

KENTUCKY'S BASIC LONG TERM CARE ELIGIBILITY CRITERIA RELATING TO:

**Resources
Resource Assessment
Look Back Period
Estate Recovery
Long Term Care Partnership Insurance**

DISCLAIMER: The purpose of this document is to provide a general overview of eligibility for Medicaid Long Term Care (LTC) in Kentucky. It is intended to serve as a prerequisite to training required for insurance producers who sell, solicit or negotiate LTC Partnership insurance policies as part of the LTC Partnership in Kentucky.

The document is not to be used to determine eligibility for Medicaid LTC services. Determining eligibility for Medicaid is the responsibility of the Kentucky Department of Community Based Services (DCBS), Division of Family Support. **All Medicaid eligibility determinations shall be made only by local DCBS offices. Producers should refer consumers to their local DCBS office for assistance with Medicaid eligibility determinations.**

The information in this document relates primarily to the rules to qualify for Medicaid LTC and the interface with the LTC Partnership program. This document includes Medicaid eligibility rules and dollar limits that are correct at the time of the example. These rules and the dollar amounts change periodically.

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RESOURCES

OVERVIEW OF RESOURCES

Resources are generally defined as those assets an individual or couple own and/or can convert to cash. Resources may be available money, real property, personal property or other assets and may have a lien or loan attached. They may include homestead, and the cash surrender value of life insurance policies the individual has at the time of application for Medicaid. Savings, checking, stock accounts, retirement accounts, and vehicles are also examples of resources that are reviewed. Some resources may be countable and some may be excluded depending on the ownership or usage. Those issues are clarified during the application process. Although a resource may not be considered as available to the individual at application or may meet one of the exclusion criteria, it may still be subject to the Estate Recovery efforts.

RESOURCE LIMITS

An institutionalized individual's current resource limit is \$2,000.

The community spouse's allowable resources are established at the resource assessment.

RESOURCE ASSESSMENT

A resource assessment determines the amount of a couples assets which can be protected for the use and benefit of the community spouse. The couples' total assets are added together and compared to the resource allowance minimum and maximum limits in place at the time of assessment. The amount that can be protected for the community spouse is adjusted each January. For current resource limits: http://manuals.chfs.ky.gov/dcbs_manuals/DFS/voliva/volivams1750.doc.

A couple or their representative can request a resource assessment when the individual is institutionalized. Once an assessment is completed it is valid unless it is discovered that all resources were not disclosed or the institutionalized spouse leaves long term care. The assessment requires the disclosure of all resources of the institutionalized spouse and community spouse. Once the resources are identified and the determination regarding countable versus excluded resources is made, the countable resources are totaled and each spouse is assigned $\frac{1}{2}$. If that $\frac{1}{2}$ is not greater than the community spouses' resource maximum for that year, that figure becomes the amount the community spouse can keep. Any amount over the maximum is added to the institutionalized spouse's portion and must be spent down before Medicaid eligibility can be established. If the $\frac{1}{2}$ is less than the minimum, additional resources from the institutionalized spouse can be transferred to the community spouse to bring her protected portion up to the resource minimum.

The portion that is determined to be protected for the benefit of the community spouse must be placed in the name of the community spouse **only** within six months of Medicaid approval.

RESOURCE ASSESSMENT EXAMPLES

EXAMPLE 1:

Sam and Sally have the following countable resources:

Checking.....	\$10,000
Saving.....	50,000
Boat.....	10,000
Annuity.....	50,000
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Total	\$120,000

Sam is in the nursing facility, Sally is the community spouse.

\$120,000 divided by 2 equals \$60,000 each which is below the maximum community spouse resource allowance.

Sally can protect \$60,000 and Sam must spend down to \$2,000. When a future application is made for Medicaid assistance the total countable resources must be equal to or less than \$62,000.

Sally has six months from the date of application to remove Sam's name from the protected resources. Therefore, if Sally chooses to protect the boat and annuity she must have Sam's name removed from those assets.

EXAMPLE 2:

John and Mary requested a resource assessment in November 2008. They have the following countable resources:

Vacation home.....	\$ 50,000.00
C.D.....	110,000.00
Life insurance policy with cash value.....	90,000.00
Building lot.....	25,000.00

Checking.....	30,000.00
Savings.....	60,000.00
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Total	\$365,000.00

\$365,000 divided by 2 equals \$182,500 each.
The maximum allowable in 2008 for the community spouse to protect was \$104,400.

\$182,500 minus \$104,400 equals \$78,100.

