

Red Flags in Long Term Medicaid Eligibility



E L D E R L A W *at*

A H R E N S D E A N G E L I

L A W G R O U P

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Legislative Update

- Medicaid Politics, Facility Issues, and Families Searching for Care Options
- The “Big Beautiful Bill”
- Problems with Medicaid

Complete Medicaid Planning



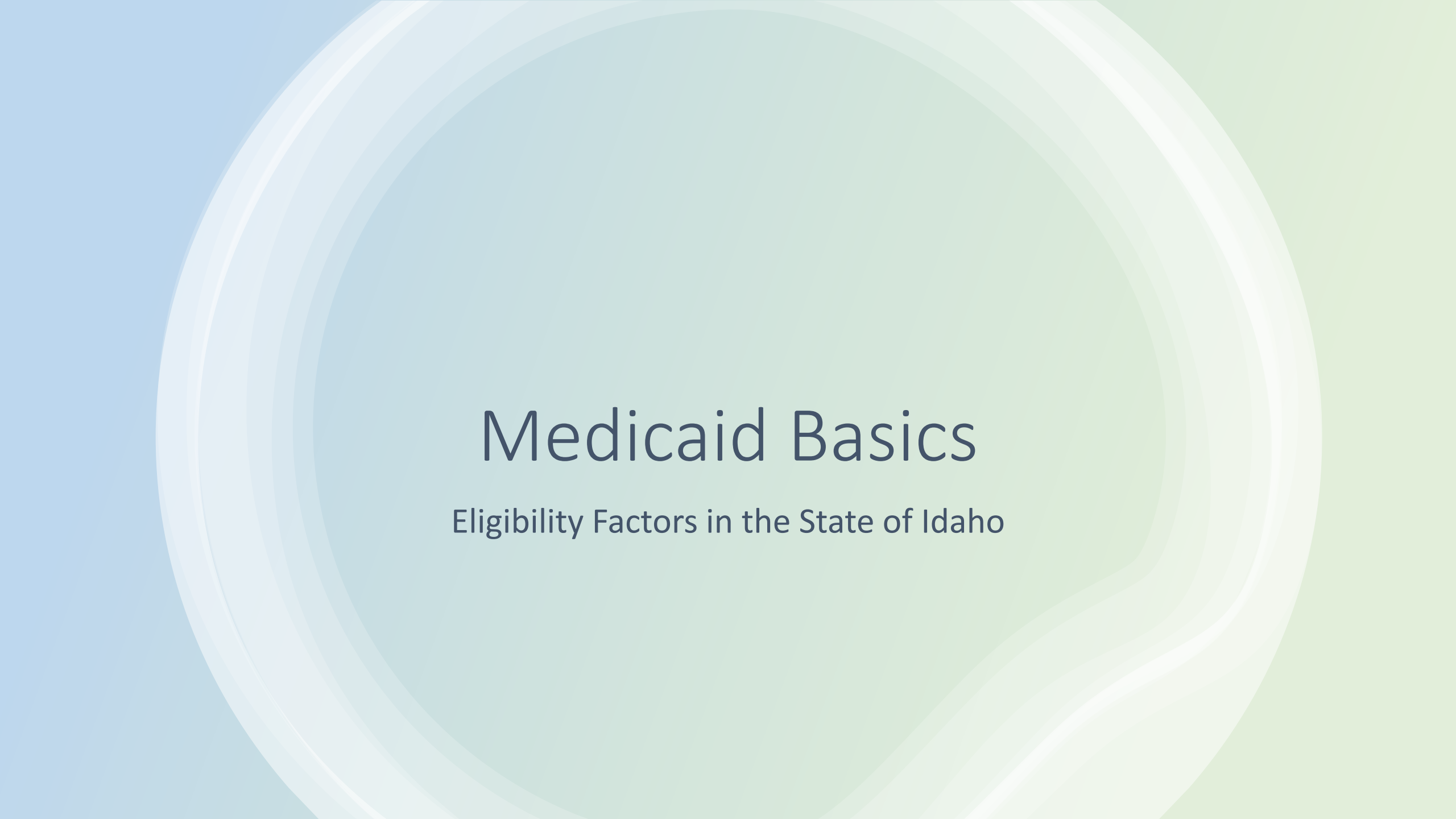
Preplanning

Asset Preservation

Application

Asset Transfers

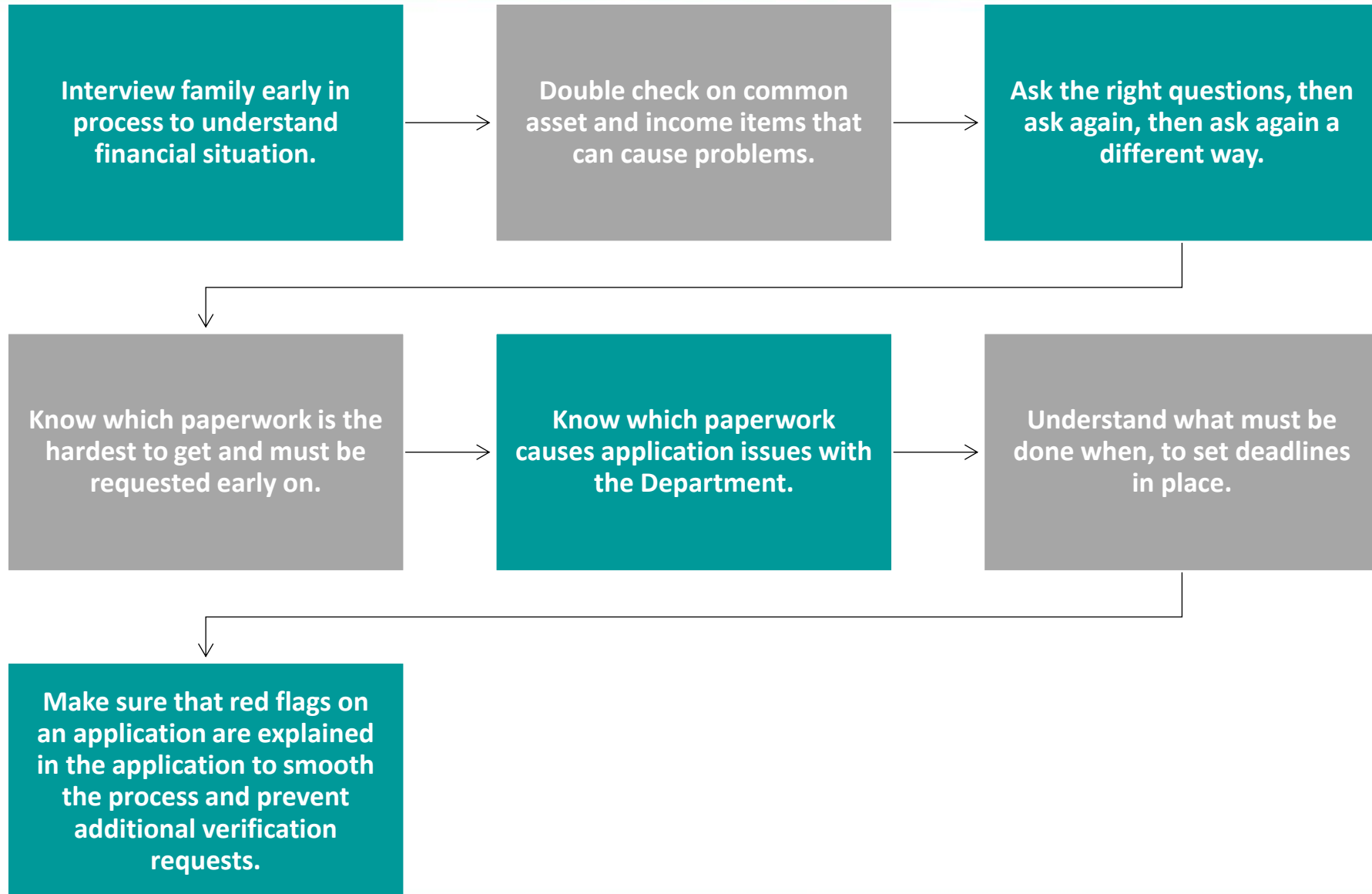
Estate Planning



Medicaid Basics

Eligibility Factors in the State of Idaho

Crisis - Helping Medicaid Eligibility



AABD/A&D Waiver Medicaid Eligibility

1. Medical Need Requirement

- If under age 65, need to apply first for SSD, get denied, then apply for Medicaid and do state disability approval.

2. Assets (Medicaid calls them “Resources”)

- Look at anything owned by either spouse
 - You must make clear that Medicaid looks at both spouse’s assets. Families don’t understand that.
- Set aside non-countable assets, then:
 - \$2,000 for a single person
 - \$3,000 for a married couple if both are applying
 - Formula for married couple if only one is applying, currently between \$31,584 and \$157,920.

3. Monthly Income

- Applicant’s monthly income must be less than \$2,921 to be automatically eligible.
