

Medicaid & VA Benefits

Qualifying Clients Since 1990

Sean **W.** Scott
Elder Law Attorney
wlaw p.a.



Free - no obligation - professional consultation

Ask a Medicaid attorney
727.539.0181

Quick Medicaid Facts

Income Limits 2017

Applicant - \$2,205 per month (gross).
Spouse - Income not counted.

Asset Limits 2017

Single Applicant - \$2,000 *

Married Applicant - \$2,000 *
plus \$120,900 for the spouse

* Add \$3,000 if applicant's income is less than \$885 per month.

Spousal Diversion Amount

A spouse of a Medicaid applicant can have his or her monthly income increased up to the following amounts by diverting the applicant's income to themselves:

Base spousal income - \$2,030

Maximum income increase - \$3,023

Look-back period

60 months (5 years)

Transfer Penalty

Divide the amount transferred by 8,944 to obtain the amount of disqualified months. Note however that this penalty can be fixed. So even if you have transferred assets there are techniques to undo the transfers.

When to plan

Often the most challenging question for clients is not how to solve the problem of paying for long term care, but when to begin to plan.

If we all had the magic ability to see into the future and know exactly when we would need nursing home care, then we could all start planning at the perfect time.

The majority of clients fall into one of three categories when it comes to Medicaid planning: The planner client, the writing on the wall client, and the emergency client. Which one are you?

The planner client takes great solace and peace of mind with having all the details worked out well in advance.

The writing on the wall client has had some indication that a problem looms ahead. A diagnosis of Alzheimer's or Parkinson's, for example. Steps should be taken at this time to address the future need and payment for care.

The emergency client, or the "Uh-oh" client. Uh-oh as in "Uh-oh, my loved one is in the nursing home and I don't know how I am going to pay for it." The good news is that even if you have waited until nursing home placement, it is still not too late to preserve the person's assets and obtain Medicaid benefits to help pay the cost of care.

The key is knowing what to do and when to do it. This is an area where the experience of a qualified elder law attorney can be invaluable.

The more time you plan before a care crisis occurs the more options you have and the easier the problem is to solve.

Why protect assets?

Why take any action to preserve assets? Is there anything wrong with depleting all the money on nursing home care? What if there were options and compelling reasons to take action to avoid spending everything on the nursing home?

There are three good reasons to do something versus standing by as all the assets disappear.

First reason: make sure that sufficient assets are maintained to take care of the spouse who is not in the nursing home. When the sick spouse goes into the nursing home, life savings start to disappear leaving the healthier spouse without sufficient funds to meet his or her needs going in to the future.

Second reason: leave a legacy for the children. An informal poll of my clients reveals the number one reason for saving their money, "...to give it to their kids."

The third, and most overlooked reason, is to preserve the assets for the benefit of the person who is in the nursing home.

There are solutions to obtain eligibility for Medicaid benefits. With good planning and assistance of a qualified professional, no one needs to be financially wiped out by the high costs of long-term care.

By taking action to preserve the assets of the nursing home resident you can then use those preserved funds to augment and supplement the care the person is receiving in the nursing home and greatly improve their quality of life.

Frequent Medicaid Questions

Q. Why do I need an attorney? Can't any Medicaid "expert" solve this problem.

A. An attorney specifically trained in Medicaid qualification is absolutely necessary. Be wary of non-attorney Medicaid "experts." They are unregulated and you have zero recourse when they make a mistake. They are also usually annuity salesmen in disguise. We are regulated by the Florida Bar, we sell you no investments, we have been qualifying clients for benefits for 25 years, AND 100 percent of our Medicaid clients qualify for benefits.

Q. If I give assets away am I ineligible for Medicaid?

A. Yes. All gifts disqualify the applicant for Medicaid benefits. The disqualification starts at the time of the application for Medicaid. The disqualification must be removed by taking appropriate legal action before application is made.

Q. What about the money in my safety deposit box? Do I have to tell anyone about it when applying for benefits?

A. Yes. You must disclose all of your assets. Failure to do so is a felony.

Q. Can my son take money out of our joint account without effecting my eligibility?

A. No. Any transfer of assets from a joint account, regardless of who makes the transfer, will be considered a disqualification.

Q. Is my home protected?

A. Yes. The home is not counted as an asset so long as the owner has an intent to return and the value is less than \$560,000.

