



LEGAL HOTLINE FOR TEXANS

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NURSING HOME MEDICAID: INCOME/RESOURCE LIMITS

THIS PUBLICATION IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY.

The pamphlets of the Legal Hotline for Texans are general in nature and should not be relied on as advice for your particular circumstances. For advice that is specific to your particular circumstances, you should consult a lawyer.

The Legal Hotline for Texans (LHT) is a telephone hotline providing free legal advice and consultation and other free legal services to Texans Age 60 and Older or Eligible for Medicare; Crime Victims Age 60 and Older and their Family Members and Authorized Claimants; and Pension and Retirement Plan Employees, Participants and Beneficiaries.

Eligible Clients can consult with an attorney of the Legal Hotline for Texans free of charge by calling one of the phone numbers listed above. If clients would like to consult with an attorney in their communities, or if ongoing representation by an attorney is needed, the Legal Hotline for Texans may be able to make a referral.

Depending on individual circumstances and local availability, such a referral may be to an organization providing free attorneys to low income persons, or may be to an attorney on the Legal Hotline for Texans' reduced-fee panel, or may be to a statewide or local lawyer referral service.

The Legal Hotline for Texans is a project of the Texas Legal Services Center with support from the Texas Department of Aging and Disability Services (DADS), the U.S. Centers for Medicare and Medicaid Services (CMS), the U.S. Administration on Aging (AoA), and the Texas Equal Access to Justice Foundation through the Texas Basic Civil Legal Services Program (BCLS) and the Texas Crime Victims Civil Legal Services Program (CVCLS).

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FOR NURSING HOME MEDICAID, WHAT ARE THE CURRENT INCOME AND RESOURCE LIMITS?

**Nursing home Medicaid:
There are requirements
of age (or disability),
medical need, and low
income/few resources.**

In Texas, persons who are sixty-five (65) years of age or older, or who are determined to be disabled or blind, and who have a medical need for nursing home care, may qualify for nursing home Medicaid. In addition to the above requirements (medical need for nursing home care, plus age 65 or above, disability, or blindness), certain income and resource limits must be met. The current income and resource limits for nursing home Medicaid in Texas are:

Income limits.

Income: Maximum: Couple (i.e., when both spouses will be in nursing home care), \$3,618; Individual, \$1,809. These are monthly amounts. Income includes earned income (wages and salaries) and unearned income (such as interest, dividends, pensions, royalties, rental payments, gifts, and annuities) and government benefits (including Social Security and Veterans Benefits). At the present time, it is the policy of the Texas Health and Human Services Commission to count as income to an individual **all** income coming in the name of that individual regardless of whether it is community or separate income, and regardless of the income received in the name of the other spouse.

Use of Miller Trust.

If an individual has met the resource test below and her or his income is above \$1,809 a month, but the income does not cover the expenses of the nursing home, he or she may be eligible to establish a Qualified Individual Trust, also referred to as a Miller Trust. In such a situation an attorney should be consulted to either establish the trust or discuss other legal options.

Resource limits.

Resources: Maximum: Couple (i.e., when both spouses will be in nursing home care), \$3,000; Individual, \$2,000. Resources basically include all types of property (real property, tangible personal property and intangible personal property [such as bank accounts and stocks]). The only property that you can safely assume will not be counted as a resource is "excluded property." Excluded property (which does not count in determining Medicaid eligibility) consists of: The homestead (if it will continue to be occupied by the spouse [or certain others], or if you plan to return to it); life insurance with a face value of

\$1,500 or less and/or \$1,500 or less of pre-paid burial expenses, but the total of life insurance and pre-paid burial expenses must not exceed \$1,500 (However, irrevocable, pre-paid burial contracts have no limit.); a burial space for the nursing home patient, spouse, and close relatives; a car of up to \$4,500 in value (except more if the auto is used for necessary transportation). Thus, these excluded resources do not count toward the \$3,000 or \$2,000 amount, whichever applies. Property that does not fit under one of the exclusions has to be sheltered under the \$3,000 or \$2,000 resource maximum. So whatever property you cannot place under an exclusion, you can keep, as long as the total of such non-excluded property does not exceed the applicable maximum.

Note: The above income and resource maximums apply as follows: If only one spouse will be entering the nursing home, the individual figure is used. If both spouses are entering the nursing home, the couple figure is used.

**Important note re:
Uncompensated
transfers of property.**

If the applicant transfers property and does not receive equivalent value for it, and if one of the reasons for the transfer was to become eligible for nursing home Medicaid, and if the transfer occurred within thirty-six (36) months of the date of application for nursing home Medicaid, the applicant will be ineligible for Medicaid, for a given penalty period. The penalty period is determined by dividing the amount of the transfer by \$117.08 to determine the number of days of ineligibility for nursing home care. In sum, it can be very risky to transfer property without receiving full compensation for it, if one enters a nursing home and applies for Medicaid within thirty-six (36) months of the transfer.

**Two important concepts:
(1) Community spouse;
(2) Protected resources
amount**

If only one spouse of a married couple is entering the nursing home, the spouse who will be staying in the home is called the "community spouse" (i.e., the spouse will stay in the community). Under this situation, the spouse entering the nursing home is entitled to the above-identified resource maximum and exclusions. In addition, the "community spouse" is entitled to what is called a "protected resources amount." To determine the "protected resources amount" the starting point is one-half of the couple's property other than these exclusions:

homestead, household goods, personal goods, one car, and burial funds. After excluding these items of property, the "community spouse" may keep one-half of all the other property of the couple, but not less than \$19,908 nor more than \$99,540.