 - First, look only at the person applying, not the spouse. If the applicant’s gross income is less than \$2,921, then they are ok. If over, then look at the married couple’s combined income. If combined gross income is less than \$5,842 then they are ok. If they fail both tests, probably need to open a Miller Trust Account.
 - They will usually tell you the net social security amount. Remember that social security has withholdings for Medicare premiums. In 2025 it is \$185. Gross income will include the \$185.

4. Penalized Gifts or Sales

- Medicaid penalizes gifts and/or sales for less than fair market value.
- Also penalizes some financial transactions, like buying certain annuities, certain land sales on installments or certain loans. MOST COMMON PROBLEM: Paying family member for care usually counts as a gift under Medicaid rules.
 - This is by far the most common topic lied about by applicants. You need to be careful here so that they understand that it is not uncommon for the Department to find out about prior gifts and sales and then to ask more. It can sink an application, and it is a felony to lie on a Medicaid application.

Assets (Resources) vs Income

RESOURCES are the assets the participant owns on the FIRST moment of the FIRST day of the month ONLY.

INCOME is the money the participant receives during the month.

Medicaid Assets (Resources)

- **Non-Countable: The Exclusions**

- Home
 - If either member of couple lives there, unlimited value
 - If neither lives there, \$750,000 limit
 - If the house is in a revocable family trust (sometimes called a living trust), it is NOT exempt.
The family needs to deed the house out of the trust and into the couple's name OR IT WILL PREVENT ELIGIBILITY.
 - Ask the family if there is a family trust and if so, have them talk to an elder law attorney immediately. Where should the house go after it is pulled from the original trust?
- Car (2 cars for married couple)
- Life Insurance with "Face Amount" up to \$1,500
- Burial Fund up to \$1,500
 - This is a checking account, or some other fund set aside and labeled for burial funds
 - This can be done in an emergency to get someone eligible who otherwise failed eligibility.
- Irrevocable Burial Policy
 - Must be irrevocably assigned to the funeral home
 - Look for a box to check on the policy to irrevocably assign it
- Burial plot
 - Can be any value, this is the actual plot of ground, not the policy to pay for the funeral
- Household goods and personal effects

Medicaid Assets (Resources)

- **Non-Countable: Unusual Assets**
 - Retirement accounts* (always consult an elder law attorney when a retirement account is involved)
 - Rental Properties
 - Business Properties
 - Farms
 - Plots of ground used for gardens
 - Medicaid Compliant Annuities** (always consult an elder law attorney when someone suggests a Medicaid Compliant Annuity to make sure it makes sense)



Medicaid Assets (Resources)

