

ANSWERING YOUR QUESTIONS ABOUT DIVESTMENT

Published and distributed by the Coalition of Wisconsin Aging Groups

January 2010

This publication provides a general overview of how divestment can affect Medicaid eligibility for individuals in nursing homes, other institutional settings, and community based long term care programs. In Wisconsin Medicaid is referred to as “Medical Assistance” or “MA.”

Divestment is a very complicated issue and it may have adverse effects on an individual’s eligibility for MA. If you have specific questions about transfers of income, assets or property consult an elder law attorney with estate and long term care planning experience.

1. WHAT IS DIVESTMENT?

To be found eligible for Medical Assistance, an applicant must have assets below a certain asset limit. If an applicant owns assets in excess of this limit, (s)he may think that the solution is to give away assets in order to become eligible for MA. This would be considered a “divestment” and will have adverse effects on the applicant’s eligibility for MA.

Specifically, divestment is defined as *the act of transferring income, non-exempt assets or property for less than fair market value for the purpose of becoming or remaining eligible for institutional MA.* See Question 3 for a description of “institutional MA.”

2. DO DIVESTMENT RULES APPLY TO ALL MEDICAL ASSISTANCE PARTICIPANTS?

No. As mentioned above, divestment rules do not apply to MA participants who receive medical services and / or supplies in the community that are not provided by a long term care MA program. These services are sometimes referred to as “MA card services” or “community MA.” Individuals who participate in the Medical Assistance Purchase Plan (MAPP) are likewise not subject to divestment rules.

3. WHICH MEDICAL ASSISTANCE PARTICIPANTS SHOULD BE CONCERNED ABOUT DIVESTMENT RULES?

Applicants for MA as well as currently eligible MA participants who reside in nursing homes and certain other institutional settings or who receive services through a long term care MA program are subject to divestment rules. Institutional settings include hospitals, nursing homes, intermediate care facilities, community based residential facilities, and skilled nursing facilities. In these situations, the MA program covers many of the costs related to the individual’s long-term care. Individuals who participate in the state long term care MA programs are also subject to divestment rules. Long term care MA includes the Community Options Program (also known as COP or COP Classic), the MA Community Options Waiver programs (COP-W), Family Care, Wisconsin Partnership Program, IRIS, and Pace.

4. DO RULES GOVERNING OTHER PUBLIC BENEFIT PROGRAMS INCLUDE DIVESTMENT PENALTIES?

Yes. Although this publication focuses on institutional MA, you should also be aware that divesting income, assets or property can affect eligibility for the Supplemental Security Income (SSI) program. Medical Assistance and SSI have different rules relating to divestment. If you have questions about how divesting can

affect eligibility for the SSI, ask your local Benefit Specialist for more information. Benefit Specialists are located in county Aging and Disability Resource Centers, county and tribal aging units, or commission on aging offices.

5. WHAT ARE THE CONSEQUENCES OF DIVESTMENT?

Transfers to trusts: Subject to 60-month look-back period.

Non-trust transfers: Beginning January 1, 2009, transfers of any kind are subject to a 60-month look-back period beginning with the application date. Transfers before January 1, 2009 are evaluated using a 36-month look-back period. Because the 60-month look-back period applies only to transfers after January 1, 2009, the look-back period will remain 36 months until January 1, 2012. After that, the look-back period will be from the date of application back to January 1, 2009 with the full 60-month look-back period beginning January 1, 2014.

Example #1: On 2/5/09, Mrs. Williams conveys a life estate in her home to herself, and designates her daughter as the remainder person. The home's fair market value is \$95,000. Mrs. Williams does not receive any payment from her daughter in exchange for the transfer. Mrs. Williams enters a nursing home and applies for MA on 3/2/10. The transfer made on 2/5/09 is considered a divestment because it occurred within the look-back period that begins the day she applies and goes back 36 months. Mrs. Williams will be subject to a penalty period of ineligibility for MA coverage of institutional care.

Example #2: On 2/5/09, Mrs. Conrad gives \$50000 to her friend. On 6/8/2012, Mrs. Conrad enters the nursing home and applies for MA. The transfer made on 2/5/2009 occurred within the look-back period that begins on the date she applies for MA and ends on January 1, 2009. Mrs. Conrad will be subject to a penalty period of ineligibility for MA coverage of institutional care.

Example #3: On 5/28/09, Mrs. Jefferson gives her cabin to her child. On 4/1/2014, Mrs. Jefferson enters the nursing home and applies for MA. The transfer made on 5/28/2009 occurred within the look-back period that begins the date she applies for MA and ends on April 1, 2009. Mrs. Jefferson will be subject to a penalty period of ineligibility for MA coverage of institutional care.