The protected resource amount can sometimes be increased where the income of the community spouse does not meet the minimum monthly maintenance needs allowance. However, the spouse in the nursing home needs to first divert income to the spouse in the community. This increase can only take place at a fair hearing. A fair hearing takes place after the applicant has applied for nursing home Medicaid and has been denied. The applicant must request a fair hearing on the issue that the protected resource amount should be increased. An applicant should contact a Benefits Counselor with the local Area Agency on Aging or an attorney to help with a fair hearing. The request for a fair hearing must be made within 90 days after the adverse decision by the HHSC.

Note re: “applied income.”

After a person is eligible for nursing home Medicaid, an “applied income” is calculated by an HHSC worker. “Applied income” is that part of the income that must be paid to the nursing home. “Applied income” is calculated for an unmarried individual as follows: Determine the net earned and gross unearned income and deduct a “personal needs” allowance of \$45 from income and then deduct “incurred medical expenses” such as Medicare premiums and health insurance. After these deductions what is left is the “applied income” which is paid to the nursing home.

An example of “applied Income.”

In the typical case, where one spouse is entering the nursing home and the other spouse will continue to live in the community, the applied income amount is calculated as follows:

Determine the net earned income (that is, income minus income tax) and gross unearned income for the spouse in the nursing home. Then, subtract \$45. This is the "personal needs allowance." Next, add the spouse’s net earned and gross unearned income to what is left and subtract the spousal needs allowance. The spousal needs allowance is currently \$2,488.50 per month. Then, subtract incurred medical expenses, and the rest is paid to

the nursing home. In some cases, the income of the spouse in the nursing home can be diverted to the spouse in the community for the spouse's monthly maintenance needs. If the nursing home resident diverts his or her income to make the spousal allowance, and there are no dependents, and the community spouse does not have income above \$2,488.50 a month, then the protected resource amount can be raised at a fair hearing. Further, the applied income is calculated as if it were an individual budget.

Incurred medical expenses are expenses the nursing home resident is incurring for "Medicare and other health insurance premiums, deductibles and coinsurance, and medical care and services recognized by state law but not covered by Medicaid."

Example of applied income calculations

Example:

NH resident has income of \$1600 and has incurred medical expenses of \$200 per month. Community Spouse (CS) has income of \$1800. \$1600 minus \$45 plus \$1800 gives total income of \$3355. Subtract \$2488.50 for spousal monthly maintenance needs allowance. Remainder is \$866.50. Subtract \$200 for incurred medical expenses. \$666.50 is paid to the NH, and \$688.50 is diverted to the CS.

Fair hearing to protect community spouse.

An adverse decision by HHSC can be appealed at a "fair hearing." An attorney should be consulted when there is an issue of a "fair hearing." The request for a "fair hearing" must be made within 90 days of the adverse decision by HHSC.

Applying for nursing home Medicaid.

How does a person apply for nursing home Medicaid? (1) Persons who are hospitalized (and who will need long-term care upon discharge) may ask the hospital social worker to help in applying for nursing home Medicaid. (2) If it is known what nursing home the senior citizen (65 or older), disabled, or blind person will be entering, the nursing home administrator can give the patient or family the name and phone number of the Texas Health and Human Services Commission (HHSC) caseworker assigned to take applications from the nursing home. HHSC has assigned a Medicaid caseworker to each nursing home. (3) The patient or family can contact the HHSC office serving the county

where the nursing home is, and ask to apply for nursing home Medicaid. In urban counties, the local HHSC office has a specific person (a "screener") assigned to handle nursing home Medicaid matters.

Please Remember: In addition to being financially eligible (within the above-described income and resource limits), a person must be 65 or older, or disabled, or blind, in order to be eligible for nursing home Medicaid. Additionally, there must be a medical need for nursing home care determined by a medical professional. Furthermore, an application for nursing home Medicaid will not be granted until the applicant has been in the nursing home for thirty (30) consecutive days. HHSC has forty-five (45) days in which to grant or deny nursing home Medicaid to a person who is sixty-five (65) or older. If the basis of the application is disability, HHSC has ninety (90) days in which to make the decision. In either case, if the application is granted, Medicaid will provide benefits retroactively to the first day of nursing home care.

What can you do if benefits are denied, terminated, suspended, or reduced?

If an application is denied (or if benefits already granted are terminated, suspended, or reduced), an attorney should be consulted immediately. If the application was an initial application (and it has been denied), the applicant can request a fair hearing to contest the denial. This appeal must be requested within ninety (90) days of the date of the denial. If the person affected was already receiving nursing home Medicaid--if HHSC has decided to terminate, suspend, or reduce the benefits, then the benefits will remain unchanged until a hearing if a hearing is requested within ten (10) days of the date of the notice of adverse action.

Older Texans (60 or older) may call the Legal Hotline for individual advice and consultation.

This pamphlet has discussed some very complicated matters.

IF YOU ARE A TEXAN SIXTY (60) YEARS OF AGE OR OLDER OR ARE ELIGIBLE FOR MEDICARE, PLEASE FEEL FREE TO CALL THE LEGAL HOTLINE FOR TEXANS FOR FURTHER ADVICE ABOUT YOUR PARTICULAR SITUATION.

How to contact the hotline.

The telephone numbers for the Legal Hotline for Texans are: 1-800-622-2520 and (in Travis County only) 512-477-3950. The hours of the Legal Hotline for Texans are: Monday through Friday, 9:00 a.m. to 5:00 p.m. For more information you can also visit the web site for the Legal Hotline for Texans at: www.tlsc.org/hotline.html.

Note: In connection with this pamphlet, you may want to read the Legal Hotline's pamphlet entitled "What are the Alternatives to Nursing Home Medicaid?" Feel free to call us for a copy of that item.