



## Questions & Answers on Medical Assistance for Nursing Home Care In Maryland

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### Question 1: What is Medical Assistance?

Medical Assistance is a government program that pays for medical services, including nursing home care. The rules of the program are made by the Federal Government and the Maryland Department of Health and Mental Hygiene. You apply for Medical Assistance at the local Department of Social Services in the county in which you live.

Medical Assistance coverage for nursing home care has both financial and medical eligibility rules. The medical eligibility rule is that you must need health care services, above the level of room and board, which are available only in a nursing facility. The financial eligibility rules are discussed in the questions below. This leaflet does not answer all the possible questions about Medical Assistance for nursing home care. If you need to apply for Medical Assistance, it may help to talk to a lawyer or a legal services program for advice. Each person's situation is different and the result depends on the exact facts.

### Will the Nursing Home or the State take my House?

No. For some people, owning a house means they are not eligible. In that case, they may have to sell the house to pay for nursing home care, but the State does not take the house; see Question 5. In some cases, Medical Assistance pays for the care, but the State may put a lien on the house; see Question 7. If you cannot pay the nursing home, and you are not eligible for Medical Assistance, the nursing home could sue you for an unpaid bill. If the nursing home got a Court judgment for the unpaid bill, then they could put a lien on your house and could make you sell it.

### Will We Have to Use My Spouse's Income to Pay for my Nursing Home Care?

No. Medical Assistance does not count your spouse's income. If you are eligible, then your spouse's income is not affected at all. Your spouse may even be allowed an allowance from your income for his or her living expenses. See Question 3.

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## **Will My Spouse and I Have to Spend All Our Savings?**

No. The Medical Assistance rules provide for a share of the assets you own to be set aside for your spouse. The amount of the assets that are protected is set by the Federal Law. See Question 4.

## **What If I Disagree With the Decision by Medical Assistance?**

You have the right to file an appeal from any decision by Medical Assistance. You can appeal decisions about your financial or medical eligibility, about the amount of the allowance from your income set aside for your spouse, or the amount of your assets set aside for your spouse. If you disagree with any decision or action by Medical Assistance, you can see a lawyer or a legal services program for help with an appeal.

## **Question 2: What are the financial eligibility rules for medical assistance for nursing home care?**

Your income and your countable resources must be within limits set by law. Income includes such things as Social Security, pensions, VA benefits, interest, and dividends. Gross income from all sources is counted. Resources include such things as real estate, bank accounts, some life insurance policies, and stocks and bonds. Resources can include anything that has value that you could convert to cash.

### **A. Income**

To qualify for Medical Assistance, your month income minus certain deductions must be less than the basic monthly rate the nursing home charges. First, Medical Assistance totals all of the income you receive in your name. Then, they subtract the following amounts from your total income:

- \$68 a month for personal expenses such as toiletries, clothing, and newspapers
- The monthly cost of health insurance premiums you pay
- An allowance to help support your spouse, if you have one. See Question 3.
- An allowance to help support any dependent family members living with your spouse.
- A monthly allowance to maintain your home if you live alone and have the intention and ability to return home within 6 months.
- Part of the cost of other health-related items such as eyeglasses, dentures, and hearing aids may sometimes also be deducted.

If your income is less than the cost of your nursing home care after these deductions, then you are income eligible for Medical Assistance. When you are eligible for Medical Assistance nursing home coverage, your income will first be used to pay the items listed above if they apply. You must pay any remaining income to the nursing home each month. Medical Assistance pays the difference between your available income and the nursing home bill.

If you transfer your right to income to another person, or if you refuse to accept income you have a right to, you may be disqualified from Medical Assistance. See Question 6.