More Medicaid Questions

Q. Can I still give \$14,000 a year away?

A. No. Just because you can give away \$14,000 per person per year under the tax laws, you cannot under Medicaid laws. Such a gift will disqualify the applicant.

Q. When someone on Medicaid dies does the state take their home?

A. In Florida the State cannot take the home after death so long as it is considered the person's "homestead."

Q. What about long-term care insurance?

A. Yes, absolutely. If you can afford long-term care insurance, and are healthy enough, insurance is a great way to manage the risk of an extended stay in a nursing home.

Q. Does the Medicaid recipient get to keep his income?

A. No. The recipient must pay the nursing home their total monthly income, minus \$105.00. In some cases the spouse may get to keep some of the income.

Q. Should I wait until I need Medicaid benefits before I see an elder law attorney?

A. No. Many of the options available to you to protect your assets are dependent on time. The more time before the need arises the more options you have.

Q. If I have too many assets to qualify, but need Medicaid now, is it too late to protect any assets?

A. No. While you may have lost an opportunity to use some strategies, it is never too late to protect some, if not all, of the assets.

Giving Away Assets is Bad

If a potential Medicaid applicant has assets over the eligibility limit and wants to qualify for Medicaid, the tendency is to give the excess assets away, usually to a family member. This "solution" does not work and actually creates a disqualification penalty.

Medicaid will not allow you to simply give assets away in order to become qualified for benefits. There are very strict rules prohibiting gifts of assets. Any uncompensated transfer or even an under-compensated transfer will disqualify the applicant from receiving Medicaid benefits.

There are no minimum amounts that are okay to transfer, nor any recipient, except a spouse or a disabled child. Even charities, churches and political donations are not exempt from this rule.

Assets, however, may be moved and preserved if done in a way allowed by the rules. It cannot be a gift or an uncompensated transfer.

This is the essence of Medicaid planning, preserving and protecting a life's savings without violating Medicaid's rules.

The transfer of asset penalty disqualifies the applicant only if he or she transfers assets within a certain period of time before applying for benefits. This period of time is called a look-back period. The Medicaid transfer look-back period is 60 months starting from the date of application for Medicaid benefits.

If you have given assets away are you out of luck and disqualified? The answer is absolutely not. With appropriate action, the disqualifying transfers can be fixed and the penalty removed.

The Asset Target

In order to qualify for Medicaid benefits to pay for nursing home or assisted living care you must determine the total countable assets for both applicant and spouse. If the amount of the assets is beyond the eligibility target, the Medicaid applicant will be denied benefits.

Assets must be repositioned or re-characterized to reduce the total countable assets below the asset limit.

The asset target or limit for a married applicant and spouse is a total of \$122,900. Both the assets of the applicant and the spouse ARE counted in determining eligibility.

If the applicant is single the asset target shrinks to only \$2,000. This is quite a significant difference. From a practical perspective, this means that most single applicants do not initially qualify for benefits.

When meeting with clients it is our standard procedure to analyze the client's entire situation to determine the proper course of action. We take into account the character of the assets, the amount, the particulars of the family situation and the individual goals of each client.

The characteristics of the assets are important. Whether an asset is jointly owned, tax qualified, or highly appreciated will all determine the particular choice of strategy.

The composition of the family and the needs of the spouse and children will all influence the planning process. The goals of the client concerning the preservation of assets ultimately dictate the final plan of action.

Income Limits and a Solution

The goal of every good Medicaid plan is to preserve the most assets while obtaining eligibility as soon as possible. In order to accomplish this you need to first start with an accurate assessment of the applicant's income.

If the applicant is over the income limit, he or she is not eligible for Medicaid benefits. To fix this problem, an income trust needs to be created and properly funded. An income trust does not, in itself, protect assets. It only reduces the income of the applicant to obtain eligibility.

