

## MEDICAL ASSISTANCE

**Medical Assistance** (“MA”) (also called “Title 19” and “Medicaid”, distinguishing it from **Medicare**) is an economic assistance program funded through the federal and state government assisting eligible persons with the cost of long term (custodial nursing home 24/7) care. The rules are complicated and whether married or single, there are separate guidelines for each with regard to eligibility based upon your assets and income. In addition, the Estate Recovery rules in Wisconsin were drastically changed by the enactment of Wisconsin Act 20 on June 30, 2013, and include far-reaching ability to recover monies paid out on behalf of a deceased MA recipient (or his or her spouse). Some of these include judgments and liens on real estate, including life estate interests, the ability to recover against joint accounts, payable on death, and transfer on death accounts, and pursuit of marital property of the non-recipient spouse.

**Exempt assets** (assets which may be owned that are not “countable” or “available” to pay for long term care) for married persons include the following:

- Homestead. Note that for a single individual, if nursing home care is required, if cash is depleted, the home becomes available for spend-down unless a joint owner of the property refuses to sell the home. The homestead is exempt and remains so while a community spouse (non-recipient spouse) lives in the home.
- \* Life Insurance Face Value of Policy: \$1,500.00
- \* Car (even if the nursing home spouse can no longer drive)
- \* Personal Property
- \* Prepaid Burial and Funeral or Cremation services (for both spouses)
- \* Retirement Accounts of the non-recipient (“community”) spouse

Single persons may own \$2,000.00 in assets as well as the other exempt assets that are listed.

**“Spousal impoverishment”** rules apply for married couples. A determination is made, at the time of the filing of the Medical Assistance Application, of the assets owned by the spouses (regardless of titled ownership in only one spouse’s name), and income earned by the couple. In general, these rules provide that if one spouse enters the nursing home or assisted living facility and the other spouse can remain living at home in the community (“community spouse”) then the couple may own a certain amount of assets (“limit”), placed into the community spouse’s name, and only a portion of their assets are considered “countable” (available) to be spent on long term care. The process of using allowable assets above the required limit on long term care expenses is called “spend down” and this process continues until the Spousal Impoverishment limits are reached. “Countable assets” do not include the

exempt assets listed above. The limits change annually and are produced by the Department of Health Services (DHS), which maintains and monitors the Medical Assistance Program.

With regard to income, the couples' monthly income is determined and the community spouse is allowed to keep the "maximum limit", which is a number that also changes yearly and is designed to be available to the community spouse in order to maintain the home and be able to pay the annual real estate taxes, monthly costs of expenses for the home, and so on.

**Estate Recovery.** Department of Health Services (DHS) can pursue claims of probate estates of the community spouse after his or her death in order to collect money paid by Medicaid for long term care costs. This process is called "estate recovery." While the community spouse is alive and living in the home, no one can place a lien on the home.

For married couples, estate plans should be updated by an Elder Law Attorney if a spouse enters a nursing home or assisted living facility if the couple wants to preserve at least some of their estate for the benefit of their children, so it is important to confer with an attorney at that time.

**Divestment/Gifting Rules.** The "gifting" or "divestment" rule states that if you give property away in any fashion (and in any potential amount) within five years of applying for MA, the gifting can disqualify you from receiving MA for a period of time ("ineligibility period"). In general, gifting is not recommended except under certain circumstances and is best done with the advice of legal counsel familiar with the MA rules.

**Medical Assistance Applications.** Medical Assistance is applied for through the Department of Health Services (DHS) and is governed by rules set forth in a Handbook found on the following website: [www.emhandbooks.wisconsin.gov/meh-ebd/meh](http://www.emhandbooks.wisconsin.gov/meh-ebd/meh) . The Wisconsin application can be found online at the Department's website and free assistance with preparing and submitting the application is provided by the local Office on Aging ("ADRC" in Washington County).

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