

# **BASIC MEDICAID FINANCIAL CONCEPTS IN LONG TERM CARE - AN OUTLINE FOR ATTORNEYS**

\* The figures used in this outline are current as of 3/1/07, but they change periodically. \*  
\*Substantial Medicaid changes, effective 7/1/06, were made by the 2005 Deficit Reduction Act (DRA)\*

## **A. Income and resource rules for individuals**

### 1. Income.

General rule: All income available to meet needs counts.

The income limit is \$1,869/month, gross, regardless of care costs.

BUT, use of an "income cap trust" can create eligibility for someone with income over the limit.

Part of the income, e.g., \$30 or \$141, is retained by the recipient for personal needs.

### 2. Resources.

General rule: Some, but not all, resources are counted.

The limit for countable resources, such as bank accounts, retirement accounts, a second car, etc. is \$2,000.

Some resources are excluded ("exempt" resources) and do not bar eligibility.

Examples: home (usually, unless equity is \$500,000 or more), one car (usually), household goods, personal belongings, prepaid burial arrangements.

The recipient may also be able to set aside \$1,500 for burial.

## **B. Income and resource rules for couples.**

Where one spouse ("institutionalized spouse") needs care and the other spouse ("community spouse") does not, part of the household income and resources are protected and reserved for the community spouse, and need not be spent on care for the institutionalized spouse.

### 1. Income.

Only the income of the institutionalized spouse is counted.

An income cap trust can be used for an institutionalized spouse with income over the \$1,869/month limit.

The institutionalized spouse keeps \$30 or \$141/month for personal needs.

The community spouse can usually keep at least \$1,650/month of the couple's combined income.

### 2. Resources.

The same rules apply as for individuals regarding what resources are counted and what resources are excluded.

From the combined, countable resources of the couple, the community spouse can keep a minimum of at least \$20,328. The community spouse can keep a maximum, one-half share, of up to \$101,640. This "maximum" share can be increased by a court order.

## **C. Transfer of assets restrictions (note: the DRA made significant changes).**

1. The general rule is a person cannot give away assets to become eligible. The DRA changes, which impose harsher penalties for disqualifying transfers of assets, became effective on 7/1/06 when Oregon adopted rules to implement the changes in federal law. But, certain transfers are allowed. For example, one spouse can transfer resources to the other spouse. Distinguish gifts, i.e. transfers for less than fair market value, from purchases. Only gifts, not payment of bills or

purchases, result in disqualification.

2. Pre DRA transfers, i.e. transfers made before 7/1/06.

For those applying for Medicaid long term care after 7/1/06, any gift of assets made within 5 years of requesting Medicaid must be disclosed and may be disqualifying. For a disqualifying transfer made before 7/1/06, the disqualification period begins the month of the transfer. The length of disqualification is calculated by dividing the uncompensated value of the assets given away by \$4,700 (for applications filed between 10/01/04 and 10/01/06), resulting in the number of months of disqualification. Example: Your client requested Medicaid on 8/1/06. He made a disqualifying transfer of \$47,000 on 8/15/02. This transfer is within the 5 year "look back" from date of request. The disqualification period is 10 months, beginning 8/1/02, and ending 5/31/03.

3. Post DRA transfers, i.e., transfers made after 7/1/06.

The DRA made some changes in how the disqualification period is calculated, which can result in short disqualifications for small transfers. But, the big change is when the disqualification period begins to run. In most cases, the disqualification period will begin on the date your client called to apply for Medicaid, so long as she is otherwise eligible for Medicaid but for the transfer. Example: Your client called to apply for Medicaid on August 1, 2007. At that time, she met financial and medical criteria for long term care under Medicaid. But, she made a disqualifying transfer of \$53,600 on 10/1/06, which is calculated (using the divisor of \$5,360 in effect as of 10/1/06) to result in a disqualification period of 10 months. Her 10 month disqualification period begins on August 1, 2007, and ends on May 31, 2008. Her disqualification can be waived if it would cause her "undue hardship."

#### **D. Recovery by the state of benefits paid.**

1. Oregon has a claim against the estate of a recipient for reimbursement for assistance paid to the recipient from age 55 on (and for assistance paid at any age to those defined to be "permanently institutionalized"). "Estate" is defined to include not only probate assets but also non-probate assets as well, e.g., property passing outside of probate by right of survivorship.

2. This claim cannot be made until after the death of the recipient and cannot be collected if there is a surviving spouse, a minor child, or a blind or disabled child of any age.

3. Oregon does not have any lien rights which would allow it to recover against property of a recipient prior to the recipient's death.

4. The state's claim comes before the claims of general creditors and heirs but after family expenses, administrative expenses and burial expenses.

### **Disclaimer:**

This is intended as only an outline of basic Medicaid financial issues in long term care. There are exceptions and qualifications to some of the rules outlined here. Medicaid financial eligibility rules are found in OAR chapter 461. The Senior and Disabled Services office can answer questions (phone 541-682-4038). Also, this state website - <http://www.dhs.state.or.us/spd/tools/index.htm> - is helpful, with links to the administrative rules and to program manuals.

Prepared by the Senior Law Service, a program of Lane County Legal Aid and Advocacy Center, March, 2007.  
Funding for the Senior Law Service is provided through Lane Council of Governments, Area Agency on Aging,  
through the Older Americans Act, and through United Way.

©2007 Lane County Legal Aid and Advocacy Center -- Permission granted to reproduce for FREE distribution

