WOOD + LAMPING
ATTORNEYS AT LAW

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 that 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.

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).

Mark appears biweekly on the 55KRC radio as part of the Simply Money team.

EDUCATION:
University of Vermont (B.A., 1975)
University of Cincinnati
College of Law (J.D., 1979)

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.)

PROFESSIONAL ORGANIZATIONS:
Cincinnati Bar Association
Cincinnati Rotary

MAJOR PAST BOARD POSITIONS:
OTR, Inc.
Episcopal Retirement Systems
Good Samaritan Hospital Foundation
Alzheimer's Disease Association
Cincinnati Executives Assn.
Hyde Park Lumber Co.
Mills Judy Co.

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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 matters, 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 2005 through 2007, 2009 through 2013, and 2015 editions of Ohio Rising Stars and was named a "Super Lawyer" from 2020 through 2023. 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 Cincinnati Elder Law "Lawyer of the Year" in 2018. She was a Cincy Leading Lawyer in 2018 through 2023.

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

U.S. Supreme Court

EDUCATION:

Centre College (B.A., 1998)

Washington and Lee University School of Law (J.D., 2001)

ACTIVITIES:

Board Member, Children's Law Center, Inc.

MAJOR PAST BOARD POSITIONS:

Past President, Franciscan Haircuts from the Heart

Past President, Pro Seniors, Inc.

Elderly Persons in Community, Inc. (EPIC House)

Past Chair, Highland United Methodist Church Finance Committee

Past Chair, Cincinnati Bar Association Elder Law Committee

Past Chair, Cincinnati Bar Association Basic Estate Planning Institute Planning Committee

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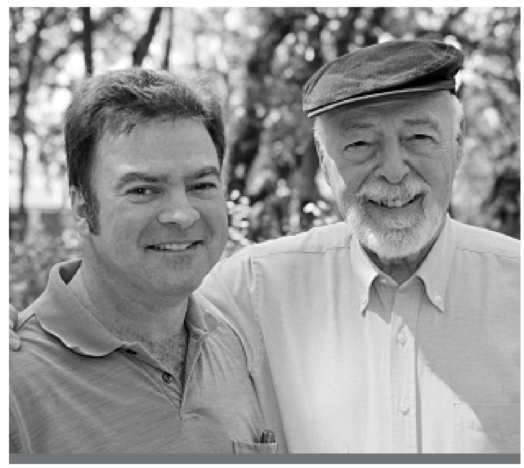
Table of Contents

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 of the Estate, and set the terms of the Guardianship. 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 non-residents can serve as the Guardian of the Person.

The Guardian must take an oath in Probate Court. Guardians of the Estate must post a protective 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 year. 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;
- the date on which the ward was last examined by a physician and the purpose of the examination; and
- a medical or psychological evaluation of the ward.

SPECIAL TYPES OF GUARDIANSHIP

Ohio law permits Probate Judges 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 now permits a "voluntary" Guardianship, called a Conservatorship. This device permits a mentally competent, but physically infirm adult to establish a court appointed Conservator 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.

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

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

- can remove a ward 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 signer 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 signer 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. In order to be most effective, 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 that 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 wider 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, bonds, etc.

This technique does, however, carry several significant disadvantages. Gifts over $16,000.00 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 does not become effective unless the person who signed it is unable to make her own health care decisions.

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.
HIPAA 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.

Under no circumstance may an Ohioan be denied comfort care.

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 signer'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 signer appeared to be of sound mind. The treating physician and the administrator of the health care institution involved in the signer's treatment may not act as witnesses.

Ohio 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 is made by a spouse. If there is no spouse, the majority of the adult children 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 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, but 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 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.

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.

A Declaration for Mental Health is good for three years.

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.

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 $300 to $450 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.

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

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

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 program.

This 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? This is called the “elimination period.” Sixty to ninety days is common. However, a longer “elimination 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 over and above their Basic Monthly pension 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 1 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, if a married veteran is eligible for $26,766 in pension and the household countable income is $10,000, then he/she is 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.

