

**New Hampshire Legal Assistance  
BRANCH LAW OFFICES**  
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**Senior Citizens Law Project Advice Line**

**603-624-6000 or 1-888-353-9944**

New Hampshire Legal Assistance provides free legal help to persons who cannot afford a private attorney. NH Legal Assistance handles civil legal matters involving health care, public and private housing issues, food stamps, welfare, unemployment compensation, utility shut-offs, consumer problems and other matters. Our offices are open Monday-Friday between 8:30 a.m. and 5:00 p.m.

This pamphlet was published by NH Legal Assistance to give you some idea of your rights. Since the law is always changing through actions of the courts and legislature, you should consult a lawyer if you have a problem that requires legal attention.

**"It Helps to Know the Law" pamphlet series includes:**

*NH Transfer / Discharge Law for Nursing Home Residents*  
*Unemployment Compensation*  
*Domestic Violence*  
*Property Tax Relief*  
*Your Rights as a Tenant in a Manufactured Housing Park*



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**MEDICAID INCOME AND  
ASSET RULES  
FOR NURSING HOME RESIDENTS  
As of July 1, 2009**

**I. THINGS TO CONSIDER BEFORE NURSING  
HOME PLACEMENT**

Whenever a person's failing health raises the issues of nursing home care and Medicaid coverage, everyone involved should keep three important goals in mind:

1. Considering options that will enable him/her to remain at home as long as possible;
2. Protecting the health and financial security of the community spouse, if any; and
3. Obtaining Medicaid coverage when necessary if nursing home care is eventually required.

Before placing someone in a nursing home, all other alternatives should be considered. Many disabled and elderly people can remain at home if they can obtain services in their homes, such as meals-on-wheels, home health care, chore services, and visiting nurses. In addition to paying for nursing home care, Medicaid operates Choices for Independence (formerly called Home and Community-Based Care), which pays for a variety of services for frail elders and disabled people who are ill enough to be in nursing homes but wish to remain at home or in a residential care facility. Financial eligibility for Choices for Independence is very different from the rules discussed in this pamphlet. To find out more about Choices for Independence, contact your local Medicaid office, or call the Senior Citizens Law Project Advice Line. (See back of pamphlet)

In making placement decisions, it is vital to consider the well-being of the healthy, or "community spouse." That spouse's health should not be jeopardized by continuing to care for a disabled spouse who needs care that is beyond the capacity of the healthy spouse to provide.

## II. MEDICAID INCOME AND ASSET RULES FOR SINGLE NURSING HOME RESIDENTS

### A. Assets

In order to qualify for Medicaid, a single person can have no more than \$2,500 in countable assets. A person's home as long as the equity value is less than \$500,000, motor vehicle, furniture, clothing and other personal effects are not countable. All liquid assets such as stocks, bonds, bank accounts, IRAs, etc., are countable. The equity value of life insurance policies is countable if the combined cash surrender value of all policies is greater than \$1,500. If the total combined value is less than \$1,500 or if the state has been made the beneficiary of the policies, the life insurance policies are not a countable resource. A person can qualify for Medicaid for three months only, even if the value of her life insurance policies exceeds the asset limit, if her medical and nursing home bills offset the excess countable assets. Assets placed in a joint account which was created on or after November 1, 1995 are considered entirely available to the person applying for Medicaid, unless it can be shown that the other joint owners also contributed to the account.

### B. The Home

Since homes with less than \$500,000 in equity are not countable assets, most homeowners may qualify for Medicaid. If, however, the recipient is the sole owner of the home and has no spouse or children living with her, the State requires that the home be sold within six months, unless the recipient's institutionalization is temporary and she is likely to be able to return to her home. (See Section III (D), below, for a discussion of the rights of the spouses, siblings, and children who reside in the Medicaid recipient's home.) The State will extend the six-month period if the recipient can show that she has been trying without success to sell the home.

The State will allow a Medicaid recipient to use her income to maintain her home, instead of paying it to the nursing home, only if the recipient's physician states that she will likely be able to return home within the three months.

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THE SENIOR CITIZENS LAW PROJECT

of

New Hampshire Legal Assistance

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The Senior Citizens Law Project is a special project of New Hampshire Legal Assistance and is funded in part by the New Hampshire Bureau of Elderly and Adult Services, under Title III of the Older Americans Act.

