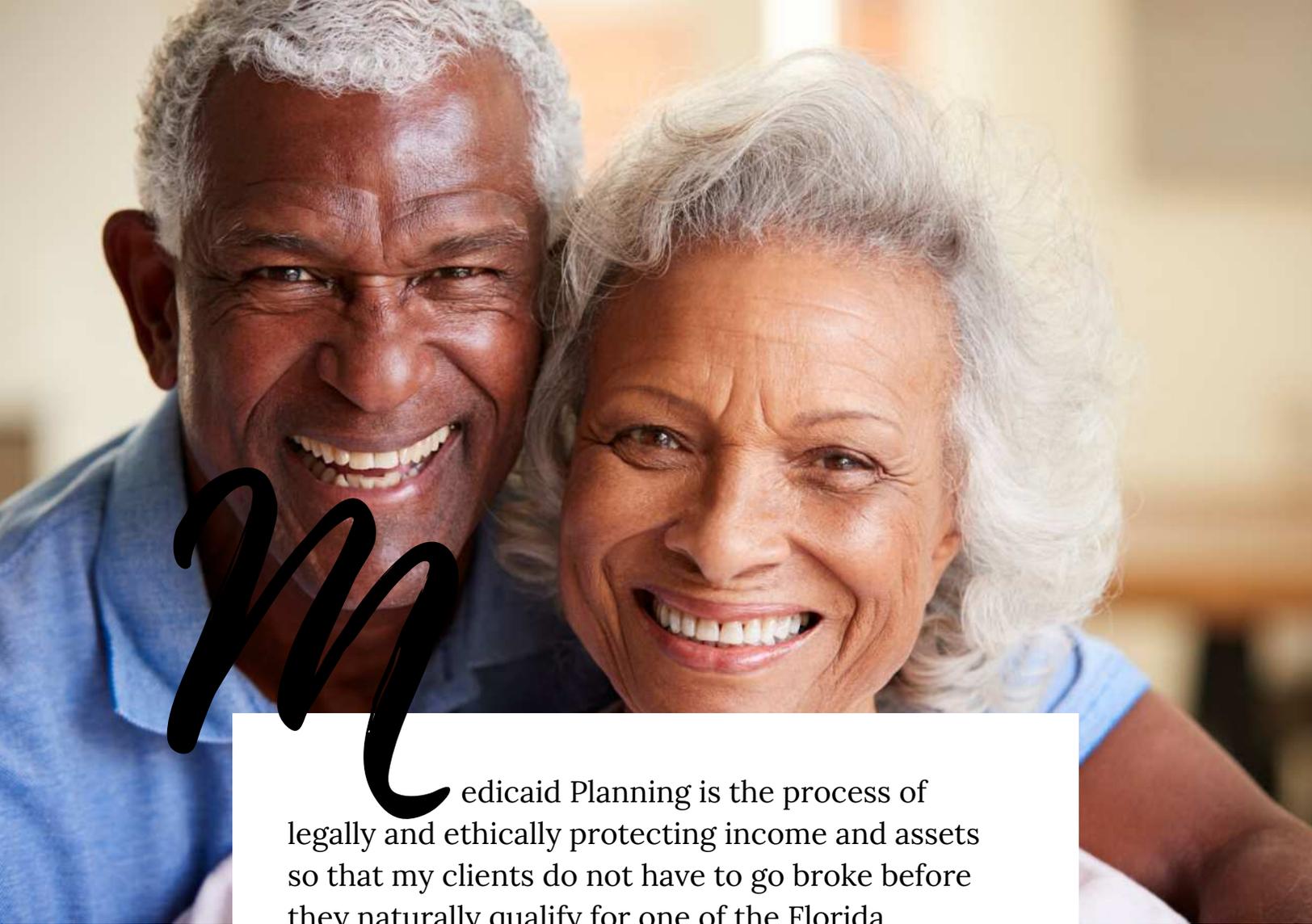




What Is Medicaid Planning and Common Medicaid Asset Protection Mistakes

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Medicaid Planning is the process of legally and ethically protecting income and assets so that my clients do not have to go broke before they naturally qualify for one of the Florida Medicaid Long Term Care Programs described in this booklet.

My typical clients may or may not own their home (sometimes with a second property) and on top of that have between \$20,000 and \$750,000 in other liquid or countable assets. Their typical incomes are between \$850 and \$4,500 per month.

