The Estate & Medicaid Handbook

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ESTATES AND TRUSTS PRACTICE GROUP

Many of the clients of Wood & Lamping's Estates and Trusts Practice Group have been with us for decades, because we view estate planning as an ongoing lifelong process. Estate planning is not something limited to people or families of a certain net worth or income level.

We work hard to develop the trust and confidence of clients at all income levels and all ages as they grow in their careers and lives. We individually design trusts and estate plans that reflect each client's particular goals, needs and circumstances. We handle trust administrations, estates, and guardianships for our clients in an efficient manner designed to preserve their wealth, save taxes and accomplish their objectives.

The Estates and Trusts Practice Group has also developed a reputation in Elder Law, Medicaid Law, and Alzheimer's planning, which is unmatched in this region. In this area, we counsel families facing disabilities or dementia of a loved one, and the long term health care costs that often accompany these disabilities.

Let us put our 280 years of combined experience in Estate and Trust planning to work for you.

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The Estate & Medicaid Handbook

INTRODUCTION

This handbook is a general reference. It is not intended to be a complete discussion. Furthermore, legal principles change with time and vary significantly by state. Always review your specific situation with competent legal counsel.

In cases of progressive illness, address these issues as soon as possible in order to maximize the planning process. The legal and financial consequences are substantial and your options will likely diminish with time.

It is my hope that you will find this information valuable. I wrote it for you.

Additional copies may be obtained at www.woodlamping.com.

Mark S. Reckman, Esq.

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MARK S. RECKMAN has practiced law at Wood & Lamping since 1979. He has served as the head of the Real Estate and Probate Departments. He also has served as the Managing Partner.

His clientele spans Medicaid, estate planning, probate, real estate and small business. In Mr. Reckman's Medicaid practice, he has counseled families facing dementia, disability and long-term health care costs for over 35 years. He writes and lectures extensively on this unique area. Mr. Reckman is a past Chairman of the Cincinnati Bar Association's Elder Law Committee. He has lectured at the Advanced Estate Planning Seminar of the Cincinnati Bar Association and at two annual conventions of the Ohio Bar Association. He has also lectured at the University of Cincinnati, NKU Law School and Cincinnati Children's Hospital.

Mark is rated as *Preeminent* by his peers (Martindale-Hubbell). In 2004, he was awarded the Excellence in Education Award by Professional Education Systems, Inc. Mark has been named a *Super Lawyer* for the State of Ohio by Law and Politics magazine annually since 2006. He has also been named one of Cincinnati's *Leading Lawyers* by Cincy Magazine annually since 2007. Mark was also in Leadership Cincinnati (Class XI).

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University of Vermont (B.A., 1975)
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PROFESSIONAL LICENSES:
Supreme Court of Ohio
United States Court of Appeals for the Sixth Circuit
Tax Court of the United States Southern District of Ohio

MAJOR PUBLICATIONS:
Ohio Probate Journal
CBA Report
Compassion Magazine
Elderlive – Lines
The Prime Times Caring
UMA Journal (United Methodist Assn.)

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JENNIFER GRIFFIN ANSTAETT has practiced law since 2001.

She practices primarily in the areas of Medicaid and Estate Planning, Probate Administration, and Special Needs Planning.

She advises clients on Medicaid eligibility for long term care whether they are living at home, in assisted living, or in a nursing facility. She also advises clients on a broad range of estate planning maters, including estate planning for families with children with disabilities, and she assists families with trust and estate administration and guardianship proceedings.

Jennifer is an OSBA Board Certified Specialist in Elder law, and she served as Chair of the Cincinnati Bar Association's Elder Law Committee for many years.

Jennifer was selected for inclusion in the 2004 through 2013, 2015, and 2016 editions of *Ohio Rising Stars*. Jennifer was also selected by her peers for inclusion in the 2013 through 2019 *Best Lawyers in America©* in the field of Elder Law, and she was named the 2018 Cincinnati Elder Law "*Lawyer of the Year*" in 2018.

She was a Cincy *Leading Lawyer* in 2006 through 2009, 2012, 2013, 2015, and 2018.

PROFESSIONAL AFFILIATIONS:

Ohio State Bar Association
Kentucky State Bar Association
Cincinnati Bar Association
National Academy of Elder Law Attorneys

PROFESSIONAL LICENSES:

Supreme Court of Ohio
Supreme Court of Kentucky
U.S. District Court Southern District of Ohio
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Centre College (B.A., 1998)
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Board Member, Children's Law Center, Inc.

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Past President, Franciscan Haircuts from the Heart
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Elderly Persons in Community, Inc. (EPIC House)
Past Chair, Highland United Methodist Church Finance Committee
Past Chair, Cincinnati Bar Association Elder Law Committee
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1. MENTAL COMPETENCY AND PLANNING FOR DISABILITY

Disability can arise for many reasons. Alzheimer's disease, illness, trauma, strokes, accidents and genetic conditions often result in diminished capacity. How can family or friends obtain the legal authority to help manage the legal, personal and medical affairs of someone with diminished capacity? Absent advance planning and cooperation, the solution is usually a guardianship.

GUARDIANSHIP

A Guardian is a person or institution appointed by the Court to manage the personal or financial affairs of an incompetent person. Guardianship begins with a court petition alleging that the proposed ward is not capable of handling his or her own affairs. It is generally accompanied by a doctor's report.

After the petition is filed, the Probate Court sends an investigator to interview the proposed ward and advise him or her of his or her legal rights. The ward's many protective rights include the right to a lawyer.

The court then schedules a public hearing to consider the doctor's report, the investigator's report and evidence brought by any interested person. The next-of-kin must be notified of the hearing. In Ohio, the hearing is generally small and quiet. In Kentucky, a jury trial is required.

If the Probate Court determines that the ward is incompetent, it must appoint a guardian, and set the terms of the guardianship. In Ohio, the many types of guardianships fall into two basic categories: Guardianships of the Person and Guardianships of the Estate. Guardians of the Person manage personal matters such as medical treatment and living arrangements. Guardians of the Estate manage financial matters. The Guardian of the Person and the Guardian of the Estate may be the same person. The Guardian of the Person must be an individual (not an institution). In Ohio, the Guardian of the Estate must be a state resident, but a non-resident can serve as the Guardian of the Person.

The guardian must take an oath in Probate Court. Guardians of the Estate must post a bond and must file an inventory within three months of appointment. Meticulous financial records are required and a full accounting of income and expenses must be filed every two years. With each accounting, the Guardian of the Estate must prove that he or she is in actual possession of the remaining assets by physically displaying them to the Court. Guardians can only make expenditures of the ward's funds with the prior approval of the Court. In Hamilton County, the Court also requires that the attorney co-sign on all expenditures.

The Guardian of the Person must file a complete report every two years on:

- the current condition of the ward;
- the place of the ward's residence;
- the number of contacts the Guardian has had with the ward;
- changes in the ward's condition since the last report;
- the Guardian's opinion as to the continued need for the Guardianship;
- the Guardian's opinion as to the adequacy of the ward's care; and
- the date on which the ward was last examined by a physician and the purpose of the examination.

The report must include a medical or psychological evaluation of the ward.

SPECIAL TYPES OF GUARDIANSHIP

Ohio law permits the Probate Court to limit the powers of a Guardian (called a Limited Guardianship) rather than grant the broad powers discussed above. For example, a Limited Guardianship may be appropriate to obtain consent for a specific medical procedure. Ohio law also provides that an Emergency Guardian can be temporarily appointed where it is reasonably certain that there will be immediate injury to the person or estate of the incompetent. Emergency Guardianships are quite rare.

Ohio law permits a "voluntary" guardianship, called a Conservatorship.

In addition, Ohio law permits a "voluntary" guardianship, called a Conservatorship. This device permits a mentally competent, but physically infirm adult to establish a court appointed Conservator

A Guardianship of the estate can be eliminated if the incompetent does not own any property or receive any direct income.

whose powers and duties are much like those of a Guardian. The Conservatorship will terminate at the ward's request.

While effective and safe, guardianships are cumbersome and expensive. Significant costs are incurred through legal and guardian's fees, court costs, and bond premiums. Also, the Court will often not approve transfers of assets that would be advantageous from a Medicaid or estate planning perspective because these transfers would have the effect of depleting the ward's estate.

In some cases, however, a guardianship is necessary and has certain advantages:

- the ward can be removed from an unsafe living environment;
- protects assets from misuse and provides Court protection and supervision;
- leaves no doubt as to who is in charge;
- protects the guardian from criticism in handling the ward's estate (if the guardian follows the law); and
- it may be the only option available where there has been no advanced planning.

ALTERNATIVES TO GUARDIANSHIP

Despite these advantages, many families want to avoid the expense, publicity and bureaucracy of guardianships. There are several effective techniques. These include Power of Attorneys, Trusts and Gifts. All must be implemented prior to incompetency.

Power of Attorneys, Living Wills and Power of Attorneys for Health Care must be signed while the signor is still competent.

Durable Power Of Attorney

The most common device used to privately manage the assets of a person is a Power of Attorney. A Power of Attorney is a document which authorizes someone to act as the legal agent for another. **It must be signed while the signor is still competent.** The recipient of the Power of

Attorney is referred to as the Agent or Attorney-in-Fact, although this person does not have to be a lawyer.

There are many types of Power of Attorneys, but, in all cases, the person granting the Power retains the right to personally manage his or her own affairs. Whenever possible, he or she should also retain the right to revoke the Power of Attorney. The document must be carefully drawn to include all powers that may be needed. The Power of Attorney must be signed AND notarized. In Kentucky, Powers of Attorney must also be witnessed by two disinterested witnesses.

Generally, Powers of Attorney take effect immediately upon being signed. Ohio law, however, also recognizes "springing" Powers of Attorney, which are signed today but which "spring" into place based on a triggering event such as when the grantor becomes incompetent. In other words, as long as the grantor can handle his or her own affairs, the Attorney-in-Fact has no authority.

A springing Power of Attorney may sound appealing to someone who has reservations about giving legal authority to another until absolutely necessary, but BE CAREFUL. A springing Power of Attorney is not a reason to appoint someone about whom you have reservations. If you don't completely trust someone, don't appoint him or her - at all! Also, the person appointed in a springing Power of Attorney may have trouble using it. Before proceeding, he or she must provide evidence that the triggering event has occurred. This could require a doctor's examination or a Court order.

There are several advantages in using Power of Attorneys:

- they are inexpensive;
- they can grant complete legal authority to act on behalf of the grantor;
- they are revocable (unless stated otherwise);
- there is no accounting to the Probate Court; and
- the grantor retains ownership of and the ability to manage his or her own property.

There are, however, disadvantages in using Powers of Attorney. A small number of financial institutions and insurance companies do not permit their use. The Social Security Administration and IRS often ignore them. Also, the Attorney-in-Fact may abuse his or her authority by mismanaging or taking assets.

Despite these problems, the Power of Attorney is an extremely useful device, which should be considered in most circumstances.

Trusts

A Trust is a legal document that creates a "fund" to manage assets. There are two basic types of Trusts: Living Trusts (Inter Vivos Trusts) and Testamentary Trusts. Living Trusts are set up during the lifetime of the creator and Testamentary Trusts are trusts spelled out in the creator's Will and established at death. There are dozens of variations of these two types of Trusts.

Assets held in a Trust are managed by a Trustee. A Trustee can be an individual or an institution such as a Bank or Trust Company. Assets held in a Trust are managed and distributed in the manner set forth in the document creating the Trust. In this sense, each Trust is different.

A Living Trust can be useful in several ways. If established while still competent, a person may transfer all of his or her property into a trust for his or her own benefit, or for his or her spouse or children. A Trust can be used to distribute assets upon the creator's death in a manner which avoids Probate. Trusts are also very useful for setting up funds for the benefit of someone who is handicapped or incompetent. They are frequently used by parents and siblings for a family member with special needs. Fully funded Trusts can be used in conjunction with a Power of Attorney to avoid guardianship and its attendant publicity and costs. Finally, Trusts can be used in Medicaid planning as discussed later.

While the cost of setting up a Trust is substantially higher than the cost of preparing a Power of Attorney, the expense is still relatively low. Funded trusts are often used in moderate and large estates to assist management

and reduce attorney fees at death. As a formal legal entity, it has stronger recognition than a Power of Attorney, and in some cases, it is taxed as a separate taxpayer.

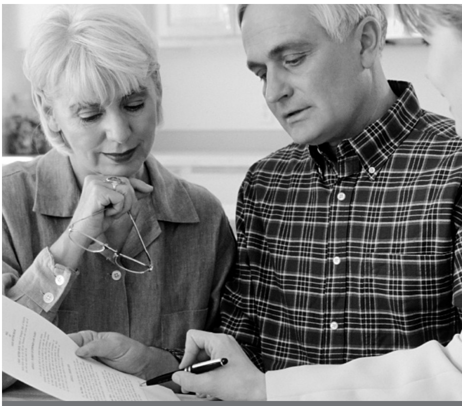
A Trust can only be used to manage assets and will not eliminate the possible need for a Guardianship of the Person.

Unconditional Gifts And Representative Payees

The need for a Guardianship of the Estate can be eliminated if the incompetent does not own any property or receive any direct income. Therefore, in a small number of cases, it may be appropriate for the individual to give away everything he or she owns. This may be accomplished by deed, memorandum of gift, or by signing over titles, stock certificates, and bonds, etc.