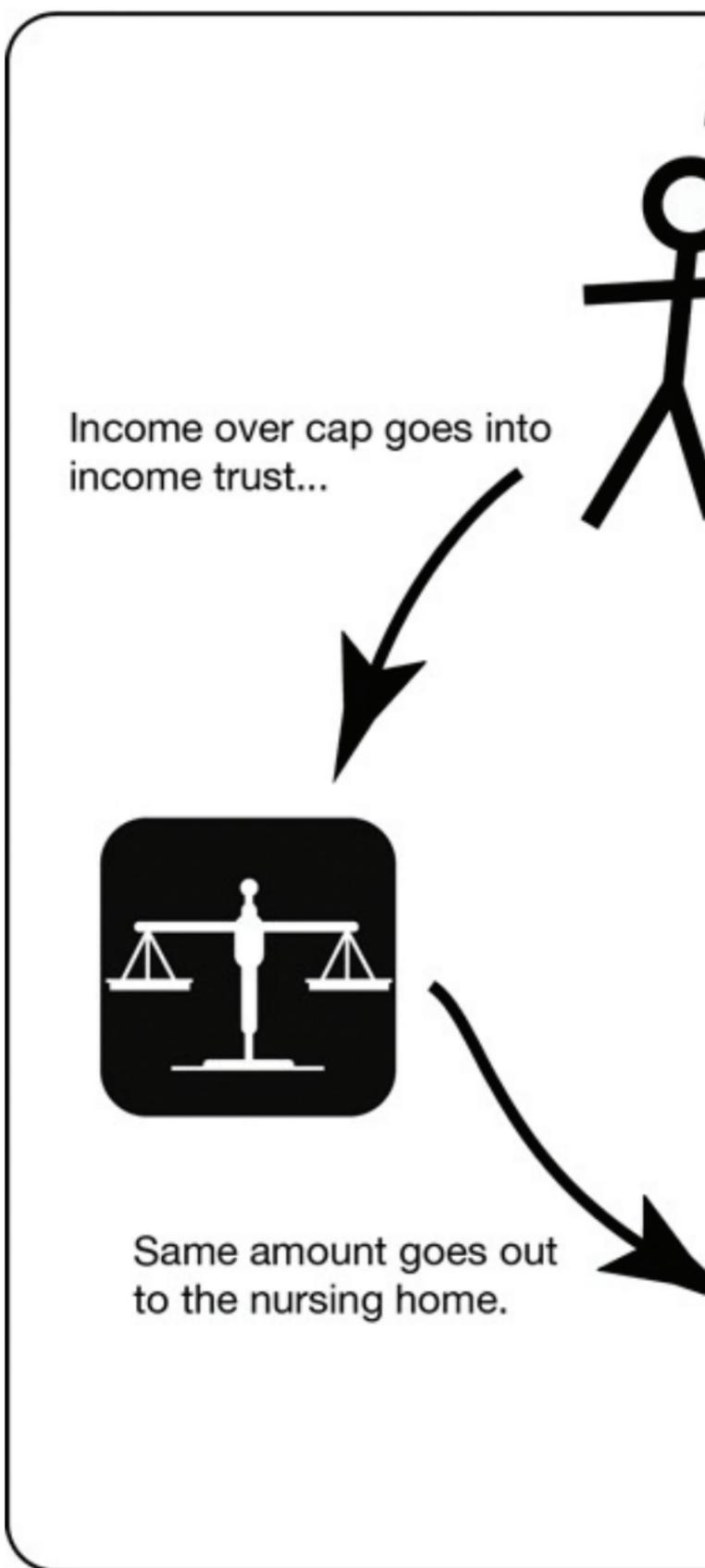
The income limit in 2017 is a gross monthly income of \$2,205. If the applicant is over this amount, even by a dollar, the applicant is disqualified for benefits. The spouse's income is not counted when determining eligibility.

In order to qualify for Medicaid benefits, an income trust must be drafted, executed and properly funded in the month that Medicaid needs to begin.

The concept of an income trust is relatively simple. A trust is created by the attorney and signed by the applicant, the applicant's spouse or the applicant's power of attorney.

Next, a checking account is opened in the trust's name at a local bank. Then every month thereafter, the applicant's income is moved from the applicant's individual bank account to the trust's checking account. The minimum amount moved must be enough to bring the applicant's income below the income cap.

The diagram on the next page illustrates the movement of income from the applicant through the trust to the nursing home.

