

SSN-Salem
VETERAN'S BENEFITS
(VA Aid & Attendance in 2020)
And
MEDICAID BENEFITS
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WHY PLAN:

People want their money and assets spent and used during their lifetime as they choose; and after death, people want their money to go to whom they choose. In addition, people want to be cared for according to their choices, not someone else's. If there is no planning for disability or death, what happens to a person's money and assets are left to chance. Potentially a court may decide how the money is spent, maybe the state will decide, or a third party of someone else's choice will make those decisions. Through proper planning a person can make his/her own decisions in advance. Do not wait until it is too late. A person must have the mental capacity to do planning. If a person does not have capacity to do planning, the options, at that point, are severely limited and may require court involvement to obtain a guardianship or conservatorship, both of which are expensive, intrusive, and require extensive paperwork. It does not make any difference the amount of money that a person has, planning at all levels is important.

I. VA BENEFITS THAT INCREASE INCOME TO PAY FOR LONG TERM CARE.

DISCLAIMER: The Veterans Administration (VA) has changed its rules to include a 3 year look-back period for transfers/gifts with a penalty divisor of \$2,266.00. Also, the Veteran and/or Widow must have a total net worth of under \$129,094.00 to qualify. These rules will affect the planning strategies and no planning should be done without further consulting with an attorney accredited by the VA.

1. A Veteran or Widow(er) of a Veteran may be able to obtain additional income from the VA, to help pay for the cost of long term care. A person who is either housebound, in need of assistance with their activities of daily living, or living in a nursing home, may qualify to receive VA Pension with Aid and Attendance.
2. All of the following criteria must be met before the Veteran/Widow(er) can receive benefits:
 - a. The Veteran must have served at least 90 days of active service, and at least one of those days during a wartime period.
 - b. The Veteran must have received a discharge other than dishonorable.
 - c. The claimant must have limited income and assets available.
 - d. The claimant must have a permanent and total disability, caused without the willful misconduct of the claimant (age 65+ = disability).
 - e. The Veteran/Widow(er) must personally sign the Application.
3. Aid and Attendance
 - a. Benefits are available to a Veteran or Widow(er) of a Veteran who meets the following criteria:
 - i. Claimant is blind;
 - ii. Claimant is living in a nursing home; OR
 - iii. Claimant needs assistance with the activities of daily living, including cognition matters, either at home, a foster home, or assisted living, or similar, community.
 - b. The applicant will be denied benefits if the Claimant's countable income exceeds the maximum permissible family income limits. Countable income is all income attributable to the applicant, the applicant's spouse, and the applicant's dependent children. However, unreimbursed medical expenses paid by the family members may be used to reduce the countable income. *The most beneficial unreimbursed expenses that may reduce countable income are the costs of home health care, assisted living facilities, or nursing homes.*
4. The permissible family income limits for 2020 for aid & attendance benefits are:

a.	Veteran w/no dependents	\$1,911.00/month
b.	Veteran w/one dependent (spouse)	\$2,266.00/month
c.	Widow(er) with no dependents	\$1,228.00/month
d.	Healthy Veteran with ill spouse	\$1,500.00/month

II. **MEDICAID**

TERMS: Institutionalized spouse is the person applying for or receiving Medicaid. The community spouse is the spouse that is not applying for or receiving Medicaid.