For assistance with a legal matter, please call:

**Senior Citizens Law Project Advice Line**

**1(603) 624-6000** (in the Manchester area)

or

**1-888-353-9944**

**TTY 1-800-634-8989**

[www.nhla.org](http://www.nhla.org)

#### **D. Transfers of Other Property**

All other transfers of the home or any other property for less than fair market value are not protected and can be disqualifying. An exception to this rule is the transfer of property by the institutionalized spouse to the community spouse so that the property can be protected as part of the community spouse's resource allowance.

A transfer of any property from the sole ownership of the applicant to joint ownership is disqualifying unless otherwise protected by the above rules. Likewise, any transfer, liquidation or withdrawal of funds or property already held jointly may be disqualifying.

Real estate (other than the home) held jointly by the Medicaid applicant which the other owner refuses to sell, is considered inaccessible and not counted as a resource. It need not be sold or transferred, but any income derived from this asset is counted as income when calculating the recipient's share of cost towards the nursing home bill. If the applicant transferred part ownership of real estate, the same transfer of asset rules set forth in Section IV, A of this pamphlet apply.

#### **E. Criminal Penalties**

For a short period of time in calendar year 1997, there were potential criminal penalties for transfers of property made for the purpose of qualifying for Medicaid. These criminal penalties no longer exist since the law was repealed. However, lawyers who provide advice about property transfers and any possible Medicaid complications may risk criminal prosecution. This law, too, has been challenged, and one federal court has found the law to be unconstitutional and unenforceable.

#### **V. GET ADVICE**

The Medicaid rules are complex and subject to change. Anyone considering entering a nursing home or applying for HCBC, or anyone considering nursing home placement for a spouse or family member, should always seek up-to-date advice on these issues from a knowledgeable attorney.

If the recipient rents her home or if it is otherwise income-producing, she is not required to sell it. Likewise, if it is owned jointly with another person who refuses to sell, she will not be disqualified for failing to sell her home.

Whenever a recipient does sell a previously excluded residence, the proceeds from the sale become a countable asset. The recipient may then lose eligibility for Medicaid until she has spent down this lump sum to the point where her total countable resources are again \$2,500 or less.

#### **C. Income**

A single person in a Medicaid certified nursing home will be eligible for Medicaid if her monthly income does not exceed the Medicaid reimbursement rate for the cost of care. Because the monthly Medicaid rates generally exceed \$3,000, only a person with very significant monthly income will not qualify. A single person is allowed to keep a small monthly personal needs allowance (personal spending money). All the rest of her income must be paid over to the nursing home.

### **III. MEDICAID INCOME AND ASSET RULES FOR MARRIED RECIPIENTS**

The Medicaid rules protect the "community spouse" (i.e. the healthy spouse at home) by allowing the spouse to keep some of the institutionalized spouse's income, if needed, and a portion of the couple's assets.

#### **A. Spousal Income Allowance**

Although married couples generally combine their incomes to meet their household expenses, the old Medicaid rules required that the institutionalized spouse's entire income be paid over to the nursing home. The current spousal protection rules allow the healthy spouse at home to receive an allowance from the income of the spouse in the nursing home.

As an example of how the income allowance rules work, consider a couple with monthly income of \$1,800, consisting of \$400 in Social Security for the wife, and \$700 in Social Security and \$700 from a pension for the husband. If the husband is in a nursing home on Medicaid, his wife, as the community spouse, is entitled to as much of his income (after a monthly deduction of \$56 for his personal needs allowance in the nursing home) as is necessary to bring her total income up to a **minimum of \$1,822 per month** (as of July 1, 2009). Therefore, she can keep at least \$1,350 of her husband's income:

\$1,822	(Minimum total spousal income)
- 400	(Wife's income)
\$1,422	(Spousal income allowance from husband's income)

If the community spouse has monthly shelter costs (rent, mortgage, property taxes, insurance, utilities<sup>1</sup> or monthly condominium fee) **in excess of \$547** (the "shelter deduction"), she can obtain a higher allowance (assuming the nursing home spouse has sufficient income), **up to a maximum limit of \$2,739**. For example, if the wife from the prior example has shelter costs of \$736, she would be entitled to \$189 more from her husband's income:

\$736	(Actual shelter costs)
- 547	(Shelter deduction)
\$189	(Excess shelter allowance)

This would mean that instead of keeping \$1,422 from her husband's income, she could keep \$1,611 to add to her own income of \$400, for a total income allowance of \$2,011.

