

Excluded Assets 510-05-70-30

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(N.D.A.C. Section 75-02-02.1-28)

The following types of property interests will be excluded in determining if the available assets of an applicant or recipient exceed asset limits:

1. The home occupied by the Medicaid unit, including trailer homes being used as living quarters.

The home occupied by the Medicaid unit includes the land on which it is located, provided that the acreage does not exceed one hundred sixty contiguous acres if rural or two acres if located within the established boundaries of a city.

The home is considered occupied by the Medicaid unit when it is the home the applicant, or the applicant's spouse or minor or disabled child is living in or, if temporarily absent from, possesses with an intention to return and the capability of returning within a reasonable length of time. Property is not occupied if the right to occupy has been given up through a rental or lease agreement, whether or not that rental or lease agreement is written. Property is not occupied by an individual in long-term care or the state hospital, with no spouse, or son or daughter who is under age twenty-one, or blind or disabled (any age), at home, unless a physician has certified that the individual is likely to return home within six months. (See 510-05-70-27 for home equity limit for excluded home during six-month period and for single HCBS applicants and recipients.)

When determining whether an individual is likely to return home within 6 months, the physician's statement must include the date admitted to the facility, the date of the statement, wording showing that the individual is reasonably expected to return home within the 6 months, and it must be signed by the physician. Statement language that indicates that an individual "may" return home, or "wants to" return home, is not sufficient. Following are examples of acceptable and non-acceptable physician statements regarding an individual's stay in a long-term care facility.

Example: Prepared within 30 days of admittance to facility.

(Recipient Name) entered the (Facility Name) on (Admit date). She is reasonably expected to return home within 6 months.

(Signed by Physician)

This statement is **acceptable** as it includes all of the required information.

Example: Prepared at time individual was admitted to facility.

(Date Written)

(Recipient Name) was admitted to the (Facility Name) on (Admit Date).
Anticipate that she may be able to return home within 6 months.

(Signed by Physician)

This statement is **not acceptable**. "May" is indefinite. It would be acceptable if it said she was expected (or likely) to return home within 6 months.

Example:

(Date Written)

(Recipient Name) is anticipated to return home in less than 6 months. Patient will receive physical therapy for strengthening and to recover from pneumonia.

(Signed by Physician)

This statement is **not acceptable** as there is no admit date so the total length of stay cannot be determined.

2. Personal effects, wearing apparel, household goods, and furniture.
3. One motor vehicle.
4. Indian trust or restricted lands.
5. Indian per capita funds and judgment funds awarded by either the Indian claims commission or the court of claims after October 19, 1973, interest and investment income accrued on such Indian per capita or judgment funds while held in trust, and purchases made using interest or investment income accrued on such funds while held in trust. The funds must be identifiable and distinguishable from other funds. Commingling of per capita funds, judgment funds, and interest and investment income earned on those funds, with other funds, results in loss of the exclusion.

The Bureau of Indian Affairs should be consulted, if necessary, to determine if the payment is the result of an award by either the Indian Claims Commission or the Court of Claims.

6. Property that is essential to earning a livelihood. Property that is essential to earning a livelihood means property that a member of a Medicaid unit owns, and which the Medicaid unit is actively engaged in using to earn income, and where the total benefit of such income is derived for the Medicaid unit's needs. A member of a Medicaid unit is actively engaged in using the property if a member of the unit contributes significant current personal labor in using the property for income-producing purposes. The payment of social security taxes on the income from such current personal labor is an indicator of the active use of the property. Except for property enrolled in the Conservation Reserve Program (CRP), other property is not essential to earning a livelihood if the Medicaid unit is merely receiving rental or lease income.

