



Medicaid: 2023 Financial Eligibility

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Basic Eligibility Requirements

- Categorical Eligibility
 - Aged, Blind or Disabled
 - Must fit within Class of Assistance
 - Length of Stay, Level of Care
- Medically Eligible
- Financially Eligible
 - Income
 - Resources
- Other: Citizenship, Residency, Enumeration

<http://georgiamedicaidmanual.com>

This Program Focuses on Financial Eligibility

We begin with an initial meeting





- “The Social Security Act is among the most intricate ever drafted by Congress. Its Byzantine construction, as Judge Friendly has observed, makes the Act “almost unintelligible to the uninitiated.” [Schweiker v. Gray Panthers](#), 453 U.S. 34 (1981)

Income

Resources

Exempt

Countable

Whiteboard

Applicant Resources
Community Spouse
Resource Allowance
Alimony

Income

Resources

Exempt

Countable

- [2302 - Ownership of Resources in ABD Medicaid](#)
- [2303 - Determining the Countable Value of Resources for ABD](#)
- [2304 - Treatment of Resources for ABD](#)
- [2305 - Co-Mingled Funds](#)
- [2306 - Agent Orange](#)
- [2307 - Austrian Social Insurance Payments](#)
- [2308 - Vehicles](#)
- [2309 - Bonds - Municipal, Corporate, Government](#)
- [2310 - Bonds - U.S. Savings](#)
- [2311 - Burial Contracts \(Pre-Paid or Pre-Need\) and Burial Space Items](#)
- [2312 - Burial Funds](#)
- [2313 - Contracts - Promissory Notes, Loans and Property Agreements](#)
- [2314 - Disaster Assistance](#)
- [2315 - Dividends, Accrued](#)
- [2316 - Homeplace: ABD Medicaid](#)

- Home
- Contiguous land
- 1 vehicle
- Burial
- Furniture & Fixtures (Personal property)
- Spouse's retirement
- In Georgia, applicant's retirement if paying distributions
- Business income producing property
- Resources inside correctly structured SNT

Applicant Resources
Albion
Community Spouse
Resource Allowance



Income

Resources

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- 1 vehicle
- Burial
- Furniture & Fixtures
(Personal property)
- Spouse's retirement
- In Georgia, applicant's
retirement if paying distributions
- Business income producing property
- Resources inside correctly
structured SNT

Countable

Anything that isn't
exempt that has value

Cash
Stocks
Bonds
CDs
Non-homeplace land
extra vehicles

Applicant Resources
Alimony
Community Spouse
Resource Allowance



2023 Resource Allowances

- Applicant: \$2,000 in Countable Resources
- Community Spouse:
 - Minimum: \$29,724.00
 - Maximum: \$148,620.00

In Georgia, CS gets maximum CSRA

Spousal Impoverishment

Spousal Impoverishment

<https://www.medicaid.gov/medicaid/eligibility/spousal-impoverishment/index.html>

Medicaidnumbers.com

The expense of nursing home care — which ranges from \$5,000 to \$8,000 or more — can rapidly deplete the lifetime savings of elderly couples. In 1981, Congress enacted provisions to prevent what has come to be called "spousal impoverishment," leaving the spouse who is still living at home in the community with little or no income or resources. These provisions help ensure that this situation will not occur and that community spouses are able to live out their lives with independence and dignity.

Under the Medicaid spousal impoverishment provisions, a certain amount of a couple's combined resources is protected for the spouse living in the community. Depending on how much of his or her own income the community spouse has, a certain amount of income belonging to the spouse in the institution must also be set aside for the community spouse's use.

Following is the minimum and maximum amount of resources and income that can be protected for a spouse in the community in 2023:

- [Updated 2023 SSI and Spousal Impoverishment Standards](#)

Income

Applicant's income

- QIT required if Gross Income exceeds cap
- All non-diverted income paid to health care provider as "cost-share" aka Patient liability amount

Resources

Exempt

- Home
- Contiguous land
- 1 vehicle
- Burial
- Furniture + Fixtures (Personal property)
- Spouse's retirement
- In Georgia, applicant's retirement if paying distributions
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Countable

Anything that isn't exempt that has value

Cash
Stocks
Bonds
CDs
Non-homeplace land
extra vehicles

Applicant Resources
Community Spouse
Resource Allowance

2023 Income Cap

- If the APPLICANT'S Gross income exceeds the income cap, then a Qualified Income Trust is necessary.
- 2023 Income Cap: \$2,742.00

Income

Applicant's income

- QIT required if Gross Income exceeds Cap
- All non-diverted income paid to health care provider as "Cost-Share" aka Patient liability amount

Get current #'s
at Medicaidnumbers.com

Resources

Exempt

- Home
- Contiguous land
- 1 vehicle
- Burial
- Furniture + Fixtures (Personal property)
- Spouse's retirement
- In Georgia, applicant's retirement if paying distributions
- Business income producing property
- Resources inside correctly structured SNT

Countable

Anything that isn't exempt that has value

Cash
Stocks
Bonds
CDs
Non-homeplace land
extra vehicles

Applicant Resources
Community Spouse
Resource Allowance

Income Diversions

Unless diverted, ALL of applicants' monthly income is paid as "cost-share"

Personal
Needs
Allowance

Incurred
Medical
Expenses (IME)

(Medical debt
& expenses not
covered by
Medicaid)

Low income
Spouse/
Dependents

Get current #s at
[Medicaidnumbers.com](https://www.Medicaidnumbers.com)

2023 minimum MMNA: \$2,288.75

2023 maximum MMNA \$ 3,715.50

Georgia allows maximum

At-Risk

- Countable resources over resource allowance
 - Individual
 - Community Spouse
- Applicant's income that is not diverted

Deferred Risk

Exempt resources subject to
Estate Recovery

Get correct #'s at medicaidnumbers.com

Community Spouse's Income

- All income paid to CS is exempt/unavailable to pay applicant's health care expenses
- IF CS has low income, then some or all of applicant's income is diverted to CS.

