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Medicaid Qualifying Trusts

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What is a trust?

A trust is a legally enforceable arrangement that allows the creator of the trust (the grantor) to transfer property to someone (the trustee) who holds the property for the benefit of someone else (the beneficiary). There are many variations on this theme; for instance, it is perfectly acceptable for you to be both the grantor and the beneficiary of a particular trust, and you may also be a trustee.

A revocable trust should be created if the grantor wants the ability to change the terms of the trust at any time or to terminate the trust at will. An irrevocable trust should be established if the grantor does not want (or can't have) such power. There are advantages and disadvantages to each type of trust.

Although there are many reasons for creating trusts, trusts are often used to shelter assets from creditors, to yield favorable tax benefits, and to avoid probate.

How can a trust help you to qualify for Medicaid?

To qualify for Medicaid, both your income and the value of your other assets must fall below certain limits (which vary from state to state). In determining your eligibility for Medicaid, a state may count only the income and resources that are legally available to you for paying medical costs.

A trust helps you to qualify for Medicaid because it can make your income and assets unavailable to you. The state Medicaid authorities cannot consider assets that are truly inaccessible to the Medicaid applicant; therefore, anything that stays in an irrevocable trust and cannot under any circumstances be payable to you will generally lie outside of your financial picture (for Medicaid eligibility purposes). Such transfers to trust are subject to the applicable "look-back" period, which pulls back into the Medicaid eligibility equation transfers into trusts made before applying for Medicaid.

What is the "look-back" period? When you apply for Medicaid, the state has the right to review or look back at your finances (and those of your spouse) for a period of months before the date you applied for assistance. Because eligibility for Medicaid is based on the level of your income and other resources, the state wants to know whether you have tried to circumvent the rules by transferring assets out of your name. Essentially, a snapshot view of your resources is taken when you apply for Medicaid. At this time, you must also disclose any asset transfers that you made during the look-back period.

If you transfer countable assets for less than fair market value (FMV) within the look-back period, the state presumes that the transfer was made solely to qualify you for Medicaid. Basically, countable assets may be defined as anything valuable you own that is not exempt by law or otherwise made inaccessible.

In general, for transfers made on or after February 8, 2006 (the date of enactment of the Deficit Reduction Act of 2005), there exists a 60-month look-back period for all transfers of countable assets. Thus, if you're a nursing-home resident, your look-back period will normally begin 60 months before the day you became institutionalized and applied for Medicaid.

Tip: *It is important to note here that revocable trusts and irrevocable trusts from which payment can be made to you or for your benefit are not effective in Medicaid planning. If you can revoke your trust, you retain sufficient control over the assets and they are not inaccessible to you (in the eyes of the Medicaid authorities). If an irrevocable trust includes a provision that payments from the trust can go to you, any payment actually made to you is income to you for Medicaid purposes; income of the trust which is payable to you or for your benefit is considered an available resource to you for Medicaid purposes. Likewise, any portion of the corpus of an irrevocable trust that is payable to you makes that portion of the trust an available resource of yours for Medicaid purposes. Payment from income from the corpus of an irrevocable trust made to another individual are considered transfers of assets by you for less than fair market value and could result in a Medicaid eligibility penalty if made during the applicable "look-back" period. If you use a trust for Medicaid purposes, therefore, it should not allow payments to you from income or the corpus.*

Which trusts are most useful for Medicaid planning?

Medicaid planning often focuses on the possibility of long-term nursing home care. An aging population and the increased cost of long-term care have made Medicaid planning a crucial topic for many people and may well be an important part of your overall financial plan. If you anticipate the need for long-term care and are looking for a strategy to preserve your resources, consider using one of the following four trusts:

1. An irrevocable income-only trust
2. An irrevocable trust (in which the creator of the trust is not a beneficiary)
3. A Miller trust
4. A special needs trust

Irrevocable income-only trust

An irrevocable income-only trust is a vehicle that may allow an applicant to qualify for Medicaid benefits while preserving substantial assets for family members or other heirs. The Medicaid applicant is both the grantor and the beneficiary of the trust, but someone else is named as the trustee. As the name of the trust suggests, you are entitled to receive only the income from the trust--you cannot access the trust principal. Only the trust principal, therefore, will be considered inaccessible for Medicaid purposes while you are alive and can generally go to your heirs when you die. Income from the trust that is actually paid to you is considered to be income to you for Medicaid purposes. Income that could be paid to you is considered an available resource of yours for Medicaid purposes.

Tip: *Be aware, however, that certain states will not allow the trust principal to pass directly to heirs. If you are the income beneficiary of an irrevocable income-only trust, the state could (in some cases) be entitled to collect the present value of your income interest at the moment of your death as reimbursement for the Medicaid benefits it paid on your behalf.*

With respect to the trust income that you receive, most of it must be spent down to pay for part of your nursing home care each month--Medicaid will pay the rest.

Irrevocable trust (in which the creator of the trust is not a beneficiary)

An irrevocable trust (in which the creator of the trust is not a beneficiary) is a vehicle that allows an applicant to qualify for Medicaid benefits while preserving substantial assets for family members or other heirs. As a Medicaid applicant, you are the grantor of the trust but not the beneficiary. You select someone else as beneficiary and make sure that the trustee has no discretion (ability) to direct trust income and assets to you. Since you are not entitled to receive any income or principal from the trust, whatever you deposit into trust will be considered inaccessible to you and preserved for your heirs. However, every transfer you make to this type of trust is considered a transfer for less than fair market value and will subject you to eligibility penalties if made during the applicable "look-back" period.

This trust is an especially useful tool when you have a second home or when you live in a so-called income-cap state (a state that does not allow you to spend down income on medical care).

Miller trust

A Miller trust is a Medicaid planning tool that is available only in certain states--income-cap states. In these states, you can qualify for Medicaid only if your income falls below a threshold level; you cannot spend down excess income on medical care in order to qualify.

A Miller trust is an irrevocable or revocable trust in which you are both the grantor and the beneficiary. You transfer all of your income (e.g., Social Security checks, pension checks, etc.) into the trust. The trustee then pays part of your nursing home bill (up to one dollar less than the income cap for your state), and Medicaid pays the rest. The trust must contain a provision which states that upon your death all the property remaining in the trust at your death, up to the amount that has been paid to you by your state Medicaid plan, will be paid to your state. Therefore, you are able to keep in the trust enough income to allow you to meet your state's income-cap cutoff.

Special needs trust

A special needs trust is a federally recognized Medicaid planning tool created for permanently disabled persons who are under the age of 65. It is an irrevocable trust in which the Medicaid applicant is the beneficiary.

The goal of the special needs trust is to supplement (rather than replace) Medicaid benefits in order to supplement daily living expenses. Therefore, the trust might pay for such things as a new television or a private room. Since the trust income and principal are not considered to be available for paying medical bills, it's possible for one to qualify for Medicaid and still enjoy the benefits of the money.

Should you be aware of any problems regarding trusts?

It is important to realize that giving away your cash and other resources in the hope of qualifying for Medicaid can sometimes create serious drawbacks, including the postponement of your ability to collect Medicaid benefits.

As a final note, because the Medicaid transfer rules have been tightened in recent years (and may continue to change in the years ahead) and because certain trusts are prohibited in certain states, it is wise for you to consult with an attorney experienced in the Medicaid area if you are interested in establishing a trust.

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