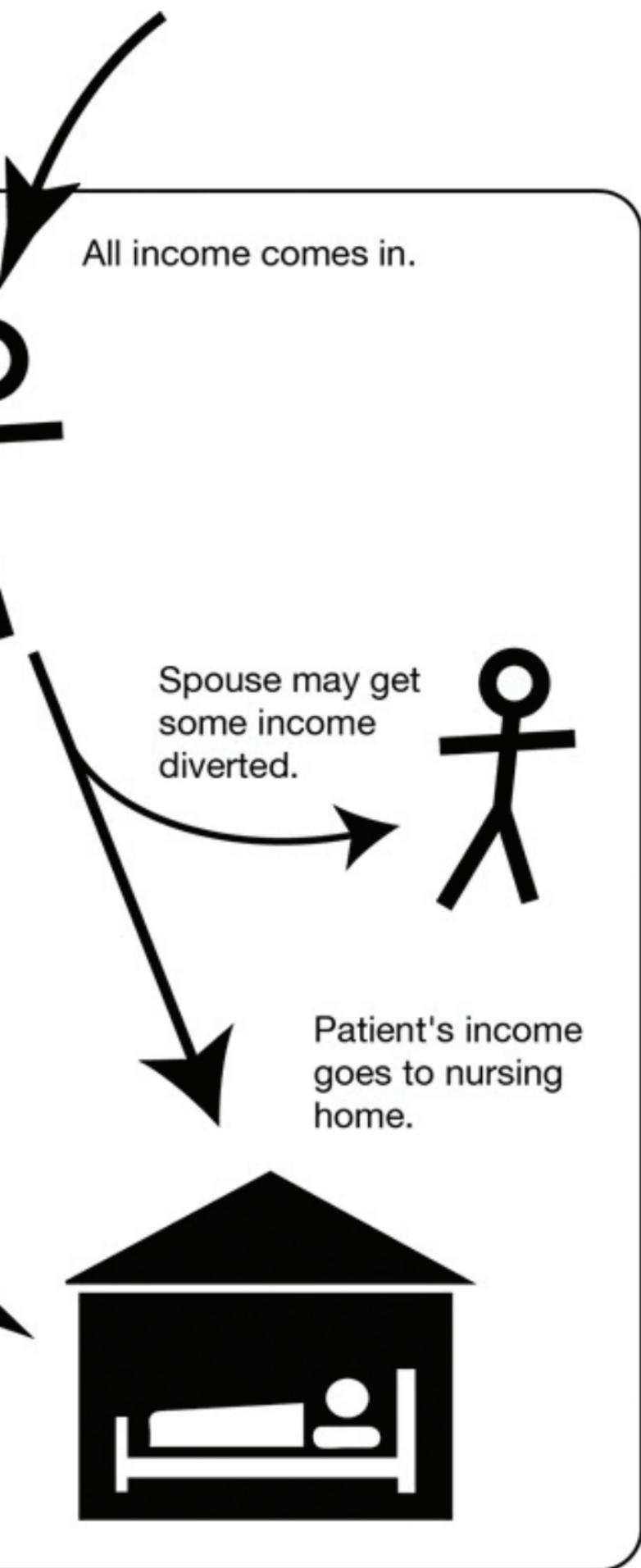


Income Trust Diagram

If the income is below the \$2,205 limit then applicant passes the income test and does not need an income trust.

If the income is above the \$2,205 limit the applicant must deposit at least the excess amount over the income cap into the income trust each month.

In most cases we recommend the



applicant's TOTAL income be to the income trust streamlining the payment of the patient responsibility to the nursing home.

There may be an exception in some cases where a spouse can divert some or even all of the recipient's income to themselves. This is called the spousal diversion or spousal allowance. The diversion is based on the amount of the spouse's income.

Asset Worksheet

Before you start Medicaid planning, it is a good idea to know the total amount of your assets and income. Below is a simple worksheet to help you get an idea where you are starting from and the amount of assets to be protected.

Asset Type	Amount
Checking	
Savings	
CDs	
Money Market	
Stocks	
Bonds	
Annuities	
IRAs and 401k	
Property (not home)	
Life insurance CV	
Other	
Total Assets	

Income Type	Gross Amount
Social Security	
Pension	
Disability	
VA	
Interest	
Other	
Total Income	

Estate Planning Issues

Perhaps the most common and fatal mistake in Medicaid planning is to ignore the estate plan of the healthy spouse.

Failure to modify the estate plan of the applicant's spouse is often overlooked during the Medicaid planning process. There is such a focus on obtaining benefits and protecting assets that the possibility of the healthy spouse dying first is overlooked.

Most spouses have reciprocal estate plans that give everything to the surviving spouse when the first spouse dies.

But upon the death of the spouse the Medicaid beneficiary's asset eligibility amount is reduced from the combined \$122,900 to \$2,000.

If the estate plan is not corrected, the death of the spouse and the transfer of assets to the Medicaid beneficiary destroys his or her eligibility for Medicaid due to having too many assets!

These reciprocal estate plans are ticking time bombs waiting to destroy Medicaid eligibility. The new estate plan must direct the assets to a trust for the benefit of the surviving spouse or to other family members in order to preserve Medicaid eligibility.