\$78,100 must be added to the institutionalized spouse's share of \$182,500 which results in his countable resource of \$260,600. The institutionalized spouse must spend this down to \$2,000 prior to Medicaid eligibility.

Therefore when a reapplication is made the joint countable resources must not exceed \$106,400, the amount protected for the community spouse \$104,400 and the \$2,000 allowable for the institutionalized spouse.

EXAMPLE 3:

Tara and Cliff have the following countable resources during the resource assessment January 3, 2009:

CD.....	\$20,000
Checking.....	\$10,000
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Total	\$30,000

\$30,000 divided by 2 equals \$15,000 each. However, the community spouse minimum for 2009 is \$21,912. Therefore the community spouse can protect \$21,912. The joint resources at the time of reapplication must be equal to or less than \$23,912 (the community spouses protected amount and the institutionalized spouses \$2,000). In this example only \$6,088 must be spent down to obtain eligibility.

NOTE: All dollars spent after the resource assessment must be accounted for at the new application.

LOOK BACK PERIOD AND PENALTIES

Federal law requires that Medicaid eligibility workers determine that assets were not disposed of for less than fair market value in order to gain Medicaid eligibility. The Deficit Reduction Act (DRA) of 2006 strengthened the language requiring that all transfers of resources shall be presumed to be for the purpose of establishing Medicaid eligibility unless the applicant could prove otherwise. The DRA also required that this investigation cover the previous 60 months from application. To accomplish this, the application date becomes the base line date (starting point) and all transfers in the previous 60 months are investigated. Goods and/or services for fair market value must be received for any transfer that occurs during this time period. For example, \$10,000 given to a daughter in the 32nd month from the baseline date would be investigated. If the applicant could not demonstrate goods and/or services received for this amount, then this would be considered a prohibited transfer of resource and would be subject to a penalty period.

All resources disposed of during the "look back period" for less than fair market value are added and the total amount is used to determine an ineligibility period. The ineligibility period is based on the average daily cost of care and that factor is revised annually. The ineligibility period begins on either the date of transfer or the date the client would be otherwise eligible (had the transfer not occurred) – whichever date occurs last.

The following is an example of calculating a transfer of resource ineligibility period for Long Term Care Medicaid benefits:

A Long Term Care application was taken on August 1, 2008. There were multiple transfers that occurred prior to the application.

\$4,000 was given away on 3/1/2006
\$2,000 was given away on 5/15/2006
\$2,000 was given away on 7/19/2006

The eligibility worker would add all transfers together, in this situation, the total is \$8,000.

The worker would then determine the ineligibility period by dividing the total amount of the transfer by the current transfer of resource factor.

\$8,000 divided by \$156.14 (2008 factor) = 51.24 days, rounded down would be 51 days of ineligibility.

The ineligibility period would begin on the date of application, August 1, 2008. The ineligibility period is for 51 days. On the 52nd day, the applicant can reapply and if all other eligibility criteria are met, the applicant would be eligible.

ESTATE RECOVERY

Medicaid has the authority to seek recovery from the estate of a deceased Medicaid recipient in order to be reimbursed up to an amount equal to the total medical assistance paid for long term care benefits.

An estate is subject to estate recovery if the individual is at least 55 years of age AND if at anytime the individual received medical assistance for any of the following:

- A. Nursing Facility (NF), not including institutionalized Hospice;
- B. Intermediate Care Facility (ICF);
- C. Mental Retardation/Developmentally Disabled (MR/DD) services;
- D. Long term care (LTC) services provided by a waiver.

The estates of individuals under 55 years of age are also subject to estate recovery if the individual has been receiving Medicaid for NF, ICF/MR/DD or LTC waiver services for a total of six consecutive months or more at the time of death.

NOTE: Resources that were excluded during the application process may still be subject to estate recovery.

EXEMPTION AND LIMITATIONS

Estate Recovery shall not be made from the estate if the estate representative can verify that:

- A. There is a surviving spouse
- B. There is a surviving minor child (under 21) or disabled child
- C. The estate is valued at less than \$10,000
- D. Recovery would create a hardship for a surviving family member. This type of exception would require a request in writing with supporting documentation.

LONG TERM CARE PARTNERSHIP INSURANCE

A qualified Long Term Care (LTC) Partnership Insurance policy will allow for an asset disregard at the time of the Medicaid application. The disregard is a one dollar (\$1) increase in protected assets for every one dollar (\$1) paid by the insurance policy at the time of application. Any assets protected at the Medicaid application, shall also be protected from estate recovery.

