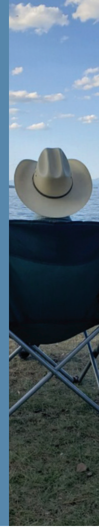

Patti Goroski

MontGuide

FAMILY FINANCIAL MANAGEMENT

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Medicaid and Long-Term Care Costs

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Outlines the legal and tax ramifications, as well as impacts on emotional and physical health, of financing long-term care.

A MAJOR CONCERN FOR OLDER ADULTS is the cost for long-term care. They are afraid those costs will diminish their life savings. Some fear if their assets become depleted by a long-term illness, the dignity, security, and independence they worked a lifetime to achieve will also disappear.

According to the U. S. Department of Health and Human Services:

- Someone turning age 65 today has a 70 percent chance of needing long-term care services.
- Women need care longer (3.7 years) than men (2.2 years).
- One-third of today's 65-year-olds may never need long-term care, but 20 percent will need it for longer than 5 years.

Nursing home care is the largest out-of-pocket health care expense for seniors. The standard cost in Montana is $7,670.48 per month ($252.18 per day from July 2020 - June 2021), almost $92,046 per year. Medicaid pays about 61 percent of the cost while Medicare only pays about 7 percent. Nursing home residents and their families pay about 32 percent.

This MontGuide explains:

- options for covering long-term care costs;
- eligibility requirements for the Medicaid application process;
- role of trusts in the protection of assets; and
- consequences of giving away assets to qualify for Medicaid.

Ways to provide for long-term care costs

There are **four** alternatives for individuals to consider for covering long-term care expenses.

First, some Montanans pay the annual cost of about $92,046 per person from their present income, savings, and investments. Those with real property or other assets could sell them and use the proceeds to pay for long-term care.

Second, some Montanans buy a *regular long-term care insurance policy* or a *long-term care partnership insurance policy.* For more information, see the MSU Extension Montguide, *Long-term Care Partnership Insurance in Montana* (https://store.msuextension.org/Products/Long-Term-Care-Partnership-Insurance-in-Montana-MT201202HR__MT201202HR.aspx, MT201202HR). Partnership policies allow purchasers to keep some or all of what they have worked a lifetime to accumulate, while still qualifying for Medicaid.

The Montana Office of the Commissioner of Securities and Insurance has information about long-term care insurance. To request a copy of the *Montana Consumer's Guide to Long-Term Care* and the *Long-Term Care Insurance Rate Comparison Guide,* call 800-332-6148 or download at https://csimt.gov/your-insurance/long-term-care/. Aging Services in DPHHS also has information about long-term care insurance https://dphhs.mt.gov/sltc/aging/longtermcareinsurance.

Third, Montanans may depend on adult children to pay for their long-term care costs. This could create financial hardships for family members who are paying their own bills, paying for their children's college education, saving for retirement, or making mortgage payments on a home, family farm/ranch or other business.

Adult children, however, may feel they are not responsible for the cost of their parents' long-term care. Unless there is a contractual agreement between the parents and children, Montana law does not require adult children to pay for their parents' long-term care costs.

Fourth, some Montanans plan to apply for Medicaid when they go into a nursing home or assisted living facility. Medicaid is a federal and state program providing comprehensive medical care, including nursing home care, to low-income individuals.

Eligibility requirements for Medicaid

Montana sets rules for Medicaid eligibility but follows federal guidelines because Congress provides about 66 percent of Medicaid funding. The Montana Legislature gives funds for the remaining 34 percent.

Assets test

The assets test measures whether the dollar amount of an applicant's assets (resources) fall within Medicaid eligibility levels. An applicant's assets (resources) are either **countable** or **excluded** for Medicaid eligibility purposes.

Countable resources. These consist of all real and personal property owned (solely or jointly with others) by the person applying for Medicaid. Examples of countable resources include: non-home real estate; vehicles; checking and savings accounts; certificates of deposit; cash value in life insurance; stocks, bonds, and mutual funds; individual retirement accounts (IRAs); Keogh accounts; contracts for deed; life estates; oil and mineral rights; items of unusual value (such as jewelry, coins and art work); and any other assets over which the individual has control (such as assets in a revocable living trust). An applicant must use countable resources exceeding the limit to pay for nursing home care before Medicaid benefits can become available.

