AMICUS LAW FIRM

CLIENT GUIDE | GOVERNMENT BENEFITS

Spend Down Guidelines to Preserve Medicaid and/or SSI

Funds you receive from a legal settlement can jeopardize your continued eligibility for needs-based government benefits, such as Supplemental Security Income (SSI) or Medicaid.

BEFORE YOU START

Does this guide apply to you?

Whether a spend down is needed depends on which program you receive. These guidelines apply to SSI and to Medicaid programs that have a resource (asset) test, which typically include Medicaid for people who are aged, blind, or disabled and Medicaid for long-term care. Many adults and children receive Medicaid under income-only rules (often called "MAGI" Medicaid), which have no resource test.[1] Under MAGI rules, settlement money paid for a personal injury (for example, for medical costs or pain and suffering) generally is not counted as income, although portions for lost wages, punitive damages, or interest may be counted in the month they are received. **If you are unsure which type of Medicaid you receive, ask your caseworker before spending any settlement funds.**

What options are available?

If funds you receive from a legal settlement will cause you to exceed the *resource* limit for the benefits you receive, your options may include:

- Spending the money down to the resource limit
- Purchasing exempt assets
- Placing the money into a Special Needs Trust or pooled trust (if eligible)
- Placing the money into an ABLE Act account (if eligible)
- Some combination of the above options
- Choosing to discontinue receiving the benefit

[1] See, e.g., Utah Medicaid Policy Manual § 440-4 (treatment of income for MAGI-based programs), available at https://oepmanuals.dhhs.utah.gov/400/440-4_Specific_Treatment_of_Income_for_MAGI-Based_Programs.htm. Rules in other states are similar but should be confirmed with your state Medicaid agency.

What is a resource?

Not everything a person owns (i.e., not every asset) is a resource and not all resources count against the allowed limit. Federal and state regulations provide for the exclusion of certain types and amounts of resources. Unless a resource is specifically excluded, it is considered "countable."

The most common resources are cash and bank accounts. Resources also include any other personal property or real property that an individual (or spouse) owns or has the authority to convert into cash.

What is a spend down?

For SSI and Medicaid, the term "spend down" refers to spending excess money down to the applicable *resource* limit (for SSI, $2,000 for an unmarried individual and $3,000 for a married couple; Medicaid resource limits are set by each state and may be higher).[2] In some states, Medicaid also uses "spend down" to describe a different process, in which a person whose income is too high qualifies by incurring medical expenses. That process is not covered here.

The spend down must occur in the same month in which the money is received. By being below the *resource* limit as of the first moment of the following month,[3] a spend down allows the recipient to maintain eligibility for those needs-based benefits.

EXAMPLE

If John Sample, an unmarried individual and SSI recipient, receives $22,000 on April 12th, he must spend down his total resources to $2,000 before May 1st to maintain his SSI eligibility. If John uses a check for his spend down, he should ensure that the check clears his bank account before the last day of the spend-down month. SSA may subtract a check that has been written but not yet cashed if the recipient can document it, but relying on that creates avoidable risk.[4]

How can a recipient spend their funds?

A spend down allows Medicaid and SSI recipients to plan and purchase a variety of items to improve their quality of life now and in the future, while still maintaining eligibility for needs-based benefits. The excess money must be spent **solely for the benefit of the recipient**. Purchasing items for other people, or paying their bills, is usually considered a gift. For SSI, giving away money or property for less than its fair market value can cause a period of ineligibility of up to 36 months.[5] For Medicaid, gifts made within the 60 months before

[2] 20 C.F.R. § 416.1205, available at https://www.law.cornell.edu/cfr/text/20/416.1205; Social Security Administration, SSI Spotlight on Resources, available at https://www.ssa.gov/ssi/spotlights/spot-resources.htm.

[3] 20 C.F.R. § 416.1207(a), available at https://www.law.cornell.edu/cfr/text/20/416.1207.

[4] Social Security Administration, Program Operations Manual System (POMS) SI 01140.200 (checking and savings accounts), available at https://secure.ssa.gov/poms.nsf/lnx/0501140200.

[5] POMS SI 01150.001 (transfers of resources for less than fair market value), available at https://secure.ssa.gov/poms.nsf/lnx/0501150001.

applying for long-term care (such as nursing home care or in-home care through a Medicaid waiver) can delay coverage for that care.[6]

Purchases made should be of exempt assets (i.e., assets exempt from *resource*-counting rules) or of goods and services that are used up, such as rent, medical care, or travel. Some allowable purchases include:

ALLOWABLE PURCHASE	WHAT TO KNOW
Paying off the recipient's own existing debts	The loan must be bona fide with a realistic expectation of repayment at the time the loan was provided. Special scrutiny is applied if paying back a loan from a family member or friend.
Purchasing a home or paying off all or part of a mortgage on a home	The recipient must be on the title or hold a life estate in the home, and the home must be the recipient's principal place of residence.[7]
Paying rent for that calendar month only	
Paying for home repairs or deferred maintenance expenses, including remodeling or modifying a home to accommodate an individual's disabilities	The recipient must be on the title or hold a life estate in the home, and the home must be the recipient's principal place of residence.
Buying home furnishings or appliances	
Hiring an attorney to do estate planning and/or Medicaid planning	
Paying medical expenses or bills not covered by Medicaid or Medicare	
Educational expenses	
Entertainment or recreation expenses	
Vacation or travel expenses	
Pre-paying burial arrangements, such as an irrevocable prepaid funeral contract or burial spaces (for example, a plot, casket, or headstone)	Money kept in a revocable burial fund is excluded only up to $1,500, and that amount is reduced by the face value of certain life insurance policies and irrevocable burial arrangements.[8]

[6] 42 U.S.C. § 1396p(c), available at https://www.law.cornell.edu/uscode/text/42/1396p.

