

# Myths of Medicaid: “They’re Going to Take My Home”

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Probably one of the most common misconceptions with the Medicaid program is that by becoming Medicaid eligible, the State of Indiana or some agency thereof will “take” the recipient’s home. The fact of the matter is that very rarely is a home or any type of real estate a barrier to Medicaid eligibility.

## Exempt Real Estate

Typically, real estate does not count toward the recipient’s maximum resource limit (asset limit). The following types of real estate are exempt under the Medicaid program:

- The home if it is the principal residence of the recipient or the recipient’s spouse, minor child, adult disabled or blind child, or parent if recipient is a minor.
- Income producing real estate where the income is greater than the expenses of ownership. Income producing real estate must also receive fair market rent in order to avoid a transfer of assets penalty (see transfer section below).
- Real estate used to produce food for home consumption.
- Burial plots.
- Real estate owned in the sole name of the non-recipient spouse.
- Real estate owned jointly with rights of survivorship where the joint owner is not willing to sell the property.
- Real estate offered for sale or for rent.

## Exempt Real Estate Transfers

The home can sometimes be transferred out of the Medicaid recipient’s name to other individuals as well. In general, Medicaid law discourages individuals from certain transfers of assets to meet the maximum resource limit. A person who gives away an asset (or sells it for less than it is worth) may be determined to be ineligible for Medicaid coverage for nursing home or equivalent Home & Community Based Services for a period of time. This period of ineligibility is known as the transfer “penalty period.” In some circumstances, however, real estate can be transferred out of the recipient’s name free of a transfer of assets penalty.

The following transfers of real estate are exempt from the transfer of assets penalty under the Medicaid program:

- The transfer to a spouse.
- The transfer of the home to a child under the age of 21 years or a child who is blind or disabled.
- The transfer of the home to a sibling who also has an equity interest in the property and who has lived in the property more than one year.
- The transfer of a home to a child who has lived in the home for at least two years and provided care that kept the recipient out of institutionalized care during this time period.
- The transfer of any real estate to a person under the age of 65 with a disability or to a Special Needs Trust for that person.

## Medicaid Liens and Estate Recovery

Even though the home is not usually a barrier to Medicaid eligibility, it may be subject to a Medicaid lien or a creditor claim after the death of the recipient without proper legal planning. Indiana has estate recovery legislation under which Medicaid is authorized to recover up to the amount expended by Medicaid for the recipient's care after the recipient's age of 55 years. Medicaid can also place a lien against real estate.

Not all real estate is subject to Medicaid lien, however. The following are exempt from Medicaid's lien:

- Real estate that is the home of the recipient spouse.
- Real estate that is the home of the recipient's child under the age of 21 years or is the home of the recipient's child who is disabled.
- Real estate that is the home of a sibling who also has an equity interest in the property and who has lived in the property more than one year.
- Real estate that is the home of the recipient's parent.

Like the Medicaid lien, not all real estate is subject to Medicaid's claim. The following are exempt from Medicaid's claim:

- Real property owned by the decedent at the time of death that was conveyed to the individual's survivor through joint tenancy with rights of survivorship which was created before June 30, 2002.
- Real estate owned by a trust or other non-probate arrangement which was transferred out of the probate estate prior to May 1, 2002.
- Real estate of a recipient while it is necessary for the support, maintenance, or comfort of the surviving spouse, dependent child under the age of 21 years, or dependent child who is non-supporting because of blindness or other disability.

To the extent that any asset may be exposed to estate recovery or lien, the amount that the State recovers is still usually far less than what would have been paid if Medicaid were not assisting. This results from a substantial "discount" given to Medicaid that is not given to private-pay patients.

In some circumstances, especially when planning long before the need for care, estate planning approaches that create no estate and no interest to which a lien can be attached can preserve the home for future generations.

Home ownership is rarely a barrier to Medicaid eligibility. Although the home may be subject to Medicaid claim at the death of the recipient, the recipient will lower out of pocket costs from receipt of Medicaid due to the "Medicaid discount" applied to medical care covered by Medicaid. In addition, with proper legal planning, the home can be protected for future generations. This is especially true for plans made before the time of need for care. If you are someone you know wants to access Medicaid benefits and protect their home from a Medicaid lien or claim, please contact us to schedule an appointment at 317-622-8181.

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[1] With an equity cap of \$536,000.