1. A federal-state sponsored program which pays for medical care and custodial care, including the intermediate level of care provided in nursing homes, adult foster homes, residential care facilities, and in-home health care services. There are several Medicaid programs, each having different requirements. This outline focuses on the Medicaid program which covers nursing home care.
2. A person applying for Medicaid must require a certain level of care, i.e. he/she must need assistance with activities of daily living.
3. Eligibility for Medicaid is based on financial need. If a person's resources or income are over the limits set by the Medicaid standards, a person will not be eligible for the program.
4. The limits set by Medicaid are very low, which means that a person will be required to spend most of a person's resources on a person's own care before a person will be eligible for the program.
5. Proper Medicaid planning allows a person to protect assets by taking advantage of the maximum benefits allowed from the exemptions and exceptions under the Medicaid statute and applicable state rules.
6. In determining Medicaid eligibility, the State looks at a person's resources and a person's income. Both tests must be met.
7. Income Test for Medicaid Eligibility
 - a. The state looks at the income of the institutionalized spouse and the income of the community spouse separately. The community spouse's income is not considered for Medicaid eligibility purposes.
 - b. The institutionalized spouse can only have gross income of \$2,349.00/month, which is 300% of the SSI level. This number changes annually. If the institutionalized spouse's income is over the income cap, then that spouse is not eligible for payment of long term care by Medicaid, unless an income cap trust is

created. In this type of a trust all of the applicant's income is placed into the trust. The Medicaid rules specify how the income in the trust is distributed.

8. Resource Test for a Single Person

- a. The State counts all of the person's available resources.
- b. Subtract out the exempt resources. The home is exempt only if the person resides in the home or if the person intends to return home. Other exempt assets may include an automobile, a burial fund, and personal property.
- c. The balance after subtracting the exempt assets must be spent down to \$2,000.00 before that person is eligible for Medicaid.

9. Resource Test for a Married Couple

- a. The State looks at the resources of both the institutionalized spouse and the community spouse on the first day of continuing care and counts all available assets, regardless of which spouse "owns" the resource.
- b. Subtract out the exempt resources such as the home, an automobile, personal property, and a burial fund.
- c. Divide the balance by two.
- d. The community spouse is allowed to keep one-half of the resources up to a maximum of \$128,640.00, or if the one-half is less than \$25,728.00 the community spouse is allowed to keep up to \$25,728.00.
- e. The amount of resources that are left, after the community spouse takes his/her share, are considered to be "available" to the institutionalized spouse and must be spent down to \$2,000.00 before that person is eligible for Medicaid.

Note: These numbers are adjusted annually.

10. Transfer of Assets

- a. For transfers after July 1, 2006, or for transfers to or from a trust, the State will "look back" for 60 months to determine if the transfer causes a disqualification.
- b. If a person gives advice to another person for a fee about transferring assets for the purpose of qualifying for Medicaid and the transfer causes a penalty from Medicaid to be imposed, the act of giving advice is a criminal offense, although the Attorney General's Office under President Clinton's administration said that the law is unconstitutional and that it will not prosecute offenses.
- c. Transfers between spouses and to disabled children do not incur any Medicaid penalty.

- d. If assets are transferred to third parties for inadequate consideration, a person will be ineligible for Medicaid for a period of time which is determined by a formula as follows: divide the value of the gift by \$9,551.00. The resulting number is the number of months of ineligibility. (For example: A transfer of \$25,000.00 would make a person ineligible for 2.62 months (\$25,000.00 divided by \$9,551.00). The number is no longer rounded down, and therefore the penalty would be 2 months and 19 days.
- e. The ineligibility period begins running on the date the individual applies for Medicaid and is disqualified because of the transfer.

11. Planning Techniques

- a. Timing is crucial in Medicaid planning. Planning prior to the first day of continuing care may be different from planning after care begins.
- b. Spend resources on exempt assets.
- c. Obtain special court orders (in very narrow cases).
- d. Purchase an annuitized annuity.
- e. Buy long term health care insurance.

12. Be Aware

The State of Oregon is entitled to recovery from the estate of the institutionalized spouse. The term "estate" has been recently expanded in Oregon to include assets which had the institutionalized spouse's name on it, but which were transferred to the community spouse in the 5 years/60 months preceding the Medicaid application. Therefore, assets which had been in joint names are still subject to the State's recovery efforts even long after the institutionalized spouse has passed away.

WARNING/DISCLAIMER: *The above information relating to Medicaid is based on existing laws and rules. Medicaid laws change frequently. If changes occur, all or a part of the above information may no longer be accurate.*