When more of the institutionalized spouse's income is given to his wife to protect her financially, less of his income goes to pay the nursing home bill. The services he receives at the nursing home remain unchanged.

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<sup>1</sup> The State uses a standard deduction of \$424 per month for all utilities rather than requiring proof of actual cost of utilities.

The disqualification period begins to run as of the first day of the month in which the transfer was made if the transfer happened prior to February 8, 2006. If the transfer took place on or after this date the disqualification date begins on the date of Medicaid eligibility or on the date of the transfer, whichever is later. The length of the disqualification is calculated by dividing the value of the property transferred by the average monthly "private pay" nursing home bill. This average is currently \$7,861. Therefore, a transfer of \$94,330 would disqualify an applicant for 12 months ( $\$94,330 \div \$7,861 = 12$  months). A transfer of \$94,330 would have to be disclosed on any Medicaid application filed within the next 60 months, but would only be disqualifying for 12 months from the first day of the month in which the transfer was made if the transfer was made prior to February 8, 2006. If the transfer was made after this date disqualification would begin either on the date of the transfer or at the time of Medicaid eligibility. If an applicant has made multiple transfers, the penalties for each transfer are added together so that the disqualification is lengthened.

### B. Trusts

The State will inquire about transfers of property into a trust that took place within 60 months of the Medicaid application. You should consult with an attorney before creating a trust, or if you have questions about how the Medicaid rule applies to a trust already created.

### C. Transfers of the Home

This penalty does not apply to transfers of the home for less than fair market value to a spouse or to a minor or disabled child. Also protected are transfers of the home to a sibling who has an equitable interest in the property and who was residing in the home for at least one year immediately prior to the applicant's entry into a nursing home. The transfer of the home to an adult, non-disabled child is protected only if that child lived in the home for two years immediately prior to the applicant's entry into a nursing home, and if the adult child can prove that he/she provided care that helped delay the applicant's institutionalization.

Furthermore, if a minor or disabled child still lives in the home, no forced sale can be made. Likewise, if a sibling of the Medicaid recipient still lives in the house and has some claim of title to the property and had lived there for at least one year prior to the recipient's entering into the nursing home, no forced sale can be made. Finally, a forced sale of the home cannot occur if an adult child is living there, and that adult child had lived with his/her parent for at least two years prior to the parent's entry into the nursing home, and can prove that he/she had provided care that delayed the parent's entry into the nursing home. (See also Section IV (C), below, relating to "Transfer of the Home.")

#### **E. State Recovery of the Cost of Medical Assistance**

New Hampshire has adopted legislation, effective August 29, 2005 that allows it to file a claim for recovery against property (other than the family home described in Section III D above) owned jointly by the Medicaid recipient. Forty-six days after the death of a Medicaid recipient, DHHS shall notify the other joint owner or owners of its claim for recovery. Recovery is limited to the amount of the Medicaid funds expended on the recipient and DHHS shall not pursue recovery if it creates an undue hardship for the surviving joint owner or owners.

### **IV. TRANSFERS OF PROPERTY AND TRUSTS**

#### **A. Disqualification for Transferring Assets – General Rule**

For years, the State of New Hampshire and the federal government have sought to prohibit wealthy persons from giving away all their property so as to impoverish themselves deliberately and thus qualify for Medicaid. Significant changes were made in the federal law on February 8, 2006.

The State will inquire about any transfer of property that took place 36 and 60 months prior to the Medicaid application. A 36-month "look-back" applies to property transfers (excluding trust property) made prior to February 8, 2006 and a 60-month look-back applies to transfers to trust property and transfers made after February 8, 2006. A transfer for less than market value during the 36 or 60 month "look-back" period may be disqualifying.