Medicaid planning utilizes Florida and Federal laws to convert these assets into an exempt or non-countable form without triggering the five-year gift penalty that allow my clients to qualify and get additional assistance right now.



Overview of Florida Medicaid Long Term Care Programs

It's important for my (potential) Medicaid-Planning clients to understand that "Medicaid" is an umbrella term used for multiple programs. In a long-term care context, there are three basic Medicaid programs that our firm works with in Florida: Medicaid ICP; Medicaid Waiver for senior citizens age 65 or older, or disabled; and QMB/MED-AD.

Medicaid ICP and Waiver programs require applicants to have less than \$2,000 in total countable assets and receive less than \$2,382 (gross, not net) from all income sources combined. **This info is good as of 2021. If you are reading this in later years - the concepts may be the same but the numbers will have changed.**

Our Medicaid planning service is centered around assisting those with excess assets or income.

Medicaid Institutional Care Program | Medicaid ICP

This long-term care Medicaid program is for those who require skilled-nursing / rehab / nursing home level of care only. There is no wait-list for this program and approval will be granted in the same month the ICP applicant is financially qualified, medically qualified, AND submits a Medicaid application.



Once approved, the Medicaid recipient will pay their “patient responsibility” or “patient share of cost” (essentially all of their income, only keeping \$130 per month for incidentals) and Medicaid will pay the entire difference for a semi-private room in a nursing home. All nursing homes must accept Medicaid, so this program can help pay for the very best nursing homes in Florida.

If the Medicaid recipient is married to a non-Medicaid recipient (known as the Community Spouse), the Community Spouse may be entitled to a portion of the Medicaid recipient’s income as part of Medicaid’s anti-spousal impoverishment policy.

Medicaid Waiver | Home & Community Based Services | SMMC-LTC
Statewide Medicaid Managed Care Long Term Care (SMMC-LTC) /
Medicaid Waiver / Home & Community Based Medicaid are all different
names for the same program.

This long-term care Medicaid program is for those who only require Assisted Living Facility (ALF) level of care OR are able to reside at home and would benefit from some home-health care. **There is a wait-list for this program.**



The Medicaid Waiver wait-list gives priority to those who need services the most. **But the wait-list can be quite long.** Part of our service, if hired to do so, is coaching you on ethical ways to obtain a higher priority score to minimize time on the waitlist. The Medicaid waiver application is not submitted until the client is called off the waitlist. Once the application is submitted (and the client is otherwise eligible), Medicaid waiver services can begin on the first day of the following month.

Once approved for waiver benefits, the Medicaid recipient keeps 100% of their income (although a portion may need to be diverted into an income trust, which can still be used to pay expenses).

If in an ALF: Medicaid contributes approximately \$1,400 (more or less), depending on amount of care needed) toward their ALF bill.

If at home: Medicaid will typically pay for between 20 - 40 hours of home health care (directly to a Medicaid-approved agency) depending on amount of care that is needed.



Cash and Health Insurance Benefits Associated with Medicaid Long-Term Care Programs

Some other tangential benefits that are included in these Medicaid programs (primarily benefiting those who apply for Medicaid Waiver) are:

1. More cash available to the Medicaid recipient. Medicaid will pay the Medicare Part B premium cost (currently automatically deducted from social security income). In **2021**, that will result in most Medicaid beneficiaries receiving an extra \$148.50 per month in their bank account.
2. More cash available to the Medicaid recipient because Medicaid will pay for most co-pays and deductibles.
3. Potentially more cash available to the Medicaid recipient when they choose their Medicaid-Managed Plan (Florida Medicaid has contracted with marquee names such as AETNA, United, Sunshine Health, Humana, etc...). Once enrolled in one of these Medicaid plans, the Medicaid recipient has the option to discontinue paying for their Medicare Advantage or Medicare Supplement (they also have the ability to keep their current Medicare plan if they so choose).
4. Long-Term Care Medicaid also pays for: medical equipment, incontinence supplies, home accessibility adaptations, speech therapy, occupational therapy, physical therapy, respiratory therapy, chiropractic services, hearing services, dental services, podiatric services and more.



Qualified Medicare Beneficiary (QMB) and Medicaid for the Aged or Disabled (MEDS-AD)

For our clients who are interested in home care or ALF care, and are on a waitlist – or those who are in need of assistance paying for medical bills and prescriptions.

