

**ESTATE AND RESOURCE PLANNING FOR A  
DISABILITY AND LONG-TERM CARE**

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## **PLANNING CONSIDERATIONS ANTICIPATING A POSSIBLE DISABILITY REQUIRING LONG-TERM NURSING HOME CARE**

### *Introduction*

Statistics indicate that there is an approximate 50% chance that a person over the age of 65 will at some time reside in a nursing home facility, the risk being slightly higher for men than for women, most probably due to the women's longer life expectancies. For married couples, there is an approximate 70% chance that at least one of the marriage partners over the age of 65 will spend some time in a nursing facility.

This high percentage is a result significantly from the impact of Alzheimer's disease, which accounts for approximately 60% of dementias, as well as similar mentally debilitating diseases. Approximately 5,000,000 Americans are afflicted with Alzheimer's. As Americans continue to live longer, a higher percentage of individuals will tend to incur mentally debilitating diseases related to age. For example, statistics indicate that 3% of Americans between the ages of 65 and 75 have Alzheimer's, 19% of those between 75 and 85 have the disease, and 47% of those over 85 are afflicted with this malady.

For those persons whose stay in a nursing facility is long-term and not rehabilitative in nature, the national average is a cumulative stay of 2.3 years. However, for 15 percent of the population, the cumulative stay exceeds five years. Average costs of a long-term care resident vary considerably, both within urban and rural facilities, and from state to state. They can vary from approximately \$6,000 per month to as much as \$15,000 per month and be even higher for acute care. Thus, for an average cumulative stay, total expenditures can be from \$180,000 to over \$450,000.

Experts in long-term care have estimated that 80% of medical expenditures for people over the age of 65 are spent on long-term health care, either in nursing homes or in a private residence. There are three ways to pay for these expenses: out-of-pocket from one's own resources, government resources (Medicaid, Veterans Administration), or private long-term care insurance. Over one-half of the residents in nursing homes are on some type of government assistance. Due to the limited availability and eligibility requirements of Veterans Administration (VA) benefits and the limited duration of rehabilitative Medicare benefits, this is principally through Medicaid benefits. Medicaid is not an entitlement program, but a "need-based" and "medically needy" program, the cost of which is paid approximately 40% by the state government and 60% by the federal government.

Discussed below are the long-term care coverage provided by governmental resources, estate planning techniques which can maximize their availability, the factors involved in determining whether long-term care (LTC) benefits not covered by governmental resources should be covered out of pocket, i.e., by being self-insured, or through the purchase of long-term care health insurance, the considerations involved in purchasing a long-term care insurance policy, and strategies to minimize efforts by the state to recover Medicaid benefits paid for LTC against the estate of the recipient or that of the recipient's surviving spouse. Particular emphasis is given to the importance of these techniques and strategies to farmers and ranchers.

## **PART ONE: GOVERNMENTAL RESOURCE PLANNING FOR LTC**

### **A. Medicare Benefits Insufficient**

Facing what could amount to a staggering cost for a long-term stay in a nursing home facility, individuals of advancing age face a dilemma in determining the proper approach in planning for such possibility. If Medicare substantially covered such costs, as many individuals mistakenly assume, a substantial commitment of one's own personal finances and the use of sophisticated estate planning strategies to protect assets would be unnecessary.

However, Medicare's eligibility rules are quite restrictive. Medicare eligibility does not commence until one turns 65 years of age and has paid a sufficient amount in for Medicaid withholding to be eligible. Even then, coverage requires a hospital stay of at least three nights and the entering of a nursing home facility which participates in Medicare within 30 days of discharge from the hospital. Additionally, the stay in the nursing facility must be for the same condition for which hospitalization was required, rehabilitative in nature, short term as opposed to long term, and care must be for skilled care (daily care from a licensed medical professional) as opposed to intermediate care (intermittent care by a licensed medical professional) or custodial care (care not needing a licensed medical professional). Less than one percent of those residing in nursing homes receive skilled care. Even then, Medicare will only fully cover the first 20 days of such skilled care in full, requiring a co-payment of approximately \$100 per day to cover the next 80 days, and can terminate during such period when rehabilitative benefits cease, after which period all Medicare coverage ceases.

There appears to be little likelihood that the federal government in the reasonably foreseeable future will significantly increase the benefits of LTC covered by Medicare. In a period of profound budgetary deficits and other fiscal restraints despite an aging population, the enormous costs of covering a rapidly aging population under Medicare would not be expected to be politically palatable.

### **B. Medicaid Eligibility Rules**

One LTC planning strategy is to simply resort to one's own funds in combination with an estate planning strategy maximizing benefits under the Medicaid "safety net." Medicaid benefits are provided by federal law and administered by the states. States are given some leeway in their eligibility requirements and enforcement. Once a person qualifies for Medicaid benefits in a Medicaid licensed facility, the individual or his or her financial representative pays all of their income (which due to the limited resources the person may have and qualify, as discussed below, normally only consists of social security and pension or annuity income) with the state picking up the difference between such income and the Medicaid reimbursement rate for that particular facility. Medicaid normally covers all costs for medical and other care in the facility, including medicine, except for the difference in cost between a private room and semi-private room, dental care, eyeglasses and hearing aids.

Unlike Medicare, eligibility for Medicaid LTC benefits requires a person to have a medical

need for such care. The applicant is screened to determine whether residency in a nursing home facility is not only necessary, but also that there are no less costly alternatives available. Such Nursing Facility Level of Care (NLFOC) varies somewhat from state to state and includes an individual's ability to satisfy certain activities of daily living (ADLs), such as eating, dressing, toileting and bathing.

Secondly, there must be a financial need. Normally, Medicaid recipients may not have more than \$2,000 in excess of certain exempt resources if they are to qualify for Medicaid. Exempt resources generally are a personal residence including contiguous acreage not broken by a public road, household furnishings, one car, household goods, personal keepsakes, personal effects, tools of one's trade, a very small amount of cash value of life insurance (death benefit limited to \$1500), term life insurance having no cash value, a burial space, headstone and casket, and certain irrevocable pre-paid funeral and burial plan expenses within specified cost limitations. In addition, in some states such exemptions can include real and personal trade or business property, such as farm land and farm machinery operated by the recipient or other family member, and in other states such exemptions may also extend to "income producing property," principally limited to real and tangible personal property, when leased to third parties, not requiring any material participation by the recipient. To be exempt, such income-producing property must produce income commensurate with its usage. Thus, e.g., vacant real property would not be exempt, nor would rental property which is leased to family members at below market rent. Among other possible exemptions, such state exemptions may also extend to qualified retirement plans and IRA assets of the non-infirm or "community spouse" when determining whether the spousal "division of assets" test below.

The exemption for trade or business property provided for in a large number of states is of particular importance to farmers and ranchers as discussed below.

**SEE APPENDIX A FOR A COMPENDIUM OF EXEMPT ASSETS FOR MEDICAID  
PURPOSES IN ALL 50 STATES**

C. "Division of Assets" Medicaid Eligibility Test for Married Individuals

In addition to the requirement that the applicant only own non-exempt resources in order to qualify for Medicaid benefits, Medicaid eligibility for a married applicant also starts out with the concept that the assets of both spouses are "pooled" with respect to non-exempt resources in determining the eligibility of the applicant. Fortunately, under federal law there is an allowance for non-exempt assets owned by the other spouse in that regard. Under so-called "division of assets" provisions applicable only to married Medicaid applicants, the "community spouse" (i.e., the non-infirm spouse estate planners often referred to in more common parlance as the well spouse) is able to retain a certain amount of otherwise non-exempt assets without disqualifying the eligibility of the infirm spouse for Medicaid benefits. To that end, federal law allows married couples to "divide" their resources such that the Medicaid applicant, the infirm spouse, retains only exempt resources (including up to \$2,000 of otherwise non-exempt resources) and the well spouse is in possession of an amount of non-exempt resources that does not exceed a certain limit without disqualifying the infirm spouse for Medicaid benefits.

In states which have adopted the so-called 50% “division of asset” test, one-half of the non-exempt resources (with a current minimum in 2023 of \$29,724 and a current maximum of \$148,620, both numbers being subject to subsequent periodic adjustments for inflation) as of the date the infirm spouse entered a long-term care setting (or the earlier date the infirm spouse went into a hospital, followed by going into LTC, or after being in a rehabilitation facility in the interim), the so-called “financial snapshot date,” can be set aside or transferred to the well spouse (with the infirm spouse being allowed a maximum of \$2,000 of otherwise non-exempt assets) without incurring any disqualifying transfer penalty by virtue of such transfer without having to count such non-exempt resources as a resource to the infirm spouse. On the other hand, in states which have adopted the alternative so-called 100% “division of assets” test for Medicaid eligibility, the well spouse may retain the full maximum amount of otherwise non-exempt assets irrespective of the amount of such non-exempt resources as of such “financial snapshot date” and consider such non-exempt resources to be exempt, without being limited to one-half of such non-exempt assets. Thus, if the couple’s non-exempt assets under the 100% state option equaled to, or were less than, the maximum amount, all of such non-exempt assets may be held by the well spouse and considered exempt for such test. It is important to note, as will become evident below in this discussion of strategizing to maximize Medicaid benefits under either such option, that mortgages on property or the debts of the couple are not considered in valuing assets in applying the “division of assets test.”

Thus, the infirm spouse will normally only qualify for Medicaid when: 1) there are no non-exempt assets in his or her name (which can be effectuated by transferring all non-exempt assets to the “well spouse,” either by the infirm spouse or through a power of attorney authorizing such transfers if the infirm spouse has insufficient capacity to make such transfers, as transfers to a spouse do not incur any Medicaid disqualification period; 2) the non-exempt assets owned by the well spouse do not exceed the foregoing “division of assets” amount; and 3) there is no remaining disqualification period for any prior disqualifying transfers as discussed below.

#### D. Income Test for Medicaid Eligibility

In addition to the resource test, some states (not Kansas) have instituted an income test for qualification for Medicaid. This is typically tied to a multiple of the applicable Supplemental Security Income (SSI). If the applicant’s income exceeds such amount even though less than the Medicaid reimbursement rate for such facility in which the applicant resides, the applicant will not qualify for Medicaid benefits.

Fortunately, such problem normally can be avoided by creating an irrevocable trust to hold the applicant’s income (so-called “Miller Trusts”) which avoids the Medicaid cap. Generally, the applicant's income is assigned to the trust. The trust is allowed to return a minimum amount for a monthly needs allowance and for maintenance of the trust. The remaining income then is paid to the nursing home and Medicaid would then pick up the difference for nursing home costs between the income paid to the nursing home and the facility’s current reimbursement rate.

Although there is no income test for the applicant in order to qualify for Medicaid, if the total unprotected income of the Medicaid recipient exceeds the Medicaid reimbursement rate for the particular facility involved, the recipient will not qualify for Medicaid. In addition, once a

Medicaid applicant meets the requirements to qualify for Medicaid, any monthly income of the Medicaid recipient (e.g., Social Security and any pension) in excess of a most incidental needs allowance set by the state normally must go to the facility, with Medicaid paying to the long-term care facility any deficiency between such unprotected income and the applicable Medicaid reimbursement rate for that facility.

Under current federal law, the income of a community spouse is irrelevant to the applicant's ability to qualify for Medicaid. However, it is not sufficient for a married person simply to have met the resource test (i.e., only own non-exempt resources) and not have any remaining disqualification period resulting from disqualifying transfer in order to qualify for Medicaid benefits. As noted above, a married Medicaid applicant must also meet the “division of assets” test, which limits the amount of non-exempt assets the applicant’s spouse may own and still have the Medicaid applicant qualify for Medicaid.

#### E. The “Division of Income” Spousal Medicaid Benefit

In addition to being able to retain non-exempt resources equal to the “division of assets” amount, a well spouse is also currently entitled in 2023 to a base of \$2,465.00/month of total spousal income (up to a maximum of \$3,715.50/month for excess shelter allowance), in such circumstances after qualifying the infirm spouse for Medicaid. This is the so-called “division of income” test.

Unlike the “division of assets” test which must be met for an infirm spouse to qualify for Medicaid benefits, the “division of income” test is not a test which needs to be met for the infirm spouse to qualify for Medicaid. Adjusted in amount at least annually, it allows the well spouse to in essence transfer income from the infirm spouse who qualifies for Medicaid (thus lowering the income of the infirm spouse otherwise going to the nursing home) to the well spouse in an amount necessary to bring the well spouse up to the minimum permitted income level.

For Medicaid qualifying recipients who are not receiving care in a long-term care facility but through what is termed Home and Community Based Services (or “HCBS”), i.e., who are medically needy under what is termed a “frail and elderly waiver” but nonetheless living at home or in an assisted living facility, the protected monthly income level is \$2,742.00 in 2023, which protected amount may be retained by the Medicaid recipient without adversely affecting HCBS benefits. This retained amount is intended to pay just for normal living aspects with Medicaid covering the level of care necessitated by the recipient’s loss of ADLs. It has the same resource eligibility requirements as Medicaid. However, there are limitations on its availability (none currently in Kansas in 2023) depending upon the state and there can be long waiting lists.

#### F. Gifts Can Result in a Period of Medicaid Disqualification

For those who gift assets (whether exempt or non-exempt) away to someone other than a spouse, there can be a Medicaid disqualification period. Such gifts must be disclosed on the Medicaid application form. Gifts to spouses are exempt from such disqualification rules because the resources of a spouse are still considered under the “division of assets” test discussed above in determining the qualification of a Medicaid applicant for Medicaid eligibility. Such gifts for

insufficient consideration (i.e., the amount paid is less than the value of the property transferred) to others cause an additional per day or per month disqualification period based upon a transfer of each specific dollar amount. These periodically adjusted disqualification amounts are determined to approximate the current average daily/monthly nursing home cost in the applicable state. For example, if the state adopts a per month determination, there would be a one-month disqualification period for each disqualifying transfer amount of such determined monthly nursing home cost. Kansas has adopted a “per day” disqualified amount of \$2,20.50 applicable in 2023 or approximately \$6,000 per month.

Normal routine gifts to charities typically are ignored by the state for disqualification purposes. So are routine small gifts to individuals. However, gifts of larger amounts are typically considered even if they were not made for Medicaid qualification purposes. Any waivers of such disqualification purposes due to an assertion that they were not made for Medicaid qualification purposes are in the discretion of the state, which can be approved or denied in its sole discretion.

For transfers made after February 8, 2006, the effective date of the Deficit Reduction Act of 2005, the disqualification rules applicable to such transfers changed substantially. The disqualification period no longer commenced from the date of the gift, but from the date of application for Medicaid when the applicant has become “medically needy” (i.e., typically being in a long-term care facility and only possessed of non-exempt resources) so as to otherwise qualify for long-term care benefits provided by Medicaid except for any disqualifying gifts. This change dramatically reduced the efficacy in making transfers to enhance Medicaid eligibility prior to the transferor being in a long-term care facility, as the disqualification period no longer commenced at the time of the gift and thus prior to the transferor residing in such a facility, but in addition to being possessed of only exempt resources, also having applied for Medicaid benefits. Secondly, the look back period for disclosure of prior gifts was extended from thirty-six months on most transfers to sixty months (or five years) for all gifts, the so-called “look back” period.

These disqualification rules apply to all gifts for insufficient consideration, but only if an application is made for Medicaid benefits within five years of the transfer. For the applicant is not required to disclose any such gifts made prior to the look back period. Moreover, applying for Medicaid during the applicable look back period for prior disqualifying transfers continues to be a “trap for the unwary” and can greatly extend the applicant’s disqualification period for Medicaid benefits. This is because if an application for Medicaid is made during the look back period in which disqualifying transfers must be disclosed on a Medicaid application, the disqualification period is determined in the usual manner, i.e., by dividing the amount of the transfer by the current applicable per day or per month disqualification amount in determining the number of days or months in which the transferor/Medicaid applicant will be disqualified from receiving Medicaid benefits. If the applicant instead waits to apply for Medicaid until after the look back period, there would be no disqualification period, assuming the applicant has otherwise qualified for Medicaid without consideration of any such disqualifying transfers.

Example: The Medicaid applicant/transferor transfers \$300,000 to his children. Within sixty months of such transfer, the transferor applies for Medicaid. As all transfers within such five-year look back period prior to the Medicaid application must be disclosed on the application, the \$300,000 transfer will be required to be disclosed thereon. Thus, by dividing the amount of such



transfer by a hypothetical \$200/day disqualification amount, an approximate fifty-month disqualification period would result. Had the Medicaid application not been made until more than five years had expired following such transfer, such transfer would have been outside the five-year look back period and thus not have to have been required to be disclosed on the Medicaid application. In such latter situation, no disqualification period would have resulted from the \$300,000 transfer.