**The minimum monthly maintenance allowance for spouses, now \$1,822, increases on July 1st of every year in accordance with the consumer price index, as does the shelter deduction, now \$547. The maximum maintenance allowance, now \$2,739, changes every January 1<sup>st</sup>.**

If the community spouse can show she cannot meet her reasonable expenses even with the minimum allowance and excess shelter allowance, she can request a fair hearing to seek a higher allowance. She will have to produce verification of her expenses at the fair hearing. If the community spouse obtains a support order from a court, even if it is higher than **the maximum maintenance allowance of \$2,739**, the state must honor it.

#### **B. Spousal Resource Allowance**

In addition to permitting the community spouse to receive an income allowance, the Medicaid rules protect a portion of the couple's "assets" or "resources" for the community spouse. **Currently**, the resource allowance granted to a community spouse is **the greater of:**

- 1) **\$21,912 or**
- 2) **one-half of all the couple's assets, up to a maximum of \$109,560.**

The minimum and maximum spousal resource allowances increase on **January 1st** of every year.

When the community spouse's resource allowance is calculated, all of the couple's assets are pooled together, regardless of whether they are actually owned separately or jointly, and regardless of any prenuptial agreement to the contrary. Which assets are countable is explained in Section II, A of this pamphlet. All but \$2,500 of the assets in excess of the allowance must be spent before Medicaid coverage will begin.

The following table shows what the community spouse's resource allowance will be in New Hampshire depending on the total value of all the assets:

In New Hampshire

Assets less than \$43,824	Assets between \$43,824 and \$219,120	Assets more than \$219,120
\$21,912	One-half	\$109,560

Under these rules, a community spouse in a couple with \$10,000 in assets would be allowed to keep all of these assets, and his/her spouse would be immediately eligible for Medicaid. A couple with \$25,000 in assets could protect \$21,912 for the healthy spouse and \$2,500 for the ill spouse, but would have to "spend down" the remaining \$588. A couple with \$50,000 in assets would be able to protect \$25,000 (1/2 of \$50,000 being greater than \$21,912) for the community spouse and \$2,500 for the institutionalized spouse; they would have to spend \$22,500 before Medicaid would find the ill spouse eligible. A couple with \$250,000 in liquid assets can only protect \$109,560 for the community spouse and \$2,500 for the institutionalized spouse. All the rest would have to be spent before Medicaid eligibility could be established.

It is important to note that the money which must be spent down can be used for any purpose that would benefit either spouse, such as home repairs, vehicles, life insurance, prepaid funerals, furniture, travel, etc. However, it cannot be given away. (See the discussion of "Transfers of Property and Trusts" in Section IV, below).

As with an unmarried applicant, the couple's principal residence and certain other assets such as furniture, automobiles, burial plots, and irrevocable funeral trusts are not counted at all in determining eligibility. (see Section II, above)

### C. Ask for a "Resource Assessment"

Under the rules, a couple is entitled to have the State do a "resource assessment" or "snapshot" at the time that one spouse enters a nursing home, whether or not the nursing home spouse is eligible for Medicaid at that time. This assessment enables the couple to find out as early as possible the maximum share of their assets that can be protected. The resource assessment helps prevent the couple from spending more than necessary and unduly jeopardizing the healthy spouse's financial security. The resource assessment is not a Medicaid application. To apply for Medicaid, an application must also be submitted. Both a resource assessment and Medicaid application are completed at local offices of the NH Department of Health and Human Services (DHHS).

Once a couple gives DHHS the necessary financial information, they will get a written assessment explaining how much of their resources must be spent before the institutionalized spouse will qualify for Medicaid.

If the community spouse needs a greater portion of the assets because of the monthly income it provides, she can request a fair hearing. To do so, a Medicaid application must first be submitted and denied.

### D. The Home

Contrary to persistent rumors, a couple is not required to sell their home in order to obtain Medicaid coverage. Instead, the healthy spouse is permitted to remain in the home as long as she/he lives, even after the death of the Medicaid recipient, and no forced sale can be made. While it had long been the practice for the state to impose a lien (a legal encumbrance like a mortgage) against the home after the death of the recipient up to the amount of the Medicaid funds expended on his or her behalf, that practice was challenged in court. As a result of a September 1999 class action settlement approved by the United States District Court for the District of New Hampshire, a surviving spouse of a Medicaid recipient no longer has to worry about a "Medicaid lien" being filed on his/her home. (See *DesFosses v. Shumway*, Case No. 97-CV-625B).