



Spousal Impoverishment

For more information on any Aging Partners Personal and Family Services, call 402-441-7070.

This packet is intended to assist in the process of designating assets under the spousal impoverishment program. The provisions of the law allow resources to be reserved for the spouse remaining in the home (community spouse) when the other spouse, who is applying for Medicaid (recipient spouse), requires nursing home, assisted living, or in-home nursing care.

Rules Regarding Income and Assets

As of January 1, 2018, a minimum of \$24,720 and a maximum of one-half of the couple's countable assets, up to \$123,600, may be reserved for the community spouse. (Assets that are exempt from inclusion as countable assets are discussed later in this letter.) In addition to reserving one-half of the countable assets for the community spouse, income received in the community spouse's name may be kept. In certain cases all or part of the recipient spouse's income may be assigned to the community spouse. The community spouse is entitled to a minimum of \$2,030 per month. If the community spouse is paying rent or making a mortgage payment, the minimum may be increased from \$2,030 up to a maximum of \$ 3,090 according to a set formula.

The procedure for qualifying the recipient spouse for Medicaid begins with listing all assets owned jointly or separately by the couple and setting a fair market value for each asset. It is very important to list everything. The enclosed questionnaire has been developed to assist you in this difficult task. Assets you forget will go to the Medicaid eligible spouse—so be thorough.

After the questionnaire has been completed, exempt resources will be earmarked and the countable resource total will be determined. If your countable assets are below \$28,720 (\$24,720 + \$4,000) the recipient spouse is eligible for Medicaid without further asset reduction. If the countable assets are in excess of the maximum applicable to the couple, there are many options for reducing the total, including the purchase of needed items, establishing burial trusts, paying off the home mortgage, purchasing a new car, repairing the family home, and private payment for nursing home care.

Transfer of Resources

Transfers for less than fair market value, gifts, and certain other actions may result in a period of ineligibility for Medicaid. Transfers or gifts made during the 60 months prior to the admission of the recipient spouse to a care facility could make the couple ineligible for Medicaid. In some cases the state will consider actions involving annuities which occurred up to 60 months prior to the Medicaid application. The ineligibility period is determined according to the date of the gift, the value of the asset, and the monthly cost of care in the facility at the private pay rate. The reason for the transfer is also considered in determining whether the action was a deprivation in violation of the Medicaid rules.

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This fact sheet is distributed to help you obtain information regarding available community services and is not an inclusive list of providers. The information is subject to change following publication.

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When the Spend Down is Completed

After the countable assets are equal to the community spouse's reserved one half plus \$4,000, the recipient spouse may apply for Medicaid.

The enclosed work sheet in this packet is used to prepare you for filling out the State of Nebraska Health and Human Services form, "Assessment of Resources." It is also used to organize the expenditure of the assets in excess of the protected amounts.

When the recipient spouse's portion has been spent down to \$4,000 and the community spouse has no more than the reserved amount, the State of Nebraska Health and Human Services form, "Designation of Resources" will be filled out specifically listing which assets will be designated to each spouse. A Medicaid application will also be filled out at this time so that Medicaid coverage can begin. Within a short time after the recipient spouse applies for Medicaid, the spouses must remove the other spouse's name as a joint owner on the asset. The community spouse's name may be on the asset as attorney-in-fact, guardian or conservator. The asset may also be payable on death to the other spouse to avoid probate.

After the designation of assets, all assets that are received jointly are divided between the spouses. All those received in the name of the community spouse alone are disregarded for Medicaid purposes. Additional resources received in the name of the recipient spouse alone will be used for his or her care unless they are needed to refund reserved amounts spent in error.

At a later time, if the community spouse requires Medicaid coverage, he or she will be treated like a single person for eligibility purposes.

Exempt Resources

Not all of the assets listed on the questionnaire are considered "countable assets." Some assets are exempt from determining your eligibility for Medicaid but should be listed nonetheless.

One such asset is an irrevocable burial trust. Each spouse may deposit up to \$5,031 in an irrevocable burial trust. The deposited funds plus all interest that accrues are not counted. A lot, stone, casket, or vault for each person is also allowed. You may also prepay for grave opening and closing.

Another asset that is not counted is one automobile, regardless of its value. Although the purchase of an expensive car appears an attractive way of legally reducing assets, there are some down sides to this choice.

Life insurance with a \$1,500 combined face value for each spouse is exempt. If all the policies are owned by one spouse, some transfers of ownership may be needed. It is not important

whose life is insured or who is the beneficiary. If the face value for either spouse exceeds \$1,500, the current cash surrender value of all policies owned by that spouse is a countable resource.

Personal possessions and furniture are exempt as well as \$6,000 in tools that are used for self-support. Assets used in a trade or business by the community spouse are not counted. Personal possessions such as coin or stamp collections, paintings with more than nominal value, and other similar assets are not exempt.

The home is exempt as long as the community spouse, recipient spouse or other qualified person resides in it. The house is usually transferred from joint ownership to sole ownership by the community spouse. The community spouse may sell the house, regardless of how it is titled and invest the proceeds in another home. If the house is sold while it is jointly owned, the proceeds are divided by the spouses. If the Medicaid case has not been opened yet, the sale proceeds may need to be fully spent down. It is good to obtain legal advice before selling the home. The transfer of the title of the home to the community spouse can be done at any time as long as the community spouse is living in the home. This is one instance where the 60-month rule does not apply and transfers can be made without penalty. Transfers of the home to other people (with some exceptions) are subject to the 60-month rule.

by Mary L. Wilson - Attorney at Law