

Qualifying for Medicaid in Nevada

A guide for Nevada's Married Seniors

Qualifying for Medicaid benefits which pay for residential skilled nursing care in Nevada is a highly bureaucratic process that can be a confusion and frustrating. For all practical purposes, Nevada Medicaid only pays for care in a skilled nursing facility and some other very limited settings for care in your residence and group home. This "Reader's Digest" explanation focuses primarily on skilled nursing (nursing home) care.

Let's start with the general requirements and guidelines (there are many "exceptions" or "interpretations" that apply) before an application can be filed:

- Age 65 or older (unless the person is deemed disabled);
- Have been in a hospital or medical facility for 30 consecutive days or longer
- The current facility the person is placed in is a "Medicaid Qualified" facility or hospital;

Next, a review of the income and assets will need to be completed. Those requirements for 2020 are:

- The gross income of the applicant cannot exceed \$2,349.00. If the gross income exceeds this amount, a "Qualified Income Trust" (also known as a Medicaid Miller Trust) can be created to divert the income away from the applicant into a trust, from which the trustee then pays the income to the care facility resulting in "income qualification" for the applicant.
- The amount of assets of the applicant ("institutional spouse") cannot exceed \$2,000.00 after deduction of exempt assets.

So, the institutional spouse may keep up to \$2,000.00 in savings for themselves. Exempt assets include a residential dwelling (if the box on the application is checked indicating an intention to return home even if this is not logically possible), one car of any value, a prepaid funeral plan or funds set aside for burial up to \$1,500.00, and any family business. Every other asset except exempt assets are considered “countable assets”.

Now let’s look at some of the specific elements of the above qualifications.

Income

“Income” is defined as recurring payments from Social Security, pensions, and other sources that are considered taxable under Federal Income Tax regulations. Monthly distributions from savings or other assets which have already been taxed are not considered income, they are distributions of an asset.

The well spouse (at-home spouse) is allowed a minimum of \$2,113.75 of the marital income for his or her support to remain in the community. If this amount of income is insufficient to meet monthly needs, the well spouse can be awarded an amount up to \$3,216.00 of marital income by a court.

Also, if the institutionalized spouse’s income and the at-home spouse’s income added together **does not exceed \$4,698.00 per month**, the institutional spouse will qualify from an income perspective because the income can be divided into two (2) equal shares for eligibility calculations.

Assets

“Countable assets” to be considered include all of the assets owned by both spouses regardless of whether those assets are

community property or separate property and regardless of whose name the asset is in. Eliminating the value of family residence (up to a maximum equity value of \$500,000.00) provides some assistance. Any other real property, vehicles, bank accounts, retirement accounts, etc. owned are considered “countable” at the time of application unless it is currently listed for sale. If Medicaid qualification is obtained, and then when any piece of real property is sold, the proceeds may need to be “spent down” before Medicaid qualification can be reestablished.

One car of any value is considered exempt. A prepaid funeral plan up to \$1,500.00 in value is also considered exempt. Medicaid does not count personal clothing, furniture and the furnishings of a residence, nor do they count personal jewelry unless it is considered an investment. Coin collections are a countable asset.

Given the above, how can any married person qualify for Medicaid? There is an answer, it is called a “Spousal Resource Allocation”.

Spousal Resource Allocation

Medicaid allows a “well spouse” to apply to a court for a “Spousal Resource Allocation”. This process provides that a spouse of an institutionalized person is entitled to protect up to \$128,640.00 of assets in addition to the assets considered to be exempt. Any asset owned by either spouse individually or jointly can be claimed. The court order that is required to take advantage of the protection also provides the well spouse will no longer be liable for the health care costs of the institutional spouse, a very important additional protection.

Assets over the protected amount of \$128,640.00 can be used to pay down debt, make deferred maintenance or repairs to

the home or vehicle, assistive technology to enhance quality of life of the well spouse and/or institutional spouse, or otherwise optimize exempt assets.

After the court order is obtained (usually in a guardianship proceeding) the assets selected are transferred into the name of the well spouse. This process protects the well spouse and enables the institutional spouse to become or maintain financial qualification for Medicaid.

A Spousal Resource Allocation is a “one-time” opportunity and must be done so as to take full advantage of asset and income allocations. It cannot be amended or done again. This requires careful “Medicaid Planning” before court assistance is requested.

Not all circumstances will necessitate a “spousal resource allocation”. However, it is best to have a spousal income and resource allocation completed by an attorney to verify how your income and assets will be categorized (exempt and non-exempt/countable and not countable) to avoid any pitfalls or periods of ineligibility.