If such a disqualifying transfer is made to avoid such assets being considered to be a resource for Medicaid purposes or be subject to an estate recovery claim even if otherwise exempt, it is preferable for the individual not to transfer such assets outright to other family members, but to gift them into an irrevocable trust for the benefit of such family members, except for the grantor/transferor possibly reserving an interest solely as an income beneficiary. This estate planning strategy provides flexibility for the grantor, as trust provisions can enable the grantor to change trustees to a party other than the grantor, alter the disposition of the trust estate among family members upon the transferor's death, and in the absence of any such change, leave the assets to children in the same manner as under their own revocable trust, such as in asset protection trusts for their benefit.

Such retention should not alter the commencement date of the five-year lookback period beyond the transfer of property to the trust. Such ability of the grantor to alter the disposition of the trust estate or the retention of trust income also causes the trust estate to be includible in the estate of the transferor/grantor such that any appreciated assets will be includible in the estate of the transferor and be eligible, except for "income in respect of a decedent" items such as IRAs, for a "step up" in income tax basis at the transferor's date of death. Given the very high current applicable exclusion amount for federal estate tax purposes, such inclusion in the vast majority of situations would not result in any federal estate tax liability. Such potential "step up" would not be the case for assets gifted to children. In that situation, the children's income tax basis in the gifted assets would be the income tax basis of the parent for purposes of gain and the lesser of its fair market value or parent's income tax basis for purposes of a subsequent loss sale.

The trust provisions can also permit transfers to children as beneficiaries during lifetime to enable them, but not require them, to voluntarily use such distributions to provide support to the transferor parent should the parent be in need of LTC during such lookback period or be in need of care not provided by Medicaid. Finally, the trust can be structured as a so-called "grantor trust" such that the income of the trust is taxed to the transferor/grantor (which would be the case in any event if the transferor was an income beneficiary) in the same manner as if the grantor remained the owner, even though the property is in the trust and the transferor may not even be a beneficiary. This result can have substantial income tax advantages in a Medicaid planning context. First, it often permits the income of the assets in the trust to be taxed at lower brackets than it would have been if the income from the property was taxed to children. Second, it permits the proceeds of the sale of the grantor/transferor's personal residence by the trustee to be excludible from federal income taxation if it would otherwise be exempt if sold by the grantor. Finally, LTC costs paid by the grantor will remain deductible against the income of the trust if paid out of the grantor's account resulting from assets voluntarily being given back to the grantor by trust beneficiaries.

From an administrative and asset protection standpoint, transferring assets to such trust

instead of outright to children avoids the property being subject to a divorce claim of a child's spouse or the claims of their creditors, avoids problems in seeking contributions for the parent's care from children individually should the spouse be in need of LTC during the five year lookback period, particularly in circumstances where a child may have predeceased the parent, and avoids the disposition of the property gifted to a child to someone whom the parent does not wish to benefit should the child predecease the parent.

#### G. Medicaid Planning Strategies

The foregoing federal law changes have constricted Medicaid planning opportunities. Nonetheless, there remain several viable strategies. Prior to discussing such strategies, the author acknowledges that some individuals may find these strategies, in addition to those enunciated above, to be personally objectionable. However, attorneys as legal counselors have an ethical and professional obligation to advise their clients regarding all relevant legally permissible options which can achieve the client's estate planning goals. Clients should expect nothing less. It is then up to the client to choose those options with which the client is most comfortable and deems appropriate. In LTC situations, maximizing Medicaid eligibility through strategies which fully comport with all legal and regulatory requirements is an available legal option in meeting an LTC need. An individual is not legally required to expend any more of an individual's assets for long-term care than the law requires prior to qualifying for Medicaid benefits, in much the same manner an individual is not legally required to pay more in taxes to federal, state and local governments than required by governing tax statutes. The laws Congress enacts establish public policy.

Congress and its highly knowledgeable and experienced policy staff are aware of these strategies used by citizens to maximize Medicaid eligibility, and analogously as well, to minimize federal income taxation. In the event Congress at any time should deem such governmental resource or tax strategies to no longer be acceptable, whether from an altruistic public policy, or merely political point of view, Congress can, and frequently does, enact modifying legislation. In the interim, any individual is certainly free for any reason to choose not to utilize any legally permissible strategy such individual should find objectionable.

A primary strategy in maximizing Medicaid eligibility is asset restructuring, i.e., making purchases and payments that do not constitute disqualifying transfers to others and assist the Medicaid applicant in reducing the Medicaid applicant's non-exempt resources in order to meet the resource test. Secondly, one may gift assets to children or other parties and then "wait out" the applicable five- year disqualification period should Medicaid subsequently be needed to assist in LTC. The earlier that LTC is anticipated to be needed, the lesser this strategy will be efficacious, for it will be then more at risk to take place during the five-year and require private pay until the period expires to avoid having to disclose the transfer on a Medicaid application, thereby possibly resulting in a disqualification period beyond the look back period. Moreover, in that situation, under the provisions of the Deficit Reduction Act of 2005 discussed above, as noted above, with respect to transfers during the five-year look back period, such disqualification period will not even commence until the transferor is possessed of only exempt resources, is "medically needy," and normally also residing in a long-term care facility.

With respect to married Medicaid applicants, Medicaid eligibility strategies for the infirm

spouse may be employed to reduce the period necessary for the well spouse to meet the “division of assets” test so that the infirm spouse may qualify for Medicaid. Under such strategies, the well spouse may pay down bills (e.g., credit card debts and mortgages) or pay taxes due but not owing (e.g., current year’s property taxes and estimated federal income tax payments) or make improvements on exempt property or purchase exempt assets with non-exempt assets (e.g., buying an exempt irrevocable pre-paid funeral plan and burial plot, purchasing a more expensive vehicle, improving the residence, purchasing desirable household furnishings and more energy efficient appliances, and purchasing “income producing” assets which are exempt resources under state law) in an amount necessary to reduce the couple’s exempt assets to at least the “division of assets” amount such that the infirm spouse may then qualify for Medicaid benefits.

Additional strategies which maximize the “division of assets” eligibility test in 50% option states for married Medicaid applicants include borrowing assets prior to the so-called “financial snapshot date.” As the “division of assets” eligibility test does not consider liabilities of either spouse, such borrowing will have the effect of increasing the numerator of the “division of assets” amount (the amount of cash) prior to dividing such amount by two in determining the “spend down” amount necessary to qualify the infirm spouse for Medicaid. Thus, unless the amount of non-exempt assets of the couple is already in excess of twice that of the maximum “division of assets” amount, thereby already limiting the “division of amount” to the maximum amount, employing this borrowing strategy will increase the amount of non-exempt assets which may be retained by the well spouse for the infirm spouse to qualify for Medicaid. Once the infirm spouse has entered a long-term care setting, the debt incurred to increase the “division of assets” amount may be paid off, thereby returning to the financial status quo prior to the loan, thereby reducing the amount of assets held by the infirm spouse to a much higher “division of assets” amount that qualifies the infirm spouse for Medicaid benefits.

However, although generally reducing Medicaid eligibility strategies in other respects, the provisions of the Deficit Reduction Act of 2005 ("DRA 2005") do provide an additional planning opportunity not previously available. Under the Act, a well spouse may purchase a “Medicaid compliant annuity” as defined in such Act, which converts a non-exempt asset used to purchase the annuity (i.e., cash) into an “income stream” to the well spouse which is not considered a Medicaid resource. As noted above, the income of the well spouse has no adverse impact in qualifying the infirm spouse for Medicaid. A “Medicaid compliant annuity” must be irrevocable, non-assignable and actuarially sound, i.e., it must be ratably paid over a period not exceeding the annuitant’s life expectancy. In addition, in order to be a “Medicaid compliant annuity,” the state must be named the beneficiary to the extent of Medicaid benefits paid to the infirm spouse should the well spouse predecease the payment of all annuity benefits to the “well spouse.” Thus, the most effective strategy in this regard is for the period of such “qualified annuity” to be quite short, say one year or less, thus reducing the risk that there would be any remaining annuity payments at the death of the well spouse having to be paid to the state for Medicaid reimbursement to the infirm spouse’s benefits. This is an effective method of significantly reducing the amount of the non-exempt assets of the couple to a much lesser “division of assets” amount qualifying the infirm spouse for Medicaid benefits. Following such qualification, the amount of the well spouse’s non-exempt assets is irrelevant to the infirm spouse’s continuing qualification for Medicaid benefits.

Although a single person could use the same approach in purchasing a “Medicaid

compliant annuity” to convert a non-exempt asset into an “income stream,” such strategy has significantly less advantages and may be of no advantage at all unless carefully structured. First of all, the income from the annuity, plus the other income of the Medicaid applicant such as Social Security and any pension, could exceed the Medicaid reimbursement rate for that facility, thereby disqualifying the Medicaid applicant from Medicaid benefits. Secondly, such annuity payments, as they constitute income, would nonetheless go to the long-term care facility during the lifetime of the Medicaid recipient and any remaining benefit normally would have to be paid to the state as beneficiary to the extent of any Medicaid benefits paid.

Thus, the only apparent way to use a “qualified annuity” for a single person both to accelerate Medicaid benefits and to preserve assets from having to go for long-term care is to make a disqualifying transfer of an amount and contemporaneously purchase a “Medicaid compliant annuity” with the remaining amount, such that at the time of filing the Medicaid application, the Medicaid applicant would otherwise qualify for Medicaid benefits but for the disqualifying transfer, thereby commencing the disqualification period resulting from the transfer. The annuity would be structured such that the term of the even annuity payments would extend till the end of the disqualification period and approximately equal the LTC payment needed during the disqualifying period. Such amount would vary from individual to individual based upon the individual’s income and the cost of LTC in the subject facility. A simple mathematical formula can determine the amount of the transfer and remaining amount of non-exempt assets needed to purchase the annuity for the full term of such disqualification period such that the disqualification period for the disqualifying transfer amount and the period for which the annuity will satisfy the annuitant’s care are approximately contemporaneous events. Consequently, once the disqualification has expired, the Medicaid applicant should then be eligible for Medicaid. The amount transferred then could be retained by family members not needed for any future need of the Medicaid applicant not satisfied by Medicaid benefits and not otherwise have to be “spent down” for LTC needs prior to the transferor being qualified for Medicaid benefits under the resource test.

It is also important to note that under the same DRA 05 provisions, a promissory note can be structured in the same manner as a Medicaid compliant annuity in converting what would otherwise be a resource into income. That is to say, the promissory note must provide for level payments which do not exceed beyond the life expectancy of the promisee. There is an additional requirement that the note must preclude cancellation of the indebtedness on the promisee’s death even though such notes would normally extend beyond death even without specifically so stating. Thus, if an otherwise disqualifying transfer is structured as a loan with a qualifying promissory note, there should be no disqualification period as a result of the transaction. Moreover, the promissory note technique has an advantage over a Medicaid qualifying annuity in avoiding commissions and other attendant costs in its implementation, and the state, should the promisor die during the term of the note, is not entitled to any remaining amount owing on the note to the extent of reimbursing the state for Medicaid benefits paid to the well or infirm spouse.

The remaining planning alternatives for married couples who nonetheless desire to possess the maximum amount of non-exempt resources in excess of the “division of assets” limit while having the infirm spouse qualify for Medicaid are quite limited. Although a pre-marital agreement may waive the legal obligation of one spouse to support the other financially and protect separate

property status at death and in the event of a divorce, under state law it may have no effect on Medicaid eligibility under governing state law. This leaves married couples with the sole option of obtaining a divorce or decree of separate maintenance in order for property otherwise exceeding the “division of assets” limit to be set aside to the well spouse and not be considered a resource to the well spouse for Medicaid eligibility. However, if the divorce is too one-sided in favor of the property set aside to the well spouse by agreement of the parties, the state may consider the excess to be a disqualifying transfer to a former spouse.

For personal and tax reasons, the couple often will prefer a decree of separate maintenance to a divorce. Although property and debts are divided in a decree of separate maintenance in the same manner as in a divorce, the couple can remain legally married. Each party may then provide for the other at death through the Medicaid trust technique discussed below. However, whether a separate maintenance decree will be honored by the state in the same manner as a divorce with respect to avoiding any assets of the infirm spouse from being considered an asset of the infirm spouse is dependent upon state law, which at this time is highly uncertain.

In summary, the Medicaid eligibility rules are both restrictive and complex. Nonetheless, even after the DRA 2005, as discussed above there remain significant planning opportunities discussed infra for a married individual, and less opportunities for a single person, to accelerate Medicaid eligibility using the foregoing Medicaid planning strategies.

**Important Note: Several states, including Kansas, Ohio and Pennsylvania, have attempted to attack the efficacy of Medicaid qualified annuities in converting an otherwise non-exempt resource to an income stream for Medicaid purposes, notwithstanding they are sanctioned under federal law. Thus, their acceptance is not assured and the possibility of a state challenge is always present. Consequently, such strategy, like all Medicaid planning strategies, should not be implemented without the advice of an experienced Medicaid estate planning attorney who can assess the current state’s position as to the viability of such strategy.**

#### H. State Recovery of Medicaid Benefits

As an important Medicaid consideration, a 1993 federal law mandates all states institute legislation providing for estate recovery against the probate estate of an individual for Medicaid benefits paid to such individual or such individual’s predeceased spouse. States are also authorized under federal law to pursue the non-probate disposition of property by individuals to convey property at their deaths, such as through joint tenancy, beneficiary designations or under the provisions of a revocable trust. Many states, such as Kansas, have enacted such expansive provisions.

However, no estate recovery is permitted until the death of a surviving spouse, or when a child of the decedent is under 21, blind or disabled as determined under social security disability criteria. It also cannot be pursued with respect to a personal residence if a sibling lived in the residence at least one year prior to the Medicaid recipient going into a LTC facility and has continuously lived in the residence since or a child of the recipient lived in the residence at least two years prior to the recipient entering LTC and provided care to such recipient sufficient for

them to avoid LTC. Finally, with respect to an estate recovery claim against the personal residence of the Medicaid recipient, there is a hardship exception to such estate recovery claim, e.g., a child resides in the residence and has no means of living elsewhere.

Careful estate planning can minimize if not avoid the impact of this claim. In states not having such expansive estate recovery provisions, disposition of property through probate avoidance devices not subject to estate recovery can be implemented. Moreover, having property subject to an estate recovery claim pass through probate makes it much easier for the state to pursue such a claim. Probate estates are normally legally required to give notice to the state of a potential estate recovery claim if the decedent or the decedent's predeceased spouse were in receipt of Medicaid benefits. When probate avoidance devices are utilized instead to convey property at death, there is no probate procedure requiring such notice be given to the state. The state must initiate its own more cumbersome separate judicial procedure to make such estate recovery efforts, which then include determining what property the decedent owed and to whom it passed to as a result of the decedent's death. This makes it somewhat less likely the state will pursue such efforts and increases the possibility of a more favorable settlement against the parties receiving such property subject to such estate recovery efforts.

Due to the fact that the assets of a deceased individual who was on Medicaid at date of death would likely only consist of exempt assets and the state would be aware of such property and that the Medicaid recipient has died and would likely have to be notified in any event with respect to any potential Medicaid claim, estate recovery is likely only to be avoided by using probate avoidance devices such as beneficiary designations on the property of the estate which the state would not be permitted to recover if recovery in such state is limited strictly to probate assets. Minimizing estate recovery of Medicaid benefits is thus likely to be much more feasible with respect to the assets of a surviving spouse of a Medicaid recipient who was not on Medicaid. In that situation, the state may not be aware of such death if the surviving spouse was not receiving Medicaid benefits, for the state would have had to initiate tracking procedures to make such determination. Moreover, the surviving spouse will often have a much larger estate due to the "division of assets" when the predeceased spouse qualified for Medicaid or which the surviving spouse inherited or earned following the predeceased spouse's death. The surviving spouse would thus best use probate avoidance devices for the disposition of property at death, for as noted above, if the surviving spouse's assets pass through probate, normally the state would need to be notified of such potential claim. However, in the event the surviving spouse was in a state having expanded estate recovery against non-probate assets, the surviving spouse could also consider transferring assets away during the surviving spouse's lifetime either outright to family members or to an irrevocable trust discussed above under Section F so as to preclude the efficacy of any estate recovery claim the state might nonetheless assert provided such transfers could only be set aside if made by a Medicaid recipient. Under the provisions of such trust, the surviving spouse could be an income beneficiary, have the authority to change the trustee to a party other than the grantor/transferor, and even have the authority to change the disposition of the trust estate upon the surviving spouse's death. In default thereof, the trust estate would pass in the same manner as any other remaining assets of the surviving spouse's revocable trust.

Federal law under certain circumstances permits states to file a lien on the personal residence of a Medicaid recipient while living to ensure reimbursement to the state for Medicaid

benefits paid upon the death of the Medicaid recipient (or the death of a surviving spouse, if married). Such lien may be filed if the Medicaid recipient has been residing in an LTC facility for six months and the state can demonstrate that there is little possibility of the recipient returning to the personal residence. However, such lien may not be placed on a personal residence if a surviving spouse, or child under 21, or is blind or disabled is living in the residence. States are also permitted to file liens in lieu of, or in addition to filing a probate estate claim, on property owned by a Medicaid recipient following death or by a recipient's surviving spouse to secure a Medicaid estate recovery claim for benefits paid to the predeceased spouse. Lien resistant strategies include placing such real property into a limited liability company, which would convert real property into personal property.

