

# Legal NEWSLETTER

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**DIVESTMENTS**

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COVERAGE**

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**FREE ESTATE PLANNING  
SEMINAR**

*This publication is not intended to provide legal advice, but rather insight and awareness into legal issues that we feel could be useful to our clients and friends. Actual resolution of legal issues depends upon many factors, including variations of facts, and state and federal laws.*



## **HOW DIVESTMENTS AFFECT MEDICAID**

*By: Attorney Amy Eddy*

When applying for Medicaid in Wisconsin, particularly for long-term care services, one key concept to understand is divestment. Divestment refers to the transfer of assets for less than fair market value, such as gifting money or property to others, including family members, within a specific timeframe before applying for Medicaid. These transactions are closely scrutinized because Medicaid is a need-based program, and such transfers could be seen as an attempt to meet the program's strict financial eligibility requirements.

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**ANDERSON O'BRIEN LLP**

ATTORNEYS SINCE 1886

# UNDERSTANDING MEDICAL PAYMENTS COVERAGE

*By Attorney Brad Yanke*

Medical payments coverage through your automobile insurance is often an overlooked and sometimes misunderstood coverage. Reasonably, consumers are more interested in how much coverage they have for liability (if they are at fault), underinsured/uninsured (if someone else is at fault but not sufficiently insured), or collision/comprehensive (how much it will cost to get their vehicle repaired).

Further, in terms of premium dollars allocated, medical payments coverage ranks low. It is important to understand your medical payments coverage because if you are in an accident, regardless of fault, it is often the first pot of money that pays for medical treatment. Medical payments coverage is what is known as “no fault” coverage – it pays for medical expenses incurred because of an accident regardless of whether you or someone else is at fault.

## **Some things to consider:**

1. What dollar amount you are covered for? The most common medical payments limit is \$10,000 per person. However, coverages can range from as low as \$1,000 (not recommended) all the way up to \$100,000.
2. You should check your policy to see whether your medical payments coverage is primary or secondary/excess. Most medical payments coverage is primary; that is, medical payments would pay and be used up before normal health insurance starts paying. However, there are some insurers that have their medical payments coverage as excess or secondary. In this scenario, the accident-related treatment would have to be first submitted to normal health insurance, and medical payments coverage would pay what remains, such as any deductible, co-pay, coinsurance, and/or if the treatment was denied by health insurance.
3. You will want to know by when the coverage must be used. Some policies are written that the coverage



must be used within one year of the accident; some policies say used within three years of the accident; and, even some are written that if treatment is started within one year of the accident, then they will cover it for three years from the accident date.

4. If you receive a settlement or judgment from the at-fault party or their insurer, your insurer that paid medical expenses on your behalf may have the right to subrogation/reimbursement for the payments made. Fortunately, all medical payments coverage insurance in Wisconsin is subject to the Made Whole and Common Fund doctrines, which can be used to reduce the amount that has to be paid back to your insurance company out of any settlement/judgment.

As you can see, medical payments coverage is not a simple binary issue of have it vs. don't have it. Depending on how much coverage you purchased and how the policy is written will determine how the coverage is utilized after an accident. Of course, contacting and retaining a skilled attorney can help you strategize how to effectively use medical payments coverage to minimize your out-of-pocket expenses after an accident. ♦

**Injured? Don't be a victim twice.**

# LEGAL SEPARATION V. DIVORCE

*By Attorney Rich Fuller*

Clients often ask what the difference is between a legal separation and a divorce. While the court process for both is similar, the legal consequences of each are significantly different. Below are some of the differences between these two judgments:

1. Legal Definition and Consequences of Divorce: Divorce is defined as the dissolution of the marriage relationship. Once a judgment of divorce is entered, parties are free to remarry another individual after six months.

2. Legal Definition and Consequences of Legal Separation: Legal separation does not terminate a marriage. Legally separated couples may reconcile without having to remarry.