The 5-year Lookback Rule

When an application is processed, Medicaid will “lookback” for 5 years into the applicant and spouse’s financial status to see if any “disqualifying transfers” have been made. A disqualifying transfer includes any asset transferred for less than its fair market value and includes all gifts. The lost value of such a transfer will be used to delay qualification of an application.

Transfers of assets for reasons other than to qualify for Medicaid will not result in a penalty. However, the person applying for benefits must prove that the transfer or gift was not made for the purpose of obtaining Medicaid eligibility. The burden

of proof rests upon the person applying.

Transfer of the Family Home

Transfers of a family home are subject to special Medicaid rules. Transfers of homes before application will no longer be permitted without the transfer of assets penalty, except as provided below.

Home transfers are allowed when the transfer is made to:

- A blind or disabled child of any age; or
- A sibling with an equity interest who lived in the home for one year prior to the patient's admission to a medical or nursing facility; or
- A child who resided in the home for two years prior to the patient's admission and who provided care to the patient, which permitted him or her to reside at home.
- A spouse at home who receives the title to the family home from the institutionalized spouse is not allowed to transfer the asset to anyone else except a disabled or dependent child. The rule provides that if the spouse at home transfers property received from the institutionalized spouse, the penalty for the transfer of assets will be applied to the person in the nursing home. The spouse at home should not give away any property.

Medicaid Estate Recovery Program

The Medicaid program has a right to file a claim against the estate of any Medicaid recipient who was 55 years of age or older at the time Medicaid was received. The Medicaid Program will not be able to enforce such a claim during the life of a surviving spouse, a dependent child or a disabled child of any age. There is a hardship exemption which will allow the Medicaid Program to waive recovery against the estate in some cases. Currently, the Medicaid Program cannot recover its cost of care of an

institutionalized spouse from the estate of the at-home spouse who survives an institutionalized spouse that received Medicaid benefits. Remember, Medicaid can only recover from an institutionalized married person's estate after that person's spouse is also deceased. Hence, Medicaid cannot and will not seek to force a surviving spouse from his or her home because the other spouse received Medicaid benefits. The estate recovery is not made upon the at-home spouse's share of the estate until both are deceased. Medicaid may file a lien on the deceased Medicaid beneficiary's share, if any, of the family residence.

Tax Deduction for Care Costs

Nursing home costs are tax deductible if the principal reason the individual resides in the nursing home is because the person is "chronically ill" and services are necessary for diagnostic, preventative, therapeutic, treating, mitigating, rehabilitative, maintenance and personal care services.

Citizen Alert

Annuities generally are treated as resources by Medicaid except in limited circumstances. You should not buy an annuity because someone tells you it will protect your assets without first obtaining competent legal advice. The annuity rules for Medicaid are complex and the usefulness of annuities depends on other financial aspects of the marital estate.

Likewise, irrevocable trusts rarely protect resources for purposed of Medicaid eligibility. You should thoroughly investigate any professional advice you receive to do this and ask for references for successful outcomes before proceeding because these are very difficult to overcome once implemented.

The best course of action when faced with health challenges

that may result in care in a long term setting is to obtain competent legal advice as soon as the potentially disabling condition is diagnosed. This will allow you to optimize options, enhance quality of life, and maintain placement in the least restrictive environment for as long as possible. Persons trying to pre-plan before there is a disabling condition should obtain legal advice, consider long term care insurance, and create a comprehensive plan that will allow more successful aging.

Application Processing Time

It can take several weeks to several months to receive a Medicaid decision after you have submitted an application. If the decision is not favorable, it could result in substantial debt being owed to the facility, resulting in a significant reduction of the savings the at-home spouse thought they could depend on their own future needs in the community. For these reasons, it is crucial that you obtain competent and accurate advice before filing an application for benefits.

When Does Medicaid Start Paying?

In some circumstances, when an application is filed with Medicaid, the payment status becomes “Medicaid Pending” and no further private payments other than any income that may be attributable as “patient liability” (co-pay) need be made by either spouse until the application is processed as “accepted”.

In some circumstances, if an applicant would have qualified before an application is made, Medicaid may pay an institution for up to three months prior to the date of the qualifying application.

If a “Qualified Income Trust” is required for the applicant to meet the income requirement, the application will not generate coverage until the Trust is executed and funded.

Disclaimer

The information contained herein is not a substitute for legal advice in a specific situation. The rules set forth herein are subject to revision. This brochure is for informational purposes only and does not create an attorney-client relationship.