

2023

Medicaid Myths



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1. MYTH: It is against the law to plan for Medicaid.

Truth: Medicaid Planning is legal when advised by an attorney, however the "Consulting" or services offered by non-attorneys is not. Texas Resource Code Sec. 12.001. Individuals who are not attorneys and charge a fee for aiding an applicant in procuring assistance from the Texas HHS could be charged with a Class A Misdemeanor punishable by jail and/or fine. (even when "reviewed" by an attorney).

2. MYTH: "I can't give anything away and get Medicaid."

Truth: The Medicaid rules provide that a person can be penalized for giving away property, in some cases. But, a lot depends on how much is given away, when, and the date of the application for Medicaid. The penalty could be just a few days or months.

3. MYTH: "I have to wait 5 years after giving anything away, to get Medicaid."

Truth: The penalty isn't always 5 years, and sometimes there is no penalty at all. There is 5 year "look back" for some asset transfers.

4. MYTH: "Medicare will cover my nursing home bill."

Truth: Medicare only covers a small amount of the nursing home care provided in this county. In general, there are 20 days of full coverage, if you go into the nursing home after at least three days in the hospital and you are getting skilled care (not intermediate level care). Then, if you still need skilled care, you can get up to 80 days of partial coverage from Medicare.

5. MYTH: "If I enter a nursing home as a private pay resident, I must use up my assets before I can get Medicaid."

Truth: You are not required to exhaust your assets to private pay for the nursing home care. There are many opportunities to spend down on eligible items that will enhance your estate and the family members you leave behind. Seek advice from an Elder Law Attorney.

6. MYTH: "I can only 'spend-down' my assets on medical or nursing home bills."

Truth: See #6 above. Some may tell you that you have to spend your savings on the private pay rate, before applying for Medicaid, but this is not true.

7. MYTH: "I can only give away \$15,000 per year under Medicaid rules."

Truth: This is a rule under federal estate and gift tax law, not under Medicaid law. A penalty is presumed and can be assessed.

8. MYTH: "My wife is in a nursing home and will qualify for Medicaid. We both have Wills leaving everything to each other. I will leave everything as is. That's the right thing to do."

Truth: The husband's Will must be changed immediately. A Medicaid Will must be prepared for the husband. It is essential that the wife receive nothing absolute from the husband, since her inheritance from him may (and probably will) disqualify her from receiving Medicaid assistance.

9. MYTH: "I can't transfer my house to my children because they may get in financial trouble, and I will be out on the street."

Truth: A complete transfer can put your home at risk and cause a penalty. BUT, There is a way to transfer at your passing and maintain complete control during your lifetime without probate, LADY BIRD DEED or TRANSFER ON DEATH DEED!

10. MYTH: "I have to cash in my life insurance policy to purchase a prepaid funeral."

Truth: Texas allows us to assign the full life insurance benefit towards funeral cost when qualifying for Medicaid.

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Medicaid Numbers



Income Cap State: \$2,742 GROSS

Applies when: A person in the nursing home applies for Medicaid benefits

Definition: Monthly income figure that determines income eligibility for Medicaid benefits. If an individual's income is less than this amount, then they are qualified in this area. If an individual's income is greater than this amount, then they have excess income and are ineligible for benefits. However, the state allows a Miller Trust or Qualifying Income Trust to be used to reduce their income on paper and qualify that person for benefits.

Monthly Maintenance Needs Allowance: \$3,715.50

Applies when: One spouse lives in the nursing home and the other lives outside a nursing home

Definition: Minimum income each month that the spouse at home may keep. If both spouses combined income is lower than this amount, then the spouse at home keeps all of the income (and it may be possible to expand the resource allowance so the spouse at home can keep more than \$148,620 of the total assets).

Minimum Community Spouse Resource Allowance: \$29,724

Applies when: One spouse lives in the nursing home and the other lives outside a nursing home

Definition: Minimum amount of assets that a spouse at home may keep. If a couple's combined total assets are below this amount, then the spouse at home keeps all of the assets.

Maximum Community Spouse Resource Allowance: \$148,620

Applies when: One spouse lives in the nursing home and the other lives outside a nursing home

Definition: Maximum amount of assets that the spouse at home may keep in most situations. The spouse at home may keep the lesser of $\frac{1}{2}$ of the total assets or \$148,620. This can be higher using a formula from the state if the couple's combined income is less than \$3000.00, per month.

Monthly Personal Needs Allowance: \$60.00

Applies when: A person is receiving Medicaid benefits in the nursing home

Definition: Monthly amount that a Medicaid recipient may keep for personal items which Medicaid does not cover (haircuts, snacks, etc.). An additional amount may be available for veterans.

Diversion Penalty Divisor: \$237.93/day (*subject to change)

Applies when: A potential Medicaid recipient transfers assets

Definition: This figure, based on the statewide average of daily nursing home costs, is used to determine the length of time an individual or couple is ineligible for Medicaid benefits because of transfers they have made. (NOTE: A penalty is not assessed by the state in a month when the total amount of transfers, or gifts, total less than \$200/month)

Resource Allowance for an Individual: \$2,000

Applies when: A single person living in the nursing home applies for Medicaid benefits

Definition: Maximum amount of assets a single person may own and still qualify for Medicaid benefits.

Resource Allowance for a Couple: (Both Husband and Wife in a Nursing Home) \$3,000

Applies only when BOTH spouses reside in a nursing home

Definition: Maximum amount of assets a couple may own and still qualify for Medicaid benefits. If one spouse has received benefits for more than one year and then the other spouse moves to a nursing home and makes application, then a different rule may apply.

Maximum Equity allowed in a Homestead: \$688,000

This is the maximum value of equity allowed for a homestead to qualify as a protected resource

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