### **B. Resources.**

You are not eligible if your countable resources (assets or property) is worth more than \$2,500. Some resources are "exempt" and are not counted for eligibility. Exempt resources are described in Question 5. Medical Assistance uses the amount of resources available on the first day of the month you apply for. If the total resources is over \$2,500, you are not eligible for the entire month. However, if the amount of resources exceeds \$2,500 by less than the full cost of the next month's care, you can prepay the amount of \$2,500 before the end of the month and become eligible on the day the prepayment runs out. For example, if you had \$2,800 on the 29th of January and the nursing home costs \$100 a day, by prepaying \$300 for three days of February, you would be eligible as of February 4th. If you still had the \$2,800 on February 1st, you would be ineligible for all of February.

If you are married, there are special rules about resources. These rules, which are explained in Question 4, allow a spouse at home to keep more resources.

If you or your spouse give away resources or sell them for less than the fair market value, you may not be eligible for Medical Assistance. See Question 6.

If you have joint assets with another person, such as a joint bank account or jointly-owned stocks or bonds, Medical Assistance counts the full value as belonging to you unless you can prove the other person is the real owner of some or all of the asset. Because many people use joint bank accounts to allow someone else to handle their finances for them, this rule is very important. The other person should never mix their own money into that account. Also, if that person withdraws any of the money, you may be disqualified from Medical Assistance. See Question 6. A better way to allow someone else to handle your finances for you is to have a durable power of attorney.

### **Question 3: What Income Can My Spouse Keep If I Go Into a Nursing Home?**

Your spouse's income is not counted by Medical Assistance and it does not have to be used for the cost of your nursing home care if you are eligible for Medical Assistance. If your spouse's income is less than \$1,750 per month<sup>1</sup>, then your spouse can have an allowance from your income. After the \$68 personal needs deduction and the deduction for health insurance premiums from your income, your spouse can keep as much of your monthly income as needed to bring his or her income up to \$1,750 per month.

If your spouse's housing costs (rent or mortgage, property taxes, homeowner's insurance, and utilities) are more than \$525 per month, the allowance can be increased up to \$2,610. In calculating the housing costs, the actual costs for rent, mortgage, taxes, and insurance are used. For utilities, however, a standard figure of \$224 or \$371 per month, depending on whether heat is included in the rent, is used. If your spouse's necessary living expenses are more than the maximum of \$2,739, the allowance from your income may be increased by a State Administrative Law Judge. Your spouse would have to show significant financial duress to get the allowance increased. Some examples are:

- Mr. Jones is in a nursing home and his income is \$600 per month. Mrs. Jones lives in their house and her income is \$2,100 per month. Only Mr. Jones' own income is used for his Medical Assistance eligibility and Mrs. Jones is free to use her income for her own expenses.
- Mr. Jones is in a nursing home and his income is \$2,100 per month. Mrs. Jones lives in their home and her income is \$600 per month. Only Mr. Jones' income is used to determine his Medical Assistance eligibility and Mrs. Jones gets an allowance of \$1,150 per month to bring her total income to \$1,750. Mrs. Jones' mortgage and other housing expenses are \$525 per month, so her allowance is increased by another \$525 per month, raising her total income to \$2,275.

### **Question 4: What Resources Can My Spouse Keep If I Go Into a Nursing Home?**

The following rules protect some resources for the spouse who still lives in the community:

- The spouse at home can keep all resources that are "exempt" under the rules described in Question 5.
- All resources owned by either spouse are added together to determine eligibility. It does not matter which spouse owns the resources. This includes resources owned jointly with someone else unless you can prove the other person actually owns the resources. For example, joint bank accounts owned with relatives are counted in full. The couple's total resources as of the date you go into a nursing home are added up. The spouse at home is allowed to keep the larger of these two amounts:

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<sup>1</sup> The minimum monthly income allowance will be \$1,821.25 on July 1, 2009.

- a.. Up to \$21,912 of the couple's combined, non-exempt resources; or
- b. One-half of the couple's non-exempt resources, up to a maximum of \$109,560.00.

On the date you apply for Medical Assistance, the combined resources are added up again. The "spousal share" from (a) or (b) is subtracted. If the remaining resources are less than the basic \$2,500 resource limit, you are eligible for Medical Assistance. Medical Assistance uses the amount of resources available on the first day of the month you apply for. If the total remaining resources, minus the "spousal share" is over \$2,500 at all, you are not eligible for the entire month.