It is important to keep in mind that even if the state successfully recoups payments made to a Medicaid recipient following the death of the Medicaid recipient from the exempt assets of the Medicaid recipient (which would normally only consist of exempt assets if the Medicaid recipient qualified for Medicaid benefits up to date of death) or the assets of the surviving spouse of a Medicaid recipient, there could still be a substantial economic benefit conferred by Medicaid eligibility. This is because the Medicaid reimbursement rate paid by the state to the nursing home or other long-term care facility is typically less than the private pay rate. Consequently, only if such estate recovery claim exhausted the estate would there not have been a benefit in that situation in qualifying for Medicaid. Moreover, there is no interest charged by the state on the amount of such payment.

#### I. Estate Planning to Maximize Medicaid Eligibility

Maximizing Medicaid eligibility is an important estate planning consideration. Statistics indicate that approximately one-third of the time a well spouse will predecease an infirm spouse residing in long-term care. In the Medicaid context, traditional estate planning techniques such as joint tenancy ownership or simple wills giving all assets to the surviving spouse upon the death of the predeceased spouse are normally quite counterproductive. Either of these approaches will cause the infirm spouse to own all of the spousal property upon the death of the well spouse. All non-exempt resources would then have to be spent down before the infirm spouse would qualify (or remain qualified) for Medicaid.

In addition, if the surviving spouse is lacking sufficient mental capacity to execute any estate planning devices such as a financial power of attorney or manage financial affairs, a conservator would likely need be appointed by a court to make such decisions, with its attendant costs. Finally, probate of any remaining property owned outright by the infirm spouse and not having a valid beneficiary designation not needed for the surviving spouse's care would probably be required on the infirm spouse's death. State or federal law may then require that notice of the decedent's death be given to the state in the event the decedent or decedent's predeceased spouse was receiving Medicaid benefits. The state almost always would then file a claim against the probate estate of the decedent to recover such Medicaid benefits paid to the decedent or the decedent's predeceased spouse under estate recovery provisions discussed above.

Even worse for Medicaid planning purposes is a couple executing a joint revocable trust to hold the assets of both spouses, the provisions of which authorize either spouse to amend or revoke

the trust or direct the distribution of trust assets for their singular benefit. This results in all assets in the trust being deemed to be fully available to both spouses for Medicaid purposes during their lifetimes, maximizing the spend down requirements for each spouse before either spouse would become eligible for Medicaid benefits. In states having expanded estate recovery statutes for Medicaid benefits paid to either spouse upon the death of the surviving spouse through a probate avoidance device, the entire trust estate is likely to be subject to such estate recovery provisions.

Generally, unless the spousal assets for estate tax purposes approach or exceed the applicable exclusion amount (in which event marital estate tax deduction techniques may need to be employed), this adverse consequence may be avoided by the well and infirm spouse placing or transferring all spousal assets to the well spouse's revocable trust. Should the well spouse predecease the infirm spouse, the trustee of the revocable trust would be authorized to make discretionary distributions for the infirm spouse's health, support, and maintenance supplementary to government resources, without the trust assets being considered a resource to the surviving infirm spouse for Medicaid eligibility purposes. Such trust would pay for those benefits Medicaid may not pay for, such as dental care, personal incidentals and any additional amounts required for a private room. Due to Medicaid benefits being immediately available (if they weren't already due to meeting the "division of assets" test) on the well spouse's death, the spousal assets would not only last much longer in providing for the infirm spouse's care, but also provide a higher degree of care, such as paying for a private room not covered by Medicaid benefits. In addition, there would be no probate on the infirm spouse's death, as the trustee, pursuant to the terms of the trust, would distribute any then remaining trust assets to the remainder beneficiaries of the trust (usually children or their issue). Finally, if the well spouse predeceases the infirm spouse, there would be no assets in the infirm spouse's estate for the state to recover for Medicaid benefits paid to the infirm spouse. **See Appendix B for Medicaid Estate Plan Schematic.**

The implementation of this strategy requires a highly skilled attorney knowledgeable both in Medicaid law and the utilization of highly sophisticated drafting techniques. Due to the limitations under Medicaid law for a revocable trust to provide this benefit as opposed to a will, the provisions of the revocable trust must be utilized in conjunction with a carefully drafted Will (by authorizing the trustee to make a distribution to the estate of the Grantor of the revocable trust whose will incorporates the same provisions) in order to effectuate the intended result in the event the state should challenge such benefit under the provisions of a revocable trust.

**Note:** This strategy also has become both more tenuous and limited as a result of a 2003 Kansas Supreme Court decision which held that the amount of spousal rights claim that a surviving spouse would be entitled to under Kansas elective share statutes (even though having been waived during lifetime) remains an available resource to the surviving spouse for Medicaid purposes following the death of the predeceased Grantor. Other states have similarly deemed such survivorship rights to be a resource, whether legally pursued or not, although apparently not in the context of having been waived under a premarital agreement or the consent to the will of the decedent. Nonetheless, this anomalous position of the Kansas Supreme Court in holding the elective survivorship right of a surviving spouse to be a resource notwithstanding it did not exist at the predeceased spouse's death due to previously having been waived by the surviving spouse, might possibly be adopted in other states. Nonetheless even if adopted, if the infirm spouse has been receiving Medicaid benefits prior to the death of the predeceased spouse, such benefits should



not be subject to any estate recovery for Medicaid benefits paid, as the trust estate of the predeceased spouse are not assets owned by, or disposed of, by the surviving spouse.

If there is a probability of incapacity of one spouse, implementation of the above estate plan by transferring assets to the well spouse's revocable trust, or in the well spouse name with respect to exemplary resources, with his or her trust as beneficiary so that such property will remain exempt for Medicaid purposes, is normally advisable from the outset. If not, separate revocable trusts for each spouse (each holding approximately one-half of the spousal assets) could be created, thereby sheltering all assets owned by the predeceased spouse from having to be spent down for Medicaid purposes before the surviving spouse qualifies for Medicaid. In the event one spouse subsequently should incur a disability or have the expectancy of such an incurrence, revocable trust provisions could then permit the transfer of the assets from the revocable trust of the spouse anticipating a disability to the revocable trust of the other spouse, thereby maximizing both Medicaid eligibility under the "division of assets" test and also in the event the well spouse should predecease the infirm spouse during the pendency of such disability.

Even if revocable trusts are not desired presently, each spouse may give the other spouse a durable power of attorney authorizing the transfer of all spousal assets to the well spouse should either spouse later become incapacitated precluding them from having the capacity to execute such transfers in their individual capacity. In that event, the well spouse could then transfer all spousal assets to a revocable trust that the well spouse would execute, which revocable trust would implement the foregoing Medicaid Family Trust provisions for the benefit of the surviving spouse. Without a previously executed and properly drafted durable power of attorney authorizing such transfers, however, the implementation of this strategy following the incapacity of a potential Medicaid recipient may not be feasible.

Important Final Comment: The state may possibly not consider assets that are otherwise exempt for Medicaid eligibility to be exempt if held in a revocable trust. Thus, should that be the case, such exempt assets such as the personal residence would need to be held in the individual name of a single Medicaid applicant or the married Medicaid applicant's spouse to retain its exempt status. The owner would then name his or her revocable trust as beneficiary on such property at the owner's death to avoid probate in states permitting beneficiary designations on the subject properties.

#### J. Federal Law Ostensibly Prohibited Medicaid Planning Techniques

Provisions of the Kennedy-Kassebaum Bill, subsequently known as the Health Insurance Portability & Accountability Act of 1996 ("HIPAA"), imposed criminal misdemeanor penalties of up to one year in jail and up to a \$10,000 fine for "making or causing to be made false statements or representations." Although it is understandable that criminal penalties would ensue if one makes false statements to secure Medicaid benefits for which one was otherwise ineligible, that Bill made it a crime to "knowingly and willfully disposes of assets...to become eligible for [Medicaid]...if disposing of the assets results in the imposition of a period of [Medicaid] ineligibility".

This provision created a furor among senior citizens and elder law practitioners who had no knowledge such a provision was even pending, let alone passed. It was inconsistent with the

heading it was under and with other provisions in the law. Other provisions of the law, as discussed above, permit transfers but impose an ineligibility period as a result of the transfer. By imposing criminal penalties, this provision seemingly negated what was otherwise legally permissible under other provisions of the law. It was also ambiguous as to whether it would cover someone who made a transfer but did not apply for Medicaid until the period of ineligibility had expired. If not, the provision would be totally nonsensical, for it would criminally penalize someone who simply prematurely applied for Medicaid, even though there would still remain a period of Medicaid ineligibility. Moreover, such provisions of the law did not appear to cover the conversion of non-exempt assets into exempt assets. Given that criminal statutes are strictly construed against the government and can be voided by the courts for vagueness, ambiguities or inconsistencies, as well as trust amendment issues, to the extent the government intended to enforce this provision, such provisions appeared to be in for “rough sledding” in the courts.

Transfers after January 1, 1997, were affected by the new law. However, due to flack over this law, dubbed the “Granny Goes to Jail Law,” it was partially repealed by provisions of the Taxpayer Relief Act of 1997. It then only applied to those who “for a fee” give advice with respect to making transfers which would have been a violation of the old law. On March 11, 1998, Attorney General Janet Reno wrote House Speaker Newt Gingrich and notified him that the Department of Justice considered the law unconstitutional (violative of free speech) and would take no enforcement action against “violators”. Further, in the first judicial challenge of this new law in 1998, a federal court in New York concurred, holding the new law unconstitutional and issuing a restraining order prohibiting governmental agencies from enforcing it. To date, the author is unaware of any subsequent efforts to enforce it.

#### K. Limitations of the Medicaid Safety Net

As discussed above, the Medicaid rules permit maximizing eligibility through several methods, including purchasing additional exempt resources (or improving an already exempt resource, such as the personal residence), transferring assets to family members and waiting out the disqualification period, and for married couples, using proper estate planning techniques to ensure that assets owned by the predeceased spouse are left at death in a “supplemental to Medicaid” trust for the benefit of the surviving spouse. Moreover, a divorce or possible decree of separate maintenance is available as a means of last resort to protect additional assets thereby set aside to the well spouse from Medicaid “spend down” requirements. However, the bottom line is that: a single person may own only \$2,000 of otherwise non-exempt resources to qualify for Medicaid; a married couple who are both in need of LTC may own only \$3,000 of otherwise non-exempt resources and qualify for Medicaid; and for married couples only one of whom is currently in need of LTC, the well spouse may only retain non-exempt resources up to the “division of assets” limit if the infirm spouse is to qualify for Medicaid.

Even for those individuals who feel that proper estate planning within the Medicaid eligibility rules minimizes their financial risk to an acceptable level such that consideration of long-term care insurance is deemed unnecessary, it is important to realize that such eligibility rules are subject to change in the future. Current and possible future fiscal restraints may well compromise the ability of the federal and state governments to continue to fund LTC at current care levels. There has been past discussion in Congress and proposed legislation which would

provide “block grants” to the states giving them more flexibility in setting Medicaid eligibility rules. Also, there is some uncertainty as to the quantity and quality of long-term care facilities which will accept Medicaid residents in the future.

## **PART TWO: PARTICULAR IMPORTANCE OF MEDICAID ESTATE PLANNING TO FARMERS AND RANCHERS**

For a variety of reasons, Medicaid estate planning is extremely important for farmers and ranchers. Unlike other individuals, they often have a significant estate but only a small percentage of which consists of assets which are not exempt resources in qualifying for Medicaid benefits. There is typically only a modest amount in IRAs, stocks and bonds, and cash. Thus, unless the individual has LTC insurance, this could require the sale or mortgaging of farm or ranch assets to pay for their care unless qualified for Medicaid benefits.

Second, the bulk of their assets are in their home and contiguous acreage and other business real and personal property, such as farmland, cattle, farm machinery and equipment. As noted in Appendix A, a large number of states, in addition to the personal residence, exempt such property from being considered a resource for Medicaid eligibility purposes. These include such large agricultural producing states as Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, North Dakota, Oklahoma, South Dakota and Wisconsin. This presents a great opportunity for Medicaid eligibility planning unavailable to most other estates. With proper Medicaid estate planning and resorting to conversion of non-exempt assets to exempt assets, or if necessary, purchasing Medicaid compliant annuities or loans to reduce the non-exempt assets to the “division of assets” amount, despite the estate being of substantial value, the “division of assets” test often can be rather easily met so as to qualify an infirm spouse for Medicaid.

Third, agricultural families tend to place a substantial non-monetary value on farm and ranch land that other individuals do not with respect to their investment holdings, having a great importance on its retention in the family as a trade or business or simply for family legacy purposes. In addition to minimizing estate taxation in such preservation efforts, farmers and ranchers thus understandably desire to avoid needing to sell or mortgage agricultural property in order to pay for long-term care.

Unfortunately, the estates of farmers and ranchers, not unlike those of many non-agricultural families, are typically ill-prepared to both maximize Medicaid eligibility and minimize exposure to state estate recovery efforts. Even when they have attorney assistance in their estate plans, Medicaid planning is often not even a consideration. Consequently, their assets are often held in joint tenancy ownership with a spouse, name their spouse as beneficiary, or provide in their wills that all property at their death go to their surviving spouse. As a consequence, should either spouse go into long-term care, assuming their estate even otherwise meets the “division of assets” test, one-half of the income from their agricultural property, along with their other income, such as social security, would go to the LTC facility, thereby either disqualifying them from Medicaid due to such income exceeding the Medicaid reimbursement rate for the facility or substantially reducing the Medicaid benefits that would otherwise have been paid had such property not been held in joint tenancy by reducing the amount Medicaid is required to pay.

Although such exempt and non-exempt property in that circumstance could be transferred to the well spouse without incurring any disqualification period, this may not be possible if the infirm spouse does not have sufficient competency to make the transfer and has not previously executed a comprehensive financial power of attorney authorizing such transfer to be made on his or her behalf. Under the laws of most states, a general durable power of attorney for financial decisions needs to specifically authorize gifts for such authority to be reposed in the attorney in fact. Further, under such type of estate plan all spousal assets will be owned by the surviving spouse. Should the surviving spouse be the well spouse and subsequently be in need of LTC, all non-exempt assets would need to be “spent down” to qualify for Medicaid benefits and the exempt agricultural property would be subject to estate recovery by the state for Medicaid benefits paid to the predeceased spouse. Should the surviving spouse be the Medicaid recipient, the same result ensues. In either situation, as noted above, the income from the entirety of the exempt property may exceed the Medicaid reimbursement rate for that facility, thereby denying Medicaid eligibility. Finally, all assets owned by the surviving joint tenant are subject to estate recovery for Medicaid benefits paid to either spouse.

Even if the couple employs a revocable trust to avoid probate, it is often a joint revocable trust permitting either spouse to revoke or amend the trust, or withdraw assets, in favor of themselves in their individual capacity. Such trusts are the absolute worst estate planning device for Medicaid benefits. Even if exempt assets held in the joint revocable trust are still considered to be owned by the grantors of the trust and thus remain exempt, which may not be the case under some state laws such as Kansas, all assets in the trust are an available resource for Medicaid eligibility purposes to either or both spouses and in states which provide for estate recovery against non-probate assets held in a revocable trust, the entire trust estate remains available to estate recovery upon the death of the surviving spouse.

It is thus critical that Medicaid estate planning be accomplished when both spouses are living and competent to sign legal documents to maximize such planning. As discussed above, single persons such as surviving spouses have quite limited options to both maximize Medicaid planning with their assets and limit the exposure of their estates to state estate recovery for Medicaid benefits paid to them or their predeceased spouses. Such planning should include comprehensive financial powers of attorney which include provisions authorizing the attorney in fact (agent) to transfer assets to a spouse (assuming there are no second marriage considerations, such as children from prior marriages) for “division of assets” purposes.

Thus, it is normally desirable for each spouse to create a separate revocable trust as part of the estate plan pursuant to which the assets held in the trust would pass at the predeceased spouse’s death to a “supplemental needs”/Family Trust arrangement discussed above, providing discretionary distributions for the health, education, maintenance and support needs of the spouse, and possibly children as well, supplemental to Medicaid benefits. The surviving spouse may serve as a trustee of such trust up until the time of a disability or death. This avoids adding additional assets to the surviving spouse’s estate for Medicaid eligibility purposes and the income of exempt assets left for the benefit of the surviving spouse from having to be spent for LTC, it also minimizes the exposure of exempt assets such as farm and ranch property to estate recovery upon the death of the surviving spouse for Medicaid benefits paid to either spouse. Finally, to further maximize

such benefit, what is termed a “reciprocal general power of appointment” provision can be included in each revocable trust, pursuant to which the predeceased spouse has the right to appoint the assets in the surviving spouse’s revocable trust to the trustee of the predeceased spouse’s revocable trust, which then places such appointed trust estate along with the other trust assets of the predeceased spouse into a Family Trust arrangement benefiting the surviving spouse supplementary to Medicaid benefits.

