

Protecting Assets

for Long-Term Care Assistance



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As an elder law attorney, clients often ask me how they can afford nursing home care or assisted living care. The average cost for a nursing home is \$7,000 to \$8,000 per month and assisted living can cost between \$2,800 and \$6,000 per month. For most families, their entire life savings can be quickly drained by these expenses. This can be financially devastating to those who also have to deal with the emotional trauma of placing a loved one in a facility.

Florida has Medicaid programs which can help with these expenses. These programs do not usually cover the entire cost of the nursing home or assisted living facility as the applicant's income is required to help pay for the care. There are four basic requirements to be eligible for this assistance: an assessment by the State, income limits, asset limits, and a five (5) year "look back" period for improper transfers.

The Department of Elder Affairs will make an assessment of the applicant to determine the need and proper level of long term care. This assessment can be made in the home or facility.

The income limit to be eligible for these programs changes yearly. Currently the applicant's gross income limit is \$2,313 per month. If the applicant is married, the "community" spouse has no income limit. The good news is if an applicant is over this limit, there is a procedure under the Medicaid rules to allow that person to qualify for assistance by setting up a "Qualified Income Trust". The important thing to remember is that too high of an income does not disqualify a person. In certain circumstances the applicant's spouse can receive some of the applicant's income to help the spouse remain in the community, living independently.

The next step in determining eligibility is the asset requirement. Both the applicant and the spouse have limits on the value of their countable assets. The applicant is limited to \$2,000 in countable assets, while the "community" spouse living

at home currently has a higher asset limit of \$127,060. Not all assets are "countable" though. The most valuable assets that are not counted include the primary residence, one car, irrevocable prepaid burial or funeral expenses, and certain life insurance policies.

The final step is dealing with the five (5) year "look back" period. This means that an applicant and spouse's financial records can be reviewed for the five year period immediately prior to the application date. This is to find any improper transfers of assets by the applicant or the spouse. An improper transfer is any transfer, gift, unpaid loan, donation, or other giving away of assets for which the "giver" does not receive fair compensation in return.

An improper transfer can trigger a penalty. This applies to cash, CD's, stocks, bonds, investment accounts, life insurance policies, annuities, real estate, and more. The reason for the transfer doesn't really matter – just the fact a transfer was made is enough to cause a penalty. There are no exceptions for helping a family member who needs medical care, college tuition, a down payment for a home, or for donating to a charity, church or temple.

The penalty for an improper transfer is a time penalty that prevents a person from qualifying for Medicaid for a certain number of months. The penalty period begins after the applicant would otherwise be eligible. Once an applicant is determined to be Medicaid eligible, he/she must then wait for the penalty period to expire and in the meantime figure out how to pay for care. Keep in mind that the greater the value of the improperly transferred asset, the longer the penalty period. People sometimes "panic" and make improper transfers or gifts when suddenly faced with the expense of long term care. However, it is possible under the Medicaid rules to correct improper transfers and avoid a penalty period.

If the applicant or spouse is over any of these limits, or has improper transfers, all is not lost. That is the time to locate

a reputable elder law attorney to begin "Medicaid planning". By utilizing the Medicaid rules you can legally protect income and assets that are over the limits, correct improper transfers, avoid penalties and still achieve eligibility. This planning can be accomplished either before or after placement in a facility.

Be sure the person you are relying on for Medicaid eligibility is an experienced elder law attorney. The Medicaid rules and regulations are very complex and are constantly changing. You should make a point to ask questions before you retain an elder law attorney: how long has that attorney practiced elder law; how much of their practice is dedicated to Medicaid planning; how many Medicaid applications have they filed in the past 5 years – how many of those were approved; how many were denied, and if denied, what happened on appeal? You can also ask the elder law attorney for references from former clients. But perhaps the best way to locate a reputable elder law attorney is to ask your friends, neighbors, and relatives. An elder law attorney will be able to assist you with the entire Medicaid process without trying to sell you any financial products. Be especially wary of anyone selling financial products which claim to achieve Medicaid eligibility, including annuities and trusts.

With careful planning, the long-term care Florida Medicaid requirements can be met without having to spend down assets, and the financial strains of long-term care are minimized. This helps a family place a loved one where they receive the level of care that they need and deserve.



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