MEDICAID ELIGIBILITY

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SETTINGS FOR LONG-TERM CARE

- In the Home
- Adult Day Care
- Assisted Living (Enhanced Residential Care)
- Nursing Home
- Community Care Retirement Community

ELIGIBILITY STANDARDS

Needs Assessment (Clinical Eligibility)

Income Allowances

Asset Allowances

CLINICAL ELIGIBILITY: THE NEEDS ASSESSMENT

- The needs assessment, or clinical evaluation, is done by a nurse employed by the Vermont Department of Disabilities, Aging & Independent Living, also called a DAIL Nurse.
- This Nurse will visit the LTC Medicaid Applicant at home or in the facility.
- The evaluation of need is to determine whether Long-Term Care is needed. This typically means they are investigating what physical or mental incapacities the applicant has that would affect Activities of Daily Living.

INCOME ELIGIBILITY

The income test is much more easily-overcome for most LTC Medicaid Applicants. For most who apply, the income threshold is not the hard part to overcome.

Rule: An applicant's income may not be greater than one month's cost of care.

For many applicants, especially those in Enhanced Residential Care or Nursing Home, the cost of care is significantly higher than their regular income in retirement.

WHAT HAPPENS TO INCOME?

- A Medicaid Applicant will be forced to pay a "patient Share."
- Patient Share is Gross Monthly Income less the statutory Personal Needs Allowance ($72.66) and any medical/health insurance expenses.
- For many, most of their income goes toward care, even when they are on Medicaid.

HOW PATIENT SHARE WORKS

Income:

Social Security: $1,289
IRA distribution: $107
Pension Income: $250
Annuity Income: $240
Total: $1,886

Health Insurance Costs:

Medicare Part B: $134
Supplement: $206
Total: $340

Patient Share:

$1,886 (Income)
- $340 (Health Costs)
- $47.66 (Personal Needs)

Total Patient Share: $1,498.34

COMMUNITY SPOUSE INCOME

- Two most important things to know if the applicant has a spouse who is still healthy and living in the community:

1. The community spouse is never forced to use their income to pay for the Medicaid recipient spouse's care
2. The community spouse may be entitled to some of the Medicaid recipient's income. This is called the Monthly Maintenance Needs Allowance. In Vermont for 2020, the Community Spouse has a right to up to $3,216 (assuming they can show a need for this much, not including fuel, utility, and shelter standards).

ASSET ALLOWANCES

Asset allowances are different for single and married applicants.

- Asset Allowance Single person: $2,000
- Asset Allowance Community Spouse: $128,640
- More flexibility for married couples because they can keep a larger pot of money as "available resources"

EXEMPT FROM THE RESOURCE ALLOWANCE

There are some assets that do not count toward the resource allowance, but are still exempt from Medicaid Qualification calculations:

- Primary Residence
- Vehicle
- Burial/Funeral Accounts and expenses (up to $10,000 per person)
- Home Improvement Expenses
- Retirement Accounts (if distribution is taken on the life expectancy tables)

*Note that even exempt assets can be subject to Estate Recovery

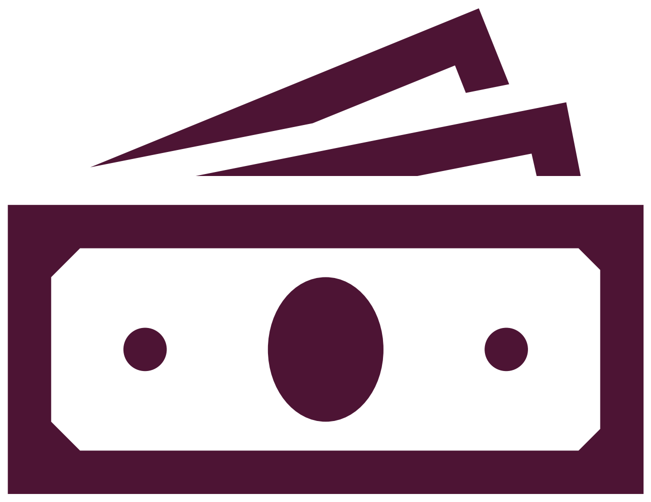
HOMESTEAD EXCEPTIONS

- Under Vermont law, an applicant's primary residence is an exempt asset, up to the threshold equity exemption amount, which is $585,000 in 2020.
- The Applicant MUST maintain the "intent to return home." When submitting a Long-Term Care Medicaid Application in Vermont, one of the questions asked is whether the Applicant has "an intent to return home." The Applicant should almost always say "Yes."
- Enhanced Life Estate Deeds are important.

TRANSFER ELIGIBILITY: THE LOOKBACK PERIOD

- The Five-Year Lookback Rule comes into play when you transfer assets prior to applying for Long-Term Care Medicaid.
- What the rule means is that if an applicant has given away, transferred away, or sold something for less than fair market value in the last 60 months, Medicaid can "penalize" them by forcing them to either have the asset returned or by paying for a portion of their care out of pocket before Medicaid will kick in.
- The portion of care is called the "Penalty Period."

