

# Medicaid and Asset Protection Law Newsletter



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**A FREE LEGAL UPDATE FOR ELDERS AND OTHERS WHO SEEK ASSET PROTECTION ♦ AUGUST, 2017 EDITION**

## MYTHS AND REALITIES: GETTING MEDICAID TO PAY YOUR NURSING HOME EXPENSES

Elderly people who need nursing home care for themselves believe many myths on this important subject. The purpose of this article is to distinguish the realities from the myths.

**MYTH:** You must be poor to get Medicaid to pay your nursing home monthly expenses.

**REALITY:** You may keep many assets and still qualify for Medicaid. You can keep a home up to \$560,000 in equity. This is true so long as you intend to return at some future time. The intent to return to your home need not be a realistic intent.

You can keep one car of any value. It is okay if you own a Rolls Royce. You can keep a second car but the second car must be of limited value. You can keep one diamond wedding ring and one engagement ring. You can keep other assets as well.

Your spouse who remains at home can keep \$120,900 in countable assets in 2017. In addition, the stay-at-home spouse can keep other assets that are not considered "countable" This includes whole life insurance up to \$2,500 in cash surrender value.

**MYTH:** You must have little or no income to get Medicaid to pay your nursing home expenses for Medicaid.

**REALITY:** You can qualify for Medicaid if your gross income is less than \$2,205 per month in 2017. If your income is more than \$2,205 you can still qualify. But you need to prepare an income-cap trust.

This requires you to deposit the patient's excess income over \$2,205 in 2017 into an irrevocable income trust account each month. This you must pay the nursing home each month.

**MYTH:** Any gifts I made in past 60 months will prevent me from getting Medicaid for long term nursing care.

**REALITY:** Return of the gifts can preserve Medicaid benefits. In addition, any gifts between spouses are absolutely okay!

**MYTH:** Many people believe they can qualify their spouse or parent for Medicaid by simply transferring assets to themselves.

**REALITY:** This is very dangerous. Many of these transfers will be considered prohibited transfers. Such prohibited transfers can delay the time by which your spouse or parent can become eligible for Medicaid. Transfers between husband and wife are the only permitted transfers.

**MYTH:** Many believe that an elder law attorney has a large charge-- even for the first meeting.

**REALITY:** This office offers a free telephone consultation to determine the nature of the case and to give an idea of expected future attorney fees and costs.

**MYTH:** Sale of your home will cause you to lose Medicaid eligibility.

**REALITY:** Sale of a home will not cause loss of Medicaid eligibility. But you must re-invest the sales proceeds, during the month of sale, into another non-countable asset. For example, you can use the proceeds to fund a personal service contract. In this manner you can transfer the proceeds to a relative as compensation for future services.

**MYTH:** If the community spouse, who has substantial assets, refuses to support his institutionalized spouse, the latter can never get Medicaid.

**REALITY:** The community spouse may file a notice of refusal to support his spouse with Florida's Department of Children and Families. The patient may still get Medicaid the patient must assign to the State of Florida her right to sue the community spouse for support.

Under present Florida law, there is no requirement to support your spouse for necessities. For this reason, it is safe to use what is known as the "Just Say No" doctrine. To date, no couple who has used this approach has been unsuccessful.

That is, the institutionalized spouses have gotten Medicaid for nursing home payments. There has never been a case where the State of Florida has filed suit against the community spouse who refused to support his wife living in a nursing home and getting Medicaid. Thus through the community spouse has countable assets more than \$120,900, his wife can still qualify for Medicaid!

**MYTH:** If assets are in a living trust, this preserves your right to get Medicaid.

**REALITY:** Such a trust does not guarantee you can qualify for Medicaid.

**MYTH:** You must sell your home to get Medicaid.

**REALITY:** You can retain your homestead if the value of its equity is below \$560,000 and you intend to return once you leave the nursing home.

## News You Can Use

### 2017 FLORIDA MEDICAID LIMITS

Gross Monthly Income Limit for Medicaid Applicant:	<b>\$2,205.00</b>
Asset Limit (Individual):	<b>\$2,000.00</b>
Asset Limit (Couple):	<b>\$3,000.00</b>
Community Spouse Resource Allowance:	<b>\$120,900.00</b>
Minimum Monthly Maintenance Income Allowance:	<b>\$2,002.50</b>
Maximum Monthly Maintenance Needs Allowance:	<b>\$3,022.50</b>