For a surviving spouse of a Medicaid recipient under a traditional estate plan who as a consequence owns all spousal assets, minimizing estate recovery efforts against such property for Medicaid benefits paid to the predeceased spouse involves consideration of a transfer of farm and ranch property to a comprehensive irrevocable trust discussed above in Section F, *supra*, to both avoid such Medicaid claim and maximize the surviving spouse’s eligibility for Medicaid benefits, subject to a disqualification period resulting from the transfer should the surviving spouse be in need of Medicaid benefits within the five year lookback period following the transfer.

### **PART THREE: THE ROLE OF INSURANCE IN LTC PLANNING**

#### **A. Long-Term Care Insurance**

For individuals who are not satisfied with the combination of self-insurance and estate planning techniques maximizing Medicaid eligibility, or who are concerned that Medicaid only covers skilled nursing care and not assisted living or custodial care, long-term care (LTC) insurance is probably the only viable alternative. Certainly, the restrictions placed on disqualifying transfers as a Medicaid qualifying technique under the Deficit Reduction Act of 2005 give an additional impetus to the consideration of LTC insurance. Many companies offering such policies went out of business due to grossly underestimating their exposure in relation to insurance benefits paid. Some states also provide for a “free look” period, e.g., 30 days, during which time period the policyholder may cancel the policy for any reason and receive a full premium refund. State laws may also essentially mandate that issued policies be renewable and cancellation based solely upon the age or deteriorating physical or mental health of the insured may be prohibited.

The key to proper evaluation of LTC policies is threefold: the policy itself, the company issuing the policy, and the person from whom it is being purchased. In evaluating the policy, the most important criterion is not the amount of the annual premium, but the value received for that premium. That is, one should evaluate the total overall benefit received in relation to the amount of premium paid.

Evaluating different policy benefits is not an easy task. Different policies have various exclusions, elimination periods, daily benefits, benefit maximums and “triggering events” for coverage. A policy exclusion is a condition which is not covered by the policy. Generally, policies exclude benefits if services are needed for intentionally inflicted injuries, treatment already paid for by the government, illnesses caused by acts of war, alcohol or drug addiction, and mental and nervous disorders, other than Alzheimer's disease. It is important that these exclusions be carefully reviewed to ensure that needed benefits will not be excluded under the terms of the policy.

The elimination period is the period the insured must receive care before benefits “kick in.” Generally, policy options offer an elimination period from zero to 100 days. Daily benefits may be couched in terms of a fixed daily benefit or a “floating amount” which covers the full cost of care up to a ceiling. The maximum benefit is normally reached when payments have been made for the maximum benefit period allowed under the policy. The most common benefit period is three years, although some companies offer policies for shorter and longer maximum benefit periods. Another factor to consider is whether to purchase a policy covering home health care and facility care at separate maximums or an integrated policy providing for a single maximum which can be utilized for either home health care or facility care. Under a separate maximum policy, once the maximum for home health care has been utilized, benefits would cease unless the insured was moved to a nursing facility for which continued coverage was provided. The trend is toward integrated policies. These policies are especially preferred by individuals who do not desire placement in a nursing facility under any circumstances.

The daily benefit and maximum benefit must be sufficient to underwrite the risk for which LTC insurance is being purchased. This may not necessarily be full coverage either on a daily or total benefit basis. The policy may only be intended to partially cover the LTC risk, with self-insurance and the Medicaid safety net being intended to cover the balance. In short, a policyholder should ensure that amount of the cost of LTC it is determined the insured cannot afford to self-insure. It is an interesting observation that although most individuals routinely ensure casualty risks, those same individuals are often reluctant to insure for LTC, even though both the risks and costs of LTC can be much higher.

With regard to policy “triggering events,” most reputable companies have long moved away from a “medically necessary” definition for eligibility to an “activities in daily living” (ADL) test. Medical definitions are not only often subjective and uncertain; they ignore the reality that many individuals in need of nursing facility care are not technically “ill.” State laws may require that all LTC policies in that state are statutorily prohibited from using a “medically necessary” definition, although policies are permitted to require that the care be ordered by a physician due to illness, injury or infirmity. Focusing on ADL places the emphasis where it should be, i.e., on the inability of the insured to attend to daily needs. ADL look to the inability to be self-assisted in daily care needs such as bathing, dressing, walking and moving about, eating and the taking of medication. It is important to review what those ADLs are under the LTC policy and how many are required in order for the LTC policy to cover home health care or facility care. For example, one or two triggers may be required for home care and two or three for facility LTC care.

Policies which offer a variety of options, rather than rigid mandatory benefits, are normally preferable. This is particularly true if the mandatory benefits are unlikely to be utilized or are otherwise not desired or needed. Most policies, however, automatically include such normally desirable benefits as one-time alteration expenses necessary to adapt a dwelling for home care, a respite benefit to allow family members to take a break from caregiving, and a bed reservation payment necessary to retain a bed in a nursing facility should a brief hospitalization be required. Moreover, long-term care insurance benefits may include “assisted living” as opposed to “nursing home” care, a benefit which is generally not available under Medicaid benefits. Inflation adjustment riders are normally desirable, particularly for younger insureds. However, such inflation riders can add between 25% and 40% to the cost of the policy. Another often desirable

provision is a waiver of premium once LTC benefits become payable under the policy.

Readily accessible resources are available to assist the consumer in evaluating LTC policies from state universities, county departments of aging, state insurance departments, as well as nationally in the National Association of Insurance Commissioners' and AARP's "Shopper's Guides," and AARP at [www.aarp.org](http://www.aarp.org). Yet other good resources are LAN (Life Association News) magazine, which annually publishes charts comparing plans offered by most leading insurers, and Consumer Reports, which has periodically addressed long-term care insurance issues. A final source is the Health Insurance Association of America. Its phone number is 1-877-582-4872 and its web site is [www.hiaa.org](http://www.hiaa.org).

In evaluating a long-term care insurance company, it is important to look at its insurance industry rating. Various rating systems determine the insurer's financial ability to meet the demands of covering policy benefits to its policyholders. The rating categories include superior (very little risk), excellent (slightly higher risk), good (high claims-paying ability) and adequate (less protection against risk). Any company not having a rating in the above four categories should be considered unacceptable. All other factors being equal, a company having a higher rating should be preferred over a company having a lower rating.

LAN, in its annual publication, usually provides the A.M. Best, Standard & Poor's, and Moody's ratings of LTC insurers. These ratings are also available directly by calling A. M. Best at (900) 420-0400, Standard & Poor's at (212) 208-1527, and Moody's at (212) 553-1653.

Ratings of an insurer's financial stability do not address such factors as an insurer's longevity in the business, its record in paying claims, or its history of premium increases to its policyholders. Nor do they address the size of the company related to other insurers, as normally the larger the pool of insureds, the greater the stability of the insurer and corresponding insurance premiums. Most, if not all, of this information can be obtained from a reputable LTC specialist. In selecting an LTC specialist, one should inquire as to the years of experience in LTC insurance, the percentage of the specialist's time devoted to LTC insurance, the variety of insurers represented, and professional and client references. If the specialist represents only one insurer or a limited class of insurers, it is normally desirable to comparison shop to ensure one is getting the best overall policy value for the premium expended.

There also can be additional monetary and tax incentive considerations in determining whether an individual should purchase a LTC policy. For example, Kansas law has provided monetary incentives for individuals to purchase LTC policies in an attempt to lower Medicaid costs. First, there is a dollar-for-dollar offset against amounts otherwise recoverable under the Medicaid claim law against assets in the applicant's or applicant's spouse's estate for amounts paid for the applicant's care under LTC policies. For example, if a LTC policy has provided \$20,000 toward the LTC of an applicant and KDHE subsequently provided \$30,000 for LTC under Medicaid once the policy limits expired and the applicant met the Medicaid eligibility requirements, the amount of the Medicaid claim against the estate of the applicant or the estate of the applicant's surviving spouse would be \$10,000, as the otherwise applicable \$30,000 claim amount would be reduced by the \$20,000 provided under the LTC policy. To the extent the applicant's estate consisted of minimal exempt assets or the estate of the applicant's surviving

spouse was planned in a manner discussed herein that ultimately resulted in the estate of the applicant being not subject to the application of the Medicaid claim law, such Medicaid claim “offset” would have been of little or no benefit.

As a second monetary benefit, some states have extended the amount of exempt assets for Medicaid purposes to include the amount of premiums the Medicaid applicant paid for LTC insurance. In that case a Medicaid applicant may possess an amount which would otherwise not be exempt equal to the amount of LTC premiums paid, without having an adverse impact upon the applicant’s Medicaid eligibility. Third, under the “long-term care partnership” program enacted under the Deficit Reduction Act of 2005, which can be statutorily affirmed by state legislatures, there is a “dollar for dollar” offset for “Partnership” policy benefits paid in terms of increasing the amount of non-exempt assets that would otherwise have to be considered in qualifying for Medicaid benefits.

In terms of tax incentives for the purchase of a LTC policy, the premium costs and benefits received have been made tax advantaged. Due to the so-called “Kennedy-Kassebaum bill” passed by Congress in 1996, up to certain amounts per day of LTC benefits are excludible from income taxation, provided the policy meets certain specified criteria in providing “qualified LTC services.” Further, on such “qualified” policies, to the extent the plan offers a full refund of premiums paid whether or not any benefits are paid out, the refunds are tax-free. In addition to other requirements, a “qualified” policy must provide payment for personal care services required by a chronically ill individual. This same legislation provides that premium payments by individuals on such “qualified” policies are also now deductible for income tax purposes in the same manner as other health insurance. With respect to “C Corporations,” premium payments for “qualified” policies on the employee, employee's spouse, or children are fully deductible with no corresponding inclusion in the employee's income. For self-employed individuals, partnerships, limited liability companies (LLCs) and what are termed “S Corporations,” the deduction for premium payments on health insurance premiums, which now includes payments on “qualified” policies, is normally 100%. Otherwise, such payments are deductible to the extent itemized on Schedule A.

Thus, unless paid out of a “health saving account” (HSA) which permits payment of LTC premiums, in order to achieve any federal income tax benefit on the portion of the LTC premium payment, which is subject to itemization, the payor must be able to itemize. Medical itemized expenses such as LTC premium payments are only deductible to the extent total medical expenditures exceed 10% of the payor's adjusted gross income. It has been made more difficult due to the meteoric rise in the standard deduction over the last several years. Even then, there are maximum annual cumulative deduction limitations on premium payments for such policies which are dependent upon the age of the insured. Consequently, inquiry should be made prior to purchasing an LTC policy whether the policy satisfies the statutory requirements as a “qualified policy” necessary for favorable federal income tax treatment. If so, a determination should be made as to whether the premium will be deductible based upon the foregoing criteria, as well as the amount of the deduction.

#### B. Accelerated Death Benefit Life Insurance

Many life insurance companies are now offering policies which provide for accelerated



death benefits in the event LTC should become necessary. The provisions of the life insurance policy providing this benefit for LTC should be viewed as an LTC policy. Consequently, these policies should be evaluated upon the same basis as LTC policies discussed above. As would be expected, amounts paid for LTC normally reduce the amount paid at death.

Obviously, having a death benefit irrespective of whether LTC is ever needed does not come without an added cost. The insurance company is providing additional insurance over and above that provided by LTC insurance alone. Thus, consideration should be given as to whether the additional cost required for a guaranteed death benefit if LTC is never required merits the purchase of the policy. Further, if a death benefit is desired for other estate planning factors, e.g., liquidity to pay taxes or debts, such liquidity would be compromised if the death benefit was needed during lifetime to cover LTC. Consequently, in that circumstance, either the amount of the death benefit purchased should be sufficient after taking this contingency into account or there should be additional guaranteed death benefit options under the policy which could be exercised should such eventuality later arise.

As it did with LTC policies, the Kennedy-Kassebaum Bill of 1996 also extended favorable income tax treatment to these types of policies as well. Benefits received for LTC through life insurance providing an accelerated death benefit are normally treated as paid by reason of death and are therefore excludible from income in the same manner as death proceeds.

### CONCLUSION

LTC estate planning, particularly estate plans involving Medicaid eligibility rules, is without a doubt one of the most highly technical areas of estate planning. It involves very complex and frequently changing Medicaid eligibility rules, sophisticated estate planning techniques, and often technical income tax issues as well. Thus, Medicaid estate planning should in no circumstance be deemed a “do it yourself” proposition. Those who attempt to implement a Medicaid estate planning strategy without the assistance of a highly qualified and experienced LTC estate planning attorney incur a substantial risk of suffering significant, if not dire, adverse financial consequences.

In short, a highly experienced and reputable LTC estate planning attorney should be sought at the outset to assist in implementing an estate plan involving Medicaid considerations. Normally, a very high “cost versus benefit” ratio will thereby be achieved with respect to balancing the costs of such Medicaid planning advice with the attendant resource savings. A well-devised estate plan will maximize the availability of Medicaid as either the primary or secondary (after LTC insurance) source of payment while minimizing the exposure of assets to a Medicaid estate recovery claim following the death of the Medicaid recipient against the Medicaid recipient’s estate as well as that of the surviving spouse of such recipient.

In addition, there are many additional benefits to be secured by a well devised Medicaid estate plan. Such benefits include the preservation of family harmony, providing for the inexpensive and proper management of assets during a legal disability without having to resort to an expensive and often contentious judicial proceeding, and the distribution of any remaining assets at death in a manner which not only avoids the costs, bother and public exposure of probate

proceedings, but also which distribute the decedent's remaining assets to the intended beneficiaries in the desired amounts or proportions. A well devised LTC estate plan also will provide for an agent to make all personal and health care decisions during a legal disability, including home health care and any nursing facility determinations which become necessary.

If the financial risk of the costs of LTC following implementation of Medicaid estate planning strategies is deemed insufficient as the sole LTC planning strategy, LTC insurance should be considered. In purchasing LTC insurance, it is important to engage a qualified and reputable LTC insurance specialist to assist in the evaluation of various policy benefits, attendant costs and the financial stability and consumer reputation of the various insurers offering such policies. The final determination of the LTC insurance policy to be purchased involves properly balancing the cost of the policy against the LTC financial risk which is being insured.

If it is decided that the purchase of LTC insurance is a preferable component of the desired LTC estate planning strategy, insurability and premium costs become significant factors. The longer one waits, the greater the risk that one's health could deteriorate to the point LTC coverage is unavailable. Further, as risk increases with age, the longer one waits the higher the annual premium cost. For example, at age 75, a comprehensive policy with good inflation protection might cost twice as much as the same policy at age 65. As an additional example, a policy purchased at age 55 may have an annual premium of only one-sixth of its cost at age 75. In waiting to take out a policy a considerable risk is incurred that a person may become uninsurable. Approximately 15% - 20% of the population over age 65 are uninsurable for LTC coverage.

In sum, only through a comprehensive approach developed with a knowledgeable LTC estate planning attorney and a reputable LTC insurance specialist can an informed decision be made with respect to comprehensively implementing appropriate LTC planning strategies in one's estate plan. An LTC estate plan is incomplete unless it has considered all of the financial, property management, estate planning and health care decision-making needs which may arise should LTC become necessary. Any LTC insurance policy component of such strategy should be purchased from a reputable LTC insurance professional, cover only the risk that needs covering, be a good overall value for the premium cost, be purchased from a company whose insurance rating indicates that the coverage is likely to be available should the need arise, and only be purchased after properly comparing the costs and benefits of similar LTC policies, both from the same company and those from different companies.