2023 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	$16,037	$19,598	$26,752
Veteran with a spouse* or child**	$21,001	$24,562	$31,714
Surviving spouse / death pension*	$10,757	$16,462	$20,509

*Presumes the spouse is not also a veteran **Add $2,743 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 12/1/2022, **the VA implemented a net worth limit of $150,538.**

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 $150,538. 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 $150,538. 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 a VA Aid and Attendance Pension.** However, they can receive the higher benefit of the two programs.
- **Receiving a VA pension may disqualify a veteran from receiving Medicaid benefits.** Often times the level of income assistance received from the Aid & Attendance benefit will exceed the maximum allowable amount of monthly income to receive Medicaid assistance.

In addition to speaking with an attorney, eligibility for these programs should be reviewed with the VA 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 or 513.425.8600
• Warren County Veterans Services	513.695.2717
• Clermont County Veterans Services	513.732.7363
• Commonwealth of Kentucky Veterans Services	800.827.1000

MEDICAID

Expanded Medicaid

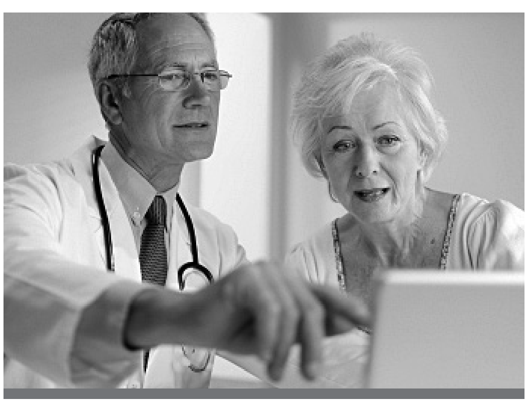
In 2014, Ohio and Kentucky both expanded their Medicaid programs as part of the Affordable Care Act. This program extends medical benefits to adults up to age 64 living at or below 138% of the federal poverty level. There are no resource criteria – only an income test. This means that adults up to age 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.

Medicaid will pay for long term care.

"Traditional" Medicaid

Medicaid will pay for long term care. In fact, Medicaid pays for almost 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 2022. 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 institutional long term care. The rules for persons seeking Medicaid assistance while they remain in their home differ in some respects, particularly in the manner in which income is treated and in the timing of the "snapshot" for married persons.

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" the patient needs. 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 over $1,500.00
- Rental and vacation property
- Promissory notes and installment contracts (with some exceptions)

- Life estates (with some exceptions)
- Assets held in trust (with some exceptions)
- Deferred annuities (non-qualified)

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

- The primary residence up to $636,000[1] in equity value 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:
    - the individual's spouse
    - a dependent relative
    - a blind or disabled child of any age
    - a child under age 21
    - a child who is age 65 or over and who is dependent upon the individual for housing
- IRAs and other retirement accounts that are in payout status
- 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
- IRAs and other retirement accounts. These are now generally disregarded so long as the owner is taking a periodic minimum distribution from the account.

1) Adjusted annually for inflation.

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.

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 $137,400[2] and a minimum of $27,480[3].

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

÷ 2 = Spousal Resource Allowance
(Max = $137,400)

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, 2022. He and his wife have CDs totaling $12,000 and a $90,000 home. The home is exempt because Mrs. Thomas resides there and $12,000 is below the minimum Community Spouse Resource Allowance ($27,480). 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, 2022. 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 ($27,480 for 2022) and below the maximum ($137,400 for 2022), Mr. Lyons is entitled to keep $30,000. The remaining $30,000 will have to be "spent down" to the $2,000 eligibility standard.

In addition, when the non-institutionalized spouse's income is less than the Minimum 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.

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

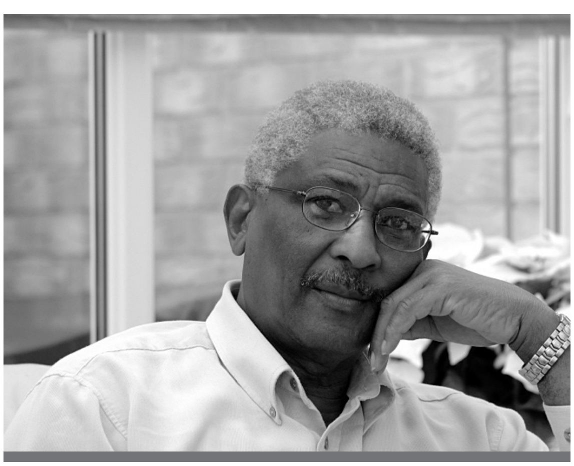
In "spending down" to reach the amount of the Community Spouse Resource Allowance, it is wise to plan carefully. This is discussed in the section on Medicaid Planning.