At the time of application an individual with a qualified LTC partnership policy must produce documentation of the dollar amount paid by the insurance as a direct reimbursement of LTC expenses, as well as benefits paid on a per diem or other periodic basis, for periods during which the individual received LTC services. It is not required that the partnership policy funds be fully exhausted. However, the resource protection is based on the amount actually paid at the time of application.

The applicant must identify the assets they wish to protect as a result of the LTC Partnership payments. The applicant **cannot** change the selection after Medicaid approval. The eligibility worker will then disregard the assets chosen when determining Medicaid eligibility and those assets will also be protected from estate recovery.

The applicant may wish to apply their LTC Partnership insurance protection to an asset that was excluded in the eligibility determination process. They may choose to apply their protection to that asset in order to insure protection from estate recovery.

NOTE: Applicants without a community spouse or a minor dependent child in the home with home equity greater than \$500,000 (this cap is subject to change) are technically ineligible for Medicaid. Due to this technical ineligibility, LTC Partnership insurance cannot apply in this situation.

EXAMPLES OF THE BENEFIT OF LTC PARTNERSHIP INSURANCE

If an applicant has purchased a qualified LTC partnership insurance policy and that policy paid out \$100,000 as of the month of application for Medicaid, that applicant could protect an additional \$100,000 of assets.

EXAMPLE 1:

Bob, a single individual, has been in the nursing facility for three years. He has homestead property valued at \$85,000, and a CD valued at \$20,000. On the date of his application, his LTC Partnership policy has paid out \$103,000. He can protect \$103,000 of resources. He is allowed to have \$2,000 in resources; therefore, he can gain eligibility and protect his homestead property and CD from estate recovery.

In order to understand how LTC Partnership insurance can affect applicants with a community spouse, below are the original examples we listed in the resource assessment section. In each example, we will consider that the LTC partnership insurance has paid \$50,000 benefits as of the month of application for Medicaid.

EXAMPLE 1:

Sam and Sally have the following countable resources:

Checking.....	\$10,000
Saving	50,000
Boat	10,000
Annuity	50,000
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Total	\$120,000

Sam is in the nursing facility, Sally is the community spouse.

\$120,000 divided by 2 equals \$60,000 each which is below the maximum community spouse resource allowance.

Sally can protect \$60,000 and Sam can apply his LTC partnership policy payout of \$50,000 at the time of application.

The couple could protect up to \$112,000 (\$60,000 + 50,000 + 2,000). At this time, Sam is still \$8,000 over resource limit.

Sam will need to determine when to make his second application based on the dollar amount he was over resource limit at the original application. He will need to take into consideration the monthly benefits from his LTC Partnership insurance policy and the amount he is paying for his cost of care, reducing his resources. For example, if Sam's LTC Partnership policy is paying \$4,000 per month to the facility and Sam is also paying \$4,000 privately he could apply the following month.

EXAMPLE 2:

John and Mary requested a resource assessment in November 2008. They have the following countable resources:

Vacation home	\$ 50,000.00
C.D	110,000.00
Life insurance policy with cash value	90,000.00
Building lot	25,000.00
Checking	30,000.00
Savings	60,000.00
<hr/>	
Total	\$365,000.00

\$365,000 divided by 2 equals \$182,500 each.

The maximum allowable in 2008 for the community spouse to protect was \$104,400.

\$182,500 minus \$104,400 equals \$78,100.

\$78,100 must be added to the institutionalized spouse's share of \$182,500 which results in his countable resource of \$260,600. The LTC Partnership policy has paid out \$50,000, he is only over the resource limit by \$208,600.

The community spouse's protected assets remain the same as long as the institutionalization remains unchanged. John needs to determine the appropriate time to reapply based on the monthly benefit of his LTC Partnership insurance policy and the rate at which his cost of care is reducing his resources.

EXAMPLE 3:

Tara and Cliff have the following countable resources during the resource assessment January 3, 2009:

CD.....	\$20,000
Checking.....	\$10,000
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Total	\$30,000

\$30,000 divided by 2 equals \$15,000 each. However, the community spouse minimum for 2009 is \$21,912. Therefore the community spouse can protect \$21,912. The joint resources at the time of reapplication must be equal to or less than \$23,912 (the community spouses protected amount and the institutionalized spouses \$2,000). In this example, since Cliff's LTC Partnership policy has spent more than the couple's countable resources, all resources can be protected and Cliff is financially eligible.

NOTE: All dollars spent after the resource assessment must be accounted for at the new application.