

# Medicaid and Long-Term Care Costs

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**Outlines the legal and tax ramifications, as well as impacts on emotional and physical health, of financing long-term care.**

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## ONE MAJOR WORRY FOR OLDER ADULTS IS THAT

costs for long-term care will exhaust their life savings. Some fear that if their assets are depleted by a long-term illness the dignity, security and independence they worked a lifetime to attain will also dissipate. According to one study among persons age 65 and over, 43 percent are expected to spend some time in a nursing home. Among this population, 55 percent are expected to have total lifetime nursing home care of at least one year and 21 percent will have a total lifetime nursing home care for five or more years.

Nursing home care is the single largest out-of-pocket health care expense for the elderly. The standard cost in Montana for the year 2009 is \$5,125.50 per month (\$61,506 per year). Nursing home residents and their families pay about 32 percent of the total costs, Medicaid pays about 61 percent, and Medicare pays about 7 percent.

This MontGuide explores:

- options for covering long-term care costs
- eligibility requirements (federal and state) for the Medicaid application process
- rules about transferring property
- role of trusts in the protection of assets
- potential emotional and tax consequences of giving away assets
- Montana Medicaid lien and estate recovery program

## Ways to provide for long-term care costs

Generally, there are *four* ways that individuals can provide for their long-term care expenses.

*First*, some are able to pay the average annual cost of \$61,506 per person from present income, savings and investments. Others with real property or other assets can sell them and use the proceeds to pay for their long-term care.

*Second*, some may purchase long-term care insurance. The Montana Insurance Department provides information about long-term care insurance. Call 1-800-332-6148 to request

a copy of Montana Consumer's Guide to Long Term Care. The Senior and Long Term Care Division also has several informative publications about long-term care alternatives. Call 1-800-332-2272.

*Third*, some may depend on adult children or other relatives to pay for long-term care costs. However, this can create financial hardships for family members who are also paying their own bills, paying for their children's college education, saving for retirement or making payments on a home, family farm, ranch or other business. Some family members may not feel responsible for the costs of their relatives' long-term care. Unless there is a contractual agreement between the parents and children, Montana law does not require adult children to pay for their parents' support.

*Fourth*, some may apply for Medicaid assistance. Medicaid is a federal-state government program that provides comprehensive medical care, including nursing home care, to low-income individuals. About sixty percent of all nursing home residents in Montana receive assistance from Medicaid.

## Federal and state eligibility requirements for Medicaid

While Montana sets rules for Medicaid eligibility, federal guidelines must be followed since the federal government provides about 70 percent of Medicaid funding. The Montana legislature allocates funds for the remaining 30 percent.

To be eligible for Medicaid, an applicant must fall within a category of persons entitled to participate in the program. The individual must:

- be age 65 or older, blind or disabled by Social Security standards or receiving Supplemental Security Income (SSI) or Social Security disability,
- be a permanent U.S. resident
- be a Montana resident; and
- have a Social Security number.

The person must also be admitted to a nursing facility under a doctor's orders and meet medical need criteria for nursing home care. Lastly, the person must meet financial need requirements under the assets and income tests as determined by the Montana Department of Public Health and Human Services (DPHHS). Any resources owned by the applicant are evaluated by DPHHS for accessibility, value and exclusion status when making Medicaid eligibility determinations. DPHHS must also verify the applicant's citizenship and identity. Verification can be accomplished by the applicant showing his or her Medicare card.

## Assets test

An applicant's assets (resources) are considered either countable or excluded for Medicaid eligibility purposes. The assets test measures whether the applicant's *countable resources* are within eligibility levels.

### Countable resources

*Countable resources* consist of all real and personal property owned singularly or jointly with others by the person applying for Medicaid. Examples of countable resources include but are not limited to: non-home real estate; vehicles; checking and savings accounts; certificates of deposit; cash value in life insurance; stocks; bonds, and mutual funds; individual retirement accounts (IRAs); Keogh accounts; contracts for deed, life estates, oil and mineral rights; items of unusual value (such as jewelry, coins and art work); and any other assets over which the individual has control (such as assets in trusts).

