



Title XIX and Medicaid Trusts

Ross F. Barnett
Abendroth and Russell Law Firm
2560 - 73rd Street
Urbandale, Iowa 50322

Medicaid



- ☞ Requires care for 30 consecutive days or more
- ☞ **Income** of \$2,205 per month or less
- ☞ **Resources** of \$2,000 or less

Spousal Exemptions



If the Medicaid applicant is married, the spouse can keep some resources and income

- ☞ Community spouse must have at least \$3,022.50 in monthly income (Minimum Monthly Maintenance Needs Allowance)
- ☞ Community spouse can retain \$120,900 in resources

Resource Exclusions



- ☞ Homestead
- ☞ One vehicle
- ☞ Term life insurance
- ☞ Pre-paid burial and funeral plans
- ☞ Household goods and furnishings

Resource Inclusions



- ☞ Non-homesteaded real estate
- ☞ Investments, retirement plans, IRAs, pensions
- ☞ Life insurance with surrender value
- ☞ Checking accounts, savings accounts, and cash
- ☞ Trusts

Resources



- ☞ Medicaid employs a **five-year look-back** for transfers
- ☞ Improper transfers within 60 months impute the value to the applicant
- ☞ Giving away or re-titling assets can result in a period of ineligibility
- ☞ Iowa Code imposes criminal penalties on transferee and recipient

Resources



Certain limited exceptions exist to general rule prohibiting transfers

- ☞ Payment of debt
- ☞ Caregiver pursuant to a written agreement
- ☞ Transfer of house to caretaker

Wait, Did You Say Trusts Are Included as Resources?



- ☞ Self-settled revocable grantor trusts are estate planning vehicles
 - ☞ Primarily used to avoid probate
 - ☞ Settlor retains ability to change, modify, or revoke the trust
 - ☞ Because the settlor can request *some* of the income and principal, then *all* of the income and principal is considered available for care

Well, That Sucks



I direct that my net estate be divided into seven equal shares and one-seventh of my net estate is hereby devised and bequeathed to my son-in-law, as Trustee for the use and benefit of my daughter. He is to hold said bequest and invest it as best he can, and to pay unto my daughter the income therefrom each year plus one-tenth of the corpus until the full amount of the bequest is used up.

Miller Trust



A Medical Assistance Income Trust (Miller Trust) is used to keep a Medicaid recipient **income-qualified**.

- ☞ More than the monthly limit (\$2,205 in 2017)
- ☞ Less than the statewide average for private pay (\$5,267.20 in 2016)
 - ☞ New Iowa law allow this to go up to 125%, or \$6,584

Income between \$2,205 and \$6,584 can use a Miller Trust

Miller Trust



- ☞ Irrevocable
- ☞ Established with the Medicaid recipient's income
- ☞ State of Iowa is the remainder beneficiary

Miller Trust



Income Source	Income	Payout	Total
Social Security	\$1,734.00		\$1,734.00
Pension	\$1,500.00		\$3,234.00
Medicare Part D deduction		\$134.00	\$3,100.00
Administration fee		\$10.00	\$3,090.00
Monthly personal needs allowance		\$50.00	\$3,040.00
Payment to care facility (client participation)		\$2,204.00	\$835.00
Payment to care facility (additional)		\$835.00	\$0.00

Special Needs Trust



A Special Needs Trust is used to keep a Medicaid recipient **resource-qualified**.

- ☞ More than \$2,000 in countable resources
- ☞ Younger than 65
- ☞ Disabled

Can be used to pay for uncovered expenses related to the disability

Special Needs Trust



- ☞ Irrevocable
- ☞ Established with the Medicaid recipient's assets
- ☞ State of Iowa is the remainder beneficiary

Special Needs Trust



- ☞ Distributions are allowed to enhance the quality of life of the beneficiary
 - ☞ Distributions are at the sole discretion of the Trustee
 - ☞ Distributions in excess of \$1,000 are subject to Court approval
- ☞ Previously, could only be used for uncovered expenses related to the disability
- ☞ DHS has been directed to promulgate and adopt new rules

Reporting Requirements



☞ The Department can require annual reporting on the income and expenses of a Medical Assistance Income Trust (Miller Trust) and a Medical Assistance Special Needs Trust

☞ Currently, the reporting requirements are enforced through the Estate Recovery program

Ensure legal compliance!

Make sure that reporting is done timely and accurately

ABLE Account



☞ Similar to a 529 college savings plan

☞ Accounts are managed by the states

☞ Established with the Medicaid recipient's assets

☞ Income is not taxed

☞ State of Iowa is the remainder beneficiary

ABLE Account



☞ Beneficiary must meet certain criteria:

☞ Disabled under Federal definition

☞ Disabled before age 26

☞ Receiving Supplemental Security Income (SSI) or Social Security Disability Income (SSDI)

ABLE Account



- Account can hold cash assets:
 - Maximum yearly contribution equal to gift tax limit (\$14,000)
 - Maximum lifetime contribution set by states (less than \$500,000)
 - Only first \$100,000 in account is excluded from resource calculation
(if over \$100,000, it affects SSI eligibility but not Medicaid eligibility)

ABLE Account



- Beneficiary may direct distributions
- Distributions are not counted as income in month in which received
- Distributions count as a resource if retained past the month
- Distributions for housing expenses are not considered in-kind support

Why Not Both?



	Special Needs Trust	ABLE Account
Age Limit	Under 65	Establish before age 26
Management	Trustee	State
Trust	Income is taxed at trust rates	Income is not taxed
Spending Limit	Unlimited	\$14,000 per year from all sources
Resource Exclusion	Unlimited	First \$100,000 only
Distributions	Trustee has sole discretion	Beneficiary may direct distribution
Spending	Not paid for housing or gifts	Qualified disability expenses Can pay for housing Can distribute directly to beneficiary
Termination	Death of beneficiary	Death of beneficiary
Income Recovery	Yes	Yes

Supplemental Needs Trust



A Supplemental Needs Trust is used to enhance the quality of life of a Medicaid recipient

- ☞ Established by another person (a "third-party" trust)
 - ☞ Holds money that came from anybody except the Medicaid recipient
 - ☞ Discretionary distribution
 - ☞ Remainder beneficiary is not the State of Iowa
- Can be used to supplement (not replace) other benefits**

Estate Recovery



- ☞ Required by Federal rules allowing states to administer Medicaid
- ☞ Tasked with recovering medical assistance debt
- ☞ Previously exempt resources become non-exempt upon death

Estate Recovery



Ensure you know what assets are recoverable

- ☞ Homestead property exempted at time of application
- ☞ Life estate interest in real estate
- ☞ Revocable trusts
- ☞ Third-party trusts that contain Barkema language

Questions?