This technique does, however, carry several significant disadvantages. Gifts over $15,000.00 per person per year must be reported to the IRS. The incompetent loses control over his or her assets and there is little recourse if the recipient does not use or invest the assets properly. The recipient of the assets may die, become involved in a divorce or other litigation, or otherwise expose the assets to loss to his or her creditors. There can also be negative income and capital gains tax effects.

With respect to income, it is possible to arrange for most checks (including Social Security and other federal benefits) to be made payable to a representative payee, or to be deposited directly into a joint account or an account controlled by a Power of Attorney. In this way, a trusted family member or friend can assist the incompetent.



Durable Power Of Attorney For Health Care

Ohio, Kentucky and Indiana now permit individuals to execute Durable Powers of Attorney for Health Care. With this document, Tri-Staters can designate a person to make health care decisions for them if they are unable to speak for themselves.

The person signing the Health Care Power of Attorney must be of sound mind. The decision maker may not be the attending physician or the administrator of

any health care institution involved in the patient's care. This type of Power of Attorney must also contain a durability clause.

Generally, the Attorney-in-Fact will have the authority to give informed consent, refuse to give informed consent, and to withdraw consent for any medical treatment. However, the person holding the Power of Attorney will NOT be able to refuse or withdraw consent to health care needed to maintain life, except in very limited circumstances. For example, the Attorney-in-Fact would NOT be able to withdraw the use of a ventilator for a patient who is expected to recover after heart surgery. Also, the attorney-in-fact may not refuse or withdraw food or water, unless two doctors agree that the patient is terminally ill. In the case of a permanently unconscious patient who is not terminally ill, food and water may never be withheld unless special language is included in the Health Care Power of Attorney. HIPPA language is now an important component in these documents.

In Ohio, a standardized form has been approved by the legislature and is available for free on the internet.

Living Wills

Ohio has enacted procedural requirements for advance declarations regarding health care called Living Wills. While the law validates Living Wills signed in other states and pre-existing Living Wills signed in Ohio, Living Wills signed after October 10, 1991 must meet certain criteria. Kentucky has similar legislation.

Living Wills must be in writing and should recite the signor's advance instructions regarding medical treatment in the event of terminal illness or permanent unconsciousness. They must be signed in the presence of two witnesses OR a notary. The witnesses or notary must affirm that the signor appeared to be of sound mind. The treating physician and the administrator of the health care institution involved in the signor's treatment may not act as witnesses.

Under no circumstance may an Ohioan be denied comfort care.

Ohio's Living Will law distinguishes between patients who are terminally ill and those who are permanently unconscious. Although both conditions must be verified by two doctors, in Ohio there are additional protective measures for the permanently unconscious. Food and water may not be withheld from a permanently unconscious Ohioan unless the patient has signed a Living Will or Power of Attorney for Health Care with a special section. This special section must be signed or initialed.

Under no circumstance may an Ohioan be denied comfort care. Comfort care is defined as the minimum amount of care administered to alleviate pain and suffering but not to prolong life.

The Living Will law grants immunity to all medical practitioners who treat a patient or refrain from treating a patient pursuant to a Living Will. It also creates immunity for a medical practitioner who refuses to follow a Living Will "as a matter of conscience." In such cases, however, the medical practitioner may not interfere with the actions of another acting pursuant to the Living Will.

Perhaps equally important, Ohio law creates a list of persons who have the highest priority in making health care decisions in the absence of a Living Will. If there is no guardian, the decision may be made by a spouse. If there is no spouse, the majority of the adult children may decide. If there are no children, then the decision falls to the patient's parents. If there are no parents, the majority of adult siblings may direct the healthcare.

When a patient with no Living Will becomes terminally ill or permanently unconscious, the decision maker must act consistent with the known wishes of the patient. If his or her wishes are not known, the decision must be consistent with the patient's wishes as inferred from his or her character and lifestyle. The decision maker may even elect to withhold or withdraw food and water, though to do so with permanently unconscious patients, the condition must continue for twelve months and the decision must be confirmed by the Probate Court.

The Ohio "Standard Forms" have been revised several times over the years. The older forms are still valid and there is no reason to sign new forms unless your wishes have changed. Forms are available for free on the internet, however, be sure that you use the correct form for your state. Feel free to contact your attorney if you have any questions or concerns.

Declaration For Mental Health Treatment

While the Ohio Durable Power of Attorney for Health Care ("DPOAHC") covers both mental and physical health issues, the standard DPOAHC does not address mental health issues in significant detail. For those with a mental illness, a Declaration for Mental Health Treatment may be an appropriate addition to the DPOAHC.

A Declaration for Mental Health Treatment gives mental health care providers direction regarding treatment in the event a patient cannot make his or her own decisions. The law also allows the declarant to name a person who can make mental health decisions for him/her, called a "proxy". A proxy is required to follow the instructions in the Declaration or to do what the declarant has told him/her to do. The proxy will be able to view all mental health medical records. The proxy must accept his/her appointment in writing by signing the Declaration and may withdraw from the appointment with written notice at any time. When selecting a proxy, choose someone who is well suited for this serious responsibility.

A Declaration for Mental Health Treatment may be an appropriate addition to the DPOAHC.

Anyone may draft his/her own Declaration for Mental Health Treatment. However, most people obtain a form from an attorney or download it from the internet. The standard form will ask if there is a specific preferred treatment facility or any other treatment preferences. The standard form also allows the Declarant to express a preference for or against specific types of treatments or medications. The Declarant may also select a preferred doctor or other mental health professional. In order to be valid, the form must be signed by two witnesses or notarized. The witnesses cannot be the treating physician, family members, or the proxy. The form also contains a revocation section, a renewal section, and a HIPAA release statement.

The Declaration for Mental Health Treatment is good for three years, unless revoked. The declaration can be renewed for an additional three years. If, during the three year period, the declarant can no longer make his/her own decisions because of a mental illness, the Declaration is effective until the declarant's decision-making ability returns.

A Declaration for Mental Health is good for three years.

The Declaration will let the health care professionals know the declarant's preferences regarding mental health treatment. However, any directives expressed in a Living Will that governs the use, continuation, or withdrawal of life-sustaining treatment will supersede the provisions contained in a Declaration for Mental Health.

2. FINANCING NURSING HOME CARE

The cost of long term nursing home care is a major concern of persons facing progressive illnesses like Alzheimer's disease and victims of strokes and trauma. In greater Cincinnati, the cost of nursing care facilities ranges from $200 to $350 per day. These costs will increase with time and will quickly deplete the resources of all but the wealthy and the well prepared. There are several alternatives available to pay for nursing home care.

MEDICARE

Medicare is mentioned first because it is probably the best known medical insurance program for the elderly and disabled. However, in terms of assisting with nursing home bills, it probably should be mentioned last. Medicare only covers "skilled nursing" care in a Skilled Nursing Facility, not the intermediate care (also called custodial care) required for most nursing home residents. Even with skilled care, Medicare only provides full nursing home benefits for the first 20 days and limited benefits for an additional 80 days.

In terms of assisting with nursing home bills, Medicare should be mentioned last.

Don't count on Medicare to cover the cost of long term care.

LIFE CARE CONTRACTS

A limited number of facilities offer life care contracts. Generally, the resident signs over all or a portion of his or her assets to the facility in exchange for the facility's promise to provide care for the remainder of his or her life. The financial stability of the facility is always an issue. Another major concern is whether all or any part of the lump sum payment is refundable, and if so, under what circumstances. The resident could die or wish to move after a relatively short period of time.

While life care contracts are relatively rare in the tristate area, they can provide a realistic means of financing long term care. These agreements have many pitfalls and should be reviewed by an attorney.

LONG TERM CARE INSURANCE

Long term care insurance must be purchased before serious illness.

This type of insurance is generally only available to persons in relatively good health and therefore must be purchased before serious illness and before the age of 81.

In late 2007, Ohio adopted a Long Term Care Partnership Program. This program significantly adds to the value of having long term care insurance. But, it is important your policy complies with this new program. Many insurance companies are now offering to exchange old policies to conform to the program.

This new program increases the amount of money one can retain when applying for Medicaid, dollar for dollar. For example, if you exhaust $100,000 from your policy, you can keep $100,000 more in assets when you apply for Medicaid.

Kentucky and Indiana have also adopted this program.

When selecting a policy, keep these points in mind:

- The insurance company should be financially sound and reasonable to deal with.
- What is covered? For extra premium, you can buy valuable coverage for "in-home" care.
- How much is the daily benefit? When combined with your income, is it enough to cover most of the nursing home costs?
- How long does the coverage last? Three or four years is usually sufficient.
- Do the premiums increase dramatically as the policyholder ages?
- How long do you have to be in the nursing home before the policy begins to pay? Sixty to ninety days is common. However, a longer "waiting period" will reduce the annual premium.
- Avoid policies that require a prior hospital stay before paying out benefits.

VETERANS' BENEFITS

If you are a veteran overwhelmed with the high cost of long-term elder care, such as paying for assisted living facilities, home care aids, adult daycare, or skilled nursing, the Veterans Aid and Attendance benefit could be the solution to help offset these rising care costs. A wartime veteran or their surviving spouse (or just the spouse in case of the veteran's death) with limited income may be eligible to receive additional monthly income to help pay for these expenses.

Eligibility Requirements:

Non-Financial Qualifications

1) Age - Veterans or their surviving spouses* must be at least 65 or officially disabled if younger.

2) Period of Military Service - Veterans must be considered "wartime veterans" meaning they served at least 90 days and served at least one day during wartime, but not necessarily in combat.

3) Discharge Status - Veterans cannot have been dishonorably discharged.

4) Disability Status - Veterans are eligible without a disability, but a higher benefit is available to those who are disabled.

* A surviving spouse must have been living with the veteran at the time of their death and must be single at time of claim.

Financial Requirements:

Income Limits

A veteran's and their spouse's joint, countable income must be less than the pension amount for which they are eligible. For example, a married veteran in 2019 is eligible for $26,766 in pension; if their countable income is $10,000, then they are eligible to receive an additional $16,766 / year in pension.

However, because the VA allows applicants to deduct certain expenses and forms of income from their "countable income", the applicants' actual income can be considerably higher than their countable income.

Veterans should deduct all of their unreimbursed medical-related expenses for themselves and their spouses that are greater than 5% of the Maximum Annual Pension Rate (MAPR). For example, for a married couple applying for Aid & Attendance, 5% of the MAPR is $1,338. Therefore, if a couple has an annual income of $30,000, and $25,000 in medical-related expenses, one would subtract $1,338 from $25,000, which means $23,662 of their medical expenses could be deducted from their income. Therefore, their countable income would be $6,338 vs. an actual income of $30,000.

Medical-related expenses include the cost of care in skilled nursing, assisted living, adult day centers, and at home. Medicare and other insurance premiums, as well as prescriptions not covered by insurance, should also be included as medical-related expenses. Income from Supplemental Security Income (SSI) and welfare benefits should not be included as countable income.

2020 BASIC / HOUSEBOUND / AID AND ATTENDANCE INCOME LIMITS			
VETERAN FAMILY STATUS	BASIC PENSION INCOME LIMIT	HOUSEBOUND INCOME LIMIT	AID & ATTENDANCE INCOME LIMIT
Veteran with no dependents	$13,535	$16,540	$22,577
Veteran with a spouse* or child**	$17,724	$20,731	$26,766
Surviving spouse / death pension*	$9,078	$11,095	$14,509

*Presumes the spouse is not also a veteran **Add $2,313 for each additional child

Asset Limit

To qualify for the Aid and Attendance benefit and other pensions, the VA will look at the applicant's overall net worth, which includes both (assets) and annual income. Assets, according to the VA, include assets in bank

accounts, stocks, bonds, mutual funds, and property other than the veteran's primary residence and vehicle. Other items that can be excluded when determining net worth are the value of your home and vehicles, household goods and furnishings, as well as personal effects, such as clothing.

As of 10/18/18, **the VA implemented a net worth limit of $123,600.**

As mentioned above, one's net worth includes one's annual income (after deducting unreimbursed medical expenses). Say a veteran has $12,000 in annual income after deducting eligible medical expenses, and has assets in the amount of $100,000. In this example, $12,000 in income would be added to the $100,000 in assets, equaling a total of $112,000 in net worth for the applicant.

The VA also has an asset look back rule that became effective on 10/18/18. This is similar to Medicaid's asset test, which "looks back" at an applicant's past asset transfers for up to 5 years preceding their application. **However, the VA "look back" period is only for 3 years.** During this timeframe, which immediately precedes one's application date, the VA checks to ensure no assets were given away or sold under fair market value.

If they find any such transfers, it is assumed the assets were gifted or sold in order to meet the new net worth limit of $123,600. Therefore, there will be a period of VA pension ineligibility. Please note: transfers made prior to 10/18/18 do not violate this new look back rule. Another exception is if the applicant transferred assets, but never had a net worth in excess of $123,600. If this is the case, these transfers do not violate the look back period.

There are no restrictions on how VA pension benefits can be used provided it is for the benefit of the veteran or their surviving spouse. It can be applied toward skilled nursing, assisted living facility, in home or adult day care services, or to fund home modifications to accommodate for a disability. **Furthermore, many veterans are unaware that VA Pensions can be used to pay a family member who is the caregiver of a veteran or survivor (with the exception of spouses).** As mentioned, care expenses

can be deducted from their income, including payments made to family members, such as children or grandchildren. Beneficiaries can then receive an increased pension benefit equal to the amount they have paid to their family member for care. Unfortunately, this method does not work for the veteran's spouse since joint income is calculated as household income. Therefore, any salary the spouse received would be included as part of their household income, and would not be considered a deductible care expense.