**APPENDIX A  
(2019)**

<b><u>State &amp; Source</u></b>	<b><u>Exemptions</u></b>
<p><b>Alabama</b>  <a href="https://www.medicaid.alabama.gov/documents/3.0_Apply/3.2_Qualifying_Medicaid_for_Elderly_Disabled/3.2.5_Medicaid_for_Elderly_Disabled/3.2.5_Resource_Limits_Revised_2-6-18.pdf">https://www.medicaid.alabama.gov/documents/3.0_Apply/3.2_Qualifying_Medicaid_for_Elderly_Disabled/3.2.5_Resource_Limits_Revised_2-6-18.pdf</a></p>	<ul style="list-style-type: none"> <li>• <b>Real Property</b> - may be exempt when: <ul style="list-style-type: none"> <li>○ Applicant intends to return home from medical institution.</li> <li>○ Applicant is making a bona fide effort to sell the property.</li> <li>○ A spouse, dependent, or joint owner is living on the property.</li> <li>○ The property interest is a life estate.</li> </ul> </li> <li>• <b>Income producing property</b> - valued at less than \$6,000.</li> <li>• <b>Household goods &amp; personal effects</b></li> <li>• <b>Life insurance</b> - if the total combined face value is \$5,000 or less.</li> <li>• <b>Burial funds</b> (or prepaid burial contracts) up to \$5,000 including burial space items.</li> <li>• <b>Vehicle</b> – one per household.</li> </ul>
<p><b>Alaska</b>  <a href="http://dpaweb.hss.state.ak.us/manuals/apa/apa.htm">http://dpaweb.hss.state.ak.us/manuals/apa/apa.htm</a></p>	<ul style="list-style-type: none"> <li>• <b>Home Property</b> - consists of adjoining land, any buildings located on the land. Easements and public right of ways do not separate adjoining land from the home plot.</li> <li>• <b>Life insurance</b> - if the total combined face value is \$1,500 or less.</li> <li>• <b>Burial space</b></li> <li>• <b>Vehicle</b> – one per household.</li> <li>• <b>Household goods and personal effects.</b></li> <li>• <b>Personal Property</b> – may be exempt if it is: <ul style="list-style-type: none"> <li>○ Property used in a trade or business.</li> <li>○ Property that represents governmental authority (fishing permits, etc.)</li> <li>○ Personal property used by an employee for work.</li> <li>○ Nonbusiness property that is used to produce goods or services for home consumption (up to \$6,000 equity value).</li> <li>○ Nonbusiness property excluded up to \$6,000 equity if it produces a 6% rate of return.</li> </ul> </li> <li>• <b>Government/Social Payments</b> - <ul style="list-style-type: none"> <li>○ Payments received because of the individual’s status as a victim of Nazi persecution.</li> <li>○ Payments received from parents exposed to herbicides in Vietnam that caused spina bifida in their child.</li> <li>○ Money received from the Ricky Ray hemophilia relief fund.</li> <li>○ Payments to persons captured and interned by North Vietnam.</li> <li>○ Payments from the Radiation Exposure Compensation Fund.</li> <li>○ Gifts of domestic travel tickets.</li> <li>○ Restitution payments made by the US Government to Japanese Americans who were interned in WW II.</li> </ul> </li> </ul>

<p><b>Arizona</b>  <a href="https://azahcccs.gov/resources/guidesmanualspolicies/eligibilitypolicy/eligibilitypolicymanual/index.html#t=Policy%2FChapter_700_Resources%2F705_Resource_Types%2FK_Home_Property.htm">https://azahcccs.gov/resources/guidesmanualspolicies/eligibilitypolicy/eligibilitypolicymanual/index.html#t=Policy%2FChapter_700_Resources%2F705_Resource_Types%2FK_Home_Property.htm</a></p>	<ul style="list-style-type: none"> <li>• <b>Homestead property</b> – including adjacent or contiguous lands. Easements or public rights of way do not separate the land.</li> <li>• <b>Income producing property</b> – <ul style="list-style-type: none"> <li>○ Income producing property that is “essential to self-support”.</li> <li>○ Business property used in a trade or for employment.</li> <li>○ Non-business property that produces at least a 6% rate of return.</li> <li>○ Property that produces goods or services for the customer’s needs.</li> </ul> </li> <li>• <b>Household goods &amp; personal effects</b></li> <li>• <b>Automobile</b> – one per household.</li> <li>• <b>Life insurance policies</b> - if the total combined face value is \$1,500 or less.</li> <li>• <b>Animals</b> - used for food, to produce items used for food, income producing animals, service animals, pets.</li> <li>• <b>Financial assets</b> <ul style="list-style-type: none"> <li>○ Irrevocable Annuities.</li> <li>○ US Savings Bonds within the first 12 months of issuance.</li> <li>○ Irrevocable burial funds, burial plots.</li> <li>○ Certain financial accounts: Educational Savings Account, Flexible Spending Arrangement, ABLE Account.</li> <li>○ Supplemental Security Income (SSI) funds kept in a dedicated account.</li> </ul> </li> </ul>
<p><b>Arkansas</b>  <a href="https://humanservice.s.arkansas.gov/images/uploads/dco/Complete_Medicaid_Policy_Manual.pdf">https://humanservice.s.arkansas.gov/images/uploads/dco/Complete_Medicaid_Policy_Manual.pdf</a></p>	<ul style="list-style-type: none"> <li>• <b>Homestead property</b> – includes all contiguous land, mineral rights for the land, and the buildings located on such land. The principal place of residence as long as it is occupied by the individual, spouse, or a dependent. <ul style="list-style-type: none"> <li>○ Includes all contiguous land, the mineral rights for the land, and the buildings located on such land.</li> </ul> </li> <li>• <b>Income-producing property</b> - (3 categories): <ul style="list-style-type: none"> <li>○ Property with equity up to \$6,000 if it’s producing a 6% annual rate of return.</li> <li>○ Property used in a trade or business essential to self-support.</li> <li>○ Property with up to \$6,000 in equity.</li> </ul> </li> <li>• <b>Irrevocable burial contracts</b> – or annuities purchased to fund a pre-paid burial contract.</li> <li>• <b>Vehicle</b> – one per household.</li> <li>• <b>Life insurance policies</b> - if the total combined face value is \$1,500 or less.</li> <li>• <b>Household goods &amp; personal effects.</b></li> </ul>
<p><b>California</b>  <a href="https://www.dhcs.ca.gov/services/medical/eligibility/Documents/Article9-Property.pdf">https://www.dhcs.ca.gov/services/medical/eligibility/Documents/Article9-Property.pdf</a></p>	<ul style="list-style-type: none"> <li>• <b>Homestead Property</b> - the principal place of residence, including any property or structure which is connected to and is/was intended to be used as a permanent part of the property (including farmland). <ul style="list-style-type: none"> <li>○ Includes life estate property interests in a homestead.</li> </ul> </li> <li>• <b>Medical equipment property.</b></li> <li>• <b>Disaster relief aid.</b></li> <li>• <b>Burial Expenses</b> – burial trusts, burial items, burial space.</li> </ul>

<p><b>Colorado</b>  <a href="https://www.colorado.gov/pacific/sites/default/files/LTCPartnership%20Medicaid%20Producer%20Training%2005-20-2008.doc">https://www.colorado.gov/pacific/sites/default/files/LTCPartnership%20Medicaid%20Producer%20Training%2005-20-2008.doc</a></p>	<ul style="list-style-type: none"> <li>• <b>Homestead Property</b> - principal place of residence (either applicant, spouse, or dependent must live in the home and the equity value is less than \$585,000).</li> <li>• <b>Household goods &amp; personal effects.</b></li> <li>• <b>Vehicle</b> - one per household.</li> <li>• <b>Burial Spaces/plots.</b></li> <li>• <b>Life insurance policies</b> - if the total combined face value is \$1,500 or less.</li> <li>• <b>Irrevocable annuities.</b></li> </ul>
<p><b>Connecticut</b>  <a href="https://www.cga.ct.gov/2012/rpt/2012-R-0057.htm">https://www.cga.ct.gov/2012/rpt/2012-R-0057.htm</a></p>	<ul style="list-style-type: none"> <li>• <b>Homestead property</b> - principal place of residence (includes home, land where the home is located, and related outbuildings). <ul style="list-style-type: none"> <li>○ Includes funds from home sale if reinvested within 3 months into a replacement home.</li> <li>○ Jointly owned real property which would otherwise be a resource if the sale of the property would cause another owner to lose his or her residence.</li> <li>○ Real property that an individual has made reasonable (but unsuccessful) efforts to sell if the seller is making a bona fide sales effort and if including the property as a resource would result in a determination of eligibility.</li> </ul> </li> <li>• <b>Vehicle</b> - one per household.</li> <li>• <b>Life insurance policies</b> - if the total combined face value is \$1,500 or less.</li> <li>• <b>Burial funds</b> – includes burial space, up to \$1,500 for burial funds, and revocable prepaid burial contracts.</li> <li>• <b>Household goods and personal effects.</b></li> <li>• <b>Property essential to self-support</b> <ul style="list-style-type: none"> <li>○ Includes resources that a blind or disabled individual needs.</li> </ul> </li> <li>• <b>Government/Social Payments</b> - <ul style="list-style-type: none"> <li>○ Funds in a dedicated financial institution account that is established and maintained for the payment of past-due benefits to disabled children.</li> <li>○ Assistance received under the Disaster Relief and Emergency Assistance Act or other funds received from a presidentially declared disaster.</li> <li>○ Cash received to repair or replace an excluded resource (ex: insurance payout for roof repair).</li> <li>○ Funds received from a fund established by a state to aid victims of crime</li> <li>○ Relocation assistance provided by a state or local government.</li> <li>○ State annuities for certain veterans who are blind, disabled, or aged.</li> <li>○ Transferable shares of stock held by a native of Alaska in a regional or village corporation.</li> </ul> </li> </ul>

<p><b>Delaware</b>  <a href="https://dhss.delaware.gov/dhss/dss/lcreso/urceeligibility.html">https://dhss.delaware.gov/dhss/dss/lcreso/urceeligibility.html</a></p>	<ul style="list-style-type: none"> <li>• <b>Homestead Property</b> – includes the house or land owned solely or jointly) that is still occupied by a spouse, dependent adult child or an adult child who cares for the applicant in which the applicant intends to return to.</li> <li>• <b>Income producing property.</b></li> <li>• <b>Vehicle</b> – one per household.</li> <li>• <b>Burial expenses</b> - Up to \$1,500 cash for burial expenses or an irrevocable burial trust up to \$10,000 (must be approved).</li> <li>• <b>Life insurance policies</b> - if the total combined face value is \$1,500 or less.</li> </ul>
<p><b>Florida</b>  <a href="http://www.floridamedicaid.com/index.php/exempt-assets.html">http://www.floridamedicaid.com/index.php/exempt-assets.html</a></p>	<ul style="list-style-type: none"> <li>• <b>Homestead Property</b> <ul style="list-style-type: none"> <li>○ So long as the well spouse continues to reside there.</li> <li>○ If the applicant intends to return.</li> <li>○ If a dependent SSI-disable child lives there.</li> </ul> </li> <li>• <b>Trade or business property.</b></li> <li>• <b>Burial expenses</b> - irrevocable burial contracts and up to \$2,500 cash designated for burial expenses, one burial plot per family member.</li> <li>• <b>Vehicle</b> – one per household (of any value), additional vehicles are excluded if it is seven or more years old, except if it is a luxury model, antique, or customized.</li> <li>• <b>One wedding ring.</b></li> </ul>
<p><b>Georgia</b>  <a href="https://aging.georgia.gov/sites/aging.georgia.gov/files/Medicaid%20Info%20for%20LTC%202018.pdf">https://aging.georgia.gov/sites/aging.georgia.gov/files/Medicaid%20Info%20for%20LTC%202018.pdf</a></p>	<ul style="list-style-type: none"> <li>• <b>Homestead property</b> – the principal place of residence (the home and all the land the house is on and any other buildings on that land as long as the applicant intends to return there).</li> <li>• <b>Nonbusiness property</b> - that is income producing (ex: rental property is excluded but the rent counts as income and is not excluded). <ul style="list-style-type: none"> <li>○ Property that is used to produce goods or services for home use or home consumption up to \$6,000 in equity value.</li> </ul> </li> <li>• <b>Household goods and personal property.</b></li> <li>• <b>Vehicle</b> - one automobile per household.</li> <li>• <b>Life insurance policies</b> - if the total combined face value is \$1,500 or less.</li> <li>• <b>Burial Expenses</b> – irrevocable burial contracts, burial accounts up to \$10,000.</li> </ul>
<p><b>Hawaii</b>  <a href="https://www.medicaidplanningassistance.org/medicaid-eligibility-hawaii">https://www.medicaidplanningassistance.org/medicaid-eligibility-hawaii</a></p>	<ul style="list-style-type: none"> <li>• <b>Homestead property</b> – if the applicant or spouse lives there and the equity value is under \$878,000.</li> <li>• <b>Household goods &amp; personal effects.</b></li> <li>• <b>Vehicle</b> – one per household.</li> <li>• <b>Burial expenses</b> – includes burial plot and irrevocable funeral trusts.</li> </ul>

**Idaho**

<https://adminrules.idaho.gov/rules/2014/16/0305.pdf>

- **Homestead property** – the principal place of residence if the applicant intends to return of if the home equity value is \$750,000 or less.
  - Native American (owned by an individual or a tribe) real property and natural resources.
- **Income producing property** - up to \$6,000 of the equity value of nonbusiness income producing property if it produces at least a 6% rate of return.
- **Vehicle** – one per household.
- **Burial Expenses** – burial funds up to \$1,500 and burial plot.
- **Household goods & personal effects.**
- **Life insurance policies** - if the total combined face value is \$1,500 or less.
- **Government/ Social Payments**
  - Resources essential to self-support.
  - Resources set aside as part of an approved Plan for Achieving Self-Support (PASS).
  - Gift from a tax-exempt nonprofit organization to a child who has a life-threatening condition.
  - German reparation payments.
  - Assistance received from a presidentially declared disaster.
  - Agent Orange settlement payments.
  - Payments to Alaska Natives from the Alaska Native Claims Settlement Act.
  - Victim’s compensation payments from State approved funds.
  - Austrian General Social Insurance Act payments.
  - Radiation Exposure Compensation Act payments.
  - Dedicated account for past-due SSI benefits set up for a participant under 18.
  - Payments from the Dutch government under the Netherlands Act on Benefits for Victims of Persecution.
  - Payments by the US and Canadian Governments to Japanese-Americans and Aleuts interned or relocated during WWII.
  - Class action settlement payments from Susan Walker v. Bayer Corporation.

**Illinois**

<https://www.dhs.state.il.us/page.aspx?item=4107>

- **Homestead property** - includes any surrounded property that is not separated from the home by someone else's property.
- **Vehicle** – one per household.
- **Household goods & personal effects.**
- **Burial funds** - irrevocable burial trusts and burial space.
- **Life insurance policies** - if the total combined face value is \$1,500 or less.
- **Business property** - property used in a trade or business that is necessary for self-support up to an equity value of \$6,000 and that produces an annual net income of at least 6%.
- **Government/ Social Payments**
  - Funds raised from a medical fund raiser if applicant does not have actual control of the funds.
  - Funds received from federal nutrition programs.
  - VISTA payments.
  - Payments made by the DHS under the Family Assistance Program for mentally disabled children.
  - Student grants and loans.
  - Disaster relief payments.
  - Money received from the Social Security Administration under a Plan to Achieve Self-Support (PASS).
  - Earned income tax credit payments.
  - Funds received from the Senior Citizens and Disabled Persons Property and Relief Act.
  - Title VII Nutrition Program for the Elderly of the Older Americans Act of 1965.
  - Agent Orange settlements.
  - Settlements from the Radiation Exposure Compensation Act.
  - German reparation payments.
  - Payments made by the US Government for Japanese-Americans interned during WWII.
  - Payments distributed or held in trust for members of any Native American tribe.
  - Payments made under the Alaska Native Claims Settlement Act.
  - Payments made under the Aleutian and Pribilof Islands Restitution Act.
- Individual interests of Native Americans in Indian trust lands



<p><b>Indiana</b>  <a href="https://www.in.gov/iltcp/2426.htm">https://www.in.gov/iltcp/2426.htm</a></p>	<ul style="list-style-type: none"> <li>• <b>Homestead property</b> - if a spouse, child under 18, disabled or blind child, or applicant lives there or intends to return.</li> <li>• <b>Burial funds</b> – irrevocable funeral trusts with the funds tied to specific funeral or burial services.</li> <li>• <b>Home household furnishings &amp; personal effects.</b></li> <li>• <b>Income-producing property</b> - if the income is greater than the expenses of ownership.</li> <li>• <b>Life insurance</b> - if term insurance or it has a cash value of less than \$10,000 and the beneficiary is the recipient’s estate or funeral home.</li> <li>• <b>Vehicle</b> - one vehicle if it is the only one applicant owns, has been modified to accommodate a disability, or is for the community spouse. Otherwise, up to \$5,000 the current market value.</li> </ul>
<p><b>Iowa</b>  <a href="https://dhs.iowa.gov/sites/default/files/Comm072.pdf?062420191924">https://dhs.iowa.gov/sites/default/files/Comm072.pdf?062420191924</a></p>	<ul style="list-style-type: none"> <li>• <b>Homestead property</b> - the house that the spouse (or dependent relative) lives in.</li> <li>• <b>Vehicle</b> – one automobile per household.</li> <li>• <b>Life insurance</b> - cash value when the face value totals less than \$1,500.</li> <li>• <b>Burial expenses</b> - an irrevocable funeral contract, burial spaces, and up to \$1,500 set aside for funeral expenses.</li> <li>• <b>Business Property</b> – Includes personal and real property used in a trade or business</li> </ul>
<p><b>Kansas</b>  <a href="http://www.kdheks.gov/hcf/kancare/Jan2019_Output/01-19_output_Final.htm">http://www.kdheks.gov/hcf/kancare/Jan2019_Output/01-19_output_Final.htm</a></p>	<ul style="list-style-type: none"> <li>• <b>Homestead property</b> - includes home and surrounding property including the tract of land and contiguous tracts of land upon which the house is located. Includes: <ul style="list-style-type: none"> <li>○ Restricted or allotted land held by an enrolled member of an Indian tribe which cannot be sold or transferred without permission of members of the tribe.</li> <li>○ Real or personal property which is directly related to the maintenance or use of a vehicle that is primarily used for producing income or transporting a physically disabled household member.</li> </ul> </li> <li>• <b>Income producing property</b> – includes farmland and property necessary for employment or self-employment.</li> <li>• <b>Vehicle</b> - one per household.</li> <li>• <b>IRA of Community Spouse</b></li> <li>• <b>Burial Funds</b> – irrevocable funeral agreements, burial spaces, and funds up to \$1,500.</li> <li>• <b>Household goods and personal effects</b> – includes tools, gift cards or gift certificates, and home consumption items used to produce food for the family</li> <li>• <b>Life insurance policies</b> - a term policy and cash values of life insurance policy not exceeding \$1,500 face value.</li> <li>• <b>Government Accounts</b> <ul style="list-style-type: none"> <li>○ Kansas Investments in Development Scholars accounts.</li> <li>○ Achieving a Better Life Experience (ABLE) accounts.</li> <li>○ Escrow accounts established for families participating in the Family Self-Sufficiency Program through the Department of Housing and Urban Development.</li> </ul> </li> </ul>

