

UNDERSTANDING MEDICAID: Maximizing Allowable Assets and Income for a Community Spouse

SUSAN E. JOHNSON-DRENTH, CELA*

JD Legal Planning, PLLC

902 28th Street South, Suite 2

Fargo, ND 58103

701-364-9595

855-299-9595

sdrenth@jdlegalplanning.com

www.jdlegalplanning.com



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ND MEDICAID/MN MEDICAL ASSISTANCE SINGLE

- 2021 Single person asset limit = \$3,000 of available assets and allowable excluded assets

ND MA ASSET LIMITS FOR 2021

MARRIED

- \$3,000 in “available” assets for institutionalized spouse
- One-half (1/2) of combined “available” assets (as determined in an Asset Assessment Form based on asset values on day of admission to hospital or nursing home)
- In North Dakota, not less than \$26,076 and not more than \$130,380 for community spouse of “Available” assets
- IRA–type accounts treated specially
- “Excluded” assets

MN MA ASSET LIMITS FOR 2021

- \$3,000 in “available” assets for institutionalized spouse
- In Minnesota, not more than \$130,380 (with no minimum) for community spouse of “Available” assets
- IRA–type accounts receive no special treatment
- “Excluded” assets

ND MEDICAID/MN MEDICAL ASSISTANCE

- What are “available” assets?
 - Assets which are at your disposal, whether or not you want to spend them
 - Assets which you have a legal ability to make available (**with or without** penalties) - Examples:
 - Bank accounts and investments (not including qualified retirement plans in North Dakota)
 - Annuity balances (not including certain single premium immediate annuities)
 - Cash value of life insurance
 - A second vehicle
 - Real estate other than your primary home
 - 529 college plans

ND MEDICAID/MN MEDICAL ASSISTANCE

- If you are married, what else can the community spouse keep in addition to “available” asset limit?
 - See Excluded Assets handout

ND Medicaid: IRA, Roth IRA (Qualified Retirement Plans)

- ▶ ND is rare state that excludes IRAs.
 - However, stringent requirements must be met:
 - Must rollover IRA to an irrevocable, unchangeable annuity with a company. If your IRA company won't do the annuity, you have to move your IRA.
 - The annuitized IRA:
 - Must have equal payments over a set term of years that is no more than what ND MA states is your life expectancy (can't use company's life expectancy)
 - Must name ND MA (DHS) as the irrevocable beneficiary (after the death of the institutionalized spouse and community spouse), NOT TO EXCEED THE MA BENEFITS PAID FOR BOTH SPOUSES.
 - After ND MA claim is paid back in full, you should list other contingent beneficiaries (i.e. your children)
 - If you refuse to rollover your IRA to an annuity, then you cannot get ND MA.

Annuities

- ▶ Can be very good, but are the most complex asset rule for MA.
- ▶ Is an account an annuity? Annuitized? Life Insurance? All of the above?
- ▶ MA expects you, your broker, and/or your attorney to figure this out before you apply. MA will not figure it out for you.
- ▶ You need to have the contract for the annuity.
- ▶ You need to have the beneficiary forms for the annuity.
- ▶ You need to have the paperwork when you annuitized your annuity, and if the company's term is longer than DHS' life expectancy the annuitized annuity will stall (or stop) your MA eligibility because that is a disqualifying transfer.
- ▶ You need to submit a special "Notice to Insurer of Annuity" to the company when you apply for ND MA.
- ▶ If annuity contract or annuity stream of payments can be sold, you are required to make offerings to at least 3 companies (JG Wentworth will often purchase them even if IRAs).

Annuities

- ▶ If your company life expectancy on the annuitized annuity is longer than MA rules, it is a disqualifying transfer for ND MA and MN MA which will result in ineligibility for MA.
- ▶ Community spouse can keep excess assets from Asset Assessment, irrevocably annuitize them as allowed and keep the monthly income stream as long as MA (DHS) is irrevocable beneficiary up to amount MA paid out.

