



THE BAILEY LAW FIRM

The Bailey Law Firm concentrates its legal practice in the areas of wills and trusts, estate taxation and planning, asset protection planning, charitable gift planning, business succession planning, elder law, and estate administration and probate. The Bailey Law Firm has attorneys licensed to practice law in the states of Mississippi and Tennessee.

OLEN M. "MAC" BAILEY, JR.

The Bailey Law Firm was founded by Olen M. "Mac" Bailey, Jr. Mr. Bailey received his J.D. from Vanderbilt University School of Law, and his B.A. from Millsaps College. Mr. Bailey is an accredited attorney with the Department of Veterans Affairs.



ESTATE PLANNING

- Wills
- Living Trusts
- Powers of Attorney
- Special Needs Trusts

ELDER LAW

- Medicaid Eligibility Strategies
- VA Aid & Attendance
- Qualified Income or "Miller" Trusts
- Conservatorships

PROBATE

- Will Contests
- Estate Administration
- Trust Administration

WHAT IS MEDICAID?

Medicaid is a government program, funded by both state and federal dollars, which provides long term care to impoverished seniors. Medicaid is one of the five methods of paying for long term care, the other four methods being (1) private pay, (2) Medicare (maximum of 100 days), (3) long term care insurance, and (4) Veterans benefits.



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WHAT DO I NEED TO KNOW ABOUT Medicaid?





WHO IS ELIGIBLE FOR MEDICAID?

To qualify for **Medicaid**, a person must meet three levels of eligibility: (1) Technical; (2) Medical; and (3) Financial.

TECHNICAL

To be technically eligible, a person must be a U.S. Citizen, must be a resident of the state in which the Medicaid application is being filed, and must be 65 years of age or older.

MEDICAL

To be medically eligible, a person must be medically needy.

FINANCIAL

To be financially eligible, a person must meet both an income test and a resource or assets test.

TENNESSEE MEDICAID

In Tennessee, there are three categories of Medicaid: (1) TennCare Medicaid, (2) TennCare Standard, and (3) CHOICES. The TennCare CHOICES program provides the elderly (65 years of age and older) who are eligible for TennCare with long term services and supports (LTSS) either in an institutionalized setting (nursing home) or in a home and community based setting (at home). To be medically eligible under CHOICES, a person must meet certain Level of Care criteria based on an acuity scale. The CHOICES program is administered by the Tennessee Bureau of TennCare.

MISSISSIPPI MEDICAID

In Mississippi, Medicaid provides health benefits to certain populations. One of those populations is the “aged.” The “aged” coverage group consists of persons over the age of 65 who either receives medically needy services in a long term care facility or receives medically needy services in a home or community based setting. The Mississippi Division of Medicaid administers the Medicaid program in Mississippi.

WHAT RESOURCES ARE EXEMPT IF I AM SINGLE?

For financial eligibility purposes, the following assets or resources are exempt or are not counted when an unmarried person applies for Medicaid: (1) One personal residence or homestead (if \$552,000 [2015] in value or less); (2) an automobile; (3) cash (\$2,000 in TN (2015) and \$4,000 in MS (2015)); (4) all term life insurance; (5) cash value life insurance (\$1,500 face value or less in TN [2015] and \$10,000 or less in MS [2015]); (6) pre-paid burial account or plan, and (7) cemetery lots.

WHAT RESOURCES ARE EXEMPT IF I AM MARRIED?

The Community Spouse is the spouse who is at home. The Institutionalized Spouse is the spouse who is in the nursing home or is receiving home and community based services. The Institutionalized Spouse has the same exempt resources as an unmarried applicant. The Community Spouse is entitled to retain additional resources referred to as the Community Spouse Resource Allowance (CSRA). The maximum CSRA is \$119,220 in both TN and MS (2015).

WHAT IS THE LOOK-BACK PERIOD?

The “Look-Back” Period is the period of time in which Medicaid “looks-back” to determine if a Medicaid applicant has “given-away” or divested (or sold for less than fair market value) resources for the purpose of becoming eligible for Medicaid. The “Look-Back” period is five (5) years or sixty (60) months from the date of application.

WHAT IS THE PENALTY PERIOD?

The **Penalty Period** is the period of time during which a Medicaid applicant is ineligible or disqualified for Medicaid based on a gift during the “Look-Back” Period. The Penalty Period begins on the date of application for Medicaid. The Penalty Period is unlimited in time. The Penalty Period is determined by dividing the fair market value of the gifted resources by a penalty divisor. The result equals the number of months of ineligibility for Medicaid. For example, in Tennessee, the penalty divisor is \$4,591 (2015). Therefore, if a person gifted \$150,000 to his or her children, and applied for Medicaid within 5 years of the date of the gift, then the Penalty Period would be 32.6 months ($\$150,000 / \$4,591 = 32.6$ months).



HOW IS INCOME TREATED?

The general rule is that a Medicaid Recipient must pay all of his or her income, less certain deductions, to the long term care facility. Medicaid then pays the long term care facility any difference between the Medicaid Recipient’s income and a negotiated “capped” monthly rate.

If the Medicaid Recipient is married, then the Community Spouse may retain all of the Community Spouse’s income. The Community Spouse is also entitled to receive a portion of the Institutionalized Spouse’s income. The amount of the Institutionalized Spouse’s income to which the Community Spouse is entitled to receive is based on what the State

determines to be a minimum income level for the Community Spouse. This minimum income amount is called the Minimum Monthly Maintenance Needs Allowance or MMMNA. The MMMNA in Tennessee is \$1,966.25 (2015) and in Mississippi is \$2,980.50 (2015). The Community Spouse must request the MMMNA on the Medicaid application.

WHAT IS AN INCOME CAP STATE?

Some states “cap” or set a limit on the amount of income a Medicaid Applicant can receive and still be eligible for Medicaid. Both Mississippi and Tennessee are “income cap” states. The income limit is \$2,199 (2015). If the Medicaid Applicant’s monthly income exceeds the cap or limit, then the Medicaid applicant will not qualify for Medicaid. However, the Medicaid applicant can create a Qualified Income or “Miller” Trust, which may allow the Medicaid applicant to qualify for Medicaid despite the applicant’s excess income.

WHAT IS ESTATE RECOVERY?

Estate Recovery is the right of the state to be reimbursed for any payments made under the Medicaid program by the state on behalf of a Medicaid recipient. The right of Estate Recovery is exercised upon the death of the Medicaid recipient. The right of Estate Recovery is usually exercised against the residence of the Medicaid recipient since the residence is exempt and is normally the only asset remaining when a Medicaid recipient dies.

Estate Recovery is mandatory both in the State of Tennessee and the State of Mississippi.

WHO SHOULD I ENGAGE TO ASSIST ME WITH MEDICAID PLANNING?

An Elder Law Attorney who has experience in representing Medicaid applicants and preparing long term care plans should be engaged to represent you with Medicaid planning.