The rules allow your spouse to keep the "spousal share" but it is not guaranteed. If you are over the resource limit, you must pay for the nursing home care for that month yourself even if your spouse then cannot keep the full amount allowed. The best way to insure that your spouse can keep the largest possible amount of your combined resources is to ask for the "spousal share" to be calculated as soon as you go into a nursing home, even if you will not be eligible for a long time. You can have that calculation done any time after you enter a nursing home by paying a \$50 fee to the State Medical Assistance Eligibility Office. Although the calculation would be free when you filed a Medical Assistance application, that might be too late to insure that your spouse can keep the largest possible amount of the resources. The telephone number for the State Eligibility Office is 410-767-1463 (Toll Free 1-800-492-5231, extension 1463).

If your combined income is not enough to give your spouse at home as much income as the rules in Question 3 allow, your spouse may be allowed to keep more of the resources than the rules in this section allow. Your spouse can keep more than the amount of resources allowed only if a Court or a State Administrative Law Judge orders Medical Assistance to let your spouse keep more of the resources.

If you or your spouse have questions or problems about the amount of resources your spouse is allowed to keep, you can talk to a lawyer or a legal services program.

### **Question 5: What Resources Are Exempt (Not Counted) For Medical Assistance Eligibility?**

- **What are Exempt Resources?**

Some resources are "exempt" and are not counted toward the resource limit described in Question 4. Exempt resources can include your home, household goods and personal effects, all vehicles, life insurance, most burial plots and prepaid burial plans, and certain other property and items used for self-support. Some of these are described in more detail below.

- **When is a Home Exempt?**

Your home could be a house (including all surrounding land), a condominium, a co-op apartment, or a house trailer. It is your "home" if it is where you lived before going into a nursing home.

Your home is exempt, whatever its value, if your spouse or certain dependent or disabled relatives live in the home.

Your home will be exempt (as long as the tax assessed value is under \$500,000 for a single person) no matter who lives in it if you say on your Medical Assistance application that you intend to return to it – even if it is unlikely that you will be able to return. See Question 7 concerning when the State will place a lien on a house.

Usually, Medical Assistance will not allow you to use any of your income except rental income from the home to pay taxes, insurance, and maintenance costs for the home. However, you may be able to have up to \$350 per month of your income set aside for up to six months to maintain your home while you are in a nursing home. A physician must certify that you probably can return home.

If you intend to return home, the proceeds from the sale of an exempt home are also exempt to the extent they are used to purchase a new home within 3 months of the sale.

If your deed says that you have a “life estate”, the rules about your house are different. See Question 8 for more information.

If your home is occupied by your spouse, your minor children, or certain other dependent relatives, you may be eligible whether or not you intend to return home.

- **When is Life Insurance Exempt?**

Term life insurance does not affect Medical Assistance eligibility. Whole life or other forms of insurance with cash value counts if the combined face value of all your policies is over \$1,500. Life insurance is exempt if the total face value (the amount payable at death) of your policies is \$1,500 or less. For couples, each spouse may have \$1,500 of life insurance. If the face value of your life insurance is more than \$1,500, the entire cash surrender value counts toward the resource limit. (The “cash surrender value” is amount the insurance company will pay if the policy is cancelled.) If you irrevocably assign your life insurance policies to a representative to fund your funeral or burial and the representative agrees in writing to use the money from the policies solely for your funeral or burial and this is permanent and can't be changed, then the policies are exempt. The life insurance benefits cannot exceed \$10,000.

- **When are Burial Funds and Burial Spaces Exempt?**

A burial fund of \$1,500 for an individual (and an additional \$1,500 for a spouse) is exempt if it is designated for burial expenses. The test is whether it was \$1,500 or less when it was set aside. It does not matter if the balance goes over \$1,500 because of interest paid. If you also have life insurance or an “irrevocable burial trust”, the \$1,500 burial fund may not be exempt and you should get legal advice.