An applicant's *countable resources* must be used to pay for nursing home care or other allowable expenses before Medicaid benefits become available. A single applicant can keep up to \$2,000 in value of *countable resources*.

### Excluded resources

Montana Medicaid eligibility regulations categorize some items as *excluded resources* that do not count toward the Medicaid resource limit. Examples of *excluded resources* may include but are not limited to: a home that the nursing home applicant has been living in and expects to return to within six months (as long as the home is valued at \$500,000 or less); a home that is used as a primary residence by the spouse or other dependents of the nursing home resident (there is no value limit on this home); most personal effects and ordinary household goods; cash value of all life insurance with a total face value of less than \$1,500; all term insurance; burial plots regardless of value; burial fund of up to \$1,500; an irrevocable burial contract with a funeral home on a state approved form; and one vehicle used for transportation.

Income-producing property used by the owner in a trade or business is also excluded up to \$6,000 of the equity value

if the applicant establishes that he or she has an actual trade or business. Thus, an applicant will need to provide: business tax returns; a description of the trade or business (including a verification of the business assets); the number of years the business has been operating; the identity of the co-owners, if any; and the estimated gross and net earnings.

The value of livestock used to produce income necessary for employment or raised for home consumption is an *excluded resource*. Livestock that are pets are also excluded.

### Marital assets

For married couples, the assets of both the husband and wife are considered as *countable resources* for Medicaid eligibility purposes, regardless of whose name appears on the titles. All separately owned property of each spouse and all jointly-owned property (whether held as tenancy in common or in joint tenancy with right of survivorship, regardless of the co-owners such as children, spouse or others) are included in the determination of whether an applicant satisfies the *countable resource* limitation test for Medicaid assistance.

**Example 1:** John has \$50,000 in certificates of deposit in his name only. His wife, Mary, has \$40,000 in U.S. savings bonds in her name only. They also own \$60,000 in mutual funds held as joint tenants with right of survivorship in four names – John, Mary, and their two sons. John has minority stock interest in the family ranch valued at \$100,000. The total value of their assets is \$250,000. If John enters a nursing home, under certain circumstances, the value of the minority stock (\$100,000) is the only asset that may be considered as an *excluded resource*. The other resources (CDs, savings bonds, mutual funds), however, are considered as *countable resources* for Medicaid eligibility purposes.

### Premarital agreement

Couples who are about to be married often contact an attorney to execute a premarital contract. The contract typically states that property will remain in the separate name of each spouse. Nevertheless, all such property is considered as *countable resources* for Medicaid eligibility purposes.

**Example 2:** Andy and Nancy each have adult children from a prior marriage. They signed a premarital contract stating that their property would remain in separate names. Each had a will containing a provision that individually owned property was to pass to their respective children. Six months after they were married Andy was diagnosed with Alzheimer's disease. Nancy placed Andy in a nursing home because she could no longer care for him at the ranch. All properties that Nancy and Andy each owned separately were considered as *countable resources* in the determination of Andy's eligibility for Medicaid.

### ***Protections for community spouse***

The spouse who lives outside the nursing home is termed as the *community spouse*. The spouse in the nursing home is referred to as the *institutionalized spouse*. In Montana, the *community spouse* is allowed to keep one-half of the countable combined resources up to a maximum of \$109,560.

However, if resources total less than \$43,824, then the *community spouse* may keep the minimum of \$21,912, even if that amount is more than one-half of the *countable resources*. The countable resource limits are for the year 2009. Asset values are adjusted annually to reflect changes in the Consumer Price Index (CPI).

**Example 3:** Bonnie and Sam have combined *countable resources* valued at \$25,000. If Sam goes into a nursing home under Medicaid eligibility rules Bonnie is allowed to keep minimum *countable resources* of \$21,912.