- **Countable: Everything Else!**

- Bank accounts
- Investments Accounts
- Life Insurance with face amount beyond \$1,500
- Vehicles
- Promissory Notes (when someone owes you money you have a countable resource)
- Annuities
- Cash
- Gold bars
- Things in a safety deposit box
- Payments to a facility for the upcoming month (balance counts as an asset)
 - This is a HUGE pitfall. If the person applying has paid for the upcoming month, then on the first moment of the month it is all refundable and the Department counts the amount paid as an additional asset. We see this problem ALL the time. Do NOT spend down by partially paying for the upcoming month if you intend Medicaid to pay the rest.
- Things Someone Else is Holding For You So That You Can Pretend to Qualify

Medicaid Assets (Resources)

Non-Countable Assets	Countable Assets
• Residence • Retirement Accounts • Vehicle (single) or 2 vehicles (couple) • Burial policy • Medicaid Compliant Annuities	• Bank Accounts • Life Insurance (Cash value only) • Most Annuities • Investment Accounts • Stocks • Property • Most Trusts Single person: \$2000 Married couple both in SNF or on Waiver: \$3000 Married couple, only one applying: \$31,584 – \$157,920

Medicaid Penalties

Things That Cause Penalties



- Gifts
- Sales for less than fair market value
 - All sales in last 5 years need to be disclosed on application. Ask about 1) sales in last 5 years and 2) sales where payments are still being made.
- Loaning money (*usually to kids*)
- Selling a house for a monthly payment (*Bank of Mom and Dad*)
- Disclaiming (Refusing) an Inheritance
- Paying family member for care
- Transfer Penalty: \$10,635/month or \$350/day

Gifting Example - \$15,000

Medicaid Participant



Monthly Income:

Social Sec.	\$3,000
Care Cost	\$10,000
Monthly Deficit	\$7,000

No Planning Option

Medicaid participant keeps all funds and spends money on care.

Balance in Dad's account

- July 25 balance - \$13,000
- July 26 - Pays for August (\$10,000), remaining balance \$3,000
- August 5 receives SS (\$3,000), balance in account \$6,000
- August 26 can only pay \$6,000 for September, not eligible for September due to payment for September
- September 5 receives SS (\$3,000), balance in account \$3,000
- September 6, pays facility \$3000
- October 1 is eligible for Medicaid application. Application takes 4-6 weeks, then facility waits longer to get paid.

Gifting Example - \$15,000

Medicaid Participant



Monthly Income:

Social Sec.	\$3,000
Care Cost	\$10,000
Monthly Deficit	\$7,000

Gifting

Medicaid participant gives the final bit of money to child and otherwise arranges to be eligible.

Balance in gifted account

- July 25 balance - \$13,000.
- July 26 gives child \$9,500. Takes a 28 day Medicaid Penalty. Declares \$1,500 to be burial fund. Has \$2000 of countable assets.
- August 1: Applies for Medicaid. Application takes 4-6 weeks.
- August 15: child, out of goodness of heart, and not due to legal obligation, pays for Dad's bill for August, knowing it will not be covered by Medicaid because of the Medicaid Penalty.
- September 15, Medicaid finally approves back to August 28.

Transfer Exceptions

- ✓ Home to Spouse
- ✓ Home to Minor child or Disabled Adult Child.
- ✓ Home to Brother or Sister who already has an equity interest or life estate in the home and was residing in the home for at least one (1) year immediately before the month the home was transferred.
- ✓ The transfer was intended to receive fair market value.
- ✓ There was no intent to qualify for Medicaid.
- ✓ The penalty causes undue hardship.
- ✓ The Medicaid participant or their spouse transferred assets as victims of fraud, misrepresentation, or coercion.
- ✓ Home to Adult Child who has resided in the home for at least two (2) years immediately before the month the participant entered a medical facility or long-term care and must have provided care to the participant which permitted him or her to live at home rather than enter a medical facility or long-term care.
 - ✓ TAX Consequences
- ✓ Assets transferred to the spouse or another person for the benefit of the Medicaid participant's spouse.
- ✓ Assets transferred to a trust for the sole benefit of a blind or disabled child.
- ✓ The Medicaid participant received no benefit from the assets.