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

1. In Ohio, when applying for nursing home benefits, a 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 "countability" 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.

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

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.

3. Medicaid benefits may be approved retroactively for up to 3 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, 2021. On October 31, 2021, 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 3 months, his coverage would begin July 1.

Retirement Accounts

In Ohio, prior to 2022, most retirement accounts of both the Medicaid applicant and the spouse were treated as countable resources. There were two exceptions:

1. Retirement plans that require the spouse to terminate employment or retire to receive the retirement benefit; and
2. Retirement plans that are in irrevocable payout status.

However, since 2022, Ohio Medicaid has changed the way it interprets this rule. Now all traditional (qualified) retirement accounts are excludable, even if they are not in payoff status. Counties around the state are still adjusting to this new interpretation.

If the applicant or the non-institutionalized 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, retirement accounts are not countable.

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 may be

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

deductible as a medical expense. Medical expenses are deductible for federal income tax purposes to the extent they exceed 7.5% of adjusted gross income. If this tax deduction opportunity is substantially unused, it may be wise to pay for the nursing home care by making withdrawals from your retirement accounts or by liquidating highly appreciated securities. This way, you may be able to use the medical deduction to offset the taxable income from your retirement accounts and the capital gain from the sale of your highly appreciated assets. Consult your tax advisor before the close of each calendar year.

Assets in Trust

Assets held in a Trust for either the institutionalized or non-institutionalized spouse may be counted as available resources. When and how these assets are counted depends on the date, type and terms of the Trust. For more information about the treatment of Trusts, seek legal counsel from a Medicaid expert. This is a complicated area.

Revocable Trusts

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

Assets in a "Safe Harbor" Trust do not affect eligibility of the beneficiary.

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 a resource). 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 to forego the distribution.

Irrevocable Trusts

If the Trust was created by the applicant or applicant's 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 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 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 Special Needs Trusts (aka Medicaid Payback Trusts), Supplemental Services Trusts, Pooled Trusts, and Qualifying Income Trusts (QITs). Collectively, these Trusts are called "Safe Harbor" Trusts. Discretionary Trusts funded by a third party may also be an option in some circumstances. 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 received by the applicant 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. It is also possible to put money from a third party (parents, grandparents, etc.) into these Trusts.

Supplemental Services Trusts (Ohio only)

Supplemental Services Trusts are either Testamentary Trusts or Living Trusts designed to supplement the support of Ohioans who receive Medicaid and are also eligible to receive benefits from the Ohio Department of Developmental Disabilities or the Department of Mental Health. For 2022, there is a maximum of $252,000 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 that "pools" the assets of many other beneficiaries. In some "pooled" Trusts, any unused portion remaining at the death of the beneficiary stays with the non-profit. 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 Trusts are set up by a third party and "funded" with assets that never belonged to the Medicaid applicant or his or her spouse. They 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 and the assets in the Trust will not be counted as a resource for Medicaid eligibility purposes. 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 as a Discretionary Trust. 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: Any asset that the applicant 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 Department of Job and Family Services will presume that any asset transferred during the look back period was transferred for the purpose of qualifying for Medicaid and impose a penalty period of ineligibility based on the transfer. The applicant DOES have the right to try to prove that the transfer was for non-Medicaid reasons, but this is difficult.

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, 2021, 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, 2021, 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 may not be penalized. This is because Mr. Jones may be able to prove from the circumstances that the transfer was not made to qualify for Medicaid: his accident, and his resulting need for Medicaid, was not foreseeable.

Certain other transfers are permissible:

- Any transfer to or for the benefit of a spouse
- The transfer of a home to a minor dependent child.
- The transfer of real estate 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 blind or disabled child.
- Cases of undue hardship.

Improper transfers made during the look back period will result in Medicaid ineligibility.

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 for nursing home care. This rate is set at $6,905 (2022) per month in Ohio and $199.46 per day (2022) 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 FAR LESS THAN THE “LOOK BACK” PERIOD.