Veterans and their families should be aware of potential eligibility conflicts between pensions and other assistance from the Department of Veterans Affairs and / or other government programs.

- **Veterans cannot receive both VA Disability compensation and VA Aid and Attendance Pension.** However, they can receive the higher benefit of the two programs.

In addition to speaking with an attorney, eligibility for these programs should be reviewed with the V.A. in all cases where the Veteran or their spouse requires nursing home care. All of the counties in the tristate area offer free counseling to veterans and will assist with the application process. Here are the phone numbers for agencies in the larger local counties:

- Hamilton County Veterans Services 513.946.3300
- Butler County Veterans Services 513.887.3600 (Hamilton)
  513.425.8688 (Middletown)
- Warren County Veterans Services 513.695.1345
- Clermont County Veterans Services 513.732.7363
- State of Kentucky Veterans Services 800.827.1000

EXPANDED MEDICAID

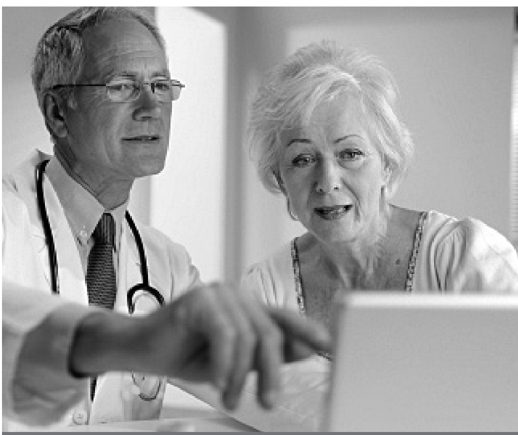
Medicaid will pay for long term care.

In 2014, Ohio and Kentucky both expanded their Medicaid programs as part of the Affordable Care Act. This program extends medical benefits to adults up to age 64 living at or below 138% of the federal poverty level. There is no resource criteria — only an income test. This means that adults up to age 64 can get the same kind of coverage offered by conventional health insurance. However, the expanded Medicaid program will not pay for nursing home care for persons age 65 and over. After age 64, for nursing home benefits, you must qualify for "traditional" Medicaid for the Aged.

"Traditional" Medicaid

Medicaid will pay for long term care. In fact, Medicaid pays for just over half of the long term care in this country. The objective of "Medicaid planning" often focuses on preserving assets by accelerating Medicaid eligibility.

Medicaid is funded jointly by federal and state governments. It is administered in Ohio by the Department of Medicaid and in Kentucky by the Cabinet For Health and Family Services. The eligibility rules discussed below are effective as of fall 2019. HOWEVER, THESE RULES ARE CONSTANTLY BEING REVISED. Also, there are many rules and procedures not discussed here that may apply to your situation. You are strongly advised to obtain advice from a qualified Medicaid planner.



The rules discussed here apply to situations where Medicaid is sought to pay for long term care. The rules for persons seeking Medicaid assistance while they remain in the community differ in some respects, particularly in the manner in which income is treated and in the timing of "snapshot" for married persons (see page 15 for a description of the "snapshot").

Level Of Care and Medical Need

To obtain Medicaid benefits in a nursing home, the nursing home placement must be medically justified. This is documented by a medical evaluation which determines the “level of care” for the patient. Historically, Medicaid only paid for skilled care. Ohio now has a program for assisted care, but not many facilities participate in that program. Those that do often have a waiting list.

Residency

To obtain Medicaid benefits, the individual must be physically present in the county and state where he or she applies and have the intention to remain there. Nursing home residents apply in the county where the nursing home is located. There is no minimum period of residency.

Certified Facility

Medicaid applicants must reside in a facility that has a contract with Medicaid. It is very important to verify that a facility will accept Medicaid payments before applying for placement.

Resource Eligibility

To qualify for Medicaid nursing home benefits, a patient must pass two tests: a resource test and an income test. The resource test is the more complicated of the two. To qualify for Medicaid, an individual must have no more than $2,000.00 in COUNTABLE RESOURCES. The term “countable resources” includes just about anything owned by or legally accessible to the Medicaid applicant.

Here are common examples of countable resources:

- Cash
- Bank Deposits
- Securities
- Whole Life Insurance
- Rental and Vacation Property
- Retirement Accounts (with some exceptions)

- Promissory Notes and Installment Contracts (with some exceptions)
- Life Estates
- Assets held in Trust (with some exceptions)
- Deferred Annuities

Certain resources are exempt in calculating the $2,000.00 resource eligibility standard. The primary exempt assets are:

- Household goods and personal effects.
- Engagement and wedding rings.
- One vehicle as long as it is used for transportation. For married persons, there is no limitation on the use.
- Term life insurance policies having no cash surrender value and other life insurance policies having an aggregate face value of $1,500.00 or less.
- An irrevocable prepaid burial contract.
- Burial plots for the immediate family.
- The home is exempt up to $595,000[1] if the individual lives there and considers it his or her principal place of residence. In addition, the home is exempt if it is occupied by any of the following:
    - Spouse
    - A dependent relative
    - Blind or disabled child
    - A child under age 21
    - Child who is age 65 or over and who is dependent upon the individual for housing

1) Adjusted annually for inflation.

÷ 2 = Spousal Resource Allowance
(Max = $128,640)

If there is no spouse or qualified child in the residence, the home is also exempt if the individual intends to return home. Special rules for homes occupied by a sibling with an equity interest or by a child who provided nursing care are discussed later. Kentucky exempts retirement accounts and life estates. Kentucky used to give the residence a permanent exemption, but this was eliminated in 2003.

Resource Eligibility — Married Persons

For married persons, there are special rules governing countable assets. Assets belonging to both spouses are counted regardless of how the asset is titled or how it was acquired. In Ohio, if an asset is owned jointly with another person, the account is counted at full value unless the applicant (or spouse) can prove that the co-owner actually contributed to the value of the asset. Kentucky will treat the entire account as an available resource, regardless of contributions by others. The non-institutionalized spouse is generally entitled to keep all exempt assets and one-half of the couple's countable assets (known as the Community Spouse Resource Allowance). The non-institutionalized spouse's share of countable assets, however, is subject to a maximum of $128,640[2] and a minimum of $25,728[3].

The non-institutionalized spouse is generally entitled to keep all exempt assets and one-half of the couple's countable assets.

2) Adjusted annually for inflation.
3) Adjusted annually for inflation.

Resources of Married Applicant

Example 1:

Mr. Thomas enters an Ohio nursing home on April 1, 2020. He and his wife have CDs totaling $12,000 and a $50,000 home. The home is exempt because Mrs. Thomas resides there and $12,000 is below the minimum Community Spouse Resource Allowance ($25,728). Mrs. Thomas is entitled to keep the house and the entire $12,000.

Example 2:

Mrs. Lyons enters an Ohio nursing home on March 1, 2020. She and her husband do not own a home but have $60,000 in the bank. Half of $60,000 is $30,000. Since $30,000 is above the minimum Community Spouse Resource Allowance ($25,728) and below the maximum ($128,640), Mr. Lyons is entitled to keep $30,000. The remaining $30,000 will have to be "spent down" to the $2,000 eligibility standard.

Medicaid will look back to the date of institutionalization to determine the proper division of assets.

In addition, when the community-based spouse's income is less than the Monthly Maintenance Needs Allowance (this is an amount set by Ohio as the monthly amount a non-institutionalized spouse is entitled to receive for living expenses), a state hearing officer may award a Community Spouse Resource Allowance above the amount in the formula just described. In two 1994 Ohio court cases (*Kimnach and Gruber*), the spouse was awarded more than half the marital assets and more than the maximum resource allowance. This is an important option.

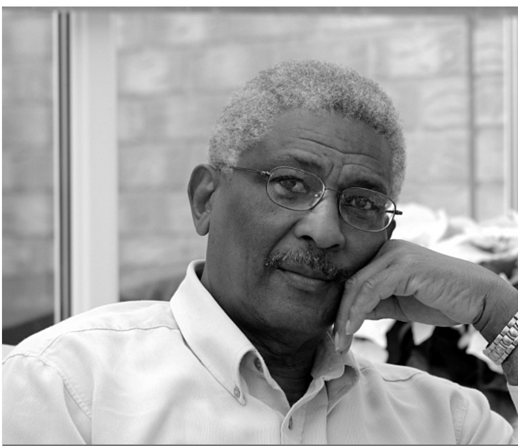
In "spending down" to reach the amount of the Community Spouse Resource Allowance, it is wise to plan carefully. This is discussed in the section on Medicaid Planning.

There are three very important factors in the calculation of resource eligibility:

Most retirement accounts of both the Medicaid applicant and the spouse are treated as countable resources in Ohio. Kentucky still exempts them.

1. In Ohio, when applying for nursing home benefits, the couple's assets are valued as of the date of institutionalization (called the "snapshot" date). Whenever Medicaid assistance is sought in Ohio, Medicaid will look back to the date of institutionalization to determine the proper division of assets. A couple may request a valuation (called a Resource Assessment) of their assets upon institutionalization even though no Medicaid application is filed at that time. Medicaid charges a fee of $50 for this service. This is rarely necessary. However, in unusual circumstances, this may be a good idea to determine the value or "includability" of an unusual asset. BE CAREFUL! Under the transfer penalties, a premature application can be disastrous (see Transfer Penalties later in this chapter). When in doubt, seek legal counsel before you go to the Medicaid.

   In Kentucky, the couple's assets are valued as of the date of the first Medicaid application (the "snapshot date"). Therefore, in Kentucky, it is often important to file an application immediately upon institutionalization;
2. Medicaid eligibility is calculated as of the LAST DAY OF THE MONTH. Therefore, if the applicant has successfully reached the spend down target on the last day of the month, he or she will be eligible for Medicaid benefits for that entire month. This fact becomes very important in cases where a person may be only a few dollars over the eligibility standard. Spending down at the end of one month rather than at the beginning of the next can result in significant savings; and



3. Medicaid benefits may be approved retroactively for up to three months prior to the month of application.

For Example:

Mr. Jones' only asset is $500 in the bank when he enters the nursing home on July 1, 2019. On October 31, 2019, Mr. Jones applies for Medicaid benefits. Mr. Jones' ENTIRE nursing home stay is covered by Medicaid. Since he applied during October, the entire month of October is covered. But, since Mr. Jones was also Medicaid eligible during each of the previous three months, his coverage would begin July 1.

Retirement Accounts

Most retirement accounts of both the Medicaid applicant and the spouse are treated as countable resources. There are two exceptions:

1. Retirement plans require the spouse to terminate employment or retire in order to withdraw money; and
2. Retirement plans in irrevocable payout status.

If the applicant or the "at-home" spouse has a retirement account, seek legal counsel as soon as Medicaid eligibility becomes an issue. There are techniques available to get the most out of these accounts. In Kentucky, the retirement accounts are still exempt.

Institutionalization can create an interesting "opportunity" for the treatment of retirement accounts. If you or your spouse are paying privately for your nursing home care (in whole or in part), a portion or all of the bill is deductible as a medical expense. Medical expenses are deductible to the extent they exceed 7.5% of adjusted gross income. If this results in a substantial amount of unused tax deductions, it is wise to make withdrawals from retirement accounts to fully utilize these deductions. It may also be wise to liquidate highly appreciated securities for the same reason. The taxable income from retirement accounts and the capital gain from the sale of highly appreciated assets may be offset by the medical deductions. Consult your tax advisor before the close of each calendar year.

Assets In Trust

Assets held in a trust for the institutionalized spouse or the community-based spouse may be counted as available resources. When and how these assets are counted depends on the date, type and terms of the Trust.

Revocable Trusts

Assets held in a trust may be counted as available resources.

There are two possible circumstances:

1. Revocable Trusts where the applicant or applicant's spouse hold the power to revoke. In this circumstance, all trust assets are counted as available resources.
2. Revocable Trusts created after August 10, 1993, where the power to revoke is held by someone other than the applicant or applicant's spouse.
    a. If the trust contains assets that came from the applicant or applicant's spouse, then the value of any payment that the Trustee can legally make to the applicant or applicant's spouse will be treated as income (not a resource) - even if the payment is never actually made. Medicaid will assume that the Trustee will exercise his or her discretion in favor of the applicant or applicant's spouse to the fullest extent possible. Furthermore, any contribution to the trust by the applicant or spouse will be subject to the transfer rules. In these cases, the "look back" is 60 months.
    b. If the trust only contains assets from a third party, the value of any payment that the applicant or applicant's spouse is legally entitled to receive is counted as income, not resources. A beneficiary is legally entitled to receive a trust distribution if he or she has met any ascertainable standard contained in the trust, even where the Trustee may have discretion.

Irrevocable Trusts

If the trust was created by the applicant or applicant' spouse after August 10, 1993 and is not revocable, then the value of any payment that may be made to the applicant or spouse is treated as income (not resources) — even if the payment is never actually made. Medicaid will assume that the Trustee will exercise his or her discretion in favor of the applicant or applicant's spouse to the fullest possible extent. Furthermore, if the Trust contains assets that may be traced back to the applicant or the applicant's spouse, then those assets are subject to the transfer rules. In these cases, the "look back" is 60 months.