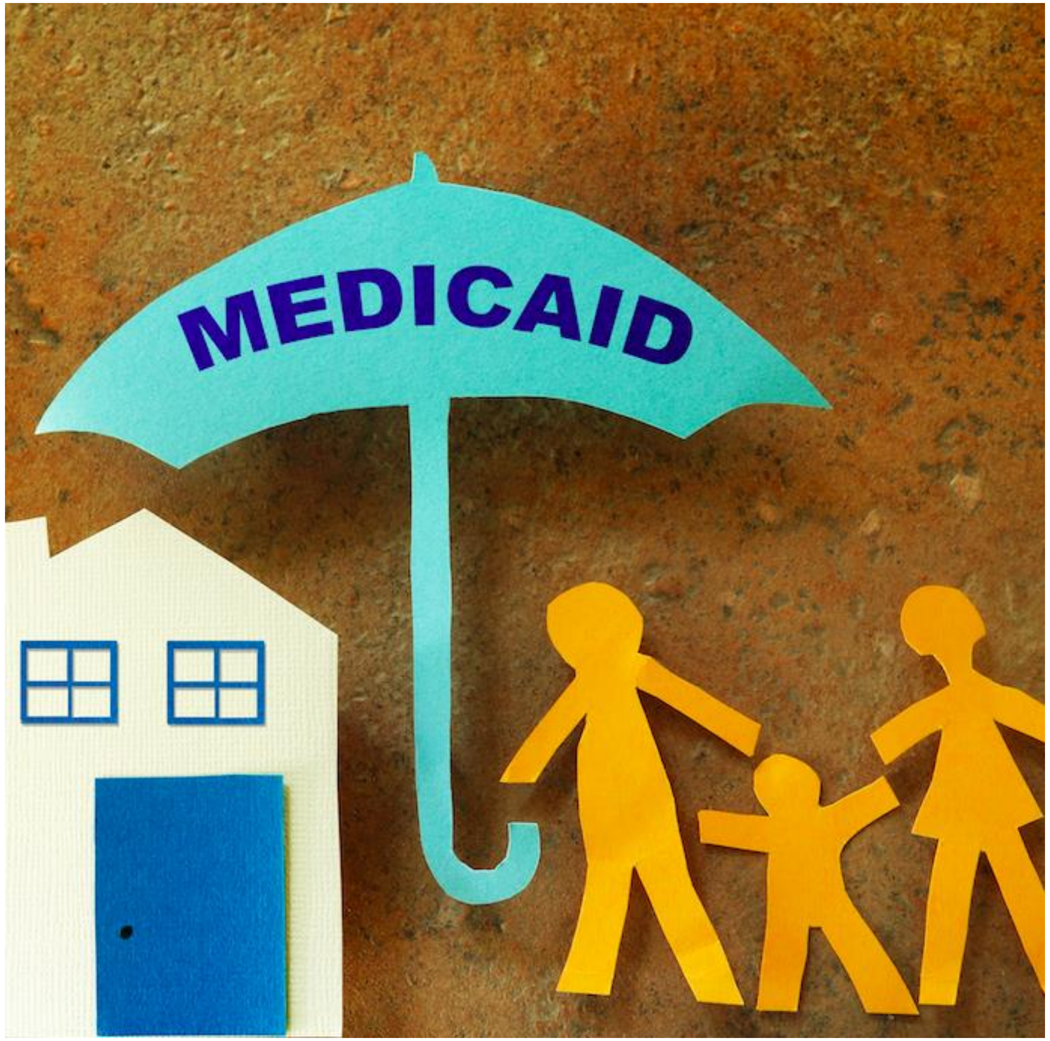
PENALTY PERIOD



- The Penalty Period is the amount of time for which the applicant must pay for their own care because of a previous transfer. This amount is calculated by taking the amount of money transferred away and dividing it by the average monthly cost of care, which in Vermont is currently $9,595.61.
- If an applicant transferred $100,000, they would divide that transferred amount by the Regional Divisor and have a Penalty Period of about 10 months. They would have to pay out of pocket for that amount of time before Medicaid would allow them to be qualified.

HOW TO MAKE THE LOOKBACK PERIOD WORK FOR YOU

- Irrevocable Medicaid Trusts are a way to transfer assets in an effort to plan ahead for Long-Term Care Medicaid.



IRREVOCABLE MEDICAID TRUST

- The most common type of Trust used in Medicaid Planning is a Trust meant to be treated as a gift/transfer from Medicaid's perspective, but is meant to remain in the Grantor's "Estate" and control from all other perspectives.
- This means that Medicaid looks at the transfer into Trust as a completed gift, but the Grantor can keep the income and the IRS treats it as a disregarded entity.

THE FIVE-YEAR LOOKBACK IS IN PLAY

TRANSFER INTO TRUST

=

GIFT

THE PENALTY PERIOD
IS A FACTOR.