- a. Operating funds in self-employment business accounts may be excluded as follows:
 - i. For self-employment in which income is received other than monthly, the current year's self-employment income, and the previous years self-employment income that has been prorated and not yet counted as income; and
 - ii. For all other self-employment, two times the monthly gross earnings.
- b. Grain or other produce retained for seed or feed is property essential to earning a livelihood. All other grain and produce is property essential to earning a livelihood in the year it is harvested. It is not excluded as property essential to earning a livelihood in the following year. For purposes of this provision, the year in which grain or other produce is harvested is the twelve-month period used by the farmer for tax purposes. For example, if a farmer's tax year is March through February, grain and other produce harvested beginning in March of each year is excluded as property essential to earning a livelihood until March of the following year.
- c. Livestock held for business purposes is property essential to earning a livelihood if a member of the Medicaid unit is actively engaged in raising the livestock to produce income. Livestock held for business purposes is not excluded under this provision if no one in the Medicaid unit is actively engaged in raising the livestock. The value of such livestock is a countable asset. Livestock raised only for personal use or pleasure is not considered business property and is excluded as an asset.
- d. Property enrolled in the Conservation Reserve Program (CRP) is considered property essential to earning a livelihood.
- e. Such property may be excluded only during months in which a member of the Medicaid unit is actively engaged in using the asset to earn a livelihood or if not in current use, the property must have been in such use and there must be a reasonable expectation that the use will resume:
 - i. Within twelve months of the last use; or
 - ii. If the nonuse is due to the disabling condition of a member of the Medicaid unit, within twenty-four months of the last use.

This nonuse exception allows the assets to be excluded, but does not affect income.

7. Property that is not saleable without working an undue hardship. Property that is not saleable without working an undue hardship means property which the owner has made a good faith effort to sell which has produced no buyer willing to pay an amount equaling or exceeding seventy-five percent of the property's fair market value, and which is continuously for sale. Property must be offered for sale at 100% of the value and if no offer received at 100%, an offer at or exceeding 75% may be accepted. Property may not be included within this definition at any time earlier than the first day of the first month in which a good faith effort to sell is begun.

Refer to 05-05 for the definition of "good faith effort to sell" to determine the method and order in which an attempt to sell property must be made.

- a. Persons seeking to establish retroactive eligibility must demonstrate that good faith efforts to sell were begun and continued in each of the months for which retroactive eligibility is sought. If a reasonable offer has been received on the property, or the property has sold prior to eligibility determination, the property cannot be determined unsalable.
- b. Good faith efforts to sell, other than for an annuity, must be repeated at least annually.
- c. When making a good faith effort to sell real property or a mobile home, wait to determine that it is non-saleable until the third month after the month in which the good faith effort began. This provides a reasonable amount of time for offers to be received without loss of potential months of eligibility for an applicant. If the property is determined to be non-saleable without working an undue hardship, the property must remain continuously for sale, and any offers received must be reported. The three calendar months must include a good faith effort to sell through the regular market for the three calendar months. For purposes of this provision, an offer to the regular market for real estate is made by listing the property with a professional real estate agent when the property is located in an area serviced by a professional real estate agent.
- d. When making a good faith effort to sell property other than real property, a mobile home, or an annuity, wait to determine eligibility until at least 30 days after the good faith effort has been made to determine if any offers are received. If the property is determined to be non-saleable without working an undue hardship, the property must remain continuously for sale, and any offers received must be reported.
- e. When making a good faith effort to sell an annuity, there is a specific market, known as the factors market, to which the good faith effort must be made. Eligibility may be determined after the good faith effort has been made and responses received from the factors that were contacted.
- f. If a Medicaid unit claims that property should be excluded because it is not saleable without working an undue hardship, verification of the way in which the fair market value was established, the established value, and the good faith effort to sell must be made a part of the file. If the efforts to sell have produced no offers, the written statement of the applicant, recipient, or sales agent, stating that fact, must be made a part of the file. The county agency reviewing the efforts to sell should be alert for actions which reflect an applicant's or recipient's effort to comply with the technical requirements for exclusion without making a genuine and serious attempt to sell the excess asset.
- g. In order to demonstrate that property is not saleable without working an undue hardship, an applicant or recipient must engage in sales efforts which are reasonably calculated to produce a sale. An applicant or recipient is not obliged to make a sale if a reasonable offer is received, but the property will not thereafter be excluded.
- h. When offering property for sale by public advertisements, those containing substantially the following content are acceptable as a means of demonstrating a good faith effort to sell:

Example 1: Offered at 75% of value.

