



TEXAS
Health and Human
Services

Medicaid: The View from the HHSC

20th Annual Estate Planning, Guardianship and Elder Law Conference

Shari L. Nichols, Staff Counsel
Health and Human Services Commission

August 9, 2018

**Medicaid for the Elderly and People with
Disabilities Program
- MEPD -
Texas Health and Human Services Commission**



TEXAS
Health and Human
Services

The Medicaid program provides medical benefits to groups of low-income people, some of whom may have no medical insurance or inadequate medical insurance. Medicaid is a jointly funded cooperative venture between the federal and state governments to assist states in providing adequate medical care to eligible needy persons.

Although the federal government establishes general guidelines for the program, the Medicaid program requirements are established by each state. States are required to include certain types of individuals or eligibility groups under their Medicaid plans and they may include others.

HHSC is responsible for determining eligibility for the MEPD Medicaid programs for persons who are aged, blind or disabled. Medicaid matching federal funding provides for medical care and supportive services (for example, vendor drugs, nursing facility and institutional care) to persons who qualify for Medicaid under one of the MEPD programs in this chapter.

And so on

QUESTIONS SUBMITTED TO HHSC

The following are questions submitted to HHSC for the 2018 Estate Planning, Guardianship and Elder Law Conference and answers to those questions.

Answers to questions that include scenarios are given based solely on the information provided in the questions. While the issues addressed in the questions and answers may be relevant to an eligibility determination, determinations of eligibility are made on a case by case basis and include evaluation of income, resources, disability, and other relevant information.

References to the Medicaid for the Elderly and People with Disabilities Handbook are denoted using the abbreviation MEPDH.

TRANSFER OF ASSETS

1 TAC §358.401. Transfer of Assets on or after February 8, 2006
MEPD Handbook I-1000 – I-9000

Transfer of assets policy applies when assets are transferred by a person who resides in an institutional setting (for example, a Medicaid certified long-term care facility) or is receiving home and community-based waiver services through a Home and Community-Based Services waiver, or by the person's spouse or someone else acting on the person's behalf.

Transfer of assets policy does not apply to the mandatory groups of [MEPD](#) programs such as Pickle. See [Section A-1000](#), General Information, and [Section A-2000](#), Mandatory Coverage Groups, for information. Transfer of assets policy also does not apply to the Medicare Savings programs such as [QMB](#), [SLMB](#), etc.

There is a "look-back" period to find transfers of assets prior to the date the person is institutionalized or, if later, the date the person applies for Medicaid.

If a transfer of assets for less than fair market value is found, Medicaid must withhold payment for nursing facility care (and certain other long-term care services) for a period of time referred to as the penalty period.

The length of the penalty period is determined by dividing the value of the transferred asset by the average private-pay rate for nursing facility care in Texas. There is no limit to the length of the penalty period.

TRANSFER OF ASSETS CONTINUED



MEPDH I-1210 Transfer of Assets Terms

The term assets, with respect to person, includes all income and resources of the person and of the person's spouse, including any income or resources that the person or such person's spouse is entitled to but does not receive because of action by:

- the person or such individual's spouse;
- a person, including a court or administrative body, with legal authority to act in place of or on behalf of the person or such individual's spouse; or
- any person, including any court or administrative body, acting at the direction or upon the request of the person or such individual's spouse.

Examples of actions that would cause income or resources not to be received are:

- irrevocably waiving pension income;
- waiving the right to receive an inheritance;
- not accepting or accessing injury settlements; and
- tort settlements that are diverted by the defendant into a trust or similar device to be held for the benefit of the plaintiff.

TRANSFER OF ASSETS – CONTINUED



MEPDH I-4100 Compensation

The uncompensated value may be reduced by compensation received by the person. To reduce the uncompensated value the compensation must meet several requirements.

MEPDH I-4110 Legal Binding Agreement on or Before the Date of Transfer

Compensation for a transferred asset must be provided according to terms of an agreement established on or before the date of transfer. **This agreement must have been established exclusively for purposes other than obtaining or retaining eligibility for Medicaid services.**

Review the written agreement and the circumstances of the agreement to determine if institutional placement or waiver services were a consideration at the time the asset was transferred. If the agreement was oral, obtain a written statement from the person and the person receiving the asset.

The written statements must specify the date and terms of the agreement.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Medicaid: The View from the HHSC

Also available as part of the eCourse

[2018 Estate Planning, Guardianship, and Elder Law eConference](#)

First appeared as part of the conference materials for the
20th Annual Estate Planning, Guardianship and Elder Law Conference session
"View from the HHSC"