CONSIDER THIS FOR CLIENTS WHO MAY NOT MAKE IT FIVE YEARS

VERMONT RECOGNIZES PARTIAL GIVE-BACK FROM THE TRUST.

IF YOUR CLIENT DOESN'T MAKE IT FIVE YEARS, IT'S OK TO DO A NEW CALCULATION.

IRREVOCABLE IS THE KEY WORD

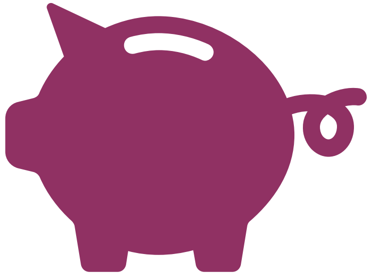
- Many clients, especially those generally familiar with Trusts already, may be cautious about the Irrevocable nature of the Trust
- Loss of control can be hard.
- Protections you can build into the Trust to ease concerns about Irrevocable Nature of the Trust:
  - Grantor status (tax advantages)
  - Power of Appointment over Beneficiaries
  - Trust Modification

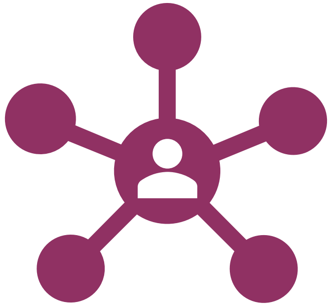
GRANTOR CANNOT BE THE TRUSTEE

- Because the Grantor must transfer the corpus of the Trust into the Irrevocable Trust and then no longer maintain any control of the Trust assets, it is not advisable for the Grantor to be the Trustee.
- There are differences of opinion on whether the state can keep the Grantor from serving as the Trustee, and Vermont does not have a specific Rule to address this issue, but it is better safe than sorry.

Grantor ≠ Trustee

TWO THINGS THAT CAN MAKE IT A GRANTOR TRUST





1. Retention of Income

2. Power of Appointment

TAXATION OF IRREVOCABLE MEDICAID TRUSTS

- One popular type of Irrevocable Medicaid Trust is the Irrevocable Income Trust
- This Trust allows for the Grantor to receive all income generated by the Trust assets. Ex:
  - Rental Property Income
  - Investment Account dividends
- Because the Grantor retains the right to this income and the Power of Appt., the income is also taxed to the Grantor, at the Grantor's tax rate.
- If there is Real Estate in the Trust, the Grantor is also responsible for Income Taxes.

TAXATION OF IRREVOCABLE MEDICIAD TRUSTS

- Because the Grantor retains the right to income and pays the taxes, the Trust is part of the Grantor’s taxable Estate and the beneficiaries get a step up in basis.
- This means that any assets transferred to the Trust during the Grantor’s lifetime get a new basis at the time of the Grantor’s death. Therefore, assets like a family camp or investment account that has appreciated over time can be distributed to the beneficiaries without the Grantor (or Beneficiary) having to worry about paying a Capital Gains Tax on the growth of that asset.

NO NEED FOR SEPARATE TAX ID

- Because the IDGT (even though Irrevocable) is a Grantor Trust, it does not need a separate tax ID number. Understanding this can be complicated for the client's financial and tax advisors but is very important to ensure the plan works correctly.

WHAT HAPPENS TO THE TRUST WHILE ON MEDICAID?

- Income is countable.
- If the Applicant retained the right to income from their Irrevocable Trust, that income counts toward the applicant's Patient Share (the amount the Applicant will be required to pay each month toward the cost of their own care.)

SELF-SETTLED TRUSTS AND MEDICAID

Irrevocable Medicaid Trusts are Self-Settled like First Party Special Needs Trusts, but there are stark differences between them.

	First-Party Special Needs Trust	Irrevocable Medicaid Trust
Self-Settled	Yes	Yes
Payback Provision Required	Yes	No
Generates a Penalty Period	No	Yes
Grantor can be Trustee	No	No
Grantor can be Beneficiary	Yes	Income-only

NOT SUBJECT TO ESTATE RECOVERY

- Because Income-Only Trusts are disclosed as part of the Medicaid Application and create transfer penalties, Estate Recovery is not typically a concern in Vermont.
- Vermont has Default Definition of Estate Recovery (not Expanded). When a probate estate is opened in Vermont, the probate court will also send a letter to the DVHA Estate Recovery Unit so that the state is notified of the probate estate opening.

FUNDING THE TRUST

- Just as with most Trusts, it is important to make sure the Trust is funded.
- With a Medicaid Trust, the funding and timing of funding is imperative. The five-year clock doesn't start ticking until the Trust is funded.

CERTIFICATE OF TRUST

It is important to make sure the Certificate of Trust is as fool-proof as possible so that third-parties (banks, financial institutions, etc.) are clear regarding the Trust's provisions. The most important provisions to include in the Certificate of Trust are:

- Name of the Trust
- Date of the Trust
- Trustor Name(s)
- Trustee Name(s)
- Tax ID (Grantor Social Security Number)
- The fact that the Trust can be continually funded after it has been established