<p><b>Kentucky</b>  <a href="https://chfs.ky.gov/agencies/dchs/dfs/Documents/OMVOLIVA.pdf">https://chfs.ky.gov/agencies/dchs/dfs/Documents/OMVOLIVA.pdf</a></p>	<ul style="list-style-type: none"> <li>• <b>Homestead property</b> <ul style="list-style-type: none"> <li>○ Life estate interest in real estate property or other property.</li> <li>○ Property being purchased by an applicant on a land contract.</li> </ul> </li> <li>• <b>Income producing property</b> - the first \$6,000 of equity value of non-home, income producing property whether or not it is used in a trade or business if it is essential for self-support. <ul style="list-style-type: none"> <li>○ Equity value of all equipment, livestock, or other inventory used for farming.</li> </ul> </li> <li>• <b>Household goods &amp; personal effects.</b></li> <li>• <b>Vehicle</b> – one per household.</li> <li>• <b>Financial Resources</b> <ul style="list-style-type: none"> <li>○ All resources of an SSI recipient.</li> <li>○ Retirement plans, such as IRAs, KEOGH plans, deferred compensation, tax deferred retirement plans and other tax deferred assets.</li> <li>○ An individual development account (IDA) up to \$5,000 plus accrued interest.</li> <li>○ ABLE Accounts.</li> </ul> </li> <li>• <b>Burial Expenses</b> - The value of a prearranged funeral contract if it is funded by life insurance that has been irrevocably assigned to the funeral home or funded by cash with an irrevocable funeral trust agreement, burial space items, burial funds if payable upon death only, interests on burial reserves, and up to \$1,500 set aside for funeral expenses.</li> <li>• <b>Government/Social Payments</b> <ul style="list-style-type: none"> <li>○ Agent Orange settlement payments.</li> <li>○ Payments for a medical or social service.</li> <li>○ Disaster relief assistance.</li> <li>○ Energy Employees Occupational Illness Compensation payments.</li> <li>○ Victims compensation payments.</li> <li>○ Money paid to hemophiliacs as part of a class action suit for Factor VIII or IX clotting agent.</li> <li>○ Money paid to individuals in the Susan Walker v. Bayer Corporation class action suit.</li> <li>○ Payments made by the Nazi Persecution Victims Eligibility Act.</li> <li>○ Payments from the Austrian General Social Insurance Act.</li> <li>○ Up to \$12,000 to Aleutians and \$20,000 to individuals of Japanese ancestry for payments made by the federal government for internment in WWII.</li> <li>○ Resources included in a Plan for Achieving Self-Support (PASS).</li> </ul> </li> </ul>
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<p><b>Louisiana</b>  <a href="http://ldh.la.gov/assets/medicaid/MedicaidEligibilityPolicy/I-1630.pdf">http://ldh.la.gov/assets/medicaid/MedicaidEligibilityPolicy/I-1630.pdf</a></p>	<ul style="list-style-type: none"> <li>• <b>Burial Contracts</b> – exclude portion of contract that represents burial space.</li> <li>• <b>Burial Space</b> – exclude paid for burial spaces for individual, spouses, or immediate family members.</li> <li>• <b>Business Assets</b> – exclude all property used in a trade or business, including (if in current use): real property; buildings; inventory; equipment; machinery; livestock; motor vehicles; and tools.</li> <li>• <b>Home Property</b> – exclude home property or the value of any ownership interest the applicant/enrollee may have in the property, including usufruct, if the applicant/enrollee is living: in the home; away from the home temporarily because of natural disaster; away from the home because of medical condition; or away from the home and spouse or relative lives there. Exclude the house or lot which is the usual residence; all contiguous property; and any other buildings on the home property. Contiguous property touches the residential property and is not separated by property owned by others. Contiguous property may be separated by public right of way.</li> <li>• <b>Household Goods</b> – exclude furniture, household appliances, televisions, carpets, cooking utensils, and dishes.</li> <li>• <b>Personal Effects</b> – exclude clothing, jewelry, personal care items, books, and instruments.</li> <li>• <b>Income Producing Property</b> – if property produces income at an annual rate of 6% or more of equity value, exclude up to \$6,000 of the equity value.</li> <li>• <b>Vehicles</b> – exclude one vehicle per household.</li> </ul>
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Maine	<ul style="list-style-type: none"> <li>• <b>Burial Contracts</b> – exclude burial spaces intended for the individual, spouse or other member of the immediate family.</li> <li>• <b>Household Goods</b> – exclude clothing, household furnishings, utensils, home and property maintenance tools and equipment, heirlooms, wedding and engagement rings, and basic jewelry.</li> <li>• <b>Life Insurance</b> – exclude as long as combined face value of all whole life policies owned by the individual on the same insured does not exceed \$1500.</li> <li>• <b>Loans</b> – money borrowed by an individual is not counted as either an asset or income for the month received. Any remainder is considered an asset in the following month.</li> <li>• <b>Property Used for Home Consumption</b> – exclude all property and equipment used to produce goods or services for home consumption. This includes garden plots, wood lots and livestock.</li> <li>• <b>Income Producing Property</b> – with eligibility decisions effective 3/1/06, income producing property and equipment can be excluded as a countable asset as long as, after three years of operation, the property produces countable income that equals or exceeds .22%, which is the average interest rate for a twelve-month Certificate of Deposit (CD) at banks in Maine. Property and equipment used in the production of income includes real property, boats, trucks, machinery and livestock. This also includes garden plots, wood lots and rental property that are income producing and liquid assets used as part of a business or trade. Income producing property is excluded as a countable asset regardless of the annual rate of return if: the property cannot be used due to circumstances beyond the control of the individual and resumption of income production is likely; the property cannot be used due to the inability of the individual to use the property for up to twenty-four months; the individual is temporarily disabled and resumption of income production is likely; the property has not been in operation or production for three years or more; or the owner is making good faith efforts to sell the property at a reasonable price.</li> <li>• <b>Primary Residence</b> – the home which the individual considers their primary residence and the land and all buildings on that land are exempt. This exemption also applies to any adjoining land as long as it is not separated by real property owned by others. Presence of any easement, road, waterway or other natural boundary does not change the exemption. The home is exempt during periods of temporary absences of the individual, spouse or dependent as long as they indicate their intent to return.</li> <li>• <b>Vehicles</b> – exclude one vehicle per household.</li> </ul>
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<p><b>Maryland</b>  <a href="https://mmcp.health.maryland.gov/Medicaid%20Manual/Section%20800-Resources.pdf">https://mmcp.health.maryland.gov/Medicaid%20Manual/Section%20800-Resources.pdf</a></p>	<ul style="list-style-type: none"> <li>• <b>Burial Contracts</b> – exclude all irrevocable or revocable burial/funds, plans, agreements, trusts, insurance, or contracts.</li> <li>• <b>Home Property</b> – the principle place of residence, or home, of an A/R is generally excluded as a resource. Home is defined as any property in which a member or any person whose income and resources are considered has an ownership interest and which serves as the individual’s principle place of residence. It is the shelter that the person considers his fixed or permanent residence and to which, whenever absent, the person intends to return.</li> <li>• <b>Income Producing Property</b> – exclude the property as a resource when that property annually produces income consistent with its fair market value.</li> <li>• <b>Other Property</b> – exclude the property as a resource when that property annually produces income consistent with its fair market value; exclude non-business property that is essential to self-support; exclude tools and equipment necessary for employment; exclude real or personal property that is directly used to maintain or use an income-producing vehicle.</li> <li>• <b>Life Insurance</b> – exclude the current cash value if the original face value was no more than \$1,500.</li> <li>• <b>Loans</b> – exclude payments received for an informal loan.</li> <li>• <b>Vehicles</b> – exclude automobiles, SUVs, trucks, and motorcycles.</li> </ul>
<p><b>Massachusetts</b>  <a href="https://www.mass.gov/files/documents/2017/09/29/130cmr520.pdf">https://www.mass.gov/files/documents/2017/09/29/130cmr520.pdf</a></p>	<ul style="list-style-type: none"> <li>• <b>Vehicles</b> – exclude one vehicle per household.</li> <li>• <b>Home</b> – exclude the home of the applicant or member and the spouse and any land appertaining to the home, unless equity value is over \$750,000. If applicant moves out of the home but a relative remains, exclude the home.</li> <li>• <b>Self-Support Property</b> – exclude business and nonbusiness property essential to self-support.</li> <li>• <b>Burial Arrangements</b> – exclude any burial space, including any burial space for any immediate family member.</li> <li>• <b>Inaccessible Assets</b> – exclude an inaccessible asset to which the applicant or member has no legal access.</li> <li>• <b>Security</b> – exclude a security for which there is no market value or that is inaccessible.</li> </ul>
<p><b>Michigan</b>  <a href="https://dhhs.michigan.gov/OLMWEB/EX/BP/Public/BEM/400.pdf">https://dhhs.michigan.gov/OLMWEB/EX/BP/Public/BEM/400.pdf</a></p>	<ul style="list-style-type: none"> <li>• <b>Loans</b> – exclude funds a person has borrowed.</li> <li>• <b>Tax Refund and Credit</b> – all state and local earned income tax credits and refunds are excluded, including home heating credits.</li> <li>• <b>Student Savings</b> – exclude funds in a separate account under a student’s name and accrued solely from a student’s earnings.</li> <li>• <b>Homestead</b> – exclude only one homestead for an asset group. A homestead is where a person lives that they own, is buying or holds through a life estate or life lease. Exclude the homestead provided the owner is institutionalized and the owner’s spouse or relative lives there. Homestead includes the home, all adjoining land and any other buildings on the land. Adjoining land means land</li> </ul>

	<p>which is not completely separated from the home by land owned by someone else. Adjoining land may be separated by rivers, easements and public rights-of-way.</p> <ul style="list-style-type: none"> <li>• <b>Future Home</b> – exclude a lot if the owner intends it to become the fiscal group’s homestead and has no other homestead.</li> <li>• <b>Burial Plot</b> – exclude burial plots and any burial and funeral arrangements.</li> <li>• <b>Income Producing Property</b> – exclude up to \$6,000 of equity in income-producing real property if it produces annual countable income equal to at least 6 percent of the asset group’s equity in the asset. Countable income is total proceeds minus actual operating expenses.</li> <li>• <b>Household Goods</b> – exclude household and personal goods.</li> <li>• <b>Vehicle</b> – exclude one motorized vehicle owned by the asset group.</li> <li>• <b>Life Insurance</b> – exclude the entire cash surrender value when the total face values of all policies a policy owner has for the same insured are \$1,500 or less.</li> <li>• <b>Farm Animals</b> – exclude farm animals used for personal consumption.</li> <li>• <b>Employment Assets</b> – exclude employment assets that: are required by a person’s employer; or produce income directly through their use (property).</li> </ul>
<p>Minnesota  <a href="https://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&amp;RevisionSelectionMethod=LatestReleased&amp;dDocName=id_018434#options">https://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&amp;RevisionSelectionMethod=LatestReleased&amp;dDocName=id_018434#options</a></p>	<ul style="list-style-type: none"> <li>• <b>Self-Support Property</b> – exclude capital and operating assets of a trade or business needed for a client to earn income up to a maximum net value of \$200,000. Examples include: real property, such as farmland that is not contiguous to the homestead.</li> <li>• <b>Trade or Business</b> – exclude real or personal property, including liquid assets, currently used in a trade or business necessary for the client’s ability to earn income.</li> <li>• <b>Homestead</b> – exclude the homestead. The homestead is defined as the home which is owned by and is the usual residence of the applicant or enrollee along with all the surrounding land and any buildings on that land, provided the land is not separated from the home by any property owned by others. Public rights-of-way which separate property from the home do not affect the exclusion.</li> <li>• <b>Farmland</b> – exclude real property, such as farmland that is not contiguous to the homestead.</li> <li>• <b>Vehicles</b> – exclude one vehicle for each household member of legal driving age used for employment or seeking employment.</li> <li>• <b>Burial Funds</b> – exclude up to \$1,500 in burial funds for each applicant or enrollee, his/her spouse and health care-eligible dependent children.</li> <li>• <b>Pension/Retirement Funds</b> – exclude pension and retirement funds. This includes individually owned retirement instruments and employer-based plans, including funds left in the employer’s plan when the employee leaves employment. Examples of excluded funds include but are not limited to IRAs, 457 deferred compensation plans, and 401K plans.</li> </ul>

<p>Mississippi  <a href="https://medicaid.ms.gov/wp-content/uploads/20103/Chapter-300.pdf">https://medicaid.ms.gov/wp-content/uploads/20103/Chapter-300.pdf</a></p>	<ul style="list-style-type: none"> <li>• <b>Home Property</b> – exclude the shelter lived in; the land on which the shelter is located; and all buildings on the land. Exclude the land on which the shelter is located and any land adjoining it as long as it is not separated by land that neither the individual or spouse has an ownership interest in. Exclude the home if individual is absent but plans to return or if the if a relative lives in the home.</li> <li>• <b>Vehicles</b> – exclude one automobile, regardless of value.</li> <li>• <b>Life Insurance</b> – a life insurance policy is excluded if its face value and the face value of any other life insurance policies the individual owns on the same insured person total \$1,500 or less.</li> <li>• <b>Household Goods</b> – exclude household goods and personal effects, in resource determinations, regardless of their dollar value.</li> <li>• <b>Burial Space</b> – a burial space or an agreement which represents the purchase of a burial space held for the burial of the individual, his or her spouse, or a member of his or her immediate family is an excluded resource, regardless of value. The burial space exclusion is in addition to, and has no effect on, the burial funds exclusion.</li> <li>• <b>Property Essential to Self-Support</b> – the exclusion of property essential to self-support may apply to real or personal property. All property must be in current use or, if not in use for reasons beyond the individual’s control, there must be a reasonable expectation that the required use will resume. Resources excluded under this provision generally fall into four categories: (1) property essential to self-support - exclude regardless of value or rate of return; (2) property used to produce goods and services - exclude up to \$6000 equity regardless of rate of return (SSI); (3) non-business, income-producing property - exclude up to \$6000 equity if it produces a 6% rate of return (SSI); and (4) essential property exclusion - liberalized policy.</li> </ul>
<p>Missouri  <a href="https://dssmanuals.mo.gov/december-1973-eligibility-requirements/1035-005-05/">https://dssmanuals.mo.gov/december-1973-eligibility-requirements/1035-005-05/</a></p>	<ul style="list-style-type: none"> <li>• <b>Homestead Exemption</b> – for the purposes of this determination, the word ‘home’ is defined as: if rural property, includes the acreage on which the home is located, plus any adjoining acreage which is a part of that farming unit (property will be considered as adjoining even though a road may separate two tracts, if the property is farmed as a single unit); and if town or city property, include lots on which there is no dwelling but which adjoin the residence (regardless of the number of lots so long as they are in the same city block). If an SAB recipient leaves the home and enters an institution, etc., the home becomes an available resource immediately and the 24 month rule does not apply.</li> <li>• <b>Burial Lot</b> – exclude burial lot for claimant and/or spouse.</li> <li>• <b>Clothing</b> – exclude clothing.</li> <li>• <b>Household Goods</b> – exclude furniture and household equipment.</li> </ul>