2023 minimum MMNA: \$2,288.75

2023 maximum MMNA \$ 3,715.50

Georgia allows maximum

communityspouse.com

Get current #'s at medicaidnumbers.com

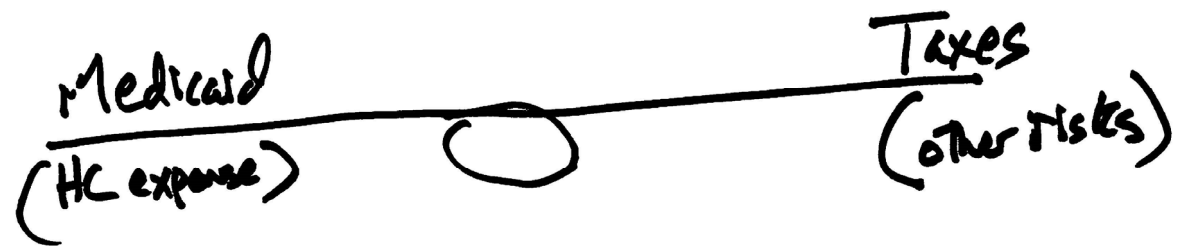
Paying (or not paying) the Cost Share

- One of the six legal reasons for discharging a nursing home resident is non-payment.
- Failure to pay the patient cost-share results in a partial non-payment, so involuntary discharge is a risk.
- Frequently, when Medicaid is pending, nursing homes don't send invoices and families fail to pay the cost-share.
- The result,



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Balancing Risks + Minimizing Risks





Converting Countable Resources to Exempt

- Resources can be bought and sold at fair market value.
- Certain transactions may change how resources are analyzed, moving them from the countable column to the exempt column.

**Do Not Try at Home:
Contact a Certified Elder Law Attorney (CELA) to get this done**

Finding a CELA

Setting the Standard for Elder Law Practice

The National Elder Law Foundation (NELF) is the only national organization accredited by the American Bar Association (ABA) to certify practitioners of elder and special needs law. NELF's Certified Elder Law Attorney (CELA) designation represents confirmation of a lawyer's exceptional expertise in the practice of elder and special needs law. There are over 500 CELAs across the country, and our numbers are growing continually.

The National Elder Law Foundation is a non-profit organization dedicated to the development and improvement of the professional competence of lawyers practicing in the area of elder law.



<https://nelf.org/>

Spend Down

- Applicants and Spouses can spend down on anything for the sole benefit or primary benefit of the applicant or spouse.
 - E.g., If an applicant owns a life estate, payment of property taxes is not a transfer of resources for less than fair market value even if the remaindermen benefit because in Georgia the life tenant is liable for property taxes.
- The trick is to spend down without wasting money.

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Planning

Converting Resources to Income

Annuity - State must be a remainder beneficiary

DRA Compliant Promissory Note

This strategy is most helpful when
income stream can be paid to a
Community Spouse

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Planning: Divorce

- Divorce is a radical Medicaid planning strategy and should not be considered without consulting a Certified Elder Law Attorney
- Pros:
 - If done right, all resources awarded to Community Spouse are protected
- Cons:
 - It might not be done right and might blow up
 - Heart break (e.g., ending marriage of 50 years, spiritual pain)
 - Loss of income diversion
 - Loss of other benefits such as VA Aid and Attendance

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Other Planning Strategies

- Transfers to permitted individuals
 - Spouse, 42 U.S.C. § 1396p(c)(2)(B)(i) (often minimizes risk of estate recovery)
 - Disabled child or trust for disabled child, 42 U.S.C. § 1396p(c)(2)(B)(iii)
 - SBT for disabled person under 65, 42 U.S.C. § 1396p(c)(2)(B)(iv)
 - Transfer of home to caregiver child, 42 U.S.C. § 1396p(c)(2)(A)(iv)
- Action for Separate Support (increase default allowances)
 - Income: 42 U.S.C. § 1396r-5(d)(5)
 - Resources: 42 U.S.C. § 1395r-5(f)(2)(A)(iv) and (f)(3)
- Spousal Refusal (42 U.S.C. § 1396r-5(c)(3))
- Administrative increase of CSRA to raise MMMNA (after considering all income available to Community Spouse) (42 U.S.C. § 1396r-5(e)(2)(C)).
- Caregiver agreements

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Planning

Gifts (including "sweet heart" deals)

- Results in transfer penalty if gift was made w/ 60 months of application

Do Not Try at Home:

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$$\begin{aligned} & \text{— Value of gift} \\ & \quad \div \text{Avg monthly cost of NHCare} \\ & \hline & = \# \text{ of months Medicaid will not help} \end{aligned}$$

* So... must plan for how care is funded during penalty

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