The only exceptions to these rules are the Supplemental Services Trust, Special Needs Trusts, Pooled Trusts, and Qualifying Income Trusts (QITs). Collectively, these trusts are called "Safe Harbor" Trusts. A comparison chart of key characteristics is at the end of chapter four.

Special Needs Trusts

A special needs trust is a trust established by a Medicaid applicant or his or her spouse, parent, grandparent or court for the benefit of a disabled person under 65 years old. The trust is then "funded" with the applicant's own money. This often is used to protect money from a personal injury case, inheritance or other lump sum. Upon the beneficiary's death, the trust must apply any remaining assets to reimburse the Medicaid program for the benefits it has paid. These trusts are often called Medicaid Payback Trusts. Assets in such a trust do not affect eligibility of the beneficiary.

Supplemental Services Trusts (Ohio only)

Supplemental Services Trusts are either testamentary trusts or living trusts designed to supplement the support of Ohioans receiving Medicaid who are also eligible to receive benefits from the Ohio Department of Developmental Disabilities or the Ohio Department of Mental Health. Currently, there is a maximum of $250,000 for 2020 that may be placed in these trusts. This maximum is adjusted upwardly $2,000 annually. These trusts cannot be funded with the applicant's own money – only money from a third party may

be used. Half of the assets remaining in the trust at the beneficiary's death must be given to the State.

Pooled Trusts

These trusts work the same as Special Needs Trusts but are managed by a non-profit association which "pools" the assets of many other beneficiaries. In some "pooled" trusts, any unused portion remaining at the death of the beneficiary stays with the "pooled" funds. In other "pooled" trusts, the remaining assets can be left to a named beneficiary, subject to Medicaid payback, or to a charity.

Qualified Income Trusts ("QIT")

These are trusts funded only with the pension, social security and other income of the individual. In cases where the applicant's income is too high to qualify for benefits, income can be diverted to a Qualified Income Trust. The income transferred into the QIT will still be part of the individual's Patient Liability and must be used to reimburse Medicaid upon the beneficiary's death.

Discretionary Trusts

These are trusts set up by a third party and "funded" with assets that never belonged to the Medicaid applicant or his or her spouse. These can be either a living trust or a testamentary trust. The key is the language in the trust that describes when the Trustee is to make distributions. If the Trustee has complete and unfettered discretion to make whatever distribution the Trustee elects, the trust will qualify as a discretionary trust. However, if the Trust contains any kind of distribution criteria or standard, the Trust assets will be at risk.

Discretionary trusts may only contain assets that never belonged to the Medicaid applicant.

This type of trust was the subject of an Ohio Supreme Court case decided in 1996 (Young v. State of Ohio). The principle was re-affirmed in a 2000 Court of Appeals Case (Carnahan v. State of Ohio). The court focused intently on the dispositive language of the trust. If a trust has any ascertainable standard by which the Trustee could be compelled to distribute money to a Medicaid recipient, it will not qualify under this doctrine. There cannot be any language like "support", "welfare", "standard of living" or even "quality of life". These

types of trusts have now been "sanctioned" in Ohio by the Legislature with the adoption of the Ohio Trust Code. This is a wonderful tool for families with a permanently disabled child or grandchild.

Transfers Of Assets (the "Look Back" rule)

There is one very important additional rule in determining resource eligibility. As of February 8, 2006, any asset transferred for less than full value within 60 months before the Medicaid application date must be reported to the caseworker. This is known as the "look back" rule. Assets placed into Irrevocable Living Trusts are also subject to this 60 month "look back". The Dept. of Job and Family Services will presume that the asset was transferred for the purpose of qualifying for Medicaid. The applicant DOES have the right to try to prove that the transfer was for non-Medicaid reasons, but this is difficult. Assets transferred before February 8, 2006 were subject to a shorter "look back".

Any asset transferred for less than full value within 60 months before the Medicaid application date must be reported to the caseworker.

For Example:

On June 1, 2019, John Jones, age 70, gave his son $20,000 as a down payment for a new home. Mr. Jones was in excellent health, and, in fact, was employed on a full time basis. On July 4, 2019, Mr. Jones was severely injured in a traffic accident and required nursing home care. The gift to the son must be reported because it is within the "look back" period, but the gift might not be penalized because Mr. Jones could prove from his circumstances that the transfer was not made to qualify for Medicaid: the gift was for a clear purpose and his accident was not foreseeable.

Certain other transfers are permissible:

- The transfer of a home to a spouse or minor dependent child.
- The transfer of a home to a sibling with an equity interest who resided in the home for one year immediately preceding institutionalization.
- The transfer of a home to a child who resided in the home for two years immediately preceding institutionalization where the child

provided care which kept the parent out of the nursing home. This exception requires supporting documentation.

- The transfer of any resource to or for the benefit of a spouse or a blind or disabled child.
- Cases of undue hardship.

Transfer Penalties

Improper transfers made during the look back period will result in Medicaid ineligibility. The length of the period of ineligibility is calculated by dividing the value of the transferred resource by the average private pay rate - $6,905 (2020) per month in Ohio and $199.46 per day in Kentucky. It is the size of the gift that determines the period of ineligibility. THIS IS IMPORTANT BECAUSE THE INELIGIBILITY PERIOD CAN OFTEN BE LESS THAN THE “LOOK BACK” PERIOD.

As of February 8, 2006, transfers are subject to a 60 month “look back”. Since gifts made more than 60 months prior to application do not need to be reported, you can avoid a penalty by simply waiting 60 months before applying for benefits. IN SUCH CASES, APPLYING TOO SOON IS DISASTROUS.

All criminal liability for the Medicaid gifts has now been repealed (it was never actually enforced). But, two important things are clear:

- All transfers made during the look back period must be reported to the case worker.
- Whenever possible, the nursing home resident should personally sign all transfer documents. Don’t use a Power of Attorney to make the transfers unless there is no choice.

As of February 8, 2006, the period of ineligibility begins when the applicant would otherwise become eligible for Medicaid (the “date of impoverishment”).

Income Eligibility

To qualify for Medicaid benefits, an application must also pass an "income test". Only the income of the institutionalized spouse is considered in determining income eligibility. Income payable solely to the patient is considered all his or hers. Income payable to the patient and/or another party is pro-rated.

A patient meets the income test when his or her income is less than the "income standard" of $2,349 (2020). If his or her income is more than $2,349 per month, he or she will need to use a QIT to reduce his or her income. Once this test is met, Medicaid then calculates how much of the patient's income must be paid to the nursing home. This is called the "Patient Liability". Medicaid then pays the balance of the nursing home bill.

The period of ineligibility begins when the applicant would otherwise become eligible for Medicaid.

The Patient Liability is determined by subtracting certain allowances from the applicant's total monthly income. These allowances include:

a. A personal needs allowance of $50 per month.
b. A Monthly Income Allowance for the non-institutionalized spouse. This allowance varies depending upon the income and shelter costs of the family. The minimum Monthly Income Allowance is $2,114[4] (2020). The maximum of all spousal allowances is $3,216[5] (2020) except in rare circumstances.
c. Health Insurance Premiums.

This is an example of the calculation of Patient Liability:

Mr. Jones enters the nursing home with gross income of $2,400 per month. Because his income is more than $2,349 per month, Mr. Jones will need to use a QIT to reduce his income. However, that will not affect the calculation of his "Patient Liability." Mrs. Jones has an income of $600 per month and pays condominium fees in the amount of $100 per month, property insurance

4) Adjusted annually for inflation.
5) Adjusted annually for inflation.

of $40 per month, property taxes of $100 per month, a mortgage payment in the amount of $400 and is given a standard utility allowance of $548 (2020) per month[6] (this means her Monthly Income Allowance is increased to the extent that her actual utility costs exceed $548). Mr. Jones has a Medicare Supplement Policy which has a premium of $140 per month.

Calculation of Monthly Income Allowance (MIA) for Mrs. Jones:

CONDO FEE:	$	100.00
INSURANCE (PROPERTY):	$	40.00
TAXES (REAL ESTATE):	$	100.00
MORTGAGE:	$	400.00
STANDARD UTILITY ALLOWANCE:[7]	$	548.00
TOTAL:	**$**	**1,188.00**

LESS EXCESS SHELTER ALLOWANCE STANDARD:[8]	$	(634.20)
MRS. JONES' EXCESS SHELTER ALLOWANCE:	**$**	**553.80**
MINIMUM MONTHLY MAINTENANCE NEEDS ALLOWANCE:[9]	$	2,114.00
TOTAL:	**$**	**2,667.80**

LESS MRS. JONES' INCOME: $ (600.00)		
MRS. JONES' MONTHLY INCOME ALLOWANCE:	**$**	**2,067.80**

Mr. Jones' Patient Liability is calculated as follows:

MR. JONES' GROSS INCOME:	$	2,400.00
LESS:		
1. PERSONAL NEEDS ALLOWANCE:	$	(50.00)
2. MR. JONES' MEDICAL INSURANCE PREMIUM:	$	(140.00)
3. MRS. JONES' MIA:	$	(2,067.80)
PATIENT LIABILITY (PAID TO NURSING HOME):	**$**	**142.20**

This means that Mrs. Jones will keep her own income of $600 per month AND she will keep $2,067.80 of Mr. Jones's income. Mrs. Jones will have a total of $2,667.80 to live on per month.

6) Adjusted annually for inflation.
7 Adjusted annually for inflation.
8 Adjusted annually for inflation.
9 Adjusted annually for inflation.

Estate Recovery

A combination of state and federal law mandate the recovery of Medicaid benefits against the estate of a Medicaid recipient. This includes assets that pass outside of probate. This can be done by either filing a lien against the property of a Medicaid applicant or by filing a claim or a collection suit against his or her estate.

Ohio only has a claim against those assets owned by the Medicaid recipient at the time of his or her death. Ohio does not have a claim beyond that.

Recovery from the estate can only be made:

- after the death of the individual and the surviving spouse,
- at a time when the individual has no surviving children under age 21,
- at a time when the individual has no surviving child of any age who is blind or totally disabled,
- for the recovery of benefits paid to people over the age of 55, and
- for the recovery of benefits paid after January 1, 1995.
- only to the extent of the interest owned by the Medicaid recipient at his/her death. In other words, recovery cannot be made against assets owned by the community spouse at the time of the Medicaid recipient's death.

It is very important to be sure that when a married person qualifies for Medicaid, all assets are transferred to the community spouse right away. This includes all bank accounts (except one), the residence and life insurance policies (transfer the ownership).

MEDICAID PLANNING

Planning ahead for Medicaid can result in substantial savings. However, sound Medicaid planning often affects income taxes, gift taxes, and estate taxes. It can also mean losing management and legal control of your assets. All factors must be weighed in developing the best Medicaid plan.

Also, watch out for bad advice in this area – there is a lot of it. Even Medicaid caseworkers have been known to give bad advice – some more than others. Double check your information with a Medicaid lawyer.

There are many types of Medicaid planning. The three most common techniques are: exemption planning, transfer planning and converting assets into income. Life estates are being used less and less. On the other hand, care contracts have gained popularity in recent years.

Exemption Planning

Exemption planning is safe and easy. Non-exempt assets are converted to an exempt form.

For Example:

- Pay all debts, especially car and mortgage loans;
- Use cash to purchase a prepaid funeral (by irrevocable agreement);
- Make justifiable repairs or improvements to an exempt residence or upgrade to a new home; and
- Purchase needed durable medical supplies or equipment.

Transfer Planning

Transfer planning is difficult. Medicaid presently has a 60 month “look back” rule for transferred assets. Under this rule, improper transfers must be made five years in advance because transfers made during the “look back” period will now be subject to a penalty that negates any advantage. In fact, improper transfers can often make the problem worse (see example 2, below).

For Example:

1. On June 30, 2007, Mr. Sanders gave his son $200,000 and filed the required gift tax return (no tax was due). On July 1, 2010 Mr. Sanders enters a nursing home. 36 months will have elapsed since Mr. Sanders made the gift. If Mr. Sanders uses his own income and Mr. Sanders’ son uses a part of the $200,000 to pay Mr. Sanders’ nursing home bill privately for the next 24 months, the 60 month “look back” period will

lapse. Mr. Sanders will be Medicaid eligible in July, 2012 (if he meets all other eligibility requirements and has no other remaining assets). Assuming that Mr. Sanders' nursing home care costs $6,500 per month and that Mr. Sanders pays $2,000 from his own income, $108,000 of principal will have to be spent on his care and $92,000.00 will have been saved. However, making gifts can be a dangerous proposition. Mr. Sanders' son may die, divorce, go bankrupt, get involved in litigation, or misuse the money. There also can be significant tax consequences to making large gifts, particularly with highly appreciated assets. Note that in this example, it is imperative that Mr. Sanders wait until the 60 month "look back" has expired before applying for Medicaid.

2. Mr. Chang is 76 years old and is single. He was institutionalized on June 1, 2019 and will not ever be able to return to the community. He has $150,000 in countable resources on the day he enters the nursing home. Later that month, he transfers $75,000 to his son and files the appropriate gift tax return (no tax was due). Because this is an improper transfer, Mr. Chang will be deemed ineligible for Medicaid benefits for a period of 10.86 months ($75,000 / 6,905[1] = 10.86 months).

Mr. Chang still has $75,000 remaining and he has monthly income of $1,500 per month. His nursing home bill is $9,000 per month. Based on these numbers, his remaining resources will last for about 10 months. Under the new penalty rule, the 10.86 month period of ineligibility will "kick in" at that point and run until about February 2021. Mr. Chang's money AND the money he gave his son may not last that long. The money may all run out before the penalty has expired and Mr. Chang will be stuck — maybe evicted.