<p><b>Montana</b>  <a href="https://dphhs.mt.gov/Portals/85/hcsd/documents/mamannual/CMA402-1April012019.pdf?ver=2019-06-12-110427-453">https://dphhs.mt.gov/Portals/85/hcsd/documents/mamannual/CMA402-1April012019.pdf?ver=2019-06-12-110427-453</a></p>	<ul style="list-style-type: none"> <li>• <b>Burial Contracts</b> – exclude funeral agreements that are inaccessible or irrevocable. Exclude the value of one burial plot for each immediate family member.</li> <li>• <b>Business Account</b> – exclude funds held in a business account that represents necessary business capital, operating funds or funds prorated as income.</li> <li>• <b>Home and Surrounding Property</b> – exclude the home and surrounding property. Property separated from the home property by a road or other right-of-way is not considered part of the property surrounding the home and is not excluded. Exclude the home if individual resides there or is absent but plans to return.</li> <li>• <b>Income Producing Property</b> – exclude income producing property necessary for self-employment. Count the equity value of income-producing property not used for self-employment. Exclude \$6,000 of the income producing property’s equity value (not necessary for self-employment) when the annual net income produced is at least 6% of the FMV.</li> <li>• <b>Livestock</b> – exclude livestock necessary for employment, raised for home consumption or that are pets. Income-producing property policy applies to livestock used produce income not related to a business/self-employment.</li> <li>• <b>Equipment Essential for Employment</b> – exclude resources that, as a condition of employment (other than self-employment), must be furnished by the employee. An employer-employee relationship must exist that requires the employee to furnish the resources/tools.</li> </ul>
<p><b>Nebraska</b>  <a href="http://dhhs.ne.gov/Documents/Title-477-Complete.pdf">http://dhhs.ne.gov/Documents/Title-477-Complete.pdf</a></p>	<ul style="list-style-type: none"> <li>• <b>Burial Space</b> – exclude value of burial space.</li> <li>• <b>Home</b> – exclude the value of the home. The home includes any land on which the house is located and any related outbuildings necessary to the operation of the home. If individual is removed from home, continue to exclude the home if relative resides there.</li> <li>• <b>Adjacent Lot</b> – a lot adjacent to the home is considered available if it can be sold separately from the home. If it is determined and documented in the case record that a lot adjacent to the home cannot be sold or is not salable due to the location or condition of the property, the adjacent lot is also exempt.</li> <li>• <b>Motor Vehicles</b> – exclude one motor vehicle regardless of value.</li> <li>• <b>Essential Property</b> – resources that are used in an applicant’s/client’s or responsible relative’s trade or business as the primary means of earning a livelihood for self-support are disregarded, regardless of value. This includes: (1) real property such as land, houses, buildings, business equipment and fixtures, farm machinery, tools, safety equipment, livestock, and crops used for a client’s trade or business, and (2) business bank accounts, as long as the funds are separated from other liquid resources.</li> <li>• <b>Household Goods and Personal Effects</b> – exclude (1) household furniture; (2) furnishings and equipment used in the operation, maintenance, and occupancy of the home or in the functions and activities of the home and family life; (3) those items that are for comfort and accommodation; and (4) personal effects (e.g., clothing, jewelry, items of personal care).</li> </ul>



<p><b>Nevada</b>  <a href="https://dwss.nv.gov/uploadedFiles/dwssnvgov/content/Home/Features/Eligibility_and_Payments/Chapter%20A_500_Mar%2017%20release.pdf">https://dwss.nv.gov/uploadedFiles/dwssnvgov/content/Home/Features/Eligibility_and_Payments/Chapter%20A_500_Mar%2017%20release.pdf</a></p>	<ul style="list-style-type: none"> <li>• <b>Burial Plot</b> – exclude one burial plot for each household member.</li> <li>• <b>Homestead</b> – the usual residence and surrounding (contiguous) property not separated by property owned by others is exempt. However, the exemption still applies if the surrounding property is separated from the home by public rights of way, such as roads. Other houses on the property that cannot be sold separately are also exempt.</li> <li>• <b>Income Producing Property</b> – exempt property that is essential to a household member’s income (employment, self-employment, rental property, vacation home, etc.) if the property: annually produces income consistent with its fair market value, even if used only on a seasonal basis; or is necessary for the maintenance or use of a vehicle exempted as income producing or as necessary for transporting a physically disabled household member. Exempt only that portion of the property that is used for this purpose. <b>Note:</b> For farmers or fishermen, continue to exempt the value of the land or equipment for one year from the date that the self-employment ceases.</li> <li>• <b>Personal Possessions</b> – exclude personal possessions.</li> <li>• <b>Other Real Property</b> – exclude real property directly related to the maintenance or use of a vehicle that is necessary for self-employment or to transport a physically or mentally disabled household member. An example of this would be a garage needed for storage/maintenance of a vehicle needed for self-employment. Each case circumstance must be reviewed individually. If only a portion of the property is for maintenance or vehicle use, only that portion is exempt for this purpose. The equity value of any remaining portion is counted unless exempt.</li> </ul>
<p><b>New Hampshire</b>  <a href="https://www.dhhs.nh.gov/fam_hm/html/real_property_fam.htm">https://www.dhhs.nh.gov/fam_hm/html/real_property_fam.htm</a></p>	<ul style="list-style-type: none"> <li>• <b>Burial Plot</b> – exclude one burial plot for each assistance group member.</li> <li>• <b>Home</b> – exclude real property consisting of the house or mobile home and any land or buildings that are owned and occupied as the residence of the assistance group. However, in order for land to be considered as part of the home, it must be adjacent to the lot on which the house rests. The adjoining land will still be considered adjacent even when it is divided by a road or the boundary of a political subdivision.</li> <li>• <b>Income Producing Property</b> – the equity value of all real property other than the home and burial plot is counted as a resource.</li> </ul>

<p><b>New Jersey</b>  <a href="https://www.state.nj.us/humanservices/providers/rulefees/regs/NJAC%2010_71%20Medicaid%20Only.pdf">https://www.state.nj.us/humanservices/providers/rulefees/regs/NJAC%2010_71%20Medicaid%20Only.pdf</a></p>	<ul style="list-style-type: none"> <li>• <b>Home</b> – exclude the house occupied by the individual as his or her principal place of residence, and land appertaining thereto. Short temporary absences from home such as trips, visits, and hospitalizations do not affect this exclusion so long as the individual intends, and may reasonably be expected, to return home. An absence of more than six months is assumed to indicate that the home no longer serves as a principal residence. If the home is used by a spouse or there is evidence that the absence from the house is temporary, the home may continue to be excluded.</li> <li>• <b>Vehicle</b> – exclude one automobile regardless of value.</li> <li>• <b>Personal Effects and Household Goods</b> – exclude to the extent that the total equity value does not exceed \$2,000.</li> <li>• <b>Life Insurance</b> – exclude the cash surrender value of all life insurance policies owned and in the control of the individual, if the total face value of such policies does not exceed \$1,500.</li> <li>• <b>Property Used in Self Support</b> – nonhome property that is used in a business or nonbusiness self-support activity that is essential to the means of self-support of an individual and/or spouse, is excluded from resources. Tools, equipment or other items that are used for trade or business and required for employment, including, but not limited to, the machinery and livestock of a farmer, are assumed to be of a reasonable value and producing a reasonable rate of return and are, therefore, excluded from resources.</li> <li>• <b>Burial Space</b> – the exclusion from resources of funds set aside for burial applies only when counting any portion of the funds toward the resource limit would cause ineligibility due to excess resources.</li> </ul>
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<p><b>New Mexico</b>  <a href="https://www.hsd.state.nm.us/uploads/files/Looking%20For%20Information/General%20Information/Registers%20-%20Rule%20Changes/MAD%20-%20Registers/Final%20Registers/2018%20Final%20Registers/Final%20Rule%208%20281%20500.pdf">https://www.hsd.state.nm.us/uploads/files/Looking%20For%20Information/General%20Information/Registers%20-%20Rule%20Changes/MAD%20-%20Registers/Final%20Registers/2018%20Final%20Registers/Final%20Rule%208%20281%20500.pdf</a></p>	<ul style="list-style-type: none"> <li>• <b>Burial Funds</b> – up to \$1500 can be excluded from the countable liquid resources of an applicant or recipient if designated as his or her burial fund. An additional amount of up to \$1500 can be excluded from countable liquid resources if designated as burial funds for the spouse of the applicant or recipient. The burial fund exclusion is separate from the burial space exclusion.</li> <li>• <b>Burial Space</b> – a burial space or an agreement which represents the purchase of a burial space held for the burial of an applicant or recipient, his or her spouse, or any other member of his or her immediate family is an excluded resource regardless of value. Interest and accruals on the value of a burial space are excluded from consideration as countable income or resources.</li> <li>• <b>Home Property</b> – a home is any shelter used by an applicant or recipient, or his or her spouse, as the principal place of residence. The home is not considered a countable resource while in use by the applicant, recipient, or his or her spouse as a principal place of residence. If an applicant’s or recipient’s home equity value exceeds the amount allowed under Section 8.200.510 NMAC, then the entire valued amount of his or her home is a countable resource. An applicant or recipient with home equity of more than the amount specified shall be placed on restricted coverage for as long as he or she owns the home. The home includes any buildings and contiguous land used in the operation of the home. If the amount is equal to or less than allowed under Section 8.200.510 NMAC, then his or her home is excluded during the periods when he or she resides in an acute care or long-term care medical facility when the applicant or recipient, or his or her authorized representative, states that the applicant or recipient intends to return to his or her home.</li> <li>• <b>Income Producing Property</b> – to be excluded from consideration as a countable resource, income-producing property that does not qualify as a bona fide business (e.g., rental property or mineral rights) must have an equity value of no more than six thousand dollars (\$6000) and an annual rate of return of at least six percent of the equity value. See Subsection F of Section 8.281.500.13 NMAC if the equity value exceeds six thousand dollars (\$6000) but the rate of return is at least six percent annually. The six thousand dollars (\$6000) and six percent limitation does not apply to property used in a trade or bona fide business, or to property used by an applicant or recipient as an employee which is essential to the applicant’s or recipient’s self-support (e.g., tools used in employment as a mechanic, property owned or being purchased in conjunction with operating a business). Existence of a bona fide business can be established by documentation such as business tax returns.</li> </ul>
<p><b>New York</b>  <a href="https://www.health.ny.gov/health_care/medicaid/reference/mrg/resindex.pdf">https://www.health.ny.gov/health_care/medicaid/reference/mrg/resindex.pdf</a></p>	<ul style="list-style-type: none"> <li>• <b>Life Insurance</b> – a life insurance policy is a resource if it generates a cash surrender value (CSV). Its value as a resource is the amount of the CSV. For SSI-related A/Rs, a life insurance policy is an excluded resource if its face value and the face value of any other life insurance policies the individual owns on the same insured total \$1,500 or less.</li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Property</b> – the equity value of real property is a countable resource and is applied toward the appropriate resource level, with the following exceptions: a homestead is exempt (land adjoining the homestead, which is on a separate deed, is considered contiguous property, and not part of the homestead); its value is not applied toward the resource level; a portion of the value of real property used to produce income may be exempt; and the first \$12,000 equity value of real property used to produce personal goods/services is exempt.</li> <li>• <b>Income Producing Property</b> – reviewed to determine if it is a countable resource. Income-producing real property of an SSI-related A/R used in a trade or business is exempt. Income-producing real property not used in a trade or business is subject to the \$12,000 and 6% test explained below. If income-producing real property produces a net return on equity of 6% or more, the first \$12,000 of the SSI-related A/R’s equity is not counted. Any remaining equity value plus any other countable resources owned by the SSI-related A/R are compared to the appropriate resource level. If the net return is less than 6% of the equity value, the entire equity value of one income-producing real property is a countable resource. The entire real property equity value plus any other countable resources owned by the SSI-related A/R are compared to the appropriate resource level.</li> <li>• <b>Producing Personal Goods</b> – real property which is used to produce personal goods/services and which is part of the A/R’s homestead is exempt.</li> </ul>
<p><b>North Carolina</b>  <a href="https://www2.ncdhhs.gov/info/olm/manuals/dma/abd/man/MA2230.pdf">https://www2.ncdhhs.gov/info/olm/manuals/dma/abd/man/MA2230.pdf</a></p>	<ul style="list-style-type: none"> <li>• <b>Burial Exclusion</b> – up to \$1,500 of otherwise countable liquid assets may be excluded for burial purposes.</li> <li>• <b>Home</b> – do not count home site if: it is the principal place of residence; a spouse or dependent is living there; the individual does not live there but plans to return. Equity of the home site used as the a/b principal place of residence is not counted. All or some of the tax value of property contiguous to the home site and the buildings located on that property, regardless of value, is excluded. Contiguous property is real property with boundaries that touch the principal place of residence. The presence of streets, roads, lakes, rivers, or streams is to be disregarded in determining whether property is contiguous.</li> <li>• <b>Property Used in Trade</b> – excluded if actively involved in a trade or business regardless of value and amount of profit. However, it must be in current use as trade or business property or, if not in use for reasons beyond the individual’s control, there must be a reasonable expectation that the required use will resume.</li> <li>• <b>Property Used to Produce Goods/Services</b> – exclude up to \$6,000 equity in non-business real or personal property used to produce goods or services solely for home consumption (i.e. land or equipment used to produce vegetables or livestock solely for home consumption). There is no requirement that the property produce a certain rate of return.</li> <li>• <b>Vehicle</b> – exclude one motor vehicle.</li> </ul>

<p><b>North Dakota</b>  <a href="http://www.nd.gov/dhs/policymanuals/51005/51005.htm#51005_70_30.htm#kanchor121">http://www.nd.gov/dhs/policymanuals/51005/51005.htm#51005_70_30.htm#kanchor121</a></p>	<ul style="list-style-type: none"> <li>• <b>Home</b> – exclude the home occupied by the Medicaid unit, including trailer homes being used as living quarters. The home occupied by the Medicaid unit includes the land on which it is located, provided that the acreage does not exceed one hundred sixty contiguous acres if rural or two acres if located within the established boundaries of a city.</li> <li>• <b>Personal Effects</b> – exclude personal effects, wearing apparel, household goods, and furniture.</li> <li>• <b>Vehicle</b> – exclude one motor vehicle.</li> <li>• <b>Property Used to Earn Livelihood</b> – exclude property that is essential to earning a livelihood. Property that is essential to earning a livelihood means property that a member of a Medicaid unit owns, and which the Medicaid unit is actively engaged in using to earn income, and where the total benefit of such income is derived for the Medicaid unit’s needs. A member of a Medicaid unit is actively engaged in using the property if a member of the unit contributes significant current personal labor in using the property for income-producing purposes.</li> <li>• <b>Burial Contract</b> – exclude any pre-need funeral service contracts, prepayments or deposits, regardless of ownership, which total \$6000 or less, which are designated by an applicant or recipient for the applicant’s or recipient’s burial. Exclude one burial plot for each family member.</li> </ul>
<p><b>Ohio</b>  <a href="https://www.medicaid.ohio.gov/Portals/0/Resources/Publications/Guidance/Policy/Medicaid-EligibilityManual.pdf">https://www.medicaid.ohio.gov/Portals/0/Resources/Publications/Guidance/Policy/Medicaid-EligibilityManual.pdf</a></p>	<ul style="list-style-type: none"> <li>• <b>Burial Space</b> – exclude the value of burial space, including prepaid funeral contracts.</li> <li>• <b>Life Insurance</b> – excluded if the total cash surrender value of all life insurance policies is equal to or less than \$1,500.</li> <li>• <b>Home</b> – exclude one home, which must be the principal place of residence. The home includes structures and land appertaining to the home property, which must adjoin the land and not separated by intervening property owned by others.</li> <li>• <b>Household Goods</b> – exclude household goods and personal effects of a reasonable value.</li> <li>• <b>Income-Producing Property</b> – Exclude up to \$6,000 of nonbusiness real, personal, or income-producing property.</li> <li>• <b>Payments from certain Federal and State Programs, Settlements, and Reparations</b> – exclude relocation assistance, disaster aid, Earned Income Tax Credit payments, reparations for victims of Japanese internment, Holocaust survivor benefits, payments under the Agent Orange Compensation Exclusion Act, select federal government payments to Native Americans, and other miscellaneous payments and settlements.</li> <li>• <b>Property Used in Trade</b> – Exclude property used in a trade or business, such as farm machinery, tools, safety equipment, uniforms, etc.</li> <li>• <b>Vehicles</b> – exclude one automobile or other mode of transportation.</li> </ul>