Excluded resources. Montana Medicaid eligibility requirements categorize certain assets as excluded resources. These resources do not count towards the Medicaid resource limit of $2,000. Examples of excluded resources include a home the applicant has been living in and expects to return to (as long as the home is valued at $603,000 or less); a home used as a primary residence by the spouse or other dependents of the nursing home resident (there is no value limit on this home); most personal effects and ordinary household goods; cash value of all life insurance with a total face value of less than $5,000; all term insurance; burial plots regardless of value; burial fund of up to $1,500; an irrevocable burial contract with a funeral home on a state approved form; and one vehicle used for transportation.

Property used by the owner of a trade or business is not a countable asset if the property is for self-employment. Income producing property up to $6,000 of the equity may be eligible for exclusion. The $6,000 exclusion applies to the total value of all income-producing property, not against each property individually. The value of livestock used to produce income necessary for employment or raised for home consumption is an excluded resource. Livestock pets are also an excluded resource.

Marital assets. For married couples, *the assets of both the husband and wife are countable resources* for Medicaid eligibility purposes, regardless of whose name appears on the titles. Countable resources include all separately owned property of each spouse. All jointly owned property (whether held as tenancy in common or in joint tenancy with right of survivorship) is a countable resource. Property held in joint tenancy with others, such as children or grandchildren, is also a countable resource for the full value of the joint tenancy.

> **Example 1:** John has $50,000 in certificates of deposit in his name only. His wife, Mary, has $40,000 in U.S. savings bonds in her name only. They also own $60,000 in mutual funds held as joint tenants with right of survivorship in four names – John, Mary, and their two sons. John owns a minority stock interest in the family ranch corporation valued at $100,000.
>
> The total value of their assets is $250,000 ($50,000 + $40,000 + $60,000 + $100,000 = $250,000). If John applies for Medicaid, the value of the minority stock ($100,000) is their only excluded resource. Their other resources including the CDs, savings bonds, mutual funds ($150,000), however, are countable resources for Medicaid eligibility purposes.

Premarital agreement. Couples who marry later in life often have a premarital agreement because, as parents, they wish to protect assets for their children. The premarital agreement or contract typically says the property will remain separately owned by each spouse if the marriage ends in divorce or death. More information about Premarital Agreements is available from your local MSU Extension office or the MontGuide can be downloaded, **https://store.msuextension.org/Products/Premarital-Agreement-Contracts-in-Montana-Financial-and-Legal-Aspects-MT201212HR__MT201212HR.aspx.**

Even with the pre-marital contract, all property titled in their separate names are countable resources for Medicaid eligibility purposes after they are married.

> **Example 2:** Andy and Nancy each have adult children from an earlier marriage. They signed a premarital agreement saying their property would remain in separate names. Each had a will having a provision saying individually-owned property would pass to their children.
>
> Four years after they were married, Andy developed Alzheimer's disease. Nancy had to make the difficult decision to place Andy in a nursing home because she could no longer care for him safely at the ranch. Although they had a premarital agreement, all property Nancy and Andy owned separately was countable resources in the determination of Andy's eligibility for Medicaid. Andy had $100,000 in countable resources in his name only. Nancy had $900,000 in countable resources in her name only. Their combined countable resources for Medicaid eligibility purposes was $1 million ($100,000 + $900,000 = $1,000,000).

Protections for community spouse. In Medicaid jargon the spouse who lives outside the nursing home is the **community spouse.** The spouse in the nursing home is the **institutionalized spouse.** In Montana, the community spouse can keep one-half of the countable combined resources up to a maximum of $130,380.

However, if resources totaled less than $49,440, then the community spouse may keep up to the minimum of $26,076, even if the amount is more than one-half of the countable resources.

These countable resource limits are for the year 2021. They change annually according to the increase in the Consumer Price Index (CPI).

> **Example 3:** Sara and Budd have combined countable resources valued at $314,000. If Budd applies for Medicaid, Sara gets to keep assets valued up to $130,380. Budd gets to keep $2,000. For Medicaid eligibility purposes, Sara cannot keep the $181,620 exceeding the maximum of $130,380 of the couple's combined countable resources ($314,000 - $130,380 - $2,000 = $181,620).

Medicaid considers any of the couple's countable resources valued at more than the asset limitations mentioned previously as **accessible resources** of the institutionalized spouse. An institutionalized spouse is eligible to receive Medicaid when those resources are less than or equal to $2,000. Resources could be "spent down" by paying for nursing home care or by paying for home repairs.

> **Example 4:** Frank and Catherine have combined countable resources valued at $300,000. Catherine may keep the maximum of $130,380. Frank may keep $2,000. Catherine plans to use the remainder of their resources, $167,620, to pay for Frank's medical expenses not covered by their health insurance plan and pay off the mortgage on their home ($300,000 - $130,380 - $2,000 = $167,620).