Years ago, many attorneys used irrevocable trusts in transfer planning to limit some of the risks. Some planners use trusts set up by the Medicaid applicant or his or her spouse with severe restrictions. Other planners use third parties to set up the trust which allows more flexibility. WATCH OUT — assets placed in such trusts are subject to new transfer and trust rules, revised as recently as January, 2007. These trusts are used less often.

1) The Ohio penalty divisor was $4,806 in 2006, $5,247 in 2007 and 2008 and $6,023 in 2009, 2010 and 2011, and $6,114 in 2012 and 2013, and $6,327 in 2014 and 2015, and increased to $6570 in 2016, 2017 and 2018, and increased again in 2019 to $6,905. See *Transfer Penalties* on page 28.

As this book goes to press, there are new strategies being developed in this ever changing area. Be sure to meet with a qualified Medicaid attorney to check your options.

Converting Assets Into Income

Converting assets into income can create significant advantages for an "at home" spouse. This issue comes into play with:

- selecting pension payout option
- purchase of annuities
- promissory notes (loans to others)
- installment sales

This is extremely important for community based spouses with employer sponsored and self directed retirement accounts (IRAs, 401(k)s, profit sharing plans and "qualified" deferred annuities). In Ohio, these accounts will be counted as available resources unless they are converted to some type of irrevocable payout program like an annuity in "pay out" status (also known as "immediate annuity"). Furthermore, any deferred annuity outside of a retirement account purchased for non-Medicaid purposes can safely be converted to "pay out" status to the applicant's spouse if:

1. the ownership of the annuity is first transferred to the "at home" spouse;
2. the annuity must be irrevocable;
3. the annuity cannot be transferable;
4. the monthly payout amount does not vary;
5. The payout formula may not be calculated to exceed the life expectancy of the "at home" spouse on the IRS table of expectancies;
6. there is no deferral of the payout;
7. there is no lump sum payment, balloon payment or death benefit; and
8. the state of Ohio is listed as the beneficiary of any payments remaining after death of the applicant and the spouse.

The use of annuities is now under great scrutiny. Do not attempt this technique without assistance from an experienced Ohio Medicaid planner.

Promissory notes (loans) and installment sales such as land contracts were popular Medicaid Planning techniques years ago. Notes and installment sales effectively converted assets into income for Medicaid purposes. However, the regulations were changed in Ohio and most installment sale contracts are now treated as a resource (not as income) and are valued at the amount of the outstanding balance - unless you can provide a knowledgeable valuation to the contrary or prove that the contract is unmarketable. This could be disastrous. Furthermore, if a note or contract has been drafted so that it cannot be sold or assigned, the balance will be treated as an improper transfer.

Life Estates

A person can create a life estate by transferring an asset (usually real estate) to another person while reserving the right to use the property for the rest of his or her life. When the person holding the life estate dies, the asset becomes the sole property of the “remainderman”. This type of transfer has clear tax advantages because the remainderman’s cost basis in the property is the market value of the property when the life estate holder dies. In addition, the property avoids probate administration. However, the entire value of the property is subject to estate taxes.

The technique has appeal for those who want to transfer their property yet seek a strong assurance that they will always have a place to live. However, for Medicaid purposes, this technique has only limited value. The value of the “right to live in the property” will be an available resource unless occupied by a spouse or other exempt relative. It is valued based on the age of the owner. In addition, the value of the interest transferred to the remainderman is subject to a transfer penalty. The property is also subject to estate taxes. This formerly unpopular technique is only gaining in popularity now because many of the more effective tools are being eliminated. Note that Life Estates were exempt in Kentucky until 2008.

Care Contracts

One way to "legally" transfer assets from one person to another is to pay for care. For example, a parent may pay one or more of his/her children for care services like housekeeping, medical supervision, care management, financial management, etc. An agreement like this must be in writing. The fee paid must be comparable to what any third party would charge for similar services. Be sure to be very reasonable and avoid paying for services that are duplicated by others. Any fee paid to the care provider is taxable income to the recipient and must be reported to the IRS on his/her annual income tax return.

Usually, care contracts call for payment in cash on a periodic basis. However, a care contract may also call for payment in something other than cash. In addition, payment can be deferred until cash is available – like after the house or business is sold. Deferred care contracts can be secured with collateral, like a mortgage on a home. In some States, Care Contracts can also be "pre-paid," but these are highly disfavored in Ohio. In Kentucky, a pre-paid care contract must provide for a refund of any "unearned" portion of the payment.

Watch out. Care contracts are under increasing scrutiny by Medicaid.

Occupancy Agreements

When a disabled adult lives with a care provider, the disabled adult can agree to pay rent and/or occupancy costs. Rent is taxable as income to the care provider. However, payments made to fairly reimburse the care provider for actual occupancy expenses are not taxable income. For example, when an elder parent lives with his/her daughter and son-in-law, he can pay one-third of all occupancy costs in the home without incurring a transfer penalty. This would include utilities, taxes, insurance, yard care, food, household consumables, etc. Some occupancy agreements include a stipend for wear and tear on fixtures and durable appliances (washer, dryer, water heater, furnace, etc.) And, don't forget transportation costs.

Medicaid Planning and Living Trusts

In the early 1990s, irrevocable Living Trusts were used frequently to shelter the assets of an institutionalized individual. However, once placed in such a trust, assets were not "available" for Medicaid purposes. Assets transferred to the trust were subject to the transfer penalty.

Recent changes in the Medicaid trust rules have almost eliminated the use of these kinds of trusts. However, Living Trusts are still valuable tools in many other ways.

For example, a community based spouse is entitled to keep all of the exempt assets and the assets making up the Community Spousal Resource Allowance (CSRA). Since this often includes a home, the value of these assets can be substantial. What happens if the community based spouse dies while his or her husband or wife is still in the nursing home?

One way to "legally" transfer assets from one person to another is to pay for care.

If the couple has not updated their estate plan, generally the assets of the community based spouse pass directly to the institutionalized spouse. This destroys the institutionalized spouse's Medicaid eligibility. Furthermore, the institutionalized spouse is often incapable of managing the assets.

Many spouses simply sign a new Will to "disinherit" the disabled individual. Although helpful, this is an imperfect solution. The Medicaid rules require the institutionalized spouse to demand the statutory "forced share" from the community based spouse's estate (which is then paid to the institutionalized spouse despite the language of the Will). In addition, the institutionalized spouse has dower rights (worth one-third of the market value) in any real estate owned by the spouse (including the residence).

All of these problems can be avoided by placing the exempt assets (excluding the house) and the CSRA assets into a revocable Living Trust. Since the trust is revocable, these assets are still available to the community based spouse. They will not be protected if the community based spouse is institutionalized. However, if the community based spouse predeceases the institutionalized spouse, the assets in the trust are not subject to the claims and complications mentioned above. You can get this same result by using other non-probate

vehicles like POD/TOD accounts and by updating the beneficiary designators on life insurance annuities and retirement accounts.

Serious Medicaid issues also arise where parents or other family members want to leave bequests to a Medicaid recipient or candidate. Receiving a bequest will destroy the beneficiary's Medicaid eligibility. Living Trusts can be used to avoid this.

This can arise in a number of different ways. One example is the parent or other family member who wishes to leave money to a person with a total disability. There are four different kinds of trusts (collectively known as "special needs trusts" or "safe harbor trusts") that can be used in this situation: The Discretionary Trust, the Medicaid Payback Trust, the Supplemental Services Trust and the Pooled Trust. The Discretionary and Supplemental Services Trusts are set up by a third party and funded with third party assets. The Discretionary Trust often (but not always) starts out as a revocable Living Trust. However, upon the death of the Grantor, the Trust becomes irrevocable. The Supplemental Services Trust can be either a Living Trust or a testamentary trust established at the death of the Grantor through his or her will. The Medicaid Payback Trust is usually an irrevocable living trust.

Discretionary Trusts have been the center of debate for decades. Medicaid has attacked these trusts on the grounds that if the trustee has discretion to make distributions to the Medicaid applicant, the trust assets are "available". In the fall of 1996, this issue was addressed by the Ohio Supreme Court. Although the vote of the Judges was close, the Court found that the Trust in question was valid and that the Trust assets were not available to the Medicaid applicant. This decision was cited in a strong Court of Appeals decision in October, 2000. These Trusts were finally codified in 2006 with the passage of the Ohio Trust Code.

In contrast, the Supplemental Services Trust has been officially sanctioned by the Ohio legislature (not available in Kentucky). As long as the trust is structured in the manner required by Ohio law, the trust assets will remain unavailable to the Medicaid recipient. However, this "official sanction" does not come without a cost. At the death of the beneficiary, the Supplemental

Services Trust must pay back to the State the value of the Medicaid benefits received, up to 50% of the remaining trust assets. Any assets remaining after that can go to the beneficiary of Grantor's choice. These Trusts must be funded with money from a "third party" (not money from the applicant). Supplemental Services Trusts are only available for those who are eligible for benefits from the Ohio Department of Developmental Disabilities or Department of Mental Health. Distributions from a Supplemental Services Trust may only be used for supplemental (non-essential) services. There is a list of example services near the end of this Handbook.

The Medicaid Payback Trust is officially sanctioned by federal law and is available in all states. This is a Living Trust set up by the Medicaid recipient's parent, guardian or by court order and usually funded with the Medicaid recipient's own money. This money can be life savings, inheritance or damages awarded in a personal injury action. A parent or third party can put additional money into this kind of Trust if they so choose, but most planners steer away from that option. Assets placed in these trusts are not treated as "available resources" for Medicaid purposes - if the trust is properly drafted.

To qualify for official sanction, distributions from a Medicaid Payback Trust must be limited to the beneficiary's "special needs". These needs are spelled out in the Ohio Administrative Code. Furthermore, the trust must contain a Medicaid payback provision. This means that when the beneficiary dies, the trust must pay to Medicaid all of Medicaid's expenses, up to 100% of the remaining balance of the trust. Money contributed to these trusts by "third parties" is not subject to the Medicaid payback requirement.

Another way to use Trusts is a simple trust designed to postpone inheritance until the beneficiary's situation is safe. I have seen several situations like this:

Mr. and Mrs. Ruize have been married for 40 years. Mr. Ruize contracts Alzheimer disease and sometime in the next three years he will begin a lengthy period of institutionalization.

The Ruize have combined available resources of $250,000. Under current Medicaid rules, these combined resources must be spent down to $126,420 before Mr. Ruize will be eligible for Medicaid.

Mrs. Ruize's mother is still alive. She has two children and an estate of $300,000. She wishes to divide her estate evenly between her children. However, if Mrs. Ruize receives $150,000 of inheritance from her mother before Mr. Ruize is institutionalized, her entire inheritance will be exposed to the "spend down" process. This is because Mrs. Ruize's Spousal Resource Allowance is already at the maximum. Any increase in their combined net worth only increases the amount that has to be spent - not the amount that Mrs. Ruize can keep.

This entire problem can be avoided by using a simple revocable Living Trust. Mrs. Ruize's mother places all of her assets in a revocable Living Trust of her own creation. The trust says that Mrs. Ruizes mother will have full access to her own money for the balance of her life. She can even serve as her own Trustee to maintain complete control. However, when Mrs. Ruize's mother dies, the Trust assets are divided in half. One half goes to Mrs. Ruizes sibling immediately. However, Mrs. Ruize's share of the trust stays in the trust until after Mr. Ruize is institutionalized and qualified for Medicaid. At that point, it is safe for Mrs. Ruize to receive her inheritance — it will not affect Mr. Ruize's Medicaid eligibility. This Trust must be drafted very carefully to avoid problems during any time that Mr. Ruize might outlive his mother-in-law.

See the Chapter 4 of this book for additional information on planning for the disabled.

Medicaid planning is an area where significant amounts of money can be saved. It is best done early, but important issues can be addressed even after the patient is institutionalized. But it is very tricky. BE CERTAIN THAT YOU GET ADVICE FROM A PERSON WHO IS BOTH QUALIFIED AND EXPERIENCED.

3. WHAT HAPPENS TO MY PROPERTY WHEN I DIE?

In Ohio and Kentucky, everything that a person owns at his or her death is classified as either a probate or a non-probate asset. These two types of assets are treated differently.

PROBATE ASSETS

Probate assets are assets owned exclusively by the person at the time of his or her death with no named beneficiary or assets owned as "tenants in common" with another person. In cases of assets owned as "tenants in common," the deceased person's fractional share is included as a probate asset.

Everything that a person owns at this or her death is classified as either Probate or Non-Probate assets.

Probate assets are subject to Probate Court administration and are handled by a personal representative appointed by the Probate Court. The Probate estate is administered in the county of the decedent's last residence.

When a person dies with a Will, the probate assets generally pass to the persons designated in his or her Will. HOWEVER, a surviving spouse has the right to take either the amount left under the Will or a statutory "forced" share of the Probate assets.

If a person dies without a Will, the probate assets pass to his or her heirs as determined by state law. Generally, this state law provides that intestate assets pass to a spouse and/or children, and their lineal descendants (i.e. grandchildren, etc). If there is no spouse or lineal descendant, then the assets pass to the decedent's parents or to the surviving parents. If the parents have predeceased the decedent, then the property passes to the brothers and sisters and their lineal descendants, regardless of whether the siblings are of whole or half blood.