We use a specialized trust under the Medicaid rules called a Testamentary Special Needs Trust to stand in the place of the Medicaid recipient to receive the estate's distribution. The assets that go into this trust are available to be used for the benefit of the Medicaid recipient, but do not count as his or her assets and therefore do not disqualify the spouse from continuing to receive benefits.

Protecting the Spouse

As we have seen Medicaid requires all the income of the recipient to go to the nursing home. This can create an obvious hardship on the spouse that is not in the nursing home because of that loss of income.

Medicaid makes an exception to the rule that all the recipient's income go to the nursing home if there is a spouse who needs it for his or her support. This is often referred to as spousal diversion or monthly maintenance allowance.

The following worksheet can be used to calculate the increase in the spouse's income.

<i>COMMUNITY SPOUSE INCOME</i>		
Social Security		
Pension + Other Income		
Interest Income (estimated)		
GROSS INCOME		a
<i>SHELTER COSTS</i>		
Rent or Mortgage		
Taxes		
Insurance		
Maintenance		
Utility Allowance	\$338.00	
SUBTOTAL OF SHELTER COSTS		b
Subtract 30% MMMNA	(\$609)	c
	(d = b-c)	
MMMNA	\$2,030	e
SPOUSAL DIVERSION		f
	(f = d+e)	
COMMUNITY SPOUSE INCOME ALLOWANCE		g
	(g = f-a)	

Add the income the spouse receives from all sources for line "a". Add all shelter costs, including your state's utility allowance, to get line "b". (Florida's 2017 amount is \$338) 30% of the MMMNA, line "e" has been calculated for you but will change depending on what your particular state's MMMNA is. Next, subtract line "b" from line "c" to the get the excess shelter costs. This amount will be added to the MMMNA to assist with the cost of providing a home for the community spouse. Add line "d" and line "e" to determine the spousal diversion amount. And finally add line "f" and "a" to determine the spouse's total projected monthly income. If you want to get really fancy, subtract the spousal diversion amount from the applicant's income to determine the patient's responsibility.

Medicaid and Assisted Living

Historically, Medicaid only paid the cost of the nursing home. There was little or no financial assistance for assisted living care or at home care. Over time, however, many assisted living facilities added more assistance for the resident, increasing the level of care they provide to reach almost the level of a nursing home. This has resulted in more people using assisted living facilities to provide care instead of nursing homes.

The Florida Statewide Medicaid Managed Care Program is a Medicaid program designed to provide extra assistance, including financial assistance, to help people remain at home longer or to help pay for an assisted living facility.

It is a part of the Medicaid program but a different flavor. It has almost identical qualification requirements, with one big exception, you have to be selected to participate in this program. Due to the selection process the program has a waiting list you must get on to be accepted on the program. We help and guide you through this process.

While Medicaid basically pays for all the nursing home bill minus the recipient's income, this flavor of Medicaid differs from traditional nursing home Medicaid by only paying a portion of the assisted living bill, usually around a \$1,000. It also provides additional benefits such as lowering or eliminating drug co-pays, acts as a Medicare supplement and adds the Medicare part B premium (approximately \$104.90) back to your social security check.

There is a way to avoid the waiting list, but the client must be in a nursing home for at least 60 days with a requirement that they are on Medicaid for at least one day before they leave the nursing home for the assisted living facility or back to their own home. We refer to this exception as 60 plus 1.

Durable Power of Attorney

Having a person that is a “second in command” to step in and help manage the affairs if you become incapacitated is CRITICAL in the Medicaid planning process. This back-up person is granted the authority to act through a durable power of attorney document.

The power of attorney document must contain very specific language to allow the person to act with particular authority.

Most powers of attorney that we review do not adequately address issues such as trust creation, IRA management, gifting powers or sufficient power over the homestead. All are fatal flaws and require the document to be updated.

A durable power of attorney is a document that grants authority to a designated person to act on behalf of another. Without a power of attorney no one is available to act on behalf of the incapacitated person without the court appointment of a guardian.

In cases where the opportunity to get a power of attorney has passed, a court appointed guardian can act on behalf of the incapacitated individual. Setting up a guardianship is a time-consuming and expensive process, and most often delays the Medicaid application process.

The tendency is to think that all powers of attorney are the same. They simply are not. In Medicaid planning, the specific terms and limitations of the particular power of attorney document can have far reaching effects. See our website for a more in-depth discussion of the most common problems.