> **Example 5:** Carlos and Maria each have children from an earlier marriage. Maria has $100,000 in countable resources in her name. Carlos has $800,000 in countable resources in his name. Maria may keep a maximum of $130,380. Carlos may keep $2,000. The rest of both of their combined countable resources of $767,620 must be "spent down" to $2,000 before Carlos is eligible for Medicaid ($800,000 + $100,000 = $900,000 - $130,380 = $767,620).

Income test

The income test examines the Medicaid applicant's countable income. **Countable income** includes funds received in the name of the Medicaid applicant. Applicants whose monthly nursing home costs are greater than their countable monthly income meet the income test.

Examples of countable income include: Social Security or other retirement pensions; railroad retirement; Veteran's Administration benefits; lease or rental income; dividends; interest earned on savings; trust income; and monthly annuity payments.

An individual in a nursing home who has income must use it to pay for nursing home care. A nursing home resident can pay the monthly cost of health insurance out of the income. Medicaid allows residents to keep $50 each month as a personal needs allowance. A veteran who receives a pension may keep $90 plus a $50 personal needs allowance.

> **Example 6:** Bruce has a monthly income of $2,000. He can keep $50 each month for personal needs such as shaving cream, toothpaste, clothing, and magazines. Bruce's remaining income of $1,950 goes toward his nursing home costs. His monthly nursing home bill is $7,670. Medicaid will pay the balance of $5,720 each month ($7,670 - $1,950 = $5,720).

Marital income

All income received solely in the name of the community spouse is not considered income of the institutionalized spouse and, therefore, is excluded for Medicaid eligibility purposes. Any income paid to both spouses is usually equally divided; one-half is income to the institutionalized spouse and the remaining half is income to the community spouse.

The community spouse may also qualify for a monthly allowance from the income of the institutionalized spouse up to a maximum of $3,260 (2021). The allowance is the amount necessary for home maintenance costs (rent or mortgage, taxes, insurance, and utility charges). If the community spouse has enough income to cover these home maintenance costs, no allowance is granted from the income of an institutionalized spouse.

Application process for Medicaid

The application process for Medicaid includes several forms: a resource assessment, a pre-screening medical determination, and an application for assistance.

Resource Assessment. When a person enters a nursing home, a family member (spouse, adult child) or friend should contact the local Office of Public Assistance for a resource assessment appointment. Even if the individual does not plan to apply for Medicaid, there is a required resource assessment.

The resource assessment is based on the individual's financial situation on the first day of the month when entering the nursing home for a period of more than 30 days. The resource assessment is critical, because it determines the amount of a married couple's resources the community spouse may keep, should the institutionalized spouse apply for Medicaid.

Pre-screening determination. A pre-screening determines if the applicant needs long-term care before Medicaid will pay. The screening also specifies whether there is a diagnosis of mental illness showing a need for other services.

Montana contracts with the Mountain-Pacific Quality Health Foundation (phone: 800-219-7035) to conduct screening determinations.

Application for assistance. An application for Medicaid assistance is available from the Office of Public Assistance in any

Montana county. An applicant can also apply online at https://apply.mt.gov/ or over the phone 1-888-706-1535.

Eligibility decisions

DPHHS decides about the eligibility of the applicant within 45 days of the date of application. Specific instances may occur to extend this deadline, such as client's inability to supply verification within the 45-day period, the evaluation of a trust or annuity, or an asset transfer requiring more information.

If the nursing home resident passes the prescreening determination, assets and income eligibility tests, Medicaid may begin payments to coincide with the date the person entered a nursing home.

An applicant denied Medicaid may request a hearing before a hearing officer. The request for a hearing must be in writing within 90 days of the mailing of the notice of Medicaid determination.

Gifting property

Some Montanans believe the best protection against depleting their assets for long-term care costs is to become "impoverished" by giving away all their property, so they qualify for Medicaid. Before giving property to others, however, consider the advantages and disadvantages of such gifts. Each potential gift has legal, emotional, and tax consequences.

Remember, after assets are gifted to someone else, the assets are beyond your control. The friend or family member who received the property is under no legal obligation to use the asset to support you during the time you need nursing home care. The family member could sell or rent out the property or put it to another use. In addition, creditors of your family member could attach a lien to the property to satisfy the family member's debts or other obligations. In short, unexpected things could happen to your gifted property. You could be without enough resources if nursing home care did become necessary.

Look-back rules

There is a period of Medicaid ineligibility if the applicant gifted an asset to others during the **look-back period.** Any asset transfer made on or after February 8, 2006 has a look-back period of 5 years dating back from the Medicaid application date.