Gifts made more than 60 months prior to application do not need to be reported. Consequently, you can avoid a penalty by simply waiting 60 months before applying for benefits. IN SOME CASES, APPLYING TOO SOON CAN BE DISASTROUS.

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

All criminal liability for 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.

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. All income payable solely to the patient is counted. Income payable to the patient and/or another party is pro-rated.

A patient meets the income eligibility standard if his or her nursing home expenses exceed his or her income.

A patient meets the income test when his or her income is less than the “income standard” of $2,523. If his or her income is more than $2,523 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” amount Medicaid then pays the balance of the nursing home bill.

The Patient Liability Amount

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 (MIA) for the non-institutionalized spouse. This allowance varies depending upon the income and shelter costs of the family. It is derived by subtracting the non-institutionalized spouse’s income from that spouse’s estimated monthly maintenance expense, which is called the Minimum Monthly Maintenance Needs Allowance (MMMNA). Currently, the MMMNA is $2,177.50[4] (2022). This dollar amount can increase up to a maximum of $3,435 if the non-institutionalized spouse has high shelter costs.
c. Health insurance premiums (such as the Medicare Part B premium).

4) Adjusted annually for inflation.

What follows is an example of how the Patient Liability amount is calculated:

Mr. Jones enters the nursing home with gross income of $2,900 per month. Mr. Jones pays a Medicare Part B premium of $170.10 per month. Because his income is more than $2,523 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."

Before we can calculate Mr. Jones' Patient Liability, we need to calculate Mrs. Jones' MIA. Mrs. Jones has an income of $600 per month. She pays condominium fees in the amount of $500 per month (including heat and other utilities), property insurance of $40 per month, property taxes of $200 per month, and a monthly mortgage in the amount of $400 per month. In Ohio, the Excess Shelter Allowance is $686.34 per month[5] (2022). (This means her MMMNA is increased to the extent that her actual shelter costs exceed $686.34).

As the table below indicates, Mrs. Jones' total shelter costs are $1,688.00. This is $1,001.66 more than the Excess Shelter Allowance ($1,688 - $686.34 = $1,001.66). Because of Mrs. Jones' relatively high shelter costs, her MMMNA will be adjusted by adding $1,001.66 to the basic minimum of $2,177.50. Her adjusted MMMNA is $3,179.16. Her income of $600 per month falls short of that amount by $2,579.16 ($3,179.16 - $600 = $2,579.16). This is Mrs. Jones' MIA, and a portion of Mr. Jones' income, up to the MIA amount $2,579.16, will be transferred to Mrs. Jones to help her meet her monthly expenses.

5) Adjusted annually for inflation.

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

STEP 1: CALCULATE MRS. JONES' SHELTER COSTS	
CONDO FEE:	$ 500.00
INSURANCE (PROPERTY):	$ 40.00
TAXES (REAL ESTATE):	$ 200.00
MORTGAGE:	$ 400.00
STANDARD UTILITY ALLOWANCE: [6]	$ 548.00
TOTAL SHELTER COSTS:	**$ 1,688.00**
STEP 2: CALCULATE MRS. JONES' MONTHLY INCOME ALLOWANCE (MIA)	
EXCESS SHELTER ALLOWANCE (ESA) (AMOUNT SHELTER COSTS EXCEED STANDARD OF $686.34)	$ 1001.66
ADD:	
BASIC MMMN [7]	$ 2,177.50
BASIC MMMNA PLUS ESA	**$ 3,179.16**
LESS:	
MRS. JONES' ACTUAL INCOME:	$ 600.00
MRS. JONES' MIA:	**$ 2,579.16**

Mr. Jones' Patient Liability is calculated as follows:

MR. JONES' GROSS INCOME:	$ 2,900.00
LESS:	
1. PERSONAL NEEDS ALLOWANCE:	$ 50.00
2. MR. JONES' MEDICAL INSURANCE PREMIUM:	$ 170.10
3. MRS. JONES' MIA:	$ 2,579.16
PATIENT LIABILITY (PAID TO NURSING HOME):	**$ 100.74**

This means that Mrs. Jones will keep her own income of $600 per month AND she will keep $2,579.16 of Mr. Jones' income. Mrs. Jones will have a total of $3,179.16 to live on per month.