**Example 4:** Betsy and Bill have combined *countable resources* valued at \$70,000. If Betsy is admitted to a nursing home, under Medicaid eligibility rules Bill may keep \$35,000 in value of the *countable resources*.

**Example 5:** Budd and Sara have combined *countable resources* valued at \$314,000. If Budd goes into the nursing home Sara gets to keep \$109,560. For Medicaid eligibility purposes Sara cannot retain the \$204,440 that exceeds the maximum of \$109,560 ( $\$314,000 - \$109,560 = \$204,440$ ).

### ***Resource eligibility amount***

Any of the couple's *countable resources* valued at more than the countable asset limitations mentioned previously are considered as accessible resources of the nursing home spouse. Those resources must be spent down to \$2,000 before the nursing home spouse is eligible to receive Medicaid assistance. Resources can be spent down by paying for nursing home care, by paying for other medical expenses or by paying for home repairs for example.

**Example 6:** Frank and Catherine have combined *countable resources* valued at \$200,000. Catherine may keep the maximum of \$109,560. She plans to use the remainder of their resources (\$90,440) to pay for Frank's medical expenses that were not covered by their health insurance plan and pay for expenses to replace the furnace in their home ( $\$200,000 - \$109,560 = \$90,440$ ).

**Example 7:** Andy and Nancy have children from prior marriages. Andy has resources in his name valued at \$100,000. His wife Nancy has resources in her name valued at \$800,000. Nancy may keep the maximum of \$109,560. The remainder of the resources (\$790,440) must be spent down to \$2,000 before Andy is eligible for Medicaid assistance ( $\$900,000 - \$109,560 = \$790,440$ ).

### **Income test**

The income test examines the Medicaid applicant's countable income. *Countable income* includes monies that are received in the name of a Medicaid applicant. If the applicant's monthly nursing home costs are greater than countable monthly income, he or she meets the income test.

Examples of *countable income* include but are not limited to: Social Security or other retirement pensions; railroad retirement; Veteran's Administration benefits; lease or rental income; dividends; interest earned on savings; trust income; and monthly annuity payments.

Montana law requires that the income of an individual in a nursing home be used to pay for his or her care. A nursing home resident can continue to pay the monthly cost of health insurance from his or her income and can also keep \$50 each month as a personal needs allowance.

**Example 8:** Bruce has a monthly income of \$2,000. His health insurance policy is \$550 per month. He can keep \$50 each month for personal needs such as toiletries, clothing, and magazines. Bruce's remaining income of \$1,400 is used to pay his nursing home costs. His monthly nursing home bill is \$5,125. Medicaid will pay the balance (\$3,725) each month ( $\$5,125 - \$1,400 = \$3,725$ ).

### ***Marital income***

The *community spouse* may keep all income that is paid solely in his or her name. This amount is not attributed to the *institutionalized spouse*. All income paid solely in the name of the institutionalized spouse is counted towards the income calculation. Any income paid to both spouses is usually equally divided; one-half is counted as income to the *institutionalized spouse* and the remaining half is counted as income to the *community spouse*.

The *community spouse* also may qualify to receive a monthly allowance from the income of the *institutionalized spouse* up to a maximum of \$2,739 (in 2009). The allowance is calculated using the established amount necessary for home maintenance costs (rent or mortgage, taxes, insurance, and utility charges). If the *community spouse* has sufficient income to cover home maintenance costs no allowance is granted from the income of the *institutionalized spouse*.

### **Application process for Medicaid**

The application process for Medicaid includes several forms: a resource assessment, a pre-screening medical determination and an application for assistance.

### ***Resource Assessment***

When a married person enters a nursing home, a family member (spouse, adult child), friend or minister should contact the local county Office of Public Assistance for a resource assessment appointment. A resource assessment is required even if the individual does not plan to apply for

Medicaid. A resource assessment is based on the individual's financial situation on the first day of the month that he/she entered the nursing home. Form DPHHS HCS-457 or 245 is used for this purpose. The resource assessment is critical, because it determines the amount of a couple's resources that the *community spouse* may keep if the *institutionalized spouse* applies for Medicaid.