ND MA EXAMPLE ASSET ASSESSMENT

(husband in nursing home)

	<u>Available</u>	<u>Excluded</u>
▶ Home (\$87,000) mortgage		\$250,000
▶ Wife's IRA		200,000
▶ Checking (joint)	\$ 3,000	
▶ Husband's prepaid funeral		6,000
▶ Old car		500
▶ Household goods		15,000
▶ Investment account (joint)	<u>217,000</u>	<hr/>
▶	\$220,000	- - -

ND MA EXAMPLE ASSET ASSESSMENT

(husband in nursing home)

1. **Wife is allowed:**
 - a. $\$220,000 \div 2 = \$110,000$
 - b. House titled in her name only
 - c. Car and household goods
 - d. Name on \$3,000 joint account
2. **Husband is allowed:**
 - ▶ a. Name on \$3,000 joint account
 - ▶ b. \$6,000 prepaid funeral

ND MEDICAID EXAMPLE ASSET ASSESSMENT

(husband in nursing home)

3. Need to legally spend excess \$107,000 (\$220,000 - \$110,000 wife - \$3,000 husband)
 - a. Pay off \$87,000 mortgage
 - b. Buy new car for \$20,000
4. Need to annuitize wife's IRA

Age = 70

Life expectancy = 15 years (180 months)

$\$200,000 \text{ IRA} \div 180 \text{ months} = \$1,111$ more income to wife each month that she can keep

Wife also keeps her Social Security

MN Medical Assistance differences

▶ Single person

- \$3,000 asset limit
- Can't keep and annuitize IRAs
- Life estate MN lien law

▶ Community Spouse

- Can keep first \$130,380 (not just ½ up to \$126,420 max like ND MA)
- Can annuitize IRAs and Excess Assets like in ND
- Life estate MA lien law

Can you pay your children to take care of you?

- ▶ Yes, but I recommend a personal services contract be prepared by your attorney **before** they render care or are paid.
- ▶ If your care is not paid under the terms of a written contract, MA may think your payment was a gift.
- ▶ When paid, child pays income tax on it.

How do you pay other people for mowing your lawn, cutting your hair, running errands?

- ▶ Always use the memo line on your check to explain the transaction.
- ▶ Pay by check, not cash.
- ▶ Don't round up
 - If your son picks up your \$83.77 groceries, pay him \$83.77 (keep receipt) and don't round up to \$100.00.

How do ND MA or MN MA know if you hide giving presents or gifts, or sell for less than fair market value?

- ▶ The MA application asks you to disclose all uncompensated transfers made in the **60** months before the MA application.
- ▶ If you get caught lying, it is a crime. UNAUTHORIZED RECEIPT OF WELFARE BENEFITS.
- ▶ If you are in the nursing home and incapacitated, do you want your Power of Attorney children to lie for you? If they get caught, they could become felons and lose their jobs.
- ▶ Increasingly in ND and MN, MA applicants will be required to provide 5 years of bank and investment records, 5 years of canceled checks, and 5 years of detailed explanations of how ATM withdrawals were spent.
- ▶ The well-trained county financial MA workers know how to search real estate records, DMV records, and other searches, and will do with every application made.

- ▶ What if your spouse becomes incompetent and cannot sign papers to meet the MA rules (i.e. annuitize IRA, deed house to spouse, etc.)?
 - Hopefully, you and your spouse signed Powers of Attorney before the incapacity, and the Power of Attorney has liberal to authorization.
 - If you have no Power of Attorney in place, you must get court conservatorship and then the Judge will decide what you can keep and what will go to the nursing home.
 - The Power of Attorney is separate from the Personal Representative in your Will. You need a Will **and** a Power of Attorney
 - Check your own estate plan if your spouse is in the nursing home.
 - Your old Will and beneficiary designations probably listed your spouse, who now lives permanently in the nursing home.
 - See your attorney ASAP to determine how best to legally minimize the inheritance to your nursing home spouse.

Thank you.

I have enjoyed my time with you today.

If you have any further questions, please call me at 701-364-9595 or 855-299-9595.

Susan E. Johnson-Drenth, CELA*

Certified Elder Law Attorney by the National Elder Law Foundation