Medicaid Share of Cost

What Will Families Pay and How to Minimize Costs

Medicaid Share of Cost

Gross income of participant
– Allowable deductions
= Share of cost.

Share of cost must be paid to the care provider and then Medicaid pays the remainder of allowed reimbursement rate.

Medicaid Share of Cost

Medicaid Participant



Monthly Income:

Social Sec.	\$2,000
Pension	<u>\$300</u>
Total	\$2,300

Community Spouse



Monthly Income:

Social Sec.	\$1,500
Pension	<u>\$400</u>
Total	\$1,900

Medicaid Share of Cost

Medicaid Participant @ SNF



Monthly Income:

Total	\$2,300
- PNA	<u>\$40</u>
= Share of Cost	\$2,260

Note: If a physician certifies in writing that the participant is likely to return home within 6 months, the participant also gets to deduct an additional amount to maintain their home during their absence. If there is a possibility of return, try and help get this to reduce share of cost.

Note: Health Insurance premiums and any other unusual ongoing medical expenses not covered by Medicaid may decrease share of cost. Make sure to ask the family about all health insurance premiums and expenses paid by the Participant.

Medicaid Share of Cost – Community Spouse Needs Standard

Medicaid Participant



Monthly Income:

Total	\$2,300
- PNA	\$40
- CSA	<u>\$655</u>
= Share of Cost	\$1,605

Community Spouse



Monthly Income:

Social Sec.	\$1,500
Pension	<u>\$400</u>
Total	\$1,900
CSNS:	\$2,555
She is short:	\$655

Medicaid Share of Cost – **HIGHER** Community Spouse Needs Standard

Medicaid Participant



Monthly Income:

Total	\$1,800
- PNA	\$40
- CSA	<u>\$2,048</u>
= Share of Cost	\$0

Community Spouse



Monthly Income:

Social Sec.	\$1,500
Pension	<u>\$400</u>
Total	\$1,900
CSNS:	\$3,948
She is short:	\$2,048

Factors that can give a Community Spouse a higher Community Spouse Needs Standard:

- Rent or Mortgage Expense
 - Make sure that if spouse is living with child, spouse is paying rent to child.
- Homeowner's Association Dues
- Property Taxes
- Homeowner's Insurance Premiums

Annuities

How They Change Share of Cost

Medicaid Compliant Annuities

Some people suggest buying a Medicaid Compliant Annuity to help someone get eligible immediately for Medicaid.

- A Medicaid Compliant Annuity:
 - Is irrevocable,
 - pays out fixed monthly amount,
 - usually to the non-Medicaid spouse.
- Turns **ASSETS** into **INCOME**
- Can be a great strategy but can also increase share of cost. Before using, consult elder law attorney.

Medicaid Annuity Example

Medicaid Participant



Monthly Income:

Total	\$1,800
- PNA	\$40
- CSA	<u>\$2,048</u>
= Share of Cost	\$0

Community Spouse



Monthly Income:

Social Sec.	\$1,500
Pension	<u>\$400</u>
Total	\$1,900
CSNS:	\$3,948
She is short:	\$2,048

Non-Countable Assets

House	\$350,000
Community Spouse IRA	\$500,000

Countable Assets

Checking	\$100,000
Savings	\$50,000
Money Market	<u>\$50,000</u>
Total	\$200,000

Medicaid Annuity Example – Buy Annuity

Medicaid Participant



Monthly Income:

Total	\$1,800
- PNA	\$40
- CSA	<u>\$0</u>
= Share of Cost	\$1,760

Community Spouse



Monthly Income:

Social Sec.	\$1,500
Pension	\$400
Annuity	<u>\$5,000</u>
Total	\$6,300
CSNS:	\$3,948
She is short:	\$0

