



*Helping Older Persons with Legal &  
Long-Term Care Problems*

# **Medicaid for Nursing Facility Residents**

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## ***1. Who Is Eligible?***

You must be a US citizen, lawful permanent resident whose date of entry is prior to August 22, 1996 or qualified alien and a resident of Ohio. In addition, you must be blind, disabled or 65 or older, and in need of nursing facility services. The financial requirements for eligibility include a gross monthly income at or below \$2,382 (2021) and countable resources (assets) not to exceed \$2,000. You, or your authorized representative, may apply for Medicaid at the County Department of Job & Family Services in the county where the institutionalized individual lives. Medicaid eligibility may go back three months from the application date. [\[1\]](#)

## ***2. What If My Gross Monthly Income Is Over \$2,382?***

You can still qualify for Medicaid by transferring some of your monthly income into a QIT (Qualified Income Trust) so that your remaining income is below \$2,382. Call Pro Seniors Legal Helpline for more information on QITs. [\[2\]](#)

## ***3. What Are Countable Income And Resources?***

**Countable income** is your gross monthly income minus [\[3\]](#)

- (a) \$20 (if your income is unearned); and
- (b) Supplemental Security Income (SSI) and other needs-based income.

**Countable resources** are cash, checking and savings accounts, CDs, stocks, bonds, cars if not otherwise exempt and real property not otherwise exempt, certain property transferred or put in a trust; and any other property which you could sell to pay for your care and which, in general, is legally available for your use. [\[4\]](#)

#### ***4. What Resources Are Excluded?***

Resources not counted in reaching the \$2,000 limit are

- (a) your home as long as you intend to return to it, or your spouse or dependent relative continues to live there, or its sale would cause undue hardship for a co-owner of the property due to loss of housing;
- (b) one automobile is excluded, regardless of value, if it is used for transportation for you or a member of your household;
- (c) the cash value of life insurance policies for one person if the face values total \$1,500 or less (if the face value exceeds \$1,500, then the total cash value is counted);
- (d) an irrevocable pre-need burial contract and burial plots for you and your immediate family members;
- (e) certain trusts; and,
- (f) any resource which is not legally available to you or that you cannot liquidate due to your disability. [\[5\]](#)

#### ***5. Is The Community Spouse's Income Used To Pay For The Applicant Spouse's Care?***

No. The community spouse's income is not used to pay for the Medicaid eligible spouse's nursing facility care. [\[6\]](#)

#### ***6. Can The Community Spouse Keep Any Of The Institutionalized Spouse's Income To Meet Monthly Expenses?***

Yes, if the community spouse's income and expenses meet certain criteria. Once the institutionalized spouse becomes eligible, the community spouse may receive a Monthly Income Allowance (MIA). The MIA is calculated by first adding the Minimum Monthly Maintenance Need Allowance (MMMNA), \$2,155, to the excess shelter allowance (ESA). The ESA is the amount the community spouse's shelter costs, such as mortgage/rent, home insurance and property taxes, exceed \$646.50.

The community spouse's gross monthly income is then subtracted from that total. The remainder is the amount the community spouse may keep from the institutionalized spouse's monthly income, i.e., the MIA. Exceptional circumstances, if proven at a hearing, will allow the community spouse to keep more money, up to a federal maximum of \$3,259.50 per month, unless a court orders a higher amount to be paid to support the community spouse. [\[7\]](#)

## ***7. Will The Institutionalized Spouse Pay Any Income To The Nursing Facility Each Month?***

Probably. This depends partly on whether the community spouse will receive a MIA as described above. To determine the institutionalized spouse's patient liability, begin with the individual's gross monthly income. Next, subtract a Personal Needs Allowance of \$50. Then subtract the MIA for the community spouse.

Now deduct past medical expenses, monthly ongoing medical expenses not covered by Medicaid and health insurance premiums. The remainder is the patient liability and paid monthly to the nursing facility. Patient liability is prorated for the month of admission and the month of discharge. [\[8\]](#)

## ***8. May The Community Spouse Keep Any Of The Resources?***

Yes. The amount the community spouse may keep depends on the total value of all available resources owned by both spouses as of the date of the Medicaid resource assessment. The Medicaid resource assessment is completed based upon the resources owned at the beginning of the first continuous period of institutionalization, which is defined as an admission to a medical institution (or receipt of PASSPORT or other community-based waiver services) for a period of at least thirty consecutive days. [\[9\]](#)

Generally, the community spouse may keep 50% of the total resources. However, that 50% cannot be less than \$26,076, nor can it exceed \$130,380. The institutionalized spouse's half of the resources may be spent for the benefit of the institutionalized spouse, for the legal and/or financial obligations of either spouse, or for the purchase and maintenance of excluded resources, but no amount can be given away for less than fair market value. If 50% of the combined resources are more than the maximum of \$130,380, the community spouse keeps the maximum amount, which is \$130,380. When 50% of the combined resources are less than \$26,076, the community spouse keeps a minimum amount, which is \$26,076.

## ***9. What Happens If I Give My Property Away?***

Consult an attorney experienced in Medicaid planning before transferring assets for less than fair market value.

Medicaid looks back 60 months from the time you enter a nursing facility, apply and are otherwise eligible for Medicaid, to determine if you or your spouse gave away, disposed of or otherwise transferred resources without receiving equal value in return and with the intent to give away resources in order to qualify for Medicaid. Certain transfers are permissible. In general, you may transfer property to your spouse or to your child who is disabled or under age 21.

There are also special rules for transferring your home. You may transfer your home to your spouse or to your child who is who is disabled or under age 21.

