

SPOUSAL REFUSAL | JUST SAY NO

Just Say No, or Spousal Refusal is applicable in situations where one spouse is living in a facility (either an assisted living facility or nursing home) and the other spouse resides in the community (“community spouse”). The Just Say No option works by transferring all of married couple’s countable assets into the name of the community spouse only.

After the transfer, and prior to filing a Medicaid application, the community spouse signs a notice of spousal refusal indicating a refusal to make these assets available for the applicant’s care. In turn, the applicant signs, either individually or through a power of attorney, an assignment of support rights to the government, which in theory, **allows the government to take the position that it could sue the community spouse to reimburse it for the amount it paid for the applicant’s care and support.** While no one likes the threat of a law suit, it should be comforting to know that Florida, to our knowledge, has never sued a community spouse who refused to make his or her assets available to the spouse who is receiving Medicaid benefits. Further, it is our belief, based on precedent, that Florida will not file such a suit. Our belief is based on the fact that in the 1990’s, Florida abolished the common law Doctrine of Necessaries through case law.

Specifically, in a Florida case, a wife received a bill from a hospital for the hospitalization of her husband. When the wife refused to pay for this bill, the hospital sued her, relying on common law Doctrine of Necessaries. The Doctrine of Necessities stated that a husband had a duty to support his spouse; however, the Doctrine did not include a wife’s duty to support her spouse. The case was eventually heard by the Florida Supreme Court who issued a ruling abolishing the Doctrine of Necessaries because it violated the constitutional right of equal protection. As the law currently stands, there is no requirement for spouses to support one another. Accordingly, it is our opinion, that in a Medicaid context, if one spouse refuses to make his/her assets available to the other, then the government would not be successful in a suit against the spouse to be reimbursed monies it expended on the Medicaid recipient spouse’s care.

While this is not a guarantee, and of course, the government could try to advance other theories, we believe that the government is unlikely to file suit. Politically, it would not look good for the government to sue an elderly person for care support.

Lastly, even if the government did sue and even if the government did win, the amount that they could recover would be limited to what it paid for care. Since the government far less for care than private rates, we believe this option poses little risk and much to gain. However, we cannot predict what actions the government will take in the future and you should be aware of the risk, even if we currently believe it is unlikely to materialize.



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Income Allowance Drawback

There is a “you can’t have your cake and eat it too” aspect to Just Say No / Spousal Refusal: Generally, to avoid impoverishing the community spouse (who is not applying for Medicaid), the community spouse may be entitled to a portion, or all, of the Medicaid Spouse’s income. This income diversion is referred to as the Minimum Monthly Maintenance Needs Allowance (MMMNA).

However, DCF takes the position that if the healthy community spouse is unwilling to “support” the spouse receiving Medicaid by deploying the “Spousal Refusal” strategy, then the community spouse will **not** be able to access the MMMNA income supplement from the Medicaid spouse that they would otherwise be entitled to receive.

Essentially – if Spouse X refuses to share assets with Spouse Y, Spouse X then will have to do without any additional income from Spouse Y as well.

Your Elder Law Attorney will be able to lay out the pros and cons of Spousal Refusal compared to other Medicaid Planning techniques.



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