

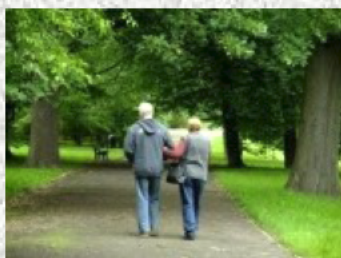


Florida Medicaid Pays for Nursing Home and Assisted Living Costs

See if you qualify.....
Take the Test in this Book

By: Gregory Glenn, Esq.
Certified Elder Law Attorney
by the





This book is an interactive journey where you will follow Tom and Sue as they determine Tom's eligibility for Florida Medicaid assisted living facility and nursing home benefits. In the end, they were surprised by the results. Tom Qualified.

This book is for educational purposes only. It is not intended to be a comprehensive guide to Medicaid qualification. Each case is unique. The worksheets in this book provide the reader with an opportunity to enter information to see if one might qualify for Medicaid assisted living facility or nursing home benefits.

This book provides an overview of Florida Medicaid limited to qualifying for long term care benefits for the assisted living facility and skilled nursing home care Medicaid benefits. The reader will learn:

- ☐ What it takes to qualify
- ☐ Defines ways and methods to get qualified
- ☐ Defines the next Steps to take towards becoming eligible



**Meet Tom and Sue,
they don't think they
qualify for Medicaid.**

**But they do! Find out how
and why**

- ❑ Tom and Sue have been married for 45 years and live in Florida.
- ❑ Tom is 83 and is receiving a pension of \$2,000 a month after retiring from his job as an auto assembly line worker.
- ❑ Tom receives Social Security retirement benefit of \$1,500 a month gross (*before deductions*), and a pension of \$500.00 a month gross. Sue is 86 and is receiving Social Security retirement benefit of \$550.00 a month gross.
- ❑ Tom and Sue own a home in Florida worth \$250,000. They have an outstanding mortgage on the house of \$100,000. The monthly mortgage payment is \$800.00, property taxes \$150.00 a month, homeowners insurance \$100.00 a month, and association dues of \$50.00 a month. Utilities are \$350.00 a month.
- ❑ They jointly own a 2002 Toyota Corolla. The car is paid off.

- ❑ Tom and Sue have savings in CD's and a brokerage account valued at \$200,000.00.
- ❑ Tom has a life insurance policy face value \$100,000.00 with a cash value of \$20,000.00.
- ❑ Tom and Sue have 2 adult children living in Michigan who are financial secure.
- ❑ Tom and Sue both have Traditional Medicare Part A and Part B.
- ❑ Tom has a supplemental Health insurance policy (Medigap). He pays \$200.00 a month.
- ❑ Tom and Sue each have prepaid funeral plans valued at \$2,400.
- ❑ Tom has recently had health issues and Sue is not physically strong enough to help Tom anymore. They are both afraid Sue will become ill or get injured trying to help lift Tom. Tom and Sue are considering moving Tom either to an assisted living facility or a nursing home in order him to get the care he needs.

What Tom and Sue do not know is there are programs under Medicaid that will subsidize and help pay the costs of assisted living facility care and nursing home care.

To find out what the eligibility criteria are, and how Tom and Sue can qualify. Read on.....



Medicaid pays for what Medicare doesn't

What does this mean?

Tom and Sue discover Medicaid is very different than Medicare. Medicare is the health insurance program people have paid into out of salaries and paychecks during their working years (*Part of those FICA and Medicare payroll deductions*).

When we officially qualify for Social Security retirement benefits, we get a choice of what form of Medicare health insurance coverage we want. The two choices are 1) Traditional Medicare or 2) Managed Care Medicare (i.e., HMO).

The traditional Medicare is the old 80/20 policy. In other words, one is responsible for 20% co-pay for all medical bills. Under the Managed Care Medicare choice, one has a lower co-pay, but is assigned a gate-keeper primary care physician doctor. All appointments needed with a specialist physician must be through a referral from that gate-keeper primary care physician. Historically speaking, the managed care Medicare choice may seem cheaper, but one nursing homes and facilities prefer Traditional Medicare.

In contrast, Medicaid is a completely separate and distinct welfare based medical care program. Medicaid is a shared federal and state funded medical insurance program. Medicaid has specific benefit programs designed for people over 65 and the disabled.

The major difference between Medicare and Medicaid is that Medicaid is a welfare-based program. Welfare-based means Medicaid has caps on the amount of assets and income one can have in order to qualify for Medicaid. Medicaid also looks at transfers/gifts of up to 5 years depending on the nature of transfer/gift.

Medicaid is designed to pay for care Medicare does not cover such as long term assisted living facility and nursing home care.

Medicaid laws do provide opportunities for planning techniques to reduce or shift assets and income to levels within financial eligibility limits of the programs.

To qualify for Medicaid a person must also meet the medical need criteria..... Learn what the medical criteria are.... Do you qualify? Read on.....



Medicaid Eligibility criteria

Do you have a Medical Need for assistance?