### ***Pre-screening determination***

A *pre-screening determination* must be conducted to determine if the applicant is in need of long-term care services before Medicaid will pay for nursing home costs. The screening also specifies whether there is an identified diagnosis of mental illness that indicates additional services would be needed.

Montana has contracted with the Mountain Pacific Quality Health Care Foundation to conduct screening determinations. The number to call for referrals is: 1-800-219-7035.

### ***Application for assistance***

The *application for assistance* can be made to the Office of Public Assistance in any Montana county. If an eligibility determination is made in the county where the person who helped fill out the forms lives, the case will be maintained in the county office that received the application unless the recipient requests it to be transferred elsewhere.

For example, Joan, a resident of Lewis and Clark County, helped her mother fill out her Medicaid forms. Her mother's case was transferred to Custer County because Joan's mother is living in a nursing home in Miles City.

### ***Eligibility decisions***

A decision on eligibility is made within 45 days of the date of application. If the nursing home resident passes the circumstances, assets and income eligibility tests, Medicaid may begin payments to coincide with the date the person entered a nursing home although regular Medicaid coverage starts on the first of the month. An applicant who is denied Medicaid may request a hearing before a hearing officer. The request for the hearing must be made in writing within 90 days of when the notice of Medicaid determination was mailed.

### ***Medicaid Cards***

Once Medicaid is approved, Medicaid recipients are issued one "credit-card-like" Medicaid card with a magnetic stripe on the back. On the front of the card, only the individual's name, date of birth and client ID number are included. The client ID number is NOT the client's Social Security number—it is a DPHHS internal system-assigned number. The cards are "ID" cards and the magnetic stripe on the back does not hold eligibility information. The recipient's health care provider uses the cards to access the data in the DPHHS payment system. Each Medicaid recipient is issued ONE

permanent, lifetime card that they should keep forever, even when they are notified that their Medicaid case is closed. When a person's eligibility is sporadic, or even when it is regular, the new eligibility information will be added to the database in the computer system at DPHHS, not to a new card. Health care providers will use the previously issued card to access Medicaid eligibility.

### ***Transfer of property rules***

Some Montanans believe the best protection against the depletion of assets from long-term care costs is to become impoverished by giving away all of their property and thus, qualify for Medicaid. Before transferring property to others, however, Montanans should learn the advantages and disadvantages of such transfers because each transfer has legal, emotional and tax consequences.

### ***Look-back rules***

There is a period of Medicaid ineligibility if assets are given away or transferred for less than fair market value within a certain time period (termed look-back period). For asset transfers made from August 11, 1993 through February 7, 2006, the look-back period is 36 months (3 years) for most assets and 60 months (5 years) for trusts. With the passage of the Deficit Reduction Act of 2005, any type of asset transfer made on or after February 8, 2006 have a look-back period of 60 months (5 years).

The *period of ineligibility* for transfers during the *look-back period* depends on the value of the gift or transfer and when it was made. The ineligibility period is set at the number of months that would otherwise be required to spend the uncompensated value of the transferred assets on nursing home care. If, for example, the Montana average monthly cost of nursing home care is \$5,125.50 (in 2009) the ineligibility period is one month for every \$5,125.50 of uncompensated value that the applicant gave away.

The penalty period will not even begin to run until an individual (1) is in the nursing home; (2) has applied for Medicaid; and most importantly (3) is otherwise eligible for Medicaid (i.e. individuals have spent down all of their assets other than \$2,000 and any exempt assets). This means that any transfer after February 8, 2006 that is within the *look-back period* will result in a period of time when individuals are both ineligible for Medicaid and have no assets, other than income, to pay for their nursing home care.