The **period of ineligibility** for the Medicaid applicant during the look-back period depends on the value and the date of the gift. The period of ineligibility is the number of days required to spend the value of the transferred assets on nursing home care. The Montana average daily cost of nursing home care in Montana is $252.18 from July 2020-September 2021. The period of ineligibility period is one day for every $252.18 of uncompensated value the applicant gave away.

> **Example 7:** Etta is considering a gift of $15,000 to each of her five grandchildren. If Etta applied for Medicaid after making the gifts to her grandchildren, she would have a period of ineligibility of about 10 months (5 grandchildren x $15,000 = $75,000 ÷ $252.18 daily cost of nursing home care = 297.41 days ÷ 30 days in a month = 9.91 months). If Etta applies for Medicaid, she will need to be sure she has the resources to cover her nursing home costs for about 10 months before Medicaid will begin payment.

Any transfer after February 8, 2006 within the 5-year look-back period could result in a period when individuals are not only ineligible for Medicaid, but also have no additional assets, other than income, to pay for their nursing home care. Transfers made before the applicable 5-year look-back period do not affect Medicaid eligibility.

> **Example 8:** John gifted his stocks and mutual funds worth $195,000 to his grandchildren, adult children, and their spouses. If John applied for Medicaid within 5 years of the gift, his gifts are subject to the Medicaid eligibility look-back rules. John would have a little over 2 years of ineligibility for Medicaid ($195,000 amount of gift ÷ $252.18 daily cost of nursing home care = 773.26 days ÷ 365 = 2.12 years).

Excluded transfers. There are three types of transfers under Medicaid eligibility rules excluded from the look-back rules:

- A home transferred to the community spouse, a child less than 21 years of age, or an adult child who is blind or permanently disabled.
- A home transferred to a child (regardless of age) if the child lived in the home for two years prior to the admission of the parent to a nursing home. The child should be prepared to send documentation that without the child's care, the parent would have had to move into a nursing home. The parent's attending doctor must confirm in a written statement the care by the child delayed the parent's entry in the nursing home.
- A home transferred to a sibling, if the sibling already owns an equity interest in it and has lived there for at least a year before the sibling entered a nursing home.

Trusts and asset protection

Promoters claim a trust is the ideal solution for Montanans who wish to protect assets from the cost of long-term care. Other promoters use a door-to-door approach in rural Montana communities to sell living trusts ranging in price from $750 to $3,500. They claim if individuals transfer property into a living trust, the nursing home or Medicaid cannot take their assets. This information is inaccurate.

A trust is a legal arrangement in which an individual (the trustor or settlor) changes the titles of assets into the name of a trust. A trustee manages the assets for the beneficiaries listed in a trust agreement. Beneficiaries named in a trust agreement can include the individual who formed the trust, friends, family members, a university, a charity, or other organization.

Revocable living trusts

An individual can create a *revocable* living trust during life and be the trustee. In Montana, unless the trust agreement makes the trust irrevocable, it is revocable. Income and assets in a living trust are countable resources in a Medicaid eligibility determination. Because the trustor/trustee can change the terms of a revocable living trust at any time, the funds are a countable resource for Medicaid eligibility purposes.

The trustee is not eligible for Medicaid until the depletion of the assets in the living trust to $2,000. For additional information request the MontGuide: *Revocable Living Trusts* from your local MSU Extension office or download here: **https://store.msuextension.org/Products/Revocable-Living-Trusts-MT199612HR__MT199612HR.aspx.**

Irrevocable trusts

The person who sets up an **irrevocable trust** has no power to amend, cancel or remove assets from it. Transfers of assets into irrevocable trusts are subject to the 5-year look-back period. For Medicaid eligibility purposes, if income from the irrevocable trust could benefit the individual applying for Medicaid then it is countable income available to the individual.

Limitations of trusts

In general, Medicaid considers resources held in trust as available to the couple when the:

- creation of the trust agreement is by an applicant for Medicaid or by the spouse;
- applicant, the spouse, or both, are beneficiaries of the trust; and
- distributions are to the beneficiaries.

Before forming any type of trust, contact an attorney to obtain legal advice.

Consequences of giving away assets

Although some Montanans may wish to give assets to family members, to a university, or to a charity for the purpose of qualifying for Medicaid, there are several personal and emotional reasons why they may not want to totally deplete their resources.

Medicaid patients may be more difficult to place in nursing homes than private paying patients. The only space open for a Medicaid recipient may be hours away from family and friends. Private paying patients can avoid the tedious task of applying for Medicaid themselves or by a family member, a time-consuming procedure some consider an invasion of privacy. Having an older person change from familiar surroundings in a private pay single room to a double room because of Medicaid qualification can be detrimental to their psychological and social well-being.