Non-Countable Assets

House	\$350,000
Community Spouse IRA	\$500,000

Countable Assets

Checking	\$100,000
Savings	\$0
Money Market	<u>\$0</u>
Total	\$100,000

Annuity

Value	\$100,000
*Pays \$5000 per month to the Community Spouse	
**Counts as Income, not as an Asset	

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How can we help?
208-387-0729

Common Medicaid Problems

Problem Assets, Income Issues, and Gifts
(Extended Notes)

Common Medicaid Problems - Assets

Income Late in the Month

- Income hitting a bank account late in a month can accidentally cause ineligibility.
 - Look at the bank statement for the last several months and check when income hits during the month.
- Too late? Maybe you can salvage it:
 - If income regularly hits on the final day of the month the Department might treat it as not hitting until the first and remove it from assets.
 - If the applicant is just barely over in assets, maybe you can argue some of the excess cash is a burial fund.

Common Medicaid Problems - Assets

Life Insurance

- Most commonly overlooked asset
 - Looking at bank statements for premiums being paid monthly can indicate a Life Insurance Policy
- Can take forever to get statements
 - The family needs to ask for a life insurance statement right away. Remember to get one for the snapshot date and then again for the first day of the month of application.
 - Make sure the statement gives CASH SURRENDER VALUE. Term policies don't have cash value so are not an issue.
- Need to also look for a "long term care rider" that can count as cash value
- Cash Value vs. Death Benefit
- Cash Value below \$1,500 is excluded
- Cash out Life Insurance? Maybe not if death benefit is high and cash value low. Have family member buy it instead. This can also speed up eligibility because cashing out can take a while. Always consult an elder law attorney when Life Insurance has cash value.

Common Medicaid Problems - Assets

Annuities

- Irrevocable, fixed monthly payments:
 - Do not count as a resource but can count as a GIFT and get penalized!!!
 - Monthly payments count as income (Share of Cost)
- Revocable:
 - Surrender value counts as a resource, not penalized

***Stay Tuned. We are going to talk later about “Medicaid Compliant Annuities”

Common Medicaid Problems - Assets

Promissory Notes

- If the Participant loans someone money, it can count as a gift and get penalized.
 - If loan was within last 5 years, could cause gift.
- The amount penalized as a gift is the remaining balance on the loan at the time of application.
- The remaining balance can also count as an asset and make someone ineligible.
- Consider selling the note or changing terms to make it Medicaid compatible. Medicaid rules allow the applicant to alter the terms of the loan to make it comply.
- Always consult an elder law attorney when someone owes them money.

Common Medicaid Problems - Assets

- Extra Automobiles
- RV's
- Tiny Lots With Little Value
 - May want to consider using it as a garden so it is exempt as necessary for self support.
- Out of State Houses
 - May rent out of state houses or put up for sale to make the house uncountable, or have spouse live there so it is the spouse's residence.
- Inheritances
 - Timing of receipt of inheritance is crucial. Ask: Do you have an inheritance coming? Have you rejected or given away an inheritance in the last 5 years?

Common Medicaid Problems - Assets

IRA, 401k, Retirement Accounts

- In Participant's Name: Doesn't count as a resource, but the participant must take the RMD or the equivalent.
- In Spouse's Name: Doesn't have to take distribution, IRA is non-countable.
 - Make sure the distributions from the IRA are started. This is a big deal for someone under age 73. They need to actually take a distribution, or they are ineligible.
 - When you ask about retirement accounts, they think of pensions and social security. You need to carefully distinguish between accounts and fixed income.
 - Yearly receipt of distributions from an IRA count as monthly income and need to be factored into income for share of cost and Miller Trust issues.

Common Medicaid Problems – Income Over Limit

- VA pension (Aid and Attendance) can count as income
 - This is a relatively recent change. Be aware of it. If they are receiving Aid and Attendance from the VA, talk to an elder law attorney before filing an application.
- Miller Trust
 - Don't deposit money into a Miller Trust too early. Must be done DURING the month of application.