For Sale: An undivided ½ interest in W½ of Sec. 65, Township 130, Range 102, East of the 5th P.M., located 2 miles west of the junction of

U.S. Hwy. 90 and Iron County Rd. 4. This land has a true and full value of \$100,000. The minimum offer which will be considered for the undivided ½ interest is \$37,500, payable upon sale. Call (701) 555-9999, or write Chaos Realty, Box 1, Tampa, ND 58990.

Example 2: Offered at 100% of value.

For Sale: An undivided ½ interest in W½ of Sec. 65, Township 130, Range 102, East of the 5th P.M., located 2 miles west of the junction of U.S. Hwy. 90 and Iron County Rd. 4. This land has a true and full value of \$100,000. This undivided ½ interest is offered for \$50,000, payable upon sale. Call (701) 555-9999, or write Chaos Realty, Box 1, Tampa, ND 58990.

- i. It is expected that a "good faith effort to sell" will normally generate a sale. If no offer for at least 75% of the established fair market value has been received on the property as of the annual review, the county agency must review the previous efforts and determine if they truly reflect a good faith effort to sell, and may require a re-evaluation of the property value, or other appropriate action likely to produce a sale.
8. A burial plot for each family member (eligible or ineligible) is excluded. A burial plot is defined to include a grave site, crypt or mausoleum.
 9. Along with the burial plot an individual is allowed either the SSI burial or ND burial provision.

The SSI burial provision provides for:

- a. Burial funds of up to one thousand five hundred dollars each, plus earnings on excluded burial funds held for the individual and the individual's spouse are excluded from the date of application. Burial funds may consist of revocable burial accounts, revocable burial trusts, other revocable burial arrangements including the value of installment sales contracts for burial spaces, cash, financial accounts such as savings or checking accounts, or other financial instruments with definite cash value, such as stocks, bonds, the cash surrender value of life insurance not excluded under subsection 3a below, or certificates of deposit. The fund must be unencumbered and available for conversion to cash on very short notice. The fund may not be commingled with nonburial-related assets and must be identified as a burial fund by title of account or by the applicant or recipient's statement.

The value of any irrevocable burial must be designated toward the burial fund exclusion.

Life or burial insurance excluded under this subsection (total face value is \$1,500 or less), must be considered at face value toward meeting the burial fund exclusion.

Example 1: Mr. Smith has two life insurance policies each having a face value of \$500. Because the total combined face value is less than \$1500, the life

insurance is excluded as an asset, but the \$1000 in face value must be applied to the burial exclusion.

Example 2: Mrs. Jones has two life insurance policies each having a face value of \$1000. Because the total combined face value is more than \$1500, the face value is ignored, and the cash surrender value is considered as an asset which may be applied towards either the burial exclusion or the asset limit.

Example 3: Mrs. Smith has two life insurance policies each having a face value of \$500. Mrs. Smith also has a \$1500 burial fund. Because the total face value of the two policies is less than \$1500, the life insurance is excluded as an asset, but the \$1000 in face value must be applied to the burial exclusion. Only \$500 of the burial fund may be excluded, and the remaining \$1000 would be counted towards the asset limit.

Example 4: Mr. Jones has a life insurance policy with a face value of \$1000 and an irrevocable burial with a face value of \$1000. The face value of the irrevocable burial must be considered toward the \$1500 burial provision leaving \$500 that could still be excluded for the burial fund. The life insurance passes the \$1500 face value test and is excluded as an asset, but since there is still \$500 that could be excluded for burial, the life insurance must be applied. No other assets can be excluded towards the burial fund.