QMB and MEDS-AD are programs that (a) have different income/asset requirements than the programs described above; (b) have no waitlist; and (c) will pay for Medicare premiums, co-pays, deductibles, etc. We often apply for QMB in conjunction with long-term care waiver benefits, so our clients can receive some **financial assistance while waiting for home-care or ALF benefits to begin.**

This summary is just a brief overview of what we will discuss during our consultation. The bulk of the consultation will discuss legal and ethical methods of qualifying you or your loved one for one or more of these Medicaid long-term care programs in a way that does not trigger the five-year lookback period so you can obtain the services needed with as little delay as possible.

We look forward to meeting you and achieving your Medicaid-planning, Incapacity planning and Estate planning goals.

Florida Medicaid provides some incredibly valuable long-term care benefits for those who qualify. For those who do not qualify right now.... That's where Elder Needs Law, PLLC shines!

After our planning strategies have been implemented, the Florida ICP or Medicaid Waiver program will pay for significant in-home-health aide costs, a portion of an ALF bill, and nearly all nursing home costs. However, many people attempt to apply for Medicaid's ICP or home and community-based waiver program on their own.

Following are some of the most common mistakes I see being made.





Top 10 Florida Medicaid Application Mistakes

1. Giving Away Money or Making gifts to reduce a Medicaid applicant's countable assets.

Giving away assets or income within five years of applying for long-term care Medicaid will cause [Department of Children and Families](#) to defer qualification of benefits for a period of time (the length of this period if ineligibility depends on the value of the gifted assets).

To read more about the [medicaid five year look-back rule](#) or watch a video on the [five year look back](#) for medicaid, ([five year medicaid rule video #2](#)) click on the links.

Essentially, any transfer of funds or assets, for less than fair-market value will create a problem. Just because the IRS allows gifting does not mean Medicaid does as well (they don't). Medicaid rules do not have to match IRS regulations - they are two totally different agencies.



2. Relying on out-dated or poorly drafted durable powers of attorney or other estate planning documents when attempting Medicaid planning.

Failing to include the specific authority to give gifts to a family member and to enter in to a personal service contract with the holder of the power of attorney are other mistakes. This will cause Department of Children and Families to deny the Medicaid application.

I see too many free internet forms that fail to meet Florida statutory requirements. Relying on an old or bad power of attorney form can hamstring our Medicaid planning efforts, or require a guardianship proceeding.

To read an article that further explains the potential problems with old powers of attorney, [click here](#).



3. Failure to create or properly maintain a Qualified Income Trust (QIT) or Miller Trust.

A [QIT](#) or Miller Trust is essential when a Florida Medicaid applicant's gross income exceeds \$2,382 (from all sources) per month as of 2021 (the income cap number increases periodically). If you do not create a properly drafted Miller Trust, and fund it during the same month as when the Medicaid application is submitted (and each month thereafter), the Medicaid application will be deemed ineligible.

To read more about [Medicaid income trusts](#) (QITs) or to watch a video further explaining [how Miller Trusts work](#) or how [Medicaid income trusts are properly funded](#), click the links.



4. **Failure to take required minimum distributions from qualified retirement accounts.**

Most people know that qualified retirement accounts (e.g. IRAs, 401ks, SEPs) are treated differently than other investment accounts. They are given special consideration by the IRS and are protected against the threat of creditors. However, there are specific steps that must be taken to ensure that they are not held against a Florida long-term care Medicaid applicant as a countable resource.

Essentially, if one is eligible to take regular distributions, they must do so and the asset itself will be deemed exempt. However, the distributions are counted as income, which may necessitate the creation of a qualified income trust / miller trust.

Also, each and every qualified retirement account must take its own regular distributions in order for Medicaid's eligibility requirements to be met. This is another example of how IRS rules do not always match Medicaid rules.

To read more about how Floridians can [qualify for long-term care medicaid even if they have a large 401k or IRA, click the link.](#)

To watch a video that further describes how [qualified retirement accounts can be deemed exempt assets by Florida medicaid](#), click the link.



5. Failure to liquidate certain annuities or life insurance policies that possess cash surrender value.

If the face value (i.e. death benefit) of any life insurance policies are more than \$2,500, their cash value will be deemed a countable asset. These life insurance policies have to either be borrowed against or completely liquidated before submitting a Medicaid application.