It is better to execute a Will to direct the distribution of assets. However, it is often even wiser to avoid Probate all together. This can be done by using non-probate ownership.

Probate Court Administration

The basic function of Probate procedure is to:

- Appoint the Executor or Administrator;
- Inventory and value the Probate assets;
- Identify and pay the debts and taxes of the decedent, including Medicaid Estate Recovery;
- Use the assets of the estate to pay the costs of administration and all debts;
- Identify the decedent's heirs;
- Distribute the remaining balance of the estate to the heirs in the proper proportions; and
- File an accounting showing the payments and distributions.

In Ohio, there are two procedures for administering Probate assets. The first is an abbreviated procedure known as Relief from Administration. It is used for estates with total Probate assets of $35,000 or less (where the estate passes to a surviving spouse, this maximum has been raised to $100,000). This procedure is shorter and less expensive than a full administration.

Non-probate assets are NOT governed by the Will or the state law governing descent.

The second procedure is a full administration. This procedure is used for estates in excess of $35,000. However, there are situations where a full administration may be appropriate for estates of less than $35,000.

A full administration involves the appointment of a fiduciary (usually called the Executor or Administrator). There are detailed timetables and legal requirements for each step of the administration procedure. A FULL ADMINISTRATION WILL USUALLY TAKE SIX TO TEN MONTHS TO COMPLETE, and settling estate taxes and any disputed claims will add several months to this process.

NON-PROBATE ASSETS

Non-probate assets pass directly to another person upon the death of the decedent. They are NOT governed by the Will or the state law governing descent. They are also not subject to the surviving spouse's statutory "forced" share or to Probate Court administration.

Non-probate assets fall into several categories including:

1. Assets held in a Living Trust. These assets pass to the beneficiaries named in the Trust document.
2. Joint and survivorship assets. Examples include savings and checking accounts owned in the name of the decedent OR another person (the signature card on file at the bank must confirm that it is survivorship). Also, real estate, stocks and bonds owned by the decedent with another person(s) in the form of "joint with the right of survivorship" or similar language are non-probate.
3. Assets with a named beneficiary such as life insurance policies, annuities, I.R.A., KEOGH, 401(k), profit sharing and pension accounts.
4. Savings accounts, checking accounts, certificates of deposit, brokerage accounts, securities or savings bonds in the name of the decedent which are designated "Payable on Death" (P.O.D.) or "Transfer on Death" (T.O.D.) to a named beneficiary. This takes a special signature card at the financial institution.

INVENTORY:

Probate Assets	Non-Probate Assets
ASSETS IN DECEASED'S NAME ONLY	TRUST
ASSETS IN DECEASED'S NAME AS "TENANTS IN COMMON"	JOINT WITH RIGHT OF SURVIVORSHIP (JTWROS)
	ASSETS W/PREVIOUSLY DESIGNATED BENEFICIARY
	PAYABLE ON DEATH (P.O.D.)
	TRANSFER ON DEATH (T.O.D.)

All but two states, (Texas and Louisiana) allow a beneficiary designation on stock and brokerage accounts called "Transfer on Death" accounts (T.O.D.).

In Ohio, bank accounts, real estate and licensed vehicles may now pass by a Transfer On Death (T.O.D.)[11] designation, as well . For bank accounts, see the head teller at your bank. For real estate, a T.O.D. affidavit is filed with the county. For licensed vehicles, the designation is put on the title at the BMV.

The use of Non-probate assets is often recommended because they are easy and quick to transfer upon death. But you must BE CAREFUL because the careless use of Non-probate assets can destroy a carefully constructed estate plan.

For Example:

Mrs. Smith has 2 children, Susan and Jane. Mrs. Smith's Will divides her estate equally between her children upon her death. Mrs. Smith's assets consist of a $100,000 stock account held by Mrs. Smith, Joint With Right of Survivorship with Susan and a $5,000 checking account held only in the name of Mrs. Smith. At Mrs. Smith's death, Susan would be entitled to the ENTIRE $100,000 in the stock account since it is not a Probate asset and DOES NOT pass under her Will. Sue and Jane would divide the remaining balance in the savings account

11) Not available in Kentucky for cars, real estate or bank accounts.

after the payment of the costs of administering Mrs. Smith's estate and after payment of her debts.

Also, there are circumstances when other considerations make Non-probate assets inadvisable. For example, if a person must enter a nursing home, jointly held assets can present complications in qualifying for Medicaid benefits.

"You just can't talk to that bunch. They all avoided probate"

In summary, it is important to carefully review the manner in which all assets are titled to be certain that your estate will be distributed in the manner that you intend. There are also important tax and Medicaid considerations to be taken into account. Periodically check your Will to see if it needs to be updated. Organize your assets so they are easy to trace and account for. Be certain that those around you know where things can be found and what your wishes are.

TRUSTS TO AVOID PROBATE

In recent decades, there has been a growing interest in saving money by minimizing or avoiding probate. While all of the non-probate assets listed above work well, trusts, especially "Living Trusts," are preferred for sophistication and flexibility. Trusts are endorsed by consumer advocates such as AARP and Consumer Reports.

A Living Trust is a revocable or irrevocable trust established during one's life. Assets transferred to a trust before death will avoid probate (assets not placed in the trust prior to death do not enjoy this benefit unless you use one of the other probate avoidance tools discussed on pages 42 and 43). The control and final disposition of the assets are spelled out in the trust document. Although these assets are usually still taxable, there is no executor's fee at death and the attorney fees for settling the estate are substantially lower. This can reduce the total administrative expenses by up to 50%.

There are many other uses for trusts and, therefore, many different kinds of trusts are available. In addition to avoiding guardianship and probate, trusts are used to:

- Set up education funds;
- Preserve money for grandchildren;
- Protect assets from a loved one with poor judgment or in unusual circumstances;
- Reduce estate taxes;
- Supplement someone's income without leaving them a lump sum;
- Make charitable gifts;
- Protection from creditors;
- Maintain eligibility for Medicaid or other benefits;
- Avoid Medicaid Estate Recovery; and
- Establish Discretionary Special Needs Trust for children or other heirs.

There are a couple of disadvantages. Living trusts are substantially more expensive to draft than a Will. In addition, placing assets into a Trust is a slight nuisance. However, the advantages far outweigh the disadvantages.

Nonetheless, trusts and other non-probate planning tools are extremely effective. Steer away from preprinted forms (and software) and "one size fits all" documents, and consult an experienced estate lawyer for the best results.

ESTATE TAXES

Both probate and non-probate assets are included in the taxable estate for federal estate purposes. (Ohio repealed its state estate taxes for deaths after January 1, 2013.)

Plan a source of cash to pay taxes when they become due.

The tax code recognizes many well-established techniques for reducing estate taxes, such as:

- Credit Shelter Trusts;
- Irrevocable Trusts;
- Family Gifts;
- Charitable Gifts (during life or at death)
- Grantor Retained Annuity Trusts ("GRAT's"); and
- Life Insurance Trusts ("ILIT's")

In addition to reducing taxes, it is important to plan for a source of cash to pay taxes when they become due. With very few exceptions, estate taxes are due nine months from the date of death. If the executor does not have enough cash, he or she may be forced to sell assets imprudently. This can be tragic if the asset is a family business or must be sold in an unfavorable market. Common techniques to raise cash to pay taxes include:

- Investment planning;
- Annuities;
- Life Insurance; and
- Buy-Sell Agreements.

GIFTS TO SAVE ESTATE AND INCOME TAXES

During the last ten years, Congress has made it easier to save taxes by permitting the passage of greater amounts of wealth from one generation to the next. One of the simplest means of saving estate taxes is to give money away while you are still alive. No reporting is required for gifts up to $15,000 per person per year. Thus, a husband and wife can join together and give up to $30,000 annually to each donee. This way, a couple having two married children and four grandchildren could give away as much as $180,000 per year (more if in-laws are included) without filing a gift tax return. Gifts in excess of this annual “allowance,” however, must be reported to the IRS and will reduce the estate tax Unified Credit discussed below.

One of the principal objections that parents and grandparents have to making substantial annual gifts is that they lose control over the funds. Parents and grandparents are often willing to see children and grandchildren receive the annual earnings from the principal, but are unwilling to put the principal sum at the disposal of their children and grandchildren at an early age. Through a trust, it is possible to make annual gifts yet maintain control over the use of the money.

TRUSTS TO REDUCE ESTATE TAXES

Although increased estate tax credits have drastically reduced the number of estates that are subject to Federal Estate tax, those estates that do exceed the available credit pay a substantial tax on the first taxable dollar. For example, a single individual who dies in 2019 would pay no federal estate tax on the first $11,400,000 of assets. The top estate tax bracket is 40%.

The Smiths, John and Mary, each age 60, have worked hard to accumulate a net worth of $14,000,000. Each owns about one-half of their combined assets ($7,000,000). They wish to leave their estates to each other and upon the death of the survivor, they want their assets to be divided between their children. They write simple Wills doing just that, each leaving his and her estate outright to the other.

Estates that exceed the available Federal credit pay a substantial tax on the first taxible dollar.

Mary then dies in 2019 and John inherits her assets; John subsequently dies in 2020. Before the Tax Reform Act of 2010, the IRS and the State of Ohio would have claimed hundreds of thousands of dollars from John's estate. But no longer. Ohio repealed its estate tax completely in 2013, And in 2018 the federal estate tax credit was increased to $11,180,000 (adjusted to $11,580,000 in 2020 for inflation). Furthermore, under the new rules, John can use his own estate tax credit ($11.4 million) and $3 million of his wife's unused estate tax credit to avoid the federal estate tax altogether.

Note that there is still no limit on the amount of money you can leave to your surviving spouse.

Prior to the Tax Reform Act of 2010, Estate planners used the Marital Deduction Trust (also known as Credit Shelter Trusts, Unified Credit Trusts and A/B Trusts), to preserve the full unified estate tax credit of both spouses.

Here is how the typical Marital Deduction Trust worked: at death, Mary left part of her estate, say $2,500,000, in trust for the children. Since this amount is less than the $3,500,000 exemption in 2009, no taxes were due when she died. John received the income from the Mary's trust during his lifetime. The

balance, $500,000, was given to John or left in the same trust, without much restriction. When John died in 2010 his taxable estate was made up of his original $3,000,000 plus the $500,000 he received from Mary. His taxable estate was $3,500,000 and escaped Federal Estate tax. The $2,500,000 which passed to the trust without taxes at Mary's death was not included in John's taxable estate, even though he received the income from the trust for his lifetime. Thus, the entire $6,000,000 avoided taxation.

The Tax Reform Act of 2010 also introduced the concept of "portability." Portability means that, with proper paperwork, any estate tax credit unused at the first death can be claimed by a surviving spouse. This eliminates the need to use a Marital Deduction Trust to preserve the unified credit of the first spouse to die. If you have a Marital Deduction Trust there is no need to panic. Most Marital Deduction Trusts will cause no harm. And, there are many non-tax reasons to use a Trust of that kind. However, it would be wise to meet with your estate planner to review your options under the new law.

Finally, it is important to note that Congress raised the maximum rate to 40% and these new rules expire in 2025. The amount of the unified credit is now adjusted annually for inflation.

JOINT TRUSTS

As the Federal Tax Credit grows, fewer and fewer estates are subject to Federal Estate Taxes. Therefore, joint trusts have risen in popularity. Joint trusts are designed both to avoid probate and to preserve assets of the first spouse to die. This can be particularly valuable for "blended" families (second marriages).

The concept of a joint trust borrows heavily from the structure of the Marital Deduction Trust described above. But, you start with one Trust for both spouses. At the death of the first spouse, a portion is set aside in a separate fund for the long term benefit of the children. Until the death of the second spouse, this "set aside" for the benefit of the children is used to support the surviving spouse.

Assets placed in a joint trust prior to death will also avoid probate administration. This saves a substantial amount of time and money for the beneficiary. The savings can exceed $20,000 in "middle sized" estates. The savings are even higher in cases where people own real estate outside the state of Ohio.

Joint trusts have risen in popularity for "middle sized" estates. Joint trusts are designed both to avoid probate.

If you wish to determine your gross taxable estate, fill in the form at the end of this chapter. Be sure to include in your computations the fair market value of:

- Savings and checking accounts, certificates of deposit;
- Stocks, bonds, debts due you;
- Life insurance;
- Collectibles, including art, numismatic collections, etc.;
- Pension and retirement funds;
- Your home and other real estate; and
- Interests in business.

TRUSTS FOR OTHER PURPOSES

There are other estate planning techniques effective in dealing with larger estates (in excess of 2 x the Unified Credit). These include:

Generation Skipping

A Generation Skipping Trust is poorly named because most Generation Skipping Trusts don't really "skip" the children. Usually, the Trust pays income to the children for their lives and only distributes the principal to the grandchildren and beyond after the death of the children. The effect is to "skip" the taxes that would otherwise be paid upon each subsequent generation's death. That can save a lot of tax. This is used when the children already have large Estates and leaving them additional money will compound their tax problems. It is also used for children who are irresponsible or disabled.

Life Insurance Trusts

For federal estate tax purposes, life insurance owned by the deceased is included in his or her taxable Estate regardless of who the proceeds are paid to. However, life insurance policies may be owned by someone other than the deceased. For example, an adult child may buy a life insurance policy payable on his or her parent's death. When the parent dies, the proceeds payable to the children are not included in the parent's taxable Estate.

A Generation Skipping Trust is set up to "skip" the taxes that would otherwise be paid upon your children's death.