You should review your existing documents with an experienced elder law attorney before a loss of capacity keeps you from being able to fix any problems in the power of attorney.

A Medicaid Lawyer is Imperative

Our goal is to help you and your loved one age with dignity, with a higher quality of life, and with a more secure financial future. Many outside forces conspire against this success, including non-professional Medicaid planners that purport to help you file for Medicaid benefits.

The non-lawyer, non-professional Medicaid planners are not trained elder law attorneys, but are usually financial advisers or insurance agents. The sad truth is that many of these non-professional Medicaid planners put profits over the interests of their clients.

Should they make a mistake you have no remedy to cure their mistakes. Lawyers, however, are strictly regulated by the Florida Bar, are required to maintain the highest standards of professionalism and ethics and must keep current on the law through continuing education requirements. Non-professional Medicaid planners have none of these safeguards.

The United States Supreme Court accurately described Medicaid law as among "the most intricate ... Byzantine" texts "ever drafted by Congress." The renowned Justice Henry Friendly called the Social Security Act "almost unintelligible to the uninitiated" and another famed appellate court famously stated that the statutes and regulations "are among the most completely impenetrable texts within human experience."

Because the high costs of assisted living and nursing home care are so damaging, most people exhaust all their assets paying for care. Only then does Medicaid help.

Our job is to avoid that result and help families protect their life savings to qualify for Medicaid now or to plan for future eligibility when necessary.

Some Final Thoughts

Having practiced Elder Law in Florida for over 27 years, we are well aware of the crisis people find themselves in paying for the high cost of long-term care.

Out of nowhere, this freight train of financial and personal trauma blindsides the unprepared, for example, after 50 years of marriage, a wife watches her husband deteriorate into total dependence. Her goal is to keep him at home as long as possible, but she has her own limits whether admitted or not.

Or, a loving daughter attempts to be a caregiver for her parents while juggling her own family and work commitments. She watches as her work and family life suffers but knows that she must deal with the core issue of her parent's needs in their final years.

In order to succeed in achieving the highest level of care and the highest quality of life, you must become educated in how the Medicaid system works.

It takes elder law attorneys years to understand how to counsel their clients and guide them through the long-term care maze. Do not make the mistake of thinking that you can do this alone.

After you have spent time reading this pamphlet, tell at least one other person to friend us on Facebook at [facebook.com/FloridaMedicaid](https://www.facebook.com/FloridaMedicaid) or visit our website at [FLMedicaid.com](https://www.FLMedicaid.com).

The information contained on our website can save tens or even hundreds of thousands of dollars, but more than money, it teaches how to increase the quality of care and quality of life for our loved ones without financial catastrophe.

Share this information so you can help others.

Assets You Can Keep

Home

The primary residence of the applicant is not counted against the asset limit. (Subject to a maximum equity of \$560,000)

Real Property

Income producing real property may be kept under certain circumstances.

Cars

One car of any value and age. Any number of cars over 7 years old.

Tax-Qualified Accounts

In many circumstances tax qualified accounts like IRAs may be kept.

Life Insurance

Term-life policies are not counted. Whole-life policies with combined face value less than \$2,500 are not counted.

Prepaid Burial Plans

Irrevocable burial plans are not counted as assets.

AND...

Pretty much everything else CAN be protected with proper planning and assistance.

The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience. Main office located at 3233 East Bay Dr, Largo FL 33771.



Total client service is our mission.

100 percent Medicaid approval our goal.

The complexity of issues and ability to integrate multiple disciplines defines and sets us apart from others who say they do Medicaid filing and planning.

Unregulated non-professionals lack the training and experience to meet the many needs of the client and are often merely a means to sell you investments.

Non-lawyer "planners" cannot provide all the services required for a complete solution. They must refer you to someone else to do powers of attorney, income trusts, and the complex estate planning necessary in every case. They cannot practice law. The Florida Supreme Court has defined Medicaid planning as the practice of law. Non-lawyer Medicaid planners cannot advise you of Medicaid law and rules. To do so is a felony.

We serve the entire state of Florida with offices in Pinellas, Hillsborough, Citrus, and Charlotte Counties.

We also have a one-of-a-kind virtual office at the University of South Florida Alzheimer's Byrd Institute located in Tampa. We frequently do regular audio and video conferencing with our more distant clients.

Please contact us for a free, initial personal consultation, phone consult or video conference.