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

Estate Recovery

A combination of state and federal law mandates the recovery of Medicaid benefits against the estate of a Medicaid recipient. This includes assets that pass outside of probate. The State of Ohio pursues recovery 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 against assets owned by the non-institutionalized spouse at the time of the recipient's death.

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 nursing home benefits paid to people over the age of 55, and
- 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 based 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 non-institutionalized spouse right away. This includes all bank accounts (except one), the residence and life insurance policies (transfer the ownership).

A combination of state and federal law mandates the recovery of Medicaid benefits against the estate of a Medicaid recipient.

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.

> ***There are four basic types of Medicaid planning: exemption planning, transfer planning, converting assets into income and life estates.***

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 (i.e., assets that are counted for Medicaid eligibility purposes) 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 because of the 60 month "look back" rule discussed earlier. Under this rule, improper transfers must be made five years in advance because transfers made during the "look back" period are subject to a penalty period of Medicaid ineligibility that negates any advantage. In fact, improper transfers can often make the problem worse (see example 2, below).

For example:

1. On June 30, 2018, Mr. Sanders gave his son $200,000 and filed the required gift tax return (no tax was due). On July 1, 2021 Mr. Sanders entered a nursing home. At this point, 36 months had 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, Mr. Sanders should be able to apply for Medicaid in July 2023 without suffering a penalty period of ineligibility related to the 2018 transfer to this son. At this point, assuming Mr. Sanders meets all other eligibility requirements, the 2018 transfer will not trigger a penalty period of ineligibility because it occurred more than 60 months' earlier.

   Assuming that Mr. Sanders' nursing home costs are $6,500 per month and that Mr. Sanders pays $2,000 toward those costs from his own income, he or his son will have to tap into $108,000 of principal to cover the rest of the nursing home costs during the two year period of private pay. Under this scenario, the $200,000 transfer in 2018 results in a savings of $92,000. However, making gifts can be a dangerous proposition. The recipient of the gift may die, divorce, go bankrupt, get involved in litigation, or misuse the money. Large lifetime gifts can also trigger significant tax consequences, particularly when they involve 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, 2021 and will not ever be able to return to the community. He had $150,000 in countable resources on the day he entered the nursing home. Later that month, he transferred $75,000 to his son and filed 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 = 10.86 months). That period will not start, however, until Mr. Chang is otherwise Medicaid eligible. Mr. Chang still has $73,000 in resources to spend down and a monthly income of $1,500 per month. He uses his income and a portion of his resources to pay his nursing home bill, which is $9,000 per month. Based on these numbers, his resources will last for a little less than 10 months, or until sometime in February 2022. Only at that point, and not before, the 10.86 month period of ineligibility (calculated: $75,000 divided by $6,905) will "kick in." This means Mr. Chang will not be Medicaid eligible until sometime in January 2023. 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 period has expired and Mr. Chang will be stuck — maybe even evicted.

Years ago, before Congress enacted the strict rules on transfer penalties and when to count Trust property as a resource of the applicant, Trusts were a very useful transfer planning tool. Some planners continue to use Trusts set up by the Medicaid applicant or his or her spouse with severe restrictions on distributions. Other planners use Trusts set up by third parties, which allows more flexibility. WATCH OUT -- assets placed in such Trusts are subject to transfer and other rules that can undermine their usefulness.

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 approach comes into play with:

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

Converting assets into income is extremely important for non-institutionalized spouses with employer sponsored and self-directed retirement accounts (IRAs, 401(k)s, profit sharing plans and "qualified" deferred annuities). In Ohio, these accounts are, in some circumstances, 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 an "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 is irrevocable;
3. the annuity is not transferable;
4. the monthly payout amount does not vary;
5. the payout formula does not 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 the death of the applicant and the spouse.

Historically, many private retirement plans that were not in irrevocable payout status were treated as countable resources. This included traditional IRAs, Roths, SEPs, KEOGHs, many 401(k)s, etc. This is why immediate annuities became popular in retirement accounts. However, in recent years, Ohio has softened its application of this rule. Ohio now treats a qualified retirement plan as a noncountable resource so long as periodic distributions are occurring.