[7] 20 C.F.R. § 416.1212, available at https://www.law.cornell.edu/cfr/text/20/416.1212.

[8] 20 C.F.R. § 416.1231, available at https://www.law.cornell.edu/cfr/text/20/416.1231.

ALLOWABLE PURCHASE	WHAT TO KNOW
Purchasing an automobile including registration and insurance	The recipient must be on the title and only one vehicle used for transportation of the recipient or a member of the household is considered an exempt resource.[9]
Buying personal products or services such as clothing, hygiene products, hair styling, etc.	

What about special needs trusts and ABLE accounts?

Instead of, or in addition to, a spend down, a recipient may be able to place settlement funds where they do not count as a resource. Each option has strict eligibility and drafting requirements.[10] To keep the funds from being counted, they generally need to be placed in the trust or account before the first day of the month after they are received.

First-party special needs trust

Available only to an individual with a disability who is under age 65. The trust may be established by the individual, a parent, a grandparent, a legal guardian, or a court. When the beneficiary dies, any funds remaining in the trust must first be used to repay the State for the Medicaid benefits it provided.

Pooled trust

A trust managed by a nonprofit organization that keeps a separate account for each beneficiary. There is no federal age limit, but placing funds in a pooled trust at age 65 or older may result in a transfer penalty for SSI and, in some states, for Medicaid. Funds remaining at the beneficiary's death may be kept by the trust or used to repay the State.

ABLE account

Available to an individual whose disability began before age 46 (the age limit was 26 before January 1, 2026). Total contributions from all sources are limited each year to an amount tied to the federal gift tax annual exclusion, so an ABLE account usually cannot hold a large settlement on its own. For SSI, the first $100,000 in an ABLE account is not counted as a resource; for Medicaid, the ABLE balance is generally not counted at all. Money withdrawn for housing expenses that is not spent in the same month may count as a resource. At the beneficiary's death, the State may be able to claim remaining ABLE funds to repay Medicaid.[11]

[9] 20 C.F.R. § 416.1218(b), available at https://www.law.cornell.edu/cfr/text/20/416.1218.

[10] 42 U.S.C. § 1396p(d)(4)(A), (C); POMS SI 01120.203 (exceptions to counting trusts), available at https://secure.ssa.gov/poms.nsf/lnx/0501120203.

A trust or ABLE account should be set up with the help of an attorney before, or at the time, the settlement funds are paid.

The recipient must report to the appropriate agency

A recipient must report changes in *income* and *resources* within 10 calendar days after the month in which the change occurred[12] to the appropriate agency: the local Social Security Administration office (SSA) or the local state Medicaid office. Medicaid reporting deadlines are set by each state and may be measured from the date of the change rather than from the end of the month. Reports should include:

- The name of the person reporting the change
- The name and social security number (SSN) of the person the report is about
- Facts about the change (e.g., explanation of spend down, receipts, bank statements, etc.)
- When the change happened

Reports may be in writing, by telephone, or in person. To find the local SSA office, visit ssa.gov/locator. Contact information for state Medicaid offices can be found at medicaid.gov/about-us/where-can-people-get-help-medicaid-chip.

Because of the reporting requirement, **it is important to keep receipts for all purchases made**. If you mail documents, make a copy of the documents before submitting them to the appropriate government agency. Also, consider sending the documents by certified mail with a signature confirmation to ensure the documents are delivered in a timely manner.

What about income requirements?

Income includes any item an individual receives that can be used to meet his or her need for food or shelter, including funds from a legal settlement.[13]

Thus, the receipt of a legal settlement received during a month is evaluated under the *income*-counting rules. Generally, an individual who has too much income in a particular month is not eligible for SSI **in that month**. Any income not spent in the month it is received will be counted as a *resource* in the following month.

Accordingly, the recipient may need to repay the SSI benefit for the month in which the funds from a legal settlement are received. If SSI payments stop for 12 months in a row, SSI eligibility ends and the recipient must file a new application to restart benefits.[14]

Conclusion

A spend down can be a valid option for Medicaid or SSI recipients who receive legal settlements. Prudent planning and preparation will minimize the ineligibility period and will

[11] Social Security Administration, SSI Spotlight on Achieving a Better Life Experience (ABLE) Accounts, available at https://www.ssa.gov/ssi/spotlights/spot-able.html.

[12] 20 C.F.R. §§ 416.708, 416.714, available at https://www.law.cornell.edu/cfr/text/20/416.714.

[13] 20 C.F.R. § 416.1102, available at https://www.law.cornell.edu/cfr/text/20/416.1102.

[14] 20 C.F.R. § 416.1335, available at https://www.law.cornell.edu/cfr/text/20/416.1335.

help avoid the wasting of settlement funds. If a spend down is done properly, the recipient's quality of life can be improved for many years to come.

DISCLAIMER

This document provides general information related to the laws and regulations governing needs-based government benefits eligibility and is based upon published agency guidelines. Some jurisdictions may have laws and regulations that differ substantially from one another, and your jurisdiction may have unique, specific requirements. This document reflects rules in effect as of October 2026.

Please speak with your caseworker, local government agency, or professional counsel to verify income limits, resource limits, notification and spend down regulations, and other specific requirements in your jurisdiction.

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