**Example 9:** John gifted his remaining *countable resources* of stocks and mutual funds worth \$182,000 to his grandchildren, adult children and their spouses. Although the transfers were not subject to federal gift taxation because of the \$13,000 annual exclusion for each donee, federal law considers his gifts as transfers subject to the Medicaid eligibility *look-back rules*. If John entered a nursing home, he would have about 3 years of ineligibility ( $\$182,000 \div \$5,125.50 = 35.51$ ). The start of this period

of ineligibility depends on the date of his asset transfer. If the asset transfer occurred prior to February 8, 2006, the *period of ineligibility* will begin on the first day of the month in which the asset transfer occurred. If the asset transfer occurred on or after February 8, 2006, the *period of ineligibility* will begin on the date the person applied for Medicaid and was found otherwise eligible, such as meeting the assets test.

However, if John had given away his assets prior to February 8, 2006 and more than 3 years before applying for Medicaid, the transfers would not have resulted in Medicaid ineligibility. Transfers made before the applicable 3 or 5 year *look-back period* do not effect Medicaid eligibility.

### ***Excluded transfers***

There are several types of transfers that under Medicaid eligibility rules may be excluded from the look-back rules:

- A home may be transferred to the *community spouse*, to a child less than 21 years of age, or to an adult child who is blind or permanently disabled.
- A home may be transferred to a child (regardless of age), if the child lived in the home for two years prior to the admission of the parent to a nursing home and it can be verified that the child provided care that permitted the parent to remain at home.
- A home may also be transferred to a brother or sister if either already owns an equity interest in it, and has lived there for at least a year before the sibling entered a nursing home.

### ***Special Annuity Rules***

Assets used to purchase an annuity either by the applicant or by the community spouse during the *look-back period* are subject to special rules. If the annuity purchased does not meet the following requirements it may be considered an *uncompensated transfer*.

- Annuities owned by the Medicaid applicant or community spouse must have periodic payments made to the Medicaid applicant on at least an annual basis. For example, no deferred or balloon payments can be made at any point during the payment period.
- The payments must be of equal amounts for the life of the annuity and the annuity must be actuarially sound. For example, the equal period payments are based on the expectation of a full payout of the contract within the annuitant's life expectancy.
- The annuity must be irrevocable and non-assignable.

The Montana Medicaid Program must be named as the irrevocable first position residual (secondary) beneficiary on any annuity purchases after February 8, 2009. However, the Medicaid applicant or recipient may name a community spouse, minor child or a blind or disabled adult child as the *primary* beneficiary.

The following will not be considered an uncompensated asset transfer (provided the payments are made to the owner of the above-named account or arrangement) or require beneficiary assignment to the Montana Medicaid Program: an individual retirement annuity [subsection (b) of section 408 of the IRS Code of 1986]; a qualified employer plan annuity [subsection (q) of section 408 of the IRS Code of 1986]; or purchase of an annuity with an IRA, employer or employee association account, or a qualified salary reduction arrangement [subsections (a), (c) and (p) of the IRS Code of 1986]; or a simplified employee pension [within the meaning of section 408(k) of the IRS code of 1986].

### **Role of trusts in the protection of assets**

Trusts have been touted as the ideal solution for Montanans who wish to protect assets from the costs of long-term care. Some promoters are using a door-to-door approach in rural Montana communities to sell living trusts ranging in price from \$750 to \$3,500. They claim that if individuals transfer property to a living trust, the assets will be completely protected from nursing home costs. Unfortunately, in their haste to make a sale, some promoters do not provide accurate information.

A trust is a legal arrangement by which an individual transfers assets to a trust. A trustee is named to manage the assets for the beneficiaries designated in a trust agreement. Beneficiaries named in a trust agreement can include the individual who formed the trust, friends, family members, a university, a charity or other organization.

### ***Revocable living trusts***

A *revocable* living trust is just what its name implies – one that is created during an individual's life and that can be changed or terminated at any time. In Montana, unless a trust is expressly made irrevocable by the trust agreement, it is considered revocable. Because a revocable living trust can be changed at any time, the income and assets in the trust are considered as countable resources in the Medicaid eligibility determination. The funds are considered as available to cover nursing home costs.