Promissory notes (loans) and installment sales such as land contracts were popular ways to convert assets into income years ago. However, Ohio Medicaid regulations now treat most installment sales contracts as a resource (not as income). They 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 (for example, an adult child) 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 other person (for example, the child). This type of transfer has a tax advantage: The other person'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 while retaining 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 counted as an available resource unless the property is occupied by a spouse or other exempt relative. It is valued based on the age of the owner. In addition, if the transfer occurred during the 60-month look back period, the value of the interest transferred is subject to a transfer penalty. The property is also subject to estate taxes.

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

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 terms must be reasonable. For example, the fees paid must be comparable to what any third party would charge for similar services and they must be for services that are not duplicated by others. Any fee paid to the care provider is taxable income that the care provider must report 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” with a lump sum payment upfront, 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 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 in the law.

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 his or her death is classified as either a Probate or Non-probate asset.

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 decedents (i.e. grandchildren, etc). If there is no spouse or lineal decedent, then the assets pass to the decedent's parents or to the surviving parent. If the parents have predeceased the decedent, then the property passes to the brothers and sisters and their lineal decedents, 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 is 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. However, 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. Assets held jointly with the right of survivorship. Examples include savings and checking accounts owned in the name of the decedent and 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	ASSETS HELD BY A TRUST
ASSETS IN DECEASED'S NAME AS "TENANTS IN COMMON"	ASSETS HELD JOINTLY WITH THE RIGHT OF SURVIVORSHIP (JTWROS)
	ASSETS W/PREVIOUSLY DESIGNATED BENEFICIARY
	ASSETS DESIGNATED AS PAYABLE ON DEATH (P.O.D.)
	ASSETS DESIGNATED AS 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" (T.O.D.) accounts.

In Ohio, bank accounts real estate and licensed vehicles may now pass by a Transfer on Death (T.O.D.) 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 after the payment of the costs of administering Mrs. Smith's estate and after payment of her debts.

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

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.

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.) 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;
- Protect assets 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. Consult an experienced estate lawyer for the best results. Steer away from preprinted forms (and software) and "one size fits all" documents.

ESTATE TAXES

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

Unfortunately, both Probate and Non-probate assets are included in the taxable estate for federal estate tax purposes. (Ohio repealed its state estate taxes for deaths after January 1, 2013.)

The tax codes recognize many well-established techniques for reducing estate taxes. They include:

- 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 $16,000 per person per year (tax year 2022). Thus, a husband and wife can join together and give up to $32,000 to each one. This way, a couple having two married children and four grandchildren could give away as much as $192,000 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 mentioned 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 2022 would pay no federal estate tax on the first $12,060,000 of assets. However, the next $500,000 (less adjustments for deductible expenses) would bear a tax at 34%, or $170,000. The top estate tax bracket is 40%.

Estates that exceed the available federal credit pay a substantial tax on the first taxable dollar.

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.

Mary then dies in 2021 and John inherits her assets; John subsequently dies in 2022. Before the Tax Reform Act of 2010, the IRS would have claimed hundreds of thousands of dollars from John's estate (less what they paid to the State of Ohio). Ohio repealed its estate tax completely in 2013. And in 2020 the federal estate tax credit was increased to $11,580,000 (adjusted to $11,700,000 in 2021 for inflation). Furthermore, under the new rules, John can use his own estate tax credit ($12.06 million) and the unused balance of his wife's 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 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 credit in 2009, no taxes were due. John received the income from the money in the 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 used by the surviving spouse. This eliminates the need to use a Marital Deduction Trust to preserve the 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 current law.

Finally, it is important to note that Congress raised the maximum rate to 40% and the current rules are set to expire in 2025. The amount of the credit is now adjusted annually for inflation. If the current rules are not extended before that time, then the credit will be cut in half – to return to its 2019 level (adjusted 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 (several 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.

Joint Trusts have risen in popularity for "middle sized" estates. Joint trusts are designed both to avoid probate and to preserve the assets of the first spouse to die.

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.

If you wish to determine your gross taxable estate, 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 2x the federal estate tax credit amount). 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 after the death of the children. The effect is to "skip" the taxes that would otherwise be paid upon the children's deaths. 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. Note that assets in a Generation Skipping Trust in excess of $5,450,000 are generally taxable at the death of the children.

> ***A Generation Skipping Trust is set up to "skip" the children and leave money to grandchildren.***

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.