6. HOW LONG WILL SOMEONE WHO HAS DIVESTED REMAIN INELIGIBLE FOR MEDICAL ASSISTANCE?

The divestment penalty period is calculated by dividing the amount given away for less than fair market value by the current average daily nursing home cost for a private pay patient (\$205.77). The period of ineligibility begins on the date the person applies for Medical Assistance benefits and is otherwise eligible but for the imposition of the penalty. There is no limit on how long a divestment penalty period can last. How long it will last is limited only by the divested amount.

Example #2: Mrs. Hopkins is in a nursing home. On 3/23/09, Mrs. Hopkins transfers ownership of \$30,000 in CD's and stocks to her son and receives nothing in return. On 1/1/10, Mrs. Hopkins applies for institutional MA. Her period of MA ineligibility is calculated by taking the amount divested (\$30,000) and dividing it by the average daily nursing home cost for a private pay patient (\$209.16). The result is 143.43 days of ineligibility. Partial days are rounded down so she will have 143 full days of ineligibility beginning with the day she was otherwise eligible but for the penalty.

7. ARE THERE ALTERNATIVES TO DIVESTMENT?

The Medical Assistance program allows applicants and participants to retain a certain amount of assets and still receive MA coverage for their institutional care. The exact value of assets that an applicant will be allowed to retain depends on several factors including whether (s)he is married or unmarried. For married individuals who would like more information about how assets are treated in the MA program, your county Benefit Specialist can provide you with the Coalition of Wisconsin Aging Groups' publication entitled, *Spousal Impoverishment Protections Under the Wisconsin Medical Assistance Program for 2009*.

The Economic Support Agency that determines MA eligibility in your county will only count certain types of assets when determining whether you own assets in excess of program limits. Several types of assets are considered "exempt" and are not counted when determining the total value of your assets. Some examples of exempt assets include an individual's home (when institutionalized, a participant's home is an exempt asset as long as a spouse or dependent relative lives in the home or the participant intends to return to the home), a vehicle and certain burial assets.

If an MA applicant owns assets in excess of the asset limit, (s)he may consider "spending down" those assets on permitted expenditures until the value of the assets has dropped below the asset limit. For example, applicants may choose to make needed home repairs, or to make payments for outstanding medical bills, credit card debt or other loans in order to attain eligibility. The Benefit Specialist in your county can provide you with more information about exempt assets and help you determine whether purchasing exempt assets or "spending down" as described here is an appropriate step in enabling you to become eligible for MA more quickly.

Example #3: Ms. Cruz is entering a nursing home and is applying for institutional MA. She is unmarried and she intends to return to her home after her nursing home stay. The MA asset limit for an unmarried individual is \$2,000. Ms. Cruz has \$6,000 in her savings account. If Ms. Cruz purchases an irrevocable burial trust with a total value of \$2,500, and spends \$1,500 on home repairs, she will have spent her assets down to the \$2,000 limit and can qualify for MA.

8. IS IT POSSIBLE FOR AN APPLICANT TO PROTECT ASSETS AND STILL BECOME ELIGIBLE FOR MEDICAL ASSISTANCE?

It is common for otherwise ineligible older people to find ways to protect their savings and assets in order to become eligible for institutional MA. These transactions are legal but they can have unintended consequences. In some cases, self-impoverishment can cause an older person to lose independence and become financially vulnerable. In many cases this is unnecessary, as statistics have shown that a very small percentage of the overall population of older Americans receive care in an institutionalized setting. It is also important to consider the intended purpose of MA; namely, to assist people with very limited financial needs who are in need of long-term care. Individuals who choose to shelter assets could drain this resource and adversely affect the participants for whom the program was created.

9. I HAVE MORE QUESTIONS ABOUT MEDICAL ASSISTANCE AND DIVESTMENT. CAN THE BENEFIT SPECIALIST IN MY COUNTY HELP ME?

Wisconsin's Benefit Specialist Program can provide only limited information about specific instances of divestment. County Benefit Specialists cannot advise clients on how to shelter or deplete assets, except through the use of clearly defined exempt assets such as burial trusts and small life insurance policies or through "spending down" on permitted expenses. If you wish to make a transfer that may be viewed as a divestment, you should contact an elder law attorney with experience in estate and long term care planning.

10. HOW DO I FIND A LAWYER?

For more information about obtaining legal counsel, call the State Bar of Wisconsin Lawyer Referral Service at 1-800-362-9082. The State Bar of Wisconsin also publishes a brochure entitled, *Answering Your Questions about Hiring and Working with a Lawyer*, which is available free online at www.legalexplorer.com.



Coalition of Wisconsin Aging Groups
2850 Dairy Drive, Suite 100
Madison, Wisconsin 53718-6742
(608) 224-0606 ☎ / (608) 224-0607 FAX