The first step is to determine if one meets the “Medical Need” requirements defined in the Medicaid rules. Medicaid assesses a person’s medical need by reviewing medical records and interviewing the Medicaid applicant. Medicaid’s primary focus is on the Activities of Daily Living (ADL’s) and the extent a person can function in day- to-day activities. The ADL’s include: 1) bathing, 2) dressing 3) transferring into and out of a chair or bed, 4) feeding oneself, 5) use of the restroom and level of continence. Medicaid also looks at cognitive abilities (*Dementia related conditions*).

Now, back to Tom and Sue. Tom needs help bathing. He cannot prepare his own meals. He cannot dress himself. He has trouble feeding himself due to Parkinson’s. He cannot walk and requires a wheelchair. His doctors have determined Tom requires extensive assistance of another person to live in a safe environment. Tom requires help with 4 out of 5 of the activities of daily living (ADL’s). The doctor’s prognosis is that Tom’s level of medical need will continue to

decline. Given this level of need, Tom will qualify for Medicaid skilled Nursing home benefits.

Take the Medicaid – basic medical needs test. Activities of Daily Living (ADL's) are measured on a scale as follows: 1) Requires total assistance, 2) Requires some level of assistance, or 3) Requires no assistance and is independent.

On the next page, take the Medicaid Medical Needs Test....

Medicaid's Medical Needs Test

		Place a checkmark in the box that applies		
Activity of Daily Living (ADL)		Totally dependent on others for help	Requires assistance from another	Can perform on own
1	Ability to Dress			
2	Ability to Bath			
3	Ability to Eat			
4	Ability to transfer out of a bed or chair.			
5	Ability to use the rest room (Continence)			
	Cognitive Issues Diagnosed with some level of Dementia	<input type="checkbox"/> YES	<input type="checkbox"/> NO	

The above table is designed to provide a general guideline to the reader and is not intended to replace a complete medical assessment that Medicaid performs. It is for illustrative purpose only. The ADL's test is only one component of the criteria Medicaid will use to make an actual assessment of medical need.

If assistance is needed in at least 4 out of 5 ADL's, or, there is total dependency in at least one of the above ADL's and require some assistance with at minimum of 2 or 3 of the other ADL's, one stands a good chance of qualifying from a Medicaid "medical needs" perspective.



**So you believe you
medically qualify for
Medicaid....**

**How about your
assets?**

The next step is to analyze asset levels to determine if one is financially eligible. Medicaid does not count certain assets when determining eligibility. So what counts and what doesn't?

Let's look at Tom and Sue's case again. Since Tom and Sue are married, Florida Medicaid rules indicate Tom can have up to \$2,000.00 in "Medicaid countable resources/assets" and Sue, since she is going to continue to live at home, will be able to keep up to \$119,220.00 in liquid "Medicaid countable assets" in her name. If Tom was single he would be limited to \$2,000.00 in Medicaid countable assets.

Florida Medicaid exempts certain assets when determining eligibility for assisted living facility or nursing home Medicaid benefits:

1. All personal furnishings (*i.e., furniture, clothing*)
2. *Liquid assets of up to \$2,000.00 each month of eligibility*
3. The applicant's homestead with an equity value of up to \$552,000.00 is not counted as a resource. The equity value cap of \$552,000.00 does not apply if the applicant's spouse or dependents live in it.
4. One automobile regardless of value.
5. Prepaid funeral plans up to \$2,500.00. If the funeral plan is made irrevocable, the total value of the funeral plan is exempt.
6. Burial set aside account up to \$2,500.00.

7. Burial plots for the immediate family
8. Whole life insurance policies - total combined cash surrender value up to \$2,500.00.
9. Income producing property (if producing fair market value rent).
10. Certain business assets necessary for familial support.
11. Property that is up for sale at fair market value.
12. Assets held in a special needs trust.

The analysis indicates Tom and Sue are over the Florida Medicaid countable resource/assets limit. But, there are planning techniques that can be used to re-arrange their assets to get Tom qualified for Medicaid assisted living or nursing home benefits while still allowing Sue to keep assets.

So how do your assets stack up? Let's see. ...

Complete the worksheet on the following page to see what assets you have. Don't worry if you have assets that exceed the Medicaid asset caps. Some of the planning techniques used to shelter assets and enable you to qualify are outlined later in this book.

**Client
ASSETS**

DATE: _____

	Applicant	Spouse
Primary Residence		
- Mortgage Owed		
Auto		
- Owed on Car		
Funeral Plan		
Cemetery Plot		
Burial Set-Aside		
QIT Ckg Acct #		
Pooled SNT		
Joint - Refusal to Sell or Up for Sale		
Checking Acct #		
Checking Acct #		
Checking Acct #		
Acct #		
Acct #		
Acct #		
CD		
CD		
CD		
Life Insurance CSV Acct #		
TOTAL COUNTABLE ASSETS		

***Light gray/blue text do not count as Medicaid asset

Dark black text = Medicaid Countable asset

Total all the applicant and spouse's assets in dark black. Do not