Certain life insurance policies do not have cash value (i.e. term life insurance) and will not be considered countable assets. But universal or whole life policies almost always have a cash-value accumulation component and must be dealt with appropriately in order to become eligible for Florida ICP / nursing home or waiver benefits.

Non-qualified annuities may also have cash value and that cash value will be counted as an asset against Medicaid eligibility. Regular annuities can be converted into a [medicaid-qualified annuity](#) or cashed out.

To read more about [Medicaid annuities](#), click the links.

To read more about [how life insurance policies are counted by Florida Medicaid](#), click the link.



6. Failure to have the funeral contract made irrevocable before submitting a Medicaid application.

A funeral contract is considered to be a countable asset if its refundable. If this causes countable assets to exceed the \$2,000 Medicaid limit, Department of Children and Families will deny the Medicaid application. The simple fix is to ask for an irrevocability rider to ensure that the funds cannot be returned.

In addition, separate bank accounts with no more than \$2,500 can be deemed non-countable if they are designated as being for funeral expenses.

An irrevocable pre-paid funeral contract, on the other hand, has no value limit.

To read more about [Florida Medicaid and burial or funeral planning](#), click the link.



7. Failing to Reveal all Assets or Income Sources to DCF.

When you apply for Florida Medicaid, you also sign a financial release that allows Medicaid to access your tax returns and write to any financial institution to investigate your bank accounts, brokerage accounts, etc. Failing to report all assets is a crime.

Also, Medicaid applicants, and those already receiving benefits must report any changes in income or assets, to DCF, within 10 days of the change in circumstances.

To read more about what you can expect to find in the [Florida Medicaid Waiver and ICP application](#), click the link.



8. Failing to plan for the possibility that the community spouse might predecease the institutionalized spouse receiving long-term care Medicaid.

[About 30% of caregivers will die before the people that they care for do.](#)

This is often because care-giving can be so stressful. When its a spouse, it can be difficult for the caregiver to remember to take care of themselves.

Ordinary estate planning has one spouse leaving the entirety of their assets to their surviving spouse. But if a non-medicaid spouse only has a will (or dies intestate) that leaves assets to the Florida long-term care medicaid spouse - this will unintentionally result in the loss of Medicaid.

Instead, an experienced Medicaid elder care lawyer can create a [testamentary special needs trust](#) that will protect the Medicaid beneficiary's access to benefits. These SN's are also referred to as [qualifying special needs trusts](#).



9. **Failing to plan around non-homestead real estate.**

While [Medicaid estate recovery](#) does not apply to homesteads in Florida, that does not prevent Medicaid from trying to recovery against second homes or rental properties owned by the Medicaid beneficiary after they pass away. An experienced Medicaid lawyer can guide you on how to qualify for Medicaid, despite owning more than one piece of real estate, and then how to avoid having to sell that real estate to pay back Medicaid after passing away.

There are multiple ways to do this, but probably the most common tool is recording a [Florida lady bird deed](#) (also known as an enhanced life estate deed). To read about some of the [disadvantages and risks of lady bird deeds](#), click the link. To watch a video that further describes [how lady bird deeds work in Florida](#), or [enhanced life estate deed](#), click either link.



10. Failing to Apply for Other Benefits.

Medicaid wants to be the "payor of last resort" what this means is that if the applicant is entitled to other benefits, then they have an obligation to apply for those benefits. As an example, someone younger than age 65 who needs help at home or requires ALfor nursing home care, would be a candidate to [apply for social security disability](#). They must do so. The other common examples is applying for [VA pension with aid and attendance benefits](#) if eligible to do so.

It's easy to understand why Medicaid wants this. If social security and the VA are paying for a portion of one's long-term care needs, it's that much less that Medicaid has to contribute.

For more information, visit www.elderneedslaw.com.



Not ready for a consultation? Check out my book:

“How to Get Medicaid to Pay for Some or All of Your Long Term Care Expenses - without having to wait 5 years; without having to sell your house; without having to go broke first.”

[Available on Amazon.com](https://www.amazon.com)

This book was written as a guide for non-lawyers. For those seeking [help with their Florida Medicaid application](#) or planning, please schedule a consultation.

I hope you have found this guide helpful. If you have other questions and want to schedule a consultation, please call or fill out the web form.

Jason Neufeld, Esq.