<p><b>Oklahoma</b>  <a href="http://www.okhca.org/xPolicyPart.aspx?id=616&amp;chapter=35&amp;subchapter=5&amp;part=5&amp;title=COUNTABLE%0A%0AINCOME+ND+RESOURCE%20S">http://www.okhca.org/xPolicyPart.aspx?id=616&amp;chapter=35&amp;subchapter=5&amp;part=5&amp;title=COUNTABLE%0A%0AINCOME+ND+RESOURCE S</a></p>	<ul style="list-style-type: none"> <li>• <b>Burial Space</b> – exclude value of burial spaces and revocable burial funds not in excess of \$1,500.</li> <li>• <b>Home</b> – exclude one home, unless the individual’s equity interest exceeds \$500,000.</li> <li>• <b>Life Insurance</b> – exclude life insurance policies, if the total face value of all policies is \$1,500 or less.</li> <li>• <b>Payments from certain Federal and State Programs, Settlements, and Reparations</b> – exclude relocation assistance, education grants, disaster aid, Earned Income Tax Credit payments, reparations for victims of Japanese internment, Holocaust survivor benefits, payments under the Agent Orange Compensation Exclusion Act, select federal government payments to Native Americans, and other miscellaneous payments and settlements.</li> <li>• <b>Vehicles</b> – exclude one automobile.</li> <li>• <b>Property Used in Trade</b> – real or personal property involved in the person’s trade or business; other personal property up to \$6,000 used to produce goods and services, including farm machinery.</li> </ul>
<p><b>Pennsylvania</b>  <a href="http://services.dpw.state.pa.us/oimpolicymanuals/ma/whnjs.htm">http://services.dpw.state.pa.us/oimpolicymanuals/ma/whnjs.htm</a></p> <p>-</p>	<ul style="list-style-type: none"> <li>• <b>Burial Space</b> – exclude irrevocable burial reserves and revocable spaces up to \$1,500.</li> <li>• <b>Home</b> – exclude real property that is used as the main home.</li> <li>• <b>Income Producing Property</b> – exclude income producing real or personal property if used as a place of business and used for the support of the applicant or recipient, no matter what the property’s value is.</li> <li>• <b>Life Insurance</b> – exclude policies with face value of less than \$1,500.</li> <li>• <b>Other Property</b> – exclude non-residential property essential to self-support (e.g., rental property).</li> <li>• <b>Payments from certain Federal and State Programs, Settlements, and Reparations</b> – exclude disaster relief, housing assistance, education assistance, reparations for victims of Japanese internment, Holocaust survivor benefits, payments under the Agent Orange Compensation Exclusion Act, select federal government payments to Native Americans, and other miscellaneous payments and settlements.</li> <li>• <b>Personal Items</b> – exclude household goods and personal items such as furniture, clothes, and jewelry.</li> <li>• <b>Vehicles</b> – exclude one motor vehicle.</li> </ul>

<p><b>Rhode Island</b>  <a href="http://www.dhs.ri.gov/Regulations/MedicAidRulesAndRegulations2ndMarch2019.pdf">http://www.dhs.ri.gov/Regulations/MedicAidRulesAndRegulations2ndMarch2019.pdf</a></p>	<ul style="list-style-type: none"> <li>• <b>Burial Funds</b> – exclude including revocable or irrevocable burial trusts or other similar agreements.</li> <li>• <b>Educational Funds</b> – exclude educational funds such as 529 accounts.</li> <li>• <b>Home</b> – exclude the principal place of residence.</li> <li>• <b>Life Insurance</b> – exclude policies where the total face value of all policies is at or below \$4,000. If the value is above \$4,000, exclude the first \$4,000.</li> <li>• <b>Non-Business Property</b> – exclude up to \$6,000 of the equity value in non-business real property.</li> <li>• <b>Personal Items</b> – exclude household goods and personal effects.</li> <li>• <b>Property Used in Trade</b> – exclude real estate used in business or a trade regardless of its equity value and whether it produces income.</li> <li>• <b>Vehicles</b> – exclude one vehicle.</li> </ul>
<p><b>South Carolina</b>  <a href="http://www1.scdhhs.gov/mppm/">http://www1.scdhhs.gov/mppm/</a></p>	<ul style="list-style-type: none"> <li>• <b>Burial spaces</b> – exclude burial spaces and funds up to \$1,500.</li> <li>• <b>Home</b> – exclude the principal place of residence, including all buildings on the excluded property, and all land adjoining the land on which the shelter is located, as long as it is not separated by land owned by a different person.</li> <li>• <b>Indian-Specific Property</b> – Certain types of Indian-specific property, such as real property on an Indian reservation, or ownership rights in items with unique religious or cultural significance.</li> <li>• <b>Life Insurance</b> – exclude if the total face value of policies is \$10,000 or less.</li> <li>• <b>Non-Business Property</b> – exclude up to \$6,000 of non-business real or personal property.</li> <li>• <b>Payments from certain Federal and State Programs, Settlements, and Reparations</b> – exclude disaster relief, relocation assistance, reparations for victims of Japanese internment, Holocaust survivor benefits, payments under the Agent Orange Compensation Exclusion Act, select federal government payments to Native Americans, and other miscellaneous payments and settlements.</li> <li>• <b>Property Used in Trade</b> – exclude property essential to self-support that is used in a trade or business.</li> <li>• <b>Vehicle</b> – exclude one vehicle.</li> </ul>
<p><b>South Dakota</b>  <a href="https://sdlegislature.gov/Rules/DisplayRule.aspx?Rule=67:46:05">https://sdlegislature.gov/Rules/DisplayRule.aspx?Rule=67:46:05</a></p>	<ul style="list-style-type: none"> <li>• <b>Burial Spaces</b> – exclude irrevocable prepaid burial contracts.</li> <li>• <b>Home</b> – exclude the principal place of residence, which is defined as a place that if sold, would force the owner to move.</li> <li>• <b>Income Producing Property</b> – exclude up to \$6,000 of income-producing real or personal property if it is essential to self-support and the net annual return on the equity is less than six percent.</li> <li>• <b>Vehicles</b> – exclude one automobile that is used for transportation.</li> <li>• <b>Personal Items</b> – exclude household goods, personal effects, and all items essential to everyday living.</li> <li>• <b>Self-Support Property</b> – exclude up to \$6,000 of personal property essential for daily activities of self-support.</li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Property Used in Trade</b> – exclude real or personal property essential for self-support if it is used for the individual's trade, business, or employment.</li> <li>• <b>Real Property Held in Trust</b> – exclude real property held in trust, if the applicant has restricted access to the principal.</li> </ul>
<p><b>Tennessee</b>  <a href="https://www.tba.org/sites/default/files/StandardManual+as+of+Nov+15+2013_2.pdf">https://www.tba.org/sites/default/files/StandardManual+as+of+Nov+15+2013_2.pdf</a></p>	<ul style="list-style-type: none"> <li>• <b>Home</b> – exclude the principal place of residence, which is defined as a place that if sold, would force the owner to move.</li> <li>• <b>Life Insurance</b> – exclude as long as the combined face value of all policies does not exceed \$1,500.</li> <li>• <b>Payments from certain Federal and State Programs, Settlements, and Reparations</b> – exclude disaster relief, relocation assistance, reparations for victims of Japanese internment, Holocaust survivor benefits, payments under the Agent Orange Compensation Exclusion Act, select federal government payments to Native Americans, and other miscellaneous payments and settlements.</li> <li>• <b>Personal Items</b> – exclude household goods, personal effects, and all items essential to everyday living.</li> <li>• <b>Self-Employment Equipment</b> – exclude equipment used in a self-employment enterprise for producing income.</li> <li>• <b>Vehicles</b> – exclude one automobile used for transportation.</li> </ul>
<p><b>Texas</b>  <a href="https://hhs.texas.gov/laws-regulations/handbooks/mepd/chapter-f-resources/f-2000-resource-exclusions-limited-related-exempt-income">https://hhs.texas.gov/laws-regulations/handbooks/mepd/chapter-f-resources/f-2000-resource-exclusions-limited-related-exempt-income</a></p>	<ul style="list-style-type: none"> <li>• <b>Burial Trust</b> – exclude a prepaid burial trust that has been paid in full.</li> <li>• <b>Home</b> – exclude the principal place of residence, including all land adjacent to the home which is not separated by intervening property owned by another person. Adjacent property is part of the home even if there is more than one document of ownership.</li> <li>• <b>Life Insurance</b> – exclude life insurance if total face value of policies is less than \$1,500 per person.</li> <li>• <b>Payments from certain Federal and State Programs, Settlements, and Reparations</b> – exclude education assistance, reparations for victims of Japanese internment, Holocaust survivor benefits, payments under the Agent Orange Compensation Exclusion Act, select federal government payments to Native Americans, and other miscellaneous payments and settlements.</li> <li>• <b>Personal Items</b> – exclude personal property in or near the home that is used on a regular basis.</li> <li>• <b>Vehicles</b> – exclude on vehicle. Exclude a second vehicle if another member of the household needs it for transportation to work and the first vehicle is needed for medical use at all times. A second vehicle may also be excluded if it is specially modified for another family member with a disability.</li> </ul>
<p><b>Utah</b>  <a href="https://bepmanuals.health.utah.gov/Medicaidpolicy/DOHMedicaid.htm">https://bepmanuals.health.utah.gov/Medicaidpolicy/DOHMedicaid.htm</a></p>	<ul style="list-style-type: none"> <li>• <b>Home</b> – exclude one home, which must be the principal place of residence. Exclude water rights attached to the exempt home.</li> <li>• <b>Income-Producing Property</b> – exclude business assets if the person is actively engaged in self-employment. Any personal property used by an employee for work is also exempt. Up to \$6,000 of rental property or livestock that is not a self-employment asset is exempt.</li> </ul>



	<ul style="list-style-type: none"> <li>• <b>Life Insurance</b> – if the combined face value of policies does not exceed \$1,500, the policies are excluded.</li> <li>• <b>Payments from certain Federal and State Programs, Settlements, and Reparations</b> – exclude relocation assistance, disaster relief, reparations for victims of Japanese internment, Holocaust survivor benefits, payments under the Agent Orange Compensation Exclusion Act, select federal government payments to Native Americans, and other miscellaneous payments and settlements.</li> <li>• <b>Personal Items</b> – exclude household goods and personal effects.</li> <li>• <b>Vehicles</b> – exclude one vehicle used for transportation.</li> </ul>
<p><b>Vermont</b>  <a href="http://humanservices.vermont.gov/on-line-rules/esd-health-related/medicaid-ssi-4200">http://humanservices.vermont.gov/on-line-rules/esd-health-related/medicaid-ssi-4200</a></p>	<ul style="list-style-type: none"> <li>• <b>Burial Funds</b> – exclude up to \$10,000 of burial funds.</li> <li>• <b>Home</b> – exclude the principal place of residence, if the person does not have more than \$500,000 of equity in the home. The exempt home includes the land on which it is located, related buildings, and surrounding property not separated from the home by intervening property owned by others.</li> <li>• <b>Income-Producing Real Property</b> – exclude real property generating six percent of its fair market value in annual net income.</li> <li>• <b>Life Insurance</b> – exclude life insurance if the combined face value of the policies does not exceed \$1,500.</li> <li>• <b>Payments from certain Federal and State Programs, Settlements, and Reparations</b> – exclude reparations for victims of Japanese internment, Holocaust survivor benefits, payments under the Agent Orange Compensation Exclusion Act, select federal government payments to Native Americans, and other miscellaneous payments and settlements.</li> <li>• <b>Personal Items</b> – exclude home furnishings, apparel, personal effects, and household goods.</li> <li>• <b>Vehicles</b> – exclude all vehicles that provide necessary transportation.</li> </ul>
<p><b>Virginia</b>  <a href="https://www.dmas.virginia.gov/files/links/72/Long-Term%20Care%20Jan2019.pdf">https://www.dmas.virginia.gov/files/links/72/Long-Term%20Care%20Jan2019.pdf</a></p>	<ul style="list-style-type: none"> <li>• <b>Burial Space</b> – exclude the value of burial spaces or plots, and burial funds.</li> <li>• <b>Home</b> – exclude the principal place of residence, including land on which the home stands.</li> <li>• <b>Life Insurance</b> – exclude life insurance if the combined face value of the policies does not exceed \$1,500.</li> <li>• <b>Payments from certain Federal and State Programs, Settlements, and Reparations</b> – exclude disaster assistance, reparations for victims of Japanese internment, Holocaust survivor benefits, payments under the Agent Orange Compensation Exclusion Act, select federal government payments to Native Americans, and other miscellaneous payments and settlements.</li> <li>• <b>Personal Items</b> – exclude household goods and personal effects.</li> </ul>
<p><b>Washington</b>  <a href="https://www.hca.wa.gov/health-care-services-supports/program-administration/resources-exclusions">https://www.hca.wa.gov/health-care-services-supports/program-administration/resources-exclusions</a></p>	<ul style="list-style-type: none"> <li>• <b>Burial Funds</b> – up to \$1,500 per person for irrevocable burial contracts or trusts.</li> <li>• <b>Home</b> – exclude one home including the land on which the dwelling is located and all contiguous property and related buildings, provided that the home is the person’s primary residence or intends to return to the home.</li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Life Insurance</b> – exclude if the combined face value of the policies does not exceed \$1,500.</li> <li>• <b>Payments from certain Federal and State Programs, Settlements, and Reparations</b> – exclude disaster assistance, reparations for victims of Japanese internment, Holocaust survivor benefits, payments under the Agent Orange Compensation Exclusion Act, select federal government payments to Native Americans, and other miscellaneous payments and settlements.</li> <li>• <b>Personal Items</b> – exclude household goods and personal effects.</li> <li>• <b>Property Essential to Self-Support</b> – exclude real and personal property used in a trade or business, up to \$6,000 of nonbusiness income-producing property, and property used to produce goods or services essential to a person’s daily activities if person’s equity in such property does not exceed \$6,000.</li> <li>• <b>Vehicles</b> – exclude one vehicle used for transportation.</li> </ul>
<p><b>West Virginia</b>  <a href="https://www.wvdhhr.org/bcf/policy/imm/archivedw17/201_40/0/203/ch11_4.pdf">https://www.wvdhhr.org/bcf/policy/imm/archivedw17/201_40/0/203/ch11_4.pdf</a></p>	<ul style="list-style-type: none"> <li>• <b>Burial Plot</b> – exclude one burial plot.</li> <li>• <b>Home</b> – exclude the homestead, which is the place where a person lives, and includes the land on which the dwelling resides which is not separated by intervening property owned by others.</li> <li>• <b>Income-Producing Property</b> – exclude up to \$6,000 of an individual's equity in personal or real income-producing property, if it produces a net annual income of at least 6% of the excluded equity.</li> <li>• <b>Life Insurance</b> – exclude if the combined face value of the policies does not exceed \$1,500.</li> <li>• <b>Payments from certain Federal and State Programs, Settlements, and Reparations</b> – exclude disaster assistance, reparations for victims of Japanese internment, Holocaust survivor benefits, payments under the Agent Orange Compensation Exclusion Act, select federal government payments to Native Americans, and other miscellaneous payments and settlements.</li> <li>• <b>Personal Items</b> – exclude household goods and personal effects.</li> <li>• <b>Property Used in Trade</b> – exclude property essential to self-support that is used in a trade or business.</li> <li>• <b>Vehicles</b> – one vehicle is excluded.</li> </ul>
<p><b>Wisconsin</b>  <a href="https://www.dhs.wisconsin.gov/publications/p1/p10030-18-03.pdf">https://www.dhs.wisconsin.gov/publications/p1/p10030-18-03.pdf</a></p>	<ul style="list-style-type: none"> <li>• <b>Burial Trusts</b> – exclude all irrevocable burial trusts and prepaid burial spaces.</li> <li>• <b>Home</b> – exclude a place of abode, unless the person’s equity interest in their home is greater than \$750,000.</li> <li>• <b>Personal Items</b> – exclude household goods and personal effects.</li> <li>• <b>Life Insurance</b> – exclude unless the cash value of all policies, including riders and attachments, exceeds \$1,500.</li> <li>• <b>Property Used in Trade</b> – exclude property used in trade or business, when the applicant is actively involved in the business operation on a day-to-day basis.</li> <li>• <b>Non-Business Property</b> – exclude up to \$6,000 of non-business property used to produce goods and services for self-support.</li> <li>• <b>Vehicles</b> – exclude one vehicle that is used for transportation.</li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Payments from certain Federal and State Programs, Settlements, and Reparations</b> – exclude reparations for victims of Japanese internment, Holocaust survivor benefits, payments under the Agent Orange Compensation Exclusion Act, select federal government payments to Native Americans, and other miscellaneous payments and settlements.</li> </ul>
<p><b>Wyoming</b>  <a href="https://sites.google.com/a/wyo.gov/ecom/tables/table8">https://sites.google.com/a/wyo.gov/ecom/tables/table8</a></p>	<ul style="list-style-type: none"> <li>• <b>Burial Funds</b> – exclude up to \$1,500 per person for revocable burial contracts, exclude all irrevocable burial trusts, and exempt the value of burial plots.</li> <li>• <b>Home</b> – exclude one home including the land on which the shelter is located and related buildings on such land.</li> <li>• <b>Income Producing Property</b> – exclude up to \$6,000 equity for income producing property essential to an individual’s means of self-support if the property produces annual net return equal to at least 6% of the equity value.</li> <li>• <b>Life Insurance</b> – exclude life insurance if combined value of policies does not exceed \$1,500.</li> <li>• <b>Payments from certain Federal and State Programs, Settlements, and Reparations</b> – exclude reparations for victims of Japanese internment, Holocaust survivor benefits, payments under the Agent Orange Compensation Exclusion Act, select federal government payments to Native Americans, and other miscellaneous payments and settlements.</li> <li>• <b>Personal Items</b> – exclude items needed for health conditions, one wedding and one engagement ring, and up to \$2,000 total equity value of other household goods and other personal effects.</li> <li>• <b>Property Used for Self-Employment</b> – exclude property essential to the self-employment business, except for real property.</li> <li>• <b>Vehicles</b> – exclude one vehicle if it is necessary for employment, necessary for treatment, modified for a handicapped person, or necessary for the performance of essential daily activities.</li> </ul>

# APPENDIX B