3. Grounds for Divorce and Legal Separation: The grounds for legal separation are that the marriage is "broken." Both parties must state that the marriage is broken for a court to grant legal separation. For a divorce, the court must find that the marriage is "irretrievably broken."

4. Property Division: Upon judgment of annulment, divorce, or legal separation, the court shall divide the parties' property and transfer the title accordingly. Property acquired by a spouse by gift remains the separate property of that spouse and is usually not subject to division upon divorce.

5. Jurisdictional Requirements: For legal separation, a court has personal jurisdiction over an individual after that person has been a resident for at least 30 days in the Wisconsin county in which the action is brought.

For divorce, the court must have personal jurisdiction over one spouse, who must have lived in Wisconsin for six months and in the county of filing for 30 days.

There are several reasons why someone might choose to remain legally married, even if they are separated.



- Continue to receive health benefits (depends on the insurance policy)
- Religious beliefs may not allow divorce
- Hope for reconciliation
- Sever the financial relationship, as between parties

There are also reasons why a party may proceed with a divorce instead of a separation.

- Wish to marry someone else
- Low or no chance for reconciliation
- Substance abuse or violence

Even if the parties are legally separated, they may convert that legal separation into a divorce by filing a motion with the court. Choosing which path to take requires some thoughtful analysis, a determination of what goals each spouse has, and whether or not they are truly interested in ending their marriage at this point, or keeping the door open for possible reconciliation.

If you have any questions on these topics our skilled, and compassionate family law attorneys would be happy to meet with you. ♦

## Lawyers where you live.

Amy J. Eddy  
Bradley A. Yanke  
Brent W. Jacobson  
Brian G. Formella

Daniel F. Schmeekle  
David M. James  
Donna L. Ginzl

Heather M. Huebner  
Jason M. Sausser  
Katherine A. Young

Keith J. Pilger  
Richard H. Fuller  
Steven H. Thompson

(continued from front page), *Divestments*

In Wisconsin, the “look-back period” for Medicaid applications is 60 months. During this time, all asset transfers are reviewed. If the state determines that divestment occurred, the applicant may face a penalty period during which they are ineligible for Medicaid coverage. This penalty period is calculated based on the value of the transferred assets and the average cost of nursing home care in the state.

Importantly, Wisconsin Medicaid does not allow general exceptions for gifting assets, even to children or other family members. Common misunderstandings arise from the belief that small or “reasonable” gifts, such as financial help to children or contributions for weddings or holidays, are permissible without penalty. However, under Medicaid rules, any transfer for less than fair market value can trigger penalties, regardless of intent or recipient unless it meets one of the very narrow and specific exceptions under the Medicaid rules. The exceptions include the following:

- Transfers between spouses
- Transfers to a blind or disabled child
- Transfers to a trust for a disabled individual who is under age 65
- Transfer of the primary residence to a spouse, a child under 21, a child of any age who lives in the home and has provided care for at least 24 months prior to a nursing home admission or to a sibling who has an equity interest and has lived in the home for a least one year prior to nursing home admission
- Transfer of an asset for full fair market value
- Transfers made with no intent to qualify for Medicaid

To avoid costly penalties, individuals should plan carefully and consult with an elder law or Medicaid attorney. Proper planning can help protect assets while ensuring compliance with Wisconsin’s Medicaid rules. Understanding and adhering to these regulations is essential to ensure a smooth application process and avoid delays or denials of much needed benefits.

If you have questions regarding divestments or Medicaid qualifications please make an appointment with one of our expert elder law attorneys. ♦



April 24  
6 p.m. to 8 p.m.

Mid-State Technical College  
1001 Centerpoint Dr.  
Stevens Point, WI 54481

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715-344-0890 or  
[andlaw.com/seminars](http://andlaw.com/seminars)



1257 Main Street | P.O. Box 228 | Stevens Point, WI 54481-0228

**715-344-0890 | [andlaw.com](http://andlaw.com)**