More often, policies like these are put into irrevocable Trusts set up by the parent. The parent contributes money into the Trust annually to pay the life insurance premium.

In order for this to work, the annual contribution must qualify for the annual gift tax exclusion ($15,000.00 per person per year). To meet these requirements, insurance Trusts generally will have a restricted right of withdraw nicknamed "Crummey rights". Each time that a contribution to the Trust is made, the beneficiaries of the Trust have 30 days within which they may withdraw that year's contribution. If they do not withdraw the contribution, the money becomes Trust property and is used to pay the

insurance premium. This process is generally viewed as a formality and not expected to be withdrawn.

When the parent dies, the life insurance policy pays a death benefit to the children or the Trust. The money is then used to pay Estate taxes or to supplant the cash used to pay taxes on other assets. This is especially valuable to someone with a large family business, farm, or vacation property that will generate a large tax. This also helps when a high percentage of the estate is in retirement accounts which will trigger income tax if invaded to pay estate taxes. The life insurance policy will create enough cash so that the family can pay the tax without selling other assets or withdrawing money from retirement accounts.

Grantor Retained Annuity Trusts

A Grantor Retained Annuity Trust (GRAT) is an irrevocable Living Trust, and is viewed as a significant estate “freezing” technique. The Trust is immediately funded with substantial assets, and often with assests expected to appreciate substantially. The creator of the Trust retains the right to receive a pre-set percentage of Trust assets for a specified period, usually 5 years or longer. Then the Trust assets become the property of the beneficiaries. The assets placed in the Trust are still subject to Federal Gift and Estate tax rules but they are valued as of the date the Trust is funded, not at their appreciated value.

For example, let’s say you put $1,000,000 worth of stock into a GRAT in 2015. In the year 2020 the stock is worth $3,000,000 (despite withdrawals). The Grantor of the Trust will report the gift as a taxable gift of $1,000,000. However, the beneficiaries receive three times that amount. The appreciation in the value of the asset is excluded from the Grantor’s taxable Estate.

Personal Residence Trusts

This Trust is very similar to a GRAT but is used specifically for primary and secondary residences. The property is placed into an irrevocable Living Trust. The Grantor retains the right to live in the property for a specified time. At

the end of that time, the property becomes the asset of the beneficiaries. For tax purposes, any appreciation in the property during the life of the Trust is excluded from the Grantor's taxable Estate.

Charitable Remainder Trusts

Charitable Remainder Trusts are also irrevocable Living Trusts. The Grantor retains the right to receive income from the Trust for the rest of his or her life.

At his or her death, the money remaining in the Trust goes to a specific charity. Because the Trust is irrevocable, the charitable donation is "locked in" when the assets are placed in the Trust. Therefore, the Grantor is immediately able to take a charitable deduction on his or her income tax return (based on a "present value" formula). These tax deductions can have very significant value.

In addition, once an asset has been placed in the Trust, it may be sold and reinvested free of capital gains tax consequences, therefore it is particularly effective to fund these Trusts with highly appreciated assets.

The real value of this device is best obtained if the tax savings from the charitable deductions are used to purchase a life insurance policy (owned by someone other than the parent). This replaces the money given to the charity. These types of Trusts should only be used where there is an underlying charitable interest.

SIMPLE TAXABLE ESTATE CHECKLIST

VALUE:	ASSETS:
________________	YOUR HOME (CURRENT MARKET VALUE)
________________	OTHER REAL ESTATE
________________	BANK ACCOUNTS (CHECKING AND SAVING)
________________	OTHER CASH ACCOUNTS (MONEY MARKET FUNDS, SAVINGS BONDS, BROKERAGE CASH ACCOUNTS, ETC.)
________________	STOCKS, BONDS, AND MUTUAL FUNDS (INCLUDING STOCK OPTIONS)
________________	LIFE INSURANCE (FACE VALUE)
________________	BUSINESS INTERESTS
________________	RETIREMENT PLAN ACCOUNTS:
________________	IRA
________________	KEOGH
________________	SEP
________________	OTHER (SUCH AS 401(K) OR PROFIT-SHARING)
________________	PERSONAL PROPERTY
________________	(REPLACEMENT VALUE OF JEWELRY, AUTOS, HOUSEHOLD FURNISHINGS, ETC.)
________________	ANNUITIES, TRUSTS, OR OTHER ASSETS
________________	COLLECTIBLES
________________	(MARKET VALUE OF FINE ART, PRECIOUS METALS, ETC.)
________________	ACCOUNTS RECEIVABLE
________________	(LOANS OWED TO YOU, INSTALLMENT SALES, ETC….)
________________	**TOTAL ASSETS**

LIABILITIES:

________________	MORTGAGES
________________	LIFE INSURANCE LOANS
________________	OTHER LOANS OR DEBTS
________________	**TOTAL LIABILITIES**

SUBTRACT LIABILITIES FROM ASSETS

________________	**GROSS TAXABLE ESTATE**

4. PLANNING FOR THE DISABLED

When a disabled parent, spouse or other family member needs medical assistance at home or in an institution, qualifying for government benefits becomes a major planning consideration. The Medicaid issues are discussed in the previous chapter. This chapter will discuss how these benefits affect the estate planning of the rest of the family. After all, once a disabled individual qualifies for Medicaid benefits, a small or even moderately sized inheritance can destroy the "best laid" plans.

Once a disabled individual qualifies for Medicaid benefits, a small or even moderately sized inheritance can destroy the "best laid" plans.

If a Medicaid nursing home resident receives an unrestricted inheritance, he or she will lose his or her benefits. There are other situations that are more subtle and much more important. For example, there are many individuals with birth defects, severe mental illness, brain damage and debilitating diseases such as cerebral palsy, multiple sclerosis, Huntington disease, etc. These individuals often are able to live in the community because of a combination of "needs based" benefits from several different programs such as Supplemental Security Income, Ohio Department of Developmental Disabilities, Ohio Department of Mental Health, Medicare, Medicaid and numerous private foundations. The cost of care can be extremely expensive. Even a moderately sized inheritance is not enough to replace the benefits that such an individual could lose.

Perhaps this is best explained with an example:

In 1997, Melissa was 16 years old. One day, the phone rang. It was the hospital emergency room in her grandmother's hometown. Her grandmother had been found unconscious in her home.

Melissa and her mother immediately got in the car and drove four hours to the hospital. They met with the doctors, but there was still no news. They decided to spend that night in Grandma's house and return in the morning.

In the middle of the night, the results of Grandma's blood tests came back from the lab. She was suffering from carbon monoxide poisoning - probably from a faulty furnace in her home. The police were immediately dispatched to

the house where Melissa and her mother were found unconscious.

Over the next few days, Melissa's Grandmother and mother both died. Melissa slipped into a coma. Melissa's coma lasted for three years. During that time, the furnace company had settled her law suit for $400,000. Her father had placed the money in a guardianship for her and had dedicated his own time and resources to her care.

Nineteen years later, Melissa still cannot care for herself. She lives in a house next door to her father and receives 24 hour care. The care is paid for by a combination of benefits from DODD, Medicaid, social security disability, her father and a private foundation in upstate New York. This permits her father to use her guardianship funds for "supplemental services" that define Melissa's quality of life. This includes the costs of her attending two local church clubs, cable television, household furnishings and the cost of her best friend — a three year old golden retriever.

Financially, Melissa is "holding her own". However, this is entirely due to her father.

Melissa's father is now over 70 years old. Should he die or become disabled, Melissa's "network" will surely fall apart. Any inheritance she receives from her father will destroy her eligibility for half of the programs she now participates in. She will probably be institutionalized. At that point, her guardianship money and her inheritance from her father will be exhausted in less than 10 years. At that point, she will probably re-qualify for the Medicaid program. This will cover the cost of her room and board in a nursing home - nothing else. She will no longer have the money to participate in any clubs, churches or community functions, to go on outings or to pay for a pet. While losing her money is meaningless to Melissa, losing her quality of life means losing everything.

Melissa's story is true (excluding the names and dates). The dilemma is the same whether the cause is birth defects, head trauma, cerebral palsy, multiple sclerosis, severe mental illness, etc.

PLANNING OPTIONS AVAILABLE TO FAMILIES IN THIS SITUATION

Traditional Approach

Often, families in this situation leave the disabled child's inheritance to a healthy sibling or other trusted family member. The disabled individual receives nothing. The sibling or trusted family member is relied upon to use all or a portion of the money to supplement the disabled person's resources.

In the right circumstances with the right people, this can work. Because the disabled individual has no legal right to any of the money, the government benefits are unaffected. However, there is no control or accountability. There is also the risk that the individual holding the money becomes disabled, dies, files bankruptcy or exercises poor judgment.

Medicaid Payback Trusts

These are Living Trusts that are established for a disabled person under age 65 by his or her spouse, parent, grandparent or by court order. These trusts must be funded with the disabled individual's own money. Money from a third party can be added, however, most planners prefer not to place assets from a third party in this type of trust. This money must be earmarked for non-essential services, only.

To qualify for "protected" status, this trust must state that upon the disabled individual's death, any assets remaining in the trust must be used to reimburse Medicaid for the value of the benefits it has paid for that individual up to 100% of the value of the benefits. This is why they are often called Medicaid Payback Trusts. Any money remaining after that can go to the beneficiary of Grantor's choice.

These types of trusts are often used to protect money from a personal injury action or an inheritance.

Supplemental Services Trusts

These are Ohio testamentary trusts or living trusts designed to supplement the support of Ohioans receiving benefits from the Ohio Department of Developmental Disabilities or the Department of Mental Health. This means that a family member or other interested party has signed a Will or a Living Trust leaving a portion of their estate to the disabled individual. However, the document specifies that the assets must be placed in a trust and used for non-essential services.

When properly drafted, assets in these trusts are not treated as "available resources" by Medicaid. Currently, these types of trusts may not be funded with more than $250,000[14].

In order to enjoy this "protected" status, the trust must provide that up to one half of the assets remaining at the death of the beneficiary are to be paid to the State of Ohio. The remaining portion can go to any beneficiary.

Supplemental Services Trusts are best in situations where the future need for Medicaid is certain. A list of examples of Supplemental Services is at the end of this chapter.

Pooled Trusts

These trusts work the same as Medicaid Payback Trusts but are managed by a non-profit association which "pools" the assets of several beneficiaries for common management. Trust distributions are also limited to "non-essential" services. This option is really designed for smaller amounts of money. Unlike Medicaid Payback Trusts, an account in a Pooled Trust may be opened by the disabled person, himself.

14 This "cap" is adjusted upward $2,000 annually.

Any amounts left in the disabled person's account at death must be left in the "pool" for others, paid to the state up to the value of Medicaid benefits paid or paid to charity.

Here are the websites and phone numbers of the three Pooled Trusts operating in Ohio. Each fund has a slightly different approach.

1. Community Fund Management Foundation, www.cfmf.org, 216.736.4540
2. The Disability Foundation, Inc., www.daytonfoundation.org, 937.222.0636
3. The McGivney Pooled Trust, www.mcgivneytrust.com, 813.530.7883

Discretionary Trusts

These trusts are revocable living trusts that are set up by a family member or "third party" and funded with his or her own money (not the money of the disabled individual). These trusts have been in use for decades. However, because of a few Ohio Supreme Court decisions in the 1960s, discretionary trusts became disfavored by many planners. In 1996, the Ohio Supreme Court heard a new case involving a discretionary trust. The Court ruled that the discretionary trust was valid and ordered the State of Ohio to reinstate Medicaid benefits without considering the assets in the trust. Since then, Ohio has codified the rules governing discretionary trusts in two different sections of the Ohio Revised Code. As a result, this devise is enjoying a real "come back".

A discretionary trust authorizes the trustee to make distributions to the beneficiary purely at the trustee's unrestricted judgement.

The discretionary trust derives its name from the discretion that is given to the trustee. These trusts authorize the trustee to make distributions to the beneficiary purely at the trustee's unrestricted judgment. The trust may not elaborate at all about what the trust money is to be used for. However, it is probably helpful to state that it is the Grantor's intention that the Trust distributions shall not be used to supplant any government benefits. The trust may not create any standard by which the trustee may exercise his or her

discretion. There can be no grounds by which the beneficiary may compel distributions from the trust. In fact, the trust language should not even make casual references to the quality of the beneficiary's life. It must be purely discretionary.

In addition, there are a number of techniques drafters use to "bolster" these types of trusts. These include:

1. A Poison Pill. This is a clause that states that if the trust is ever challenged or if the assets in the trust are ever deemed available for the purpose of determining a beneficiary's eligibility for any "needs based" government program, the trust will terminate.
2. Multiple Beneficiaries. The theory is that the more beneficiaries there are in a trust, the more difficult it is for the government to argue that the trust has an implied benefit for one person.
3. Trust "Stacking". This is where one trust is set up to distribute money to another Trust. For example, a discretionary trust may be set up so that all distributions are made to a Medicaid Payback Trust. For technical reasons, this means that the existence of the discretionary trust would not be disclosed to Medicaid at the time of the Medicaid application. The same thing applies for most other government benefits programs.

Discretionary Trusts work especially well in situations where the future need for government benefits is uncertain.

Penalty Free Transfers to Disabled Family Members

As discussed in the previous chapter, when a parent is institutionalized, there are strict limitations on what he or she may transfer free of a Medicaid penalty. However, there are certain transfers that are permissible. One of them is the transfer of any resource to or for the sole benefit of a spouse or disabled child.