- b. A burial space or agreement which represents the purchase of a burial space paid for in full for the individual, the individual's spouse, or any other member of the individual's immediate family is excluded. The burial space exclusion is in addition to the burial fund exclusion. Only one item intended to serve a particular burial purpose, per individual, may be excluded. For purposes of this paragraph:
- i. "Burial space" means a burial plot, gravesite, crypt, or mausoleum; a casket, urn, niche, or other repository customarily and traditionally used for a deceased's bodily remains; a vault or burial container; a headstone, marker, or plaque; and prepaid arrangements for the opening and closing of the gravesite or for care and maintenance of the gravesite.
 - ii. "Other member of the individual's immediate family" means the individual's parents, minor or adult children, siblings, and the spouses of those persons, whether the relationship is established

by birth, adoption, or marriage, except that a relationship established by marriage ends when the marriage ends.

North Dakota Burial Provision - Any pre-need funeral service contracts, prepayments or deposits to a fund which are placed in an irrevocable itemized funeral contract designated by an applicant or recipient for the applicant's or recipient's burial. An applicant or recipient designates a prepayment of deposit for his or her burial by providing funds that must be used for that purpose. Only those prepayments paid by members of the Medicaid unit are considered as burial prepayments.

- a. Amounts that may be designated as irrevocable vary from State to State. When an individual moves to North Dakota from another state, North Dakota Medicaid will honor the burial plan set up in the other state based on the other state's burial provision.
- b. Earnings accrued on the total amount of the irrevocable itemized burial contract are excluded.
- c. A burial plot for each family member (eligible or ineligible) will also be excluded. A burial plot is defined to include a grave site, crypt, or mausoleum. (Effective July 1, 1996)
- d. Markers, monuments, and vaults that have been pre-purchased separately from an irrevocable itemized funeral contract are not considered part of a burial plot and are not exempt. These items are countable assets for Medicaid, based on their current market value. A marker or monument that has already been engraved with some of the individual's information will likely have a reduced value. It may still have a market value; however, the value will be reduced by the cost to resurface the marker or monument. When a double marker has been purchased and one spouse has already passed away, it can be determined that there is no resale value for the marker.
- e. Individuals with burial funds set up based on the ND Burial exclusion prior to August 1, 2019 will need to change their funds designated for burial to an Irrevocable Itemized Burial, or SSI burial provision. Once the burial is changed to an irrevocable itemized burial contract it will be excluded in its entirety. If the funds are not changed to an Irrevocable Itemized Funeral Contract, any amount over the \$1500 SSI burial allowable amount will become a countable asset.
 - Individual has a \$4000 CD set aside for burial. The individual will need to contact the funeral home of their choosing and establish an Irrevocable Itemized Funeral Contract. The CD will need to be transferred into an irrevocable trust designating the interest and payout upon maturity into the trust. Also, the trust must name the funeral home as the beneficiary.
 - Individual has a \$4000 savings account set aside for burial. The individual will need to contact the funeral home of their choosing and establish an Irrevocable Itemized Funeral Contract. The savings account will need to be transferred into an irrevocable trust with the funeral home named as the beneficiary.
- f. Normally a life insurance policy is countable asset valued at its cash surrender value, however, when a whole life insurance policy is used to pay for an irrevocable itemized burial contract, the whole life insurance policy is exempt. Life insurance that is designated for burial must cover the life of the person for

whom it is designated. The following are the steps the individual will need to take for their life insurance to be considered excluded for burial:

- The individual will need to contact the funeral home of their choosing
 - Change the beneficiary of the life insurance to the funeral home
 - Execute a contract between the individual and the funeral home to indicate the beneficiary of the life insurance cannot be changed, except for the ability to transfer to another licensed funeral establishment or cemetery association.
- g. Information regarding the burial fund of a deceased recipient must be released to the funeral home personnel upon request.
- h. A burial fund, which is established at the time of application, can apply retroactively to the three month prior period and the period in which the application is pending, if the value of all assets are within the Medicaid limits for each of the prior months. Future earnings on the newly established burial fund will be excluded.
10. Home replacement funds, derived from the sale of an excluded home, and if intended for the purchase of another excluded home, until the last day of the third month following the month in which the proceeds from the sale are received. This asset must be identifiable and not commingled with other assets.
11. Unspent assistance and interest earned on unspent assistance, received under the Disaster Relief and Emergency Assistance Act of 1974 or some other federal statute, or because of a presidentially declared major disaster. Comparable assistance received from a state or local government, or from a disaster assistance organization is also excluded. These assets must be identifiable and not commingled with other assets.
12. Payments, interest earned on the payments, and in-kind items received for the repair or replacement of lost, damaged, or stolen excluded assets are excluded for nine months, and can be excluded for an additional twenty-one months if circumstances beyond the person's control prevent the repair or replacement of the lost, damaged, or stolen assets, and keep the person from contracting for such repair or replacement. This asset must be identifiable and not commingled with other assets.
13. For nine months beginning after the month of receipt, unspent assistance received from a fund established by a state to aid victims of crime, to the extent that the applicant or recipient demonstrates that such amount was paid in compensation for expenses incurred or losses suffered as a result of a crime. This asset must be identifiable and not commingled with other assets.
14. Payments made pursuant to the Confederate Tribes of the Colville Reservation Grand Coulee Dam Settlement Act, Public Law 103-436. This asset must be identifiable and not commingled with other assets.
15. Stock in regional or village corporations held by natives of Alaska pursuant to the Alaska Native Claims Settlement Act.

16. For nine months beginning after the month of receipt, any educational scholarship, grant, or award; and any fellowship or gift (or portion of a gift) used to pay the cost of tuition and fees at any educational institution. This asset must be identifiable and not commingled with other assets.
17. For twelve months beginning after the month of receipt, any federal income tax refund, any earned income tax credit refund or any advance payments of earned income tax credit. State income tax refunds are excluded for nine months beginning the month after the month of receipt. This asset must be identifiable and not commingled with other assets.
18. Assets set aside, by a blind or disabled (but not an aged) SSI recipient, as a part of a plan to achieve self-support (PASS) which has been approved by the Social Security Administration.
19. The value of a life estate.
20. Allowances paid to children of Vietnam veterans who are born with spina bifida, or to children of women Vietnam veterans who are born with certain covered birth defects. This asset must be identifiable and not commingled with other assets.
21. The value of mineral acres.
22. An annuity that is excluded per annuity sections 05-70-45-20, 05-70-45-25, or 05-70-45-30.
23. Funds held in retirement plans that are considered qualified retirement plans and meet the qualified retirement criteria established by the Internal Revenue Service (IRS); 26 U.S.C. These include:
 - SEP-IRA (Simplified employee pension) plans
 - Employer or employee association retirement accounts
 - Employer simple retirement accounts
 - 401(k) retirement plans (which include independent (sole proprietorship) plans)
 - 403(b) retirement plans
 - 457 retirement plans
 - 401 (a) Employer-sponsored money-purchased retirement plan
 - Individual Retirement Plan (IRA's)
 - Roth Individual Retirement Plan (Roth IRA's)

While these pension plans and IRA's are an excluded asset, applicants and recipients must take all necessary steps to obtain any annuities, pensions, retirement and disability benefits to which they are entitled as defined in section 510-05-35-90, Application for Other Benefits'.

When accessing their retirement accounts, individuals will have three options:

Option #1: Purchase an annuity. If the individual chooses this option, policy at 510-05-70-45-30 applies.

Option #2: Withdraw the Funds without purchasing an Annuity. When drawing the funds out without purchasing an Annuity, the

individual must:

- Receive level monthly payments AND receive the full principal and interest during or prior to the individual's life expectancy time period; or
- Withdraw the entire amount in a lump sum payment.

Individuals choosing to take a lump sum payment will have their payments considered income in the month received and an asset thereafter.

Option #3: Do nothing and continue to have the money held in the retirement account. Individuals choosing this option will not be eligible for Medicaid as they are not meeting the eligibility requirements defined in Manual Sections 510-03-35-90 and 510-05-35-90, Application for Other Benefits.

When individuals have begun drawing their retirement benefits prior to applying, Eligibility Workers will need to assess these to determine whether the individual chose Option 1 or Option 2 above, and based on the option they selected, ensure that the individual meets the policy requirements.