### ***Irrevocable trusts***

Once an *irrevocable* trust is formed, the person who established it has no power to amend, cancel or remove assets from it. For Medicaid eligibility purposes, however, if any circumstances exist under which payment (either from the principal or the income) from the irrevocable trust could benefit the individual entering a nursing home, then both principal and income are considered as resources available to the individual. Transfers of assets into irrevocable trusts are subject to the 60-month (five year) *look-back period*.

### ***Limitations of trusts***

In general, Medicaid considers resources held in trust as available to the couple when the:

- trust agreement is created by an applicant for Medicaid or by his or her spouse;
- applicant, his or her spouse, or both, are beneficiaries of the trust; and
- distributions from a trust to the beneficiaries are discretionary.

A trust can be created, however, with the principal absolutely restricted, and income payable to either or both spouses. Income payable to an *institutionalized spouse* must be applied to the cost of care. The principal of such a trust would not be considered as a *countable resource* under the assets test. Once the *look-back period* passed, the person could be eligible for Medicaid if income was less than the cost of care. The rules regarding trusts are constantly changing. Prior to forming a trust, contact an attorney to obtain legal advice.

### **Consequences of giving away assets**

Although some persons may wish to give away assets to family members, to a university or to a charity for the purpose of qualifying for Medicaid, there are a number of personal and tax reasons why they may not wish to totally deplete their resources.

#### ***Personal and Emotional consequences***

Although the Deficit Reduction Act provides for hardship waivers in certain circumstances, a person may not want to make any gift transfers to others at all unless he or she can pay for care with other assets and income during the entire five year look-back period. People who make such transfers and who do not have substantial income will not have a way to pay for their care during the resulting ineligibility period because it does not start until they have exhausted all of their assets.

Whether a person would feel stigmatized by qualifying for Medicaid and whether this would be detrimental to his or her well-being are factors to consider. Medicaid patients may be more difficult to place in nursing homes than private paying patients. Also, private paying patients are spared the tedious task of applying for benefits, a procedure that some consider as an invasion of privacy. Being uprooted from familiar surroundings or denied some of the familiar comforts available to private paying residents can be very detrimental to the psychological and social well-being of an older person.

**Example 10:** When John was a private pay resident of the nursing home he was allowed a private room. After all his resources had been used to pay for his care he became eligible for Medicaid. He was then moved to a double room. Because of the activity revolving around his ill

roommate, John could not sleep and was angry that he did not have privacy. John continues to ask his children why he can no longer have a private room. He does not understand that Medicaid will not cover the costs of a private room and the small nursing home cannot afford to take the loss that would result from John being placed in a private room.

#### ***Tax consequences***

Persons who are considering giving away assets should be aware of tax consequences, such as the federal estate tax, the federal gift tax, and the income tax on the capital gain when the assets are ultimately sold.

If the assets of a person have appreciated in value from the time of acquisition, there may be an overall tax advantage to transferring the property as a bequest after death rather than giving it away while alive.

When property is received as an inheritance, the heirs receive a *stepped-up basis* in the asset. This means the value of the property is based on the fair market value on the date of death of the owner rather than the value when the property was purchased or inherited by the owner.

When owners gift property during their lifetimes, the property has a *carryover basis*. This means that any appreciation in the asset's value above its basis would be subject to capital gains taxation upon a later sale by the person who received the gift.