> **Example 9:** When John was a private pay resident of the nursing home, he had a private room. After all his resources became depleted by paying for his care, he became eligible for Medicaid. The facility moved John to a double room. Because of the activity revolving around his ill roommate, John could not sleep. He was angry he did not have privacy he enjoyed previously. John continues to ask his children, "Why can't I have a private room like I used to?" He does not understand Medicaid will not cover the costs of a private room. The small nursing home in John's community cannot afford to take the monetary loss resulting from his placement in a private room.

Medicaid lien and estate recovery program

Federal law requires each state to develop a Medicaid estate recovery program to recoup the costs of nursing home care and other medical services from the estates of recipients who have died. In Montana, Medicaid makes a creditor's claim during the probate process. The personal representative or attorney overseeing the estate will use the proceeds from the sale of estate property to repay the Medicaid program for medical expenses paid on the decedent's behalf.

> **Example 10:** Robert, a widower, left his only property, a home valued at $75,000 to his son. At the time of his death, Medicaid had supplied $24,000 for Robert's medical and nursing home care. In addition to this claim, there was a $10,000 funeral bill and $3,000 expenses for probating his estate. Robert's son received $38,000 ($75,000 - $24,000 - $10,000 - $3,000 = $38,000).

If a spouse, a child under the age of 21, or a blind or disabled child survives a Medicaid recipient, there is no estate recovery. After Medicaid files a claim, individuals affected by the proposed estate recovery have a right to apply for a hardship waiver.

Montana has also adopted Medicaid cost recovery procedures to take place while the recipient is living. The state wants to secure its right to recover assets a recipient kept while receiving Medicaid.

Montana secures this right by filing liens on real property owned by Medicaid recipients who are "permanently institutionalized" in a nursing home facility. The lien is the amount of Medicaid payments made on behalf of the person receiving care. Before the property sells or transfers to heirs the owner must pay the lien.

Example 11: Before Millie went into a nursing home, she lived alone. She qualified to receive Medicaid payments for her nursing home care. Later a medical determination said she could not return to her home. The Montana Medicaid

Estate Recovery Program placed a lien on her home. A year later the home sold for $79,000.

During this time Medicaid paid $81,828 for Millie's care. At the time of the sale, part ($79,000) of the state's $81,828 lien was satisfied by the sale proceeds. Because the lien was for an amount greater than the sale proceeds, no money remained from the sale of Millie's home for her personal use or for her to leave to heirs.

The Recovery Unit, Estate Division, has informative brochures explaining Montana's Medicaid Lien and Estate Recovery Program.

Third Party Liability Unit Lien and Estate Recovery
PO Box 202953
Helena, MT 59620-2953
Call 800-694-3084 or 406-444-7313

For more information

The Senior and Long-Term Care Division of the Department of Public Health and Human Services (DPHHS) has the responsibility of responding to questions about Medicaid for older adults.

https://dphhs.mt.gov/sltc/aging/longtermcareinsurance

Senior and Long-Term Care Division (DPHHS)
2030 11th Avenue
Helena, MT 59604
406-444-4077

The Montana Ombudsman Program helps nursing home residents and families with nursing home-related concerns such as daily care or resident's rights. Contact the Aging Services Bureau at the DPHHS address for more information. The Medicaid recipient hotline is 800-362-8312.

The address and telephone number of the local Public Assistance Office appear in telephone listings under the name of the county in which you live. The number is also on the internet. Use your search engine to find Public Assistance (name of your county) Montana.

Acknowledgment

Representatives from the following have reviewed this MontGuide:

- Montana Department of Public Health and Human Services (DPHHS) under policies by the Aged, Blind and Disabled Medicaid Manual
- Medicaid Lien and Estate Recovery Unit
- Business, Estates, Trusts, Tax and Real Property Law Section, State Bar of Montana.

The author extends a special note of appreciation to Montana adult children for their insights from experiences with parents who have entered a nursing home and gone through the Medicaid application process.

Disclaimer

The information presented in this MontGuide is for general educational purposes only and does not substitute for legal or tax advice about Medicaid eligibility. Obtain such advice, whether general or specific, from an attorney or tax advisor. This MontGuide summarizes state and federal regulations as of the date of publication. Medicaid rules are under constant revision, so contact an attorney or your local Medicaid Eligibility Specialist for recent developments.

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FAMILY FINANCIAL MANAGEMENT (ESTATE PLANNING)

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