This creates some real opportunities. If the disabled child is not receiving any "needs based" benefits, then a parent can make transfer(s) to the disabled child as a way of preserving assets. On the other hand, if the disabled person

is receiving "needs based" benefits, the parent can transfer assets into a Medicaid Payback Trust. In either case, there will be no Medicaid penalty to the parent for the transfer of the assets. To the contrary, the Medicaid eligibility of the parent can be substantially accelerated.

The planning techniques and opportunities described in this chapter can be combined in a variety of ways to achieve highly customized and highly effective outcomes.

Here are some examples:

Liz

Liz is an 81 year old widow who has lived in her own home alone for the last five years. Liz's home is worth $75,000 and she has $50,000 in the bank.

Liz suffers a stroke and is institutionalized. She may no longer live alone. She will need 24 hour care. With this care, she could return to her home. However, she does not have enough money to pay for the care without selling her home. It looks like a nursing home is her only choice.

Liz's 28 year old grandson, Chris, lives in Texas. He is a potter who works out of his home and makes his living by attending craft fairs on the weekends. He would be willing to move to Ohio and live with Liz. He can continue his work in the home on a reduced basis. His financial sacrifice will be substantial and, as with most artists, he has no money in the bank to see him through. However, there is one other important factor. Liz's son (Chris's father) is blind. He receives Social Security Disability (SSD - not SSI) and works part-time. He does not receive any benefits from a "needs based" government program. However, by definition, he is "disabled".

The solution: Liz transfers her home to her disabled son. This is a permitted transfer and there are no penalties assessed against anyone. Her son then transfers the house to Chris. Chris signs a written care agreement that says he will move back to Ohio and take care of his grandmother. He should be able to pursue his pottery work part-time and the family will relieve him on weekends. Liz will return home and live with her grandson. Chris "earns"

his own home - something he could probably never afford to do based on the meager earnings from his crafts. Should Liz's medical condition become so bad that Chris cannot take care of her, she can return to the nursing home free of any penalty. She will pay for her care with the cash she has in the bank. When that runs out, she can apply for Medicaid. Chris will keep the house.

Steve and Jennifer:

Steve and Jennifer are both in their 80s. Jennifer has had Alzheimer's disease for 7 years and has been in a nursing home for three years. Steve has Parkinson's disease and is currently living in the assisted living section of a retirement community.

Steve and Jennifer have one son Bailey. Bailey is 49 years old. He contracted cerebral palsy as a teenager and has been totally and permanently disabled ever since.

Steve and Jennifer own their own home and the home that Bailey lives in. Steve and Jennifer also have approximately $200,000 in securities and bank deposits.

Bailey lives rent free in the home owned by his parents. He receives Social Security Disability and Medicare. He also receives home based services and medical coverage through Medicaid. He cannot work. However, he spends money freely. He has always been irresponsible with money.

Steve and Jennifer are currently spending their life savings at the rate of $80,000 a year. At this pace, their bank deposits will be exhausted in about 2 1/2 years. Before that time comes, their home and the home that Bailey lives in will have to be sold. The proceeds will have to be used for their care. Only after all their assets are gone will they qualify for Medicaid benefits. Bailey will lose his rent free home and his quality of life will suffer substantially.

However, if Steve and Jennifer both die before their assets are exhausted, Bailey will inherit the home and possibly more. Any money he receives will immediately destroy his eligibility for "needs based" government benefits. Given his irresponsible nature, it is likely that he will waste the money and lose the home.

The solution: Steve and Jennifer transfer some of their assets into an Irrevocable Trust for the sole benefit of Bailey. They elect to transfer the house where Bailey lives and $100,000 in cash. They also elect to spend some money on Bailey's home to catch up on deferred maintenance and to improve some of the outdated facilities. Steve's sister will be the trustee. It will be up to her what the trust assets are used for. Bailey will have no legal access to the trust assets. In addition, properly drafted, the assets in the trust will not affect Bailey's Medicaid.

Melissa:

Melissa's story was told at the beginning of the chapter. The solution to her situation involves combining several of the "tools" discussed.

The process starts with an application to the Probate Court. Melissa's guardian (her father) requests permission from the court to take all of the assets in her guardianship and place them in a Medicaid Payback Trust. Permission is granted and the trust is set up. The guardianship assets are transferred to the trust and the guardianship is closed out.

Next, Melissa's father executes a discretionary trust. The discretionary trust states that the assets are to be used for the father's care for the balance of his life. At his death, the trustee has discretion to make distributions to Melissa's Medicaid Payback Trust or to Melissa's brother, as the trustee may elect. The trust goes on to state that there shall be no requirement that any distributions be made and that none of the beneficiaries have the right to compel any such distributions. The trust also includes a poison pill.

When Melissa's father dies, it is likely that she will not manage long on her own. If she is institutionalized, the assets in her Medicaid Payback Trust and in her father's discretionary trust will not be counted in determining her available resources. She will be able to go on Medicaid right away. His Medicaid Payback Trust can then be used to cover any supplemental services she may need - items to improve her quality of life. Her father's discretionary trust gives the trustee the authority to replenish any distributions made from

the Medicaid Payback Trust. This trust becomes the “fall back” resource. Furthermore, since Melissa herself is not a beneficiary of the discretionary trust, its existence does not need to be disclosed to any of the government agencies.

Since Melissa’s father is still 70, it is quite likely that he will live for another 10 years. Properly invested, the assets in Melissa’s Medicaid Payback Trust will grow during that time. It is also likely that the assets in her father’s discretionary trust will grow substantially after his death. In essence, this means that there will likely be enough money in the Medicaid Payback Trust to fully reimburse Medicaid at Melissa’s death. In the final analysis, Melissa’s quality of life is maintained to the best degree possible. Medicaid will be reimbursed for all of its expenses when Melissa dies, and Melissa’s brother will receive the remaining balance of his father’s discretionary trust and the remaining balance of the Medicaid Payback Trust, if any. Everyone wins.

A chart of key characteristics of the four major trust options follows on the next page.

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Special Needs Trusts Comparison Chart ©

	THIRD PARTY TRUSTS		STABLE ACCOUNTS	SELF SETTLED TRUSTS	
	DISCRETIONARY TRUSTS	SUPPLEMENTAL SERVICES TRUSTS		MEDICAID PAYBACK TRUSTS	POOLED TRUSTS
FLEXIBILITY MAKING DISTRIBUTIONS	- MAXIMUM - Good where future need for medicaid is uncertain.	- MINIMUM - Non-essential services only. Best where future need for Medicaid is certain.	- MEDIUM -	- MEDIUM -	- MINIMUM - Non-essential services only. All distributions controlled by non-profit manager.
ELIGIBLE BENEFICIARIES	Unlimited.	Ohio DODD and DMH recipients only.	Persons disabled before age 26.	Under age 65.	Unlimited.
AMOUNT OF PRINCIPAL	Unlimited.	Limited to $250,000 (2020).	$15,000/year or $100,000 total to remain eligible for SSI/$468,000 total to remain eligible for Medicaid.[1]	Unlimited.	Unlimited.
LIMITS ON WHO CAN BE GRANTOR	Anyone other than the beneficiary.	Anyone other than the beneficiary.	Disabled person, parent, guardian or by POA.	Disabled person, parent, grandparent, guardian, or by Court order.	Disabled person, parent, grandparent, guardian, or by Court order.
PAYBACK	None.	Value of benefits received up to 50% of trust.	Value of benefits received during the time your account was open up to 100% of the account.	Value of benefits received up to 100% of trust.	Value of benefits received up to 100% of trust.
LEGAL AUTHORITY	ORC §5801.01(Y)(1) §5163.21.	ORC §5815.28	IRC Section 529A	42 USC §1396p(d)(4)(A).	42 USC §1396p(d)(4)(C).
LIMITS ON LIFETIME BENEFICIARY	None.	Disabled person only.	Disabled person only.	Disabled person only.	Disabled person only.

[1] If you are employed, you may be able to contribute up to an additional $12,140 from your income, increasing your total yearly contribution to $27,140.

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DEFINITIONS OF KEY TERMS

GUARDIANSHIP — A formal legal proceeding in which the court determines a person's competency and appoints a guardian.

INCOMPETENT — A person who is unable to manage his/her own affairs or the affairs of a dependant.

GUARDIAN OF THE PERSON — Court appointed individual who has authority over the physical care and living arrangements of a ward.

GUARDIAN OF THE ESTATE — Court appointed individual or institution who has authority over the assets and income of a ward.

CONSERVATORSHIP — A "voluntary" guardianship. Can be terminated by the ward at any time. There is no finding of incompetency.

MENTAL ILLNESS PROCEEDING — A proceeding which results in the temporary hospitalization of a person who is an immediate threat of harm to self or others. No determination of competence is made and no guardianship is established. Hospitalization is terminated when threat of harm has passed. This is an emergency intervention technique only.

POWER OF ATTORNEY — A document that appoints someone to act on your behalf. Can be limited in scope or very broad. A Power of Attorney can be for either medical purposes or financial purposes.

ATTORNEY IN FACT — A person appointed in a Power of Attorney.

REPRESENTATIVE PAYEE — A person appointed by Social Security to collect Social Security benefits for a disabled person.

EXECUTOR — A person appointed by a court to administer an estate of someone who has died. Has no authority until appointed by the court. Only has authority over "probate estate" assets. Does not have authority over assets outside of the estate.

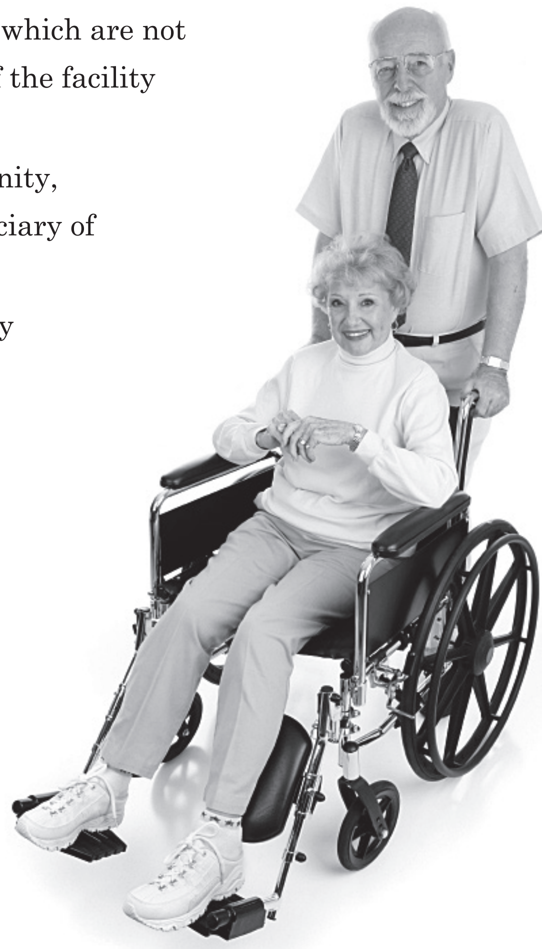
TRUSTEE — A person or institution named in a trust agreement to manage all assets placed in a trust. Has no authority over assets or other affairs outside of the trust.

EXAMPLES OF SUPPLEMENTARY SERVICES

(May include, but are not limited to the following)

- Reimbursement for attendance at or participation in recreational or cultural events.
- Travel and vacations.
- Participation in hobbies, sports or other activities.
- Items beyond necessary food and clothing (e.g. funds for dining out occasionally, for special food periodically delivered, or for an article of clothing such as a coat which is "extra" but which is desirable because it is newer, more stylish, etc.)
- Cosmetic, extraordinary, experimental or elective medical or dental care, if not available through other third party sources.
- Visiting friends, companionship.
- Exercise equipment or special medical equipment if not available through other third party sources.
- Cost differential between a shared room and a private room.
- Equipment such as telephones, cable television, televisions, radios and other sound equipment, and camera for private use by the individual.
- Membership in clubs such as book clubs, health clubs, record clubs.
- Subscriptions to magazines and newspapers.
- Small and irregular amounts of personal spending money, including reasonable funds for the occasional purchase of gifts for family and friends, or for donations to charities or churches.
- Advocacy.
- Services of a representative payee or conservator if not available through other third party sources.
- Guardianship or other protective service not listed in ODMH or DDOD rules.
- Someone other than MH DDOD Case Manager or Community Support Staff members to visit the individual periodically and monitor the services received.

- Intervention or respite when the beneficiary is in crisis if not available through other third party sources.
- Vocational rehabilitation or habilitation, if not available through other third party sources.
- Reimbursement for attendance at or participation in meetings, conferences, seminars or training sessions.
- Reimbursement for the time and expense for a companion or attendant necessary to enable the individual to access or receive supplemental services including, but not limited to, travel and vacations and attendance at meetings, conferences, seminars, or training sessions.
- Items which Medicaid and other Governmental programs do not cover or have denied payment or reimbursement for, even if those items include basic necessities such as physical or mental health care or enhanced versions of basic care equipment (e.g. wheelchairs) and items which are not included for payment by the per diem of the facility in which the beneficiary lives.
- Other Expenditures used to provide dignity, purpose, optimism and joy to the beneficiary of a supplemental trust.
- Burial expenses up to $4,500 (prepaid by contract).



NOTES:

NOTES:

- LITIGATION • BUSINESS LAW
- EMPLOYMENT/LABOR LAW
- ESTATES/TRUSTS
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