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 ($16,000 per person per year). To meet these requirements, insurance Trusts generally will have a restricted right of withdrawal 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 the contribution is 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 that 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. The creator of the Trust retains the right to receive a pre-set percentage of Trust assets for a specified period, usually 10 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.

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.

Spousal Lifetime Access Trusts

This is an irrevocable Trust set up by a married person for the benefit of the spouse and children. This Trust is funded immediately upon execution. This type of Trust is very popular right now because the unified credit is very high and may be reduced by half sometime between now and 2025. By transferring assets to an irrevocable Trust before the unified credit is reduced, a taxpayer can get the benefit of the larger credit even after it is reduced (under current law).

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. 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 Grantor). 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 a 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 for bankruptcy or exercises poor judgment.

Medicaid Payback Trusts

These are Living Trusts that are established for a disabled person under age 65 by him or herself, or 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 $252,000.

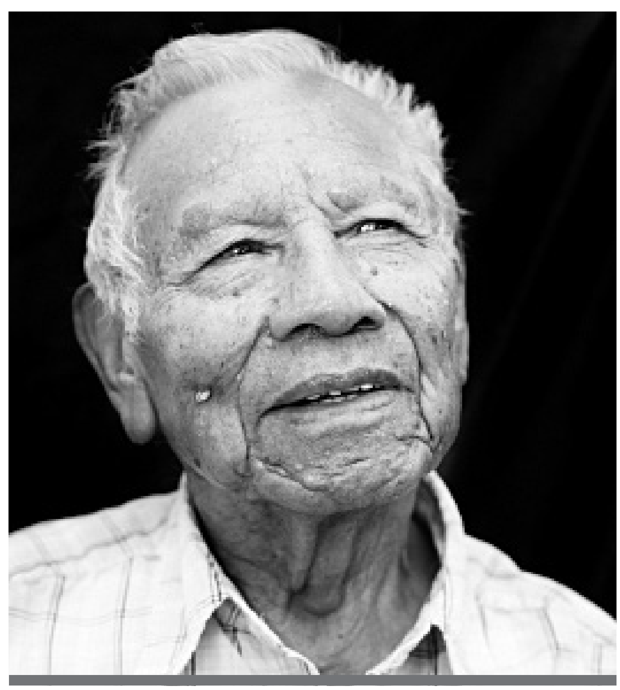
In order to enjoy this "protected" status, the Trust must provide that up to one half of the assets remaining at the death of the beneficiary are to be paid to the State of Ohio. The remaining portion can go to any beneficiary.

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.

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 two Pooled Trusts operating in Ohio. Each fund has a slightly different approach.

1. Community Fund Ohio, www.communityfundohio.org (216) 736-4540
2. The Disability Foundation, www.disability-foundation.org (937) 225-9939

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 device 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 Income (SSDI - 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 has been totally and permanently disabled since birth.

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 SSDI and Medicare. He also receives home based services and medical coverage through Medicaid. He cannot work.

Steve and Jennifer are currently spending their life savings at the rate of $120,000 a year. At this pace, their bank deposits will be exhausted in less than 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 Discretionary Trust for the sole benefit of Bailey. They elect to transfer to the Trust 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 eligibility. Steve and Jennifer are now eligible for 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. The 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 when Melissa dies, and Melissa's brother will receive the remaining balance, if any, 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.

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 $252,000 (2022).	$16,000/year or $100,000 total to remain eligible for SSI/$550,000 total to remain eligible for Medicaid.[1]	Unlimited.	Unlimited.
LIMITS ON WHO CAN ESTABLISH THE TRUST	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 $12,880 from your income, increasing your total yearly contribution to $28,880.

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 dependent.

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 business 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 Ohio Department of Mental Health or Ohio Department of Developmental Disabilities rules.

- Someone other than the Ohio Department of Mental Health or Ohio Department of Developmental Disabilities 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:

WOOD + LAMPING

- LITIGATION • BUSINESS LAW
- EMPLOYMENT/LABOR LAW
- ESTATES/TRUSTS
- CREDITOR RIGHTS/BANKRUPTCY
- ZONING/PUBLIC SECTOR LAW
- DOMESTIC RELATIONS
- REAL ESTATE • IMMIGRATION LAW
- TAX • HEALTHCARE