You may also transfer the home to sibling who has an equity interest in your home and who has lived in your home during the year before you entered the nursing facility. You may also give your home to your adult non-disabled child if she lived in your home with you, took care of you for two years before you entered the nursing facility and you needed nursing facility care for those two years.

If either spouse gives away property, and the gift does not fit an exception, Medicaid will presume that the gift was made to qualify for Medicaid and will not pay for your nursing facility care, hospital care or hospice care for a certain period of time, i.e., a penalty period. To avoid the penalty, you must prove with clear and convincing evidence that you made the gift either for fair value or you did not intend the gift to affect Medicaid. The penalty period is determined by dividing the value of the gift by the average monthly Ohio private pay rate for nursing facility services, currently \$6,905, and begins when you are otherwise eligible for Medicaid. For example, a gift of \$69,050 means a penalty period of 10 months. This penalty period also applies to PASSPORT services.

If you are denied Medicaid because of improper transfer of resources, the only exception is to provide evidence that ineligibility would cause an undue hardship. [\[10\]](#)

### ***10. What Happens If My Money Is In A Trust?***

Assets and income in most trusts will still be counted. However, there are some exceptions depending on when, why and by whom the trust is created. Some trusts that are allowed include:

- (a) special needs trusts;
- (b) pooled trusts;
- (c) qualifying income trusts (QITs); and
- (d) supplemental services trusts.

Trust rules are complicated and can have serious Medicaid consequences. You should consult an attorney experienced in Medicaid before setting up a trust. [\[11\]](#)

### ***11. How Do I Apply For Medicaid Or Appeal A Medicaid Decision?***

You or your authorized representative may apply in the county where the institutionalized individual lives. Financial eligibility should be decided within 45 days, and a notice of approval or denial must be mailed to you. Medicaid eligibility may go back three months from the month the application is filed. You may appeal any Medicaid decision that affects the amount, length or scope of coverage.

Appeals are requested by writing or calling or faxing the Ohio Department of Job and Family Services within 90 days after the Notice of Action is mailed. If benefits are being terminated, a hearing must be requested within 15 days to continue benefits during the hearing process. Administrative appeal and court review are also available. [\[12\]](#)

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Pro Seniors' Legal Helpline for Older Ohioans provides free legal information and advice by toll-free telephone to all residents of Ohio age 60 or older. If you have a concern that cannot be resolved over the phone, then the hotline will try to match you with an attorney who will handle your problem at a fee you can afford.

In southwest Ohio, Pro Seniors' staff attorneys and long-term care ombudsmen handle matters that private attorneys do not, such as nursing facility, adult care facility, home care, Medicare, Medicaid, Social Security, protective services, insurance and landlord/tenant problems.

This pamphlet provides general information and not legal advice. The law is complex and changes frequently. Before you apply this information to a particular situation, call Pro Seniors' free Legal Helpline or consult an attorney in elder law.

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**Endnotes:** [*Click the endnote number "[1]" to return to the text*]

[\[1\] Ohio Administrative Code §5160:1-2-13](#) Presumptive Eligibility

[O.A.C. §5160:1-3-02.3](#) Medicaid: coverage for individuals receiving supplemental security income (SSI) benefits

[O.A.C. §5160:1-3-02](#) Medicaid: criteria for age, blindness, or disability

[2] [O.A.C. §5160:1-6-03.2](#) Medicaid: use of qualified income trusts (QITs)

[3] [O.A.C. §5160:1-3-03.3](#) Medicaid: deeming of income

[4] [O.A.C. §5160:1-3-05.1](#) Medicaid: resource requirement

[5] [O.A.C. §5160:1-3-05.14](#) Medicaid: resource exclusion

[O.A.C. §5160:1-2-01](#) Medicaid: administrative agency responsibilities;  
[O.A.C. §5160:1-2-01\(F\)\(5\)\(b\)\(ii\)](#): “Determine eligibility in accordance with Chapter 5160:1-2 of the Administrative Code, but without considering eligibility factors for which verification cannot be obtained or means of self-support cannot be accessed because of the individual's physical or mental impairment. Use the most reliable information available without delaying the determination of eligibility.”

[6] [O.A.C. §5160:1-6.04](#) Medicaid: treatment of income and resources for an institutionalized spouse with a spouse in the community

[7] [O.A.C. §5160:1-6-01.1](#) Medicaid: definitions relating to eligibility for long-term care services

[O.A.C. §5101:1-6-7-02](#) State hearings: standards for revising community spouse income and resource allowances at a state hearing [Exceptional circumstances hearing]

[8] [O.A.C. §5160:1-6-07](#) Medicaid: post-eligibility treatment of income for individuals in medical institutions

[9] [O.A.C. §5160:1-6-04](#) Medicaid: treatment of income and resources for an institutionalized spouse with a spouse in the community

[O.A.C. §5160:1-6-01.1\(A\)\(4\)](#) Medicaid: definitions relating to eligibility for long-term care services [Continuous period of institutionalization]

[O.A.C. §5160:1-6-01.1\(A\)\(10\)](#) Medicaid: definitions relating to eligibility for long-term care services [First continuous period of institutionalization]

[10] [O.A.C. §5160:1-6-06](#) Medicaid: transfer of assets;

[Medicaid Eligibility Procedure Letter No. 146](#), September 1, 2019 (The Average Private Pay Rate (APPR) referenced in Ohio Administrative Code rule 5160:1-6-06.5 is updated every two years by the Scripps Gerontology Center at Miami University for the Ohio Department of Aging. The new rate is effective September 1, 2019).

[11] [O.A.C. §5160:1-6-06.2](#) Medicaid: treatment of transfers involving a trust

[12] [O.A.C. §5160:1-2](#) Medicaid Application Processing

[O.A.C. Chapter 5101:6](#) Hearings