There is no limit on the amount that you can put into a prepaid, irrevocable funeral trust. Maryland funeral directors have a form approved by the State for setting up an exempt funeral trust. An irrevocable funeral trust is usually a better choice than the limited “burial fund” (\$1,500 limit) described above.

Burial spaces for a Medical Assistance recipient and for immediate family members are exempt no matter how much they are worth. “Burial spaces” include plots, crypts, mausoleums, markers, caskets, vaults, and grave opening and closing costs if these items have been paid in full.

- **When are Household Goods and Personal Effects Exempt?**

If you intend to return home from the nursing home, household goods necessary for the maintenance, use, and occupancy of your home are exempt regardless of value. Personal effects, except some non-essential personal effects such as furs and jewelry, are also exempt.

- **What if I Have Assets That I Cannot Sell or Liquidate?**

If you have assets that you cannot liquidate, sell, or raise money on, you may be able to exclude those assets. The law counts assets that are available; if there is a reason why you truly cannot use the asset or its value to pay for your care and your needs, then the asset may not be countable at all. You would have to prove that you could not use the asset and why. This is an issue that you may need legal help with and you may need to file an appeal.

## **Question 6: Can I Transfer Property or Income to Other People?**

Transferring, giving away, or selling resources for less than the fair market value is called a “disposal of resources.” There is a penalty for disposal of resources if you apply for Medical Assistance within 36 months of such transfer.

For every \$6,800 disposed of, you will be disqualified for one month of Medical Assistance coverage of your nursing home care. The penalty period begins when you would “otherwise qualify” for Medicaid. If you give away property or money on more than one occasion, the second penalty does not begin to run until the end of the first one. The length of the disqualification depends on the value of the resources transferred.

Refusing to accept income you are entitled to receive, or transferring the right to receive it to someone else also is a disposal and can result in severe penalties. NOTE: Inheritances are lump sum income and are prorated as income over the months remaining in the certification period. If a nursing home resident’s spouse dies and the resident is not an heir under the spouse’s Will, the resident must file a claim for the elective share of the spouse’s estate. Failure to file a claim for the elective share is treated as a disposal of an asset. NOTE: There is a time limit for filing a claim for the elective share. The deceased spouse’s estate may have to be prorated. Call the Register of Wills Office or our office for information.

The same rules apply to transfers by you, your spouse, or someone acting for either of you. This means that if you or your spouse give away resources, it may result in a period of ineligibility for you. There are special rules for creating “trusts” and giving away property may have tax consequences, so you should never give away property or money without first getting expert legal advice. If the transfer was made into a trust fund, the penalty is applicable if you apply within 60 months of the transfer. NOTE: It is very important to contact us before transferring any assets to someone else for less than the full market value if you may need Medical Assistance coverage to pay for nursing home care within three to five years.

### **A. Rule for Transfer to a Spouse.**

There is no Medical Assistance penalty if you transfer property to your spouse. However, the resources of both spouses are considered for Medical Assistance eligibility. Therefore, any countable resource you transferred to your spouse still would be countable. See Question 4. Also, if you transfer a resource to your spouse and he or she then gives it away, you may be disqualified. See the discussion above about penalties for disposal of resources.

### **B. Rules for Transfers to People other than your Spouse.**

There is no penalty if you sell your property for a fair price. However, the proceeds from the sale would be a countable resource.

There is no penalty if you transfer your property to your child who is blind or disabled.

Your home may be transferred without a penalty only to:

- Your spouse;
- Your unmarried child under 21;
- Your blind or disabled child;
- Your child who has lived in the home and provided care to you for at least 2 years before you went into a nursing home if that care permitted you to stay at home instead of going into a nursing home sooner; or
- Your brother or sister who has an equity interest in the home and has lived there at least the year before you went into a nursing home.

### **C. Transfer was Not for Medical Assistance or Penalty Would Cause Hardship.**

If you are disqualified from Medical Assistance because of a disposal of a resource, the penalty could be cancelled if you could prove that the transfer was not made to qualify for Medical Assistance. This

is very difficult to show and you may need legal assistance for this problem. The penalty also can be cancelled if you can prove that it would cause undue hardship. To prove undue hardship, you would have to prove that there is no way you can get the sources back and that there is no way for you to pay for necessary medical care without Medical Assistance. You should never assume that it is safe to give away resources because of these two exceptions.

### **Question 7: Will Medical Assistance Place a Lien on My Real Property or My Estate?**

If your home is not exempt, you are not eligible for Medical Assistance, so there would not be a lien. If your house was excluded as a countable resource because you said you intended to return home, Medical Assistance places a lien on it unless it is medically reasonable that you will return home. The State may not place a lien on your home if any of the following persons live in it:

- Your spouse;
- Your unmarried child who is under 21;
- Your blind or disabled child; or
- Your brother or sister who has an equity interest in the home and has lived there at least one year immediately before you entered a nursing home.

When the property is sold or if you die, the State will usually attempt to collect on its lien. However, the State cannot collect on a lien imposed on your home if:

- You have a surviving spouse, a surviving child who is unmarried and under 21; or a child who is blind or disabled;
- Your sibling has lived in your home for at least one year immediately before you went into a nursing home and still lives in your home; or
- Your child lived in the home for at least two years immediately before you went into a nursing home, has continued to reside there since then, and provided you care that let you stay in your home instead of a nursing home.

When you die, if you do not have a surviving spouse or a surviving child who is unmarried and under 21 or blind or disabled, the State can recover from your estate what Medical Assistance paid for your care after you turned 55.

If you are survived by a spouse, a child who is unmarried and under 21, or a child who is blind or disabled, the State cannot recover from your estate until your surviving spouse dies and you no longer have a surviving child who is unmarried and under 21, who is blind, or who is disabled. The State has no claim against the estate of the surviving spouse or child.

### **Question 8: What If I Own My House By a Life Estate Deed?**

A "life estate" deed means that although you own the house during your lifetime, it automatically belongs to a new owner when you die. Some people use life estate deeds because they do not want their house to go through probate when they die. Some people believe their heirs may avoid taxes on the house if they use a life estate deed instead of leaving the house to the heir in a Will. Whether or not life estate deeds have value for estate planning, they can be a problem for Medical Assistance eligibility.

Life estate deeds come in two forms: with the power to sell the house within your life or without the power to sell it.

Creating a life estate without the power to sell the house is a disposal of a resource and may disqualify you from Medical Assistance. See Question 6, about the penalties for disposal of resources. If a life estate deed without the power to sell was created long enough ago that there is no penalty, the house is a countable

resource, but your life estate without the power to sell has a market value of \$0, so it would not disqualify you from Medical Assistance.

Creating a life estate deed with the power to sell the house is not a disposal, because you still have the power to sell the house at any time without anyone else's permission. However, the house could not be an exempt resource based only on your saying you intend to return home, because the State cannot put a lien on a house owned this way. The market value of the house would be counted as an available resource. If the house would be exempt for other reasons, such as because your spouse or a dependent relative lives in it, then it still would be exempt. See Question 5.

## **Conclusion**

The Medical Assistance eligibility rules are complicated. Before taking steps that may affect your or your spouse's Medical Assistance eligibility, you may need to contact us. If you have a lot of resources, you can talk to a lawyer who specializes in estate planning. If your resources after your spouse's share is subtracted will pay for only a few months of nursing home care, you should talk to us several months before you apply for Medical Assistance. Please remember that this is general information and it does not cover all possible cases. It is intended as a guide, and not as complete answers about Medical Assistance.

NOTE: This information is about Maryland law. The rules of the Medicaid programs in other states may be entirely different. Do not rely on this information if you are in any other state. This is general information and is not legal advice.