24. Property connected to the political relationship between Indian Tribes and the Federal government:

- a. Any Indian trust or restricted land, or any other property under the supervision of the Secretary of the Interior located on a federally-recognized Indian reservation, including any federally-recognized Indian Tribe's, pueblo, or colony, and including Indian allotments on or near a reservation as designated and approved by the Bureau of Indian Affairs of the Department of the Interior. This exclusion includes Individual Indian Monies (IIM) accounts, which are under the supervision of the Secretary of the Interior.
- b. Property located within the most recent boundaries of a prior Federal reservation, including former reservations in Oklahoma and Alaska Native regions established by the Alaska Native Claims Settlement Act. The Tribe, through the Department of the Interior, can provide verification to identify such property.
- c. Ownership interests in rents, leases, royalties, or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally-protected rights. Monies received from the lease or sale of these natural resources remain excluded while in an IIM account, however, if taken out of the account, they are considered as a countable asset.
- d. Property with unique Indian significance such as ownership interests in or usage rights to items not covered by paragraphs (a) through (c) that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable Tribal law or custom.

25. Achieving a Better Life Experience (ABLE) Accounts

An individual with significant disabilities that meets established criteria is eligible for one ABLE account. The account may be opened at any age but the disability must

have an age of onset before the age of 26 and the disability must still exist at the time the ABLE account is opened.

- If the individual is receiving SSI and/or SSDI and meets the age criteria, that individual qualifies.
- If not receiving SSI and/or SSDI, the individual must meet Social Security's definition and criteria regarding significant functional limitations and may be asked to provide certification from a licensed physician.

The total annual contributions for a single tax year, regardless of the number of contributors, are \$15,000, effective January 2018 (\$14,000 effective January 2017). For individuals with disabilities who are recipients of SSI, the ABLE Act sets some further limitations. When the total account balance meets a Plan's maximum balance limit, additional contributions into an ABLE account will not be accepted. Each state sets its own maximum balance limit.

The funds in an ABLE account can be withdrawn to be used for a 'qualified disability expense.' A 'qualified disability expense' is any expense that results from living a life with disabilities to include education, housing, transportation, employment training and support, assistive technology, personal support services, health care expenses, financial management and administrative services and other expenses which help improve health, independence and/or quality of life.

Originally, the ABLE Act required each state to create their own ABLE plans. Since the passage, changes were made to allow individuals to open an account anywhere in the United States. With this new option, Bank of North Dakota (BND) determined that the residents would have lower expenses if they accessed other states' plans. BND is available as a resource to answer questions about the ABLE Act and will provide a list of resources and state plans. Go to Bank of North Dakota's website at bnd.nd.gov/able/ for more information.

The ABLE Act requires amounts in ABLE accounts be disregarded in determining eligibility for means-tested federal and state programs including Medicaid. This includes the exclusion of any contributions to the ABLE account of the individual and any distributions for qualified disability expenses. However, a transfer of funds into an ABLE Account is subject to the Disqualifying Transfer policy for Medicaid.

Exception: For Medicaid, an individual is allowed to transfer their own funds into an ABLE Account for themselves or their spouse and this would not be treated as a Disqualifying Transfer. If they want to set aside funds for a child who is blind or disabled, money placed into an ABLE Account would be considered a Disqualifying Transfer. However policy at Section 510-05-80-25 #3.c. does allow them to create a Trust.

Since the funds in an ABLE account can only be withdrawn to be used for a 'qualified disability expense,' funds withdrawn from the account are also disregarded.

An individual who would be receiving payment of Supplemental Security Income' benefits but for the application of housing expenses paid by the ABLE account or due to having more than \$100,000 in the ABLE account" will continue to be treated as a SSI recipient for Medicaid purposes."

Refer to Section 510-05-10-30 for information regarding recovery of remaining funds in an ABLE account when the qualified beneficiary of an ABLE account dies (or is determined to no longer be disabled).

While the above identified assets are excluded in determining eligibility, if the assets are converted to a non-excluded asset, they become countable. For instance, money in an IIM account is excluded, however, once the money is removed from the IIM account it becomes a countable asset. As a general rule, workers may not request IIM information.

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