**Example 11:** Larry has a ranch that is valued at \$2 million.

The purchase price when Larry bought the ranch 35 years ago was \$40,000. The basis Larry has in his property is \$40,000 (*carryover basis*). If the ranch is given to a grandson during Larry's lifetime, the grandson will assume his grandfather's basis of \$40,000 in the property. If the grandson sells the ranch for \$2 million, he would be responsible for a tax on the capital gain. The amount that is subject to the capital gain tax is determined by taking the value at the date of the gift (\$2 million) and subtracting the carryover basis (\$40,000). In this case the grandson's capital gain is \$1,960,000. Assuming a 15 percent capital gain bracket (in 2009) the tax is \$294,000. Larry would also owe a federal gift tax of \$429,600 (in 2009) on the transfer of his ranch to the grandson. (\$2 million gift - \$13,000 annual exclusion in 2009 = \$1,987,000 taxable gift) \$775,400 tentative tax minus the applicable tax credit of \$345,800 = \$429,600.

**Example 12:** Alternatively, if Larry dies in 2009 and leaves the ranch to his grandson, the property would receive a step up in basis of the value on the date of Larry's death (\$2 million stepped-up basis). There would be no estate tax because the applicable exclusion value of an estate that is exempt from federal taxation is \$3.5 million in 2009. If the grandson were to later sell the ranch at a fair market value of \$2 million, there would be no capital gain tax

of the property. Larry is ineligible for Medicaid in either case because of the value of his property exceeds \$2,000 in 2009.

Gifting, federal estate and capital gain tax issues, as well as trusts and life estates, should be discussed with competent legal and tax professionals. MSU Extension also has additional information. The following MontGuides are currently available from your county Extension office or on the Web: [http://www.montana.edu/publications:MontGuide\\_MT199105HR](http://www.montana.edu/publications:MontGuide_MT199105HR), *Gifting: A Property Transfer Tool of Estate Planning*, and [MontGuide\\_MT199104HR](http://www.montana.edu/publications:MontGuide_MT199104HR), *The Federal Estate Tax*.

The transfer or sale of a home can also have tax consequences that may outweigh any potential Medicaid benefits. If, for example, a mother gives away a house that has greatly increased in value to her daughter, the daughter would not be allowed to use the *stepped-up basis* because she assumes the *carryover basis*. The daughter may owe higher capital gains taxes when the house is sold.

**Example 13:** Marie, age 93, owns a home that was valued at \$40,000 when purchased 50 years ago. The home now has a fair market value of \$400,000. If Marie sells the home she is eligible for an exclusion of \$250,000 to be applied against the total capital gain of \$360,000 ( $\$400,000 - \$40,000 = \$360,000$ ). The sale would produce a capital gain of \$110,000 ( $\$360,000 - \$250,000$ ) that results in a tax of \$16,500 for Marie (assuming a 15 percent capital gain tax bracket in 2009).

**Example 14:** If Marie gives the home to her grandchildren, they will assume Marie's basis of \$40,000 in the property. Later, if the grandchildren sell the home for \$400,000 and without having made it their personal residence, they will have a capital gain of \$360,000 ( $\$400,000 - \$40,000 = \$360,000$ ). Marie's grandchildren will owe a \$54,000 capital gain tax (assuming a 15 percent capital gain tax bracket in 2009).

**Example 15:** If Marie died while owning the home and bequeathed it in a will to the grandchildren there would be no capital gain tax assuming they sold it at the \$400,000 value. The basis of the home is stepped-up from \$40,000 to \$400,000 at the date of Marie's death. There would also be no federal estate tax because the value of the home is less than the applicable exclusion amount of \$3.5 million in 2009. Marie's other assets are not valued high enough to push her estate value beyond \$3.5 million.

Remember, once your assets are transferred to someone else they are beyond your control. The friend or family member to whom the property is given is under no legal obligation to use that property to support you after the transfer and before nursing home care is required.

The family member could sell or mortgage the property or put it to another use. In addition, creditors of your family member could attach a lien to the property to satisfy the family member's debts or other obligations. In short, many things could happen to your transferred property and you would be left with insufficient resources if nursing home care wasn't required after all.

## Medicaid lien and estate recovery program

Federal law requires that each state develop a Medicaid estate recovery program to recoup the costs of nursing facility care and other medical services from the estates of recipients who have passed away. In Montana, Medicaid makes a creditor's claim during the probate process. The personal representative or attorney handling the estate will use the proceeds from the sale of estate property to repay the Medicaid program for medical expenses paid on the decedent's behalf.

**Example 16:** Robert, a widower, left his only property, a house valued at \$75,000 to his son. At the time of his death, Medicaid had provided \$24,000 for Robert's medical and nursing home care. In addition to this claim, there was a total of \$10,000 in funeral bills and costs for probating his estate. Robert's son received \$41,000 ( $\$75,000 - \$24,000 - \$10,000 = \$41,000$ ).

No estate recovery may be made if a Medicaid recipient is survived by a spouse, by a child under the age of 21, or by a blind or disabled child. After Medicaid files a claim, individuals affected by the proposed recovery have a right to apply for a hardship waiver.

Montana has also adopted Medicaid cost recovery procedures that take place while the recipient is living. The purpose is for the state to secure its right to recover assets that recipients retained while receiving medical assistance from Medicaid. Montana secures this right by filing liens on real property owned by Montana Medicaid recipients who are permanently institutionalized in a nursing home facility. The lien is the amount of Medicaid payments made on behalf of the person receiving care. If a lien exists, the lien amount must be paid before the title to the property can be sold or transferred to heirs.

**Example 17:** Before Millie went into a nursing home, she lived alone. When a medical determination was made that she could not return to her home, Montana placed a lien on her house. A year later the house sold for \$32,000. During this time \$42,000 in Medicaid payments were made for Millie's care. At the time of the sale, \$32,000 of the state's \$42,000 lien was satisfied by the sale proceeds. Because the lien was for an amount greater than the sale proceeds, no money remained from the sale of Millie's house for her personal use or for her to bequeath to her heirs.

The Recovery Unit, Estate Division, has informative brochures that explain Montana's Medicaid Lien and Estate Recovery Program.

**Contact:**

Third Party Liability Unit  
Lien and Estate Recovery  
PO Box 202953  
Helena, MT 59620-2953  
1-800-694-3084 or 1-406-444-7313

**Summary**

There is no one answer to the question, "What is the best method to protect our assets from long-term care costs?" There are, however, several choices – each with consequences. Whatever decision is reached, it should be made with an understanding of the legal, emotional and tax ramifications. Consideration should also be given to the possible impact on the physical and emotional well-being of the person who needs long-term care.

**For more information**

The Senior and Long Term Care Division of the Department of Public Health and Human Services (DPHHS) has the responsibility of responding to questions about Medicaid for older adults.

**Contact:**

Senior and Long Term Care Division (DPHHS)  
2030 11th Avenue  
Helena, MT 59604.  
1-800-332-2272

[www.dphhs.mt.gov](http://www.dphhs.mt.gov). Click on Programs and Services, then click the Long Term Care option.

The Montana Ombudsman Program assists nursing home residents and families with nursing home-related concerns such as daily care or resident's rights. Contact the Aging Services Bureau at the DPHHS address listed above.

The Medicaid recipient hotline is: 1-800-362-8312.

The address and telephone number of the local Public Assistance Office are listed in the telephone book under the name of the county in which you live.

**Acknowledgment**

This MontGuide has been reviewed by representatives from:

- Montana Department of Public Health and Human Services (DPHHS);
- Elderly Assistance Committee, State Bar of Montana; and
- Business, Estates, Trusts, Tax and Real Property Law Section, State Bar of Montana.

Appreciation is also expressed to Montana reviewers for their insights from their experiences with parents who have gone through the Medicaid application process.

**Disclaimer**

The information presented in this MontGuide is for general educational purposes only and is not intended to substitute for legal or tax advice on Medicaid eligibility. Such advice, whether general or specific, should be obtained from an attorney, tax advisor or Medicaid Eligibility Specialist. This MontGuide summarizes state and federal regulations as of the date of publication. Medicaid rules are under constant revision, so contact an attorney or your local Medicaid Eligibility Specialist for recent developments.



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