicaid unless you transfer it to:

- Your spouse;
- A child under 21;
- A child of any age who is blind or disabled;
- A trust for a disabled person under 65 (in some circumstances the Medicaid applicant);
- A sibling who already has an equity interest in the home and has lived there for at least one year before you apply; or
- An adult child who lived with you for at least two years before you applied and took care of you, postponing your application for Medicaid.

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One vehicle to transport the applicant; a second if made handicapped-accessible. Sometimes a third is allowed if needed to transport the spouse to work.

Livestock which is part of a trade or business or exclusively for home consumption, including two horses.

Property used in the applicant's trade or business if essential to self-support, previously used, and expected to be used in the future *IF* the applicant "materially participates" in the business (property including real property, tools, safety equipment, etc.)

Real property essential to self-support such as rental property, leased farm property and income-producing mineral rights producing up to $6,000 per year with a net annual return of at least 6%.

Personal property worth up to $60,000.

Burial plots and prepaid funeral expenses up to $1,500.

Wedding rings.

Up to $2,000 in other resources if one spouse is medically eligible and applies or if both spouses are medically eligible and only one applies. **Up to $3,000** in other resources if both spouses are medically eligible and both apply.

A protected resource amount ("PRA") of one-half of a couples' joint assets equal to at least $23,844 but at most $119,220 if only one spouse is medically eligible and applies.

Inaccessible assets such as oil in the ground which cannot be leased or sold; a Medicaid-qualified deferred annuity; a limited partnership interest. A membership in a limited liability company or shares in a Sub-chapter S corporation which the Medicaid applicant and his family cannot sell because of sale restrictions they cannot control even acting as a group; and, at present, an annuity on the life of the other spouse if the term of the annuity meaningfully exceeds the life expectancy shown in Medicaid's life expectancy tables; assets in a special needs trust; and assets in an irrevocable life insurance trust.

MEDICAID DEFINITIONS

"Income" is any property (including gifts) or service (including food and shelter as "in-kind support and maintenance") which the Medicaid applicant can apply, either directly or by sale or conversion, to meet basic needs for food and shelter. "In kind support and maintenance" is not considered for Community Based Assistance, Community Living and Support Services, Home and Community Based Services, Medically Dependent Children's Programs, etc. There is a separate calculation for rental income.

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"Resources" are cash, other liquid assets or any real or personal property or other non-liquid assets that a person, a person’s spouse or parent could convert to cash to be used for his or her support or maintenance. Support and maintenance assistance not counted as income is also not considered a resource. However, an undivided interest in real property is counted if there is no legal restriction on selling it without the co-owner’s consent.

"Gifts" are different under Medicaid than under federal Gift Tax rules. There is a transfer penalty for any transfer of assets for less than fair market value.

Assets which produce income (such as oil and gas leases) are not counted as assets in determining eligibility: the income which they produce is.