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# Medicaid Myths

**Dolores M. Coulter**

8341 Office Park Dr. Ste C, Grand Blanc, MI 48439

Phone: (810) 603-0801, Fax: (810) 603-0804

Email: [coulterdm@sbcglobal.net](mailto:coulterdm@sbcglobal.net)

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These myths apply to situations where a person is applying for Medicaid to pay for long term care services, including nursing home care and Home and Community Based Services (also called the "Waiver Program" or the "MI Choice Program").

## **Medicare will cover most of the cost for nursing home care.**

Medicare only pays for nursing home care if the resident needs skilled nursing care or skilled rehab services (physical therapy, occupational therapy, or speech-language therapy) and only if the nursing home stay was preceded by a three (3) day hospital stay. Medicare will pay for a maximum of 100 days of nursing home care. However, Medicare will pay the full cost of nursing home care for only the first twenty (20) days. On day twenty-one (21), the resident is required to pay a co-pay of \$161 [for 2016] per day for the remainder of the 100 days. Medicare coverage will terminate before the end of the 100 day period if the nursing home determines that the resident no longer requires skilled nursing care or skilled rehab services.

## **I have to be destitute in order to get Medicaid.**

Certain assets, such as the equity in your home (up to a limit of \$552,000.00 for a single person and no limit for a married person) are not countable (exempt). Other non-countable assets are one car (regardless of value), certain prepaid funeral arrangements, and household furniture and furnishings. The countable asset limit for a single person is \$2,000. However, if the Medicaid applicant is married, the Medicaid rules protect a larger share of the assets for the community spouse. See the next section.

## **If I am married I can put all of my assets in my spouse's name and then I will be eligible for Medicaid.**

When a married person applies for Medicaid the Department of Health and Human Services (DHHS) looks at all the assets held by either spouse individually, jointly with each other, or jointly with a third party. DHHS then determines which assets are countable and which are not countable (exempt). The spouse in the nursing home is allowed to keep \$2,000 in countable assets and the community spouse is allowed to keep one half of the total countable assets, with a minimum allowance of \$23,844 and a maximum of \$119,220 [2016]. However the Medicaid rules allow for some asset protection strategies that in some cases can protect most of the couple's assets.

## **I will have to use my income to pay my spouse's nursing home bill.**

The community spouse is allowed to keep all of his/her income. If the community spouse's income is low enough, the community spouse may also be able to keep a portion of the nursing home spouse's income.

## **If I give property away I have to wait 5 years to get Medicaid.**

The five-year period refers to the "lookback" period. The Medicaid application asks for information on all transfers of assets within the previous 5 years. If an asset was transferred for less than fair market value (such as a gift or a sale for less than the fair market value) and the transfer does not fall within one of the exceptions, it will be considered a divestment. DHS will add up all the divestments in the lookback period and calculate a divestment penalty. The penalty is the number of months that the person will be disqualified from Medicaid. The penalty period begins to run on the date the person is otherwise eligible for Medicaid (usually the application date). The lookback period was increased from 3 years to 5 years as of February 8, 2006.

Certain types of gifts are not considered divestments, such as gifts to a spouse, to a disabled child, or to a child under age 21.

## **I can give away \$14,000.00 each year without causing a problem for Medicaid eligibility.**

This confuses the IRS gift tax rules with the Medicaid divestment rules. Under the federal gift tax rules there is an annual exclusion from the gift tax for gifts under \$14,000 to an individual [2016]. If your total gifts during the year to a recipient exceed the \$14,000 annual exclusion amount you will have to report those gifts to the IRS. However you are not liable for gift taxes until the total amount of your “excess gifts” (the amount in excess of the annual exclusion amount) over your lifetime reaches \$5,450,000 [2016]. The Medicaid rule on gifts is completely different and treats any gift within the lookback period as a divestment, unless it falls within one of the exceptions.

## **If I am over asset for Medicaid I can only “spend down” by paying medical or nursing home bills.**

You can spend down your assets in order to become eligible for Medicaid by paying other bills such as credit card bills, car loans, home equity loans or mortgages, or purchasing exempt assets such as prepaid funeral arrangements. These expenditures are not considered divestments.

## **The person I named in my power of attorney can transfer assets out of my name if I ever need to apply for Medicaid.**

Not every power of attorney document includes a gifting clause that gives the power of attorney the authority to make transfers in order to qualify for Medicaid. Also keep in mind that transferring an asset for less than fair market value, whether by the individual or by his/her power of attorney, is considered divestment and will incur a penalty unless it falls within one of the exceptions.

## **I can protect my assets by buying a “Medicaid friendly” annuity.**

The Medicaid rules on annuities are very complex. If the annuity has a cash surrender value, that value is considered as a countable asset and thus is not protected. The purchase of an annuity will be considered as a divestment unless it meets certain

requirements. If the annuity is in payment status (paying a periodic benefit and no longer able to be cashed in) and meets certain other requirements it is counted as income and not as an asset.

## **I can put my assets in a trust and they won't be counted for Medicaid.**

The Medicaid rules on trusts are very complex. If the assets are in a revocable (or "living") trust they are considered as available and countable. Transferring assets to an irrevocable trust, except for certain types of special needs trusts for the benefit of a person with a disability, can negatively affect Medicaid eligibility. The transfer may be considered a divestment or in some cases the assets in the trust may be considered as available and countable.

## **If I have money in a joint bank account only half of it will be counted for Medicaid.**

The Medicaid rules presume that all of the money in a joint account is owned by and is available to the Medicaid applicant. If the applicant can show that the money in the account was actually contributed by a third party, that amount will not be counted.

## **Medicaid will take my home if I have to go into a nursing home.**

Medicaid does not place liens on property when a person becomes eligible for Medicaid. However Michigan enacted an estate recovery law in September, 2007, that allows the state to file a claim against the estate of a deceased Medicaid recipient to recover the amount of its Medicaid payments for long term care. The 2007 law required the state to develop an estate recovery plan and have the plan approved by the federal Medicaid agency before it could be implemented. There were numerous delays in the approval process, but the state plan was finally approved and became effective July 1, 2011. The 2007 law limits estate recovery to the Medicaid recipient's probate estate, which means that property that passes outside of the probate process (such as through beneficiary designations, a trust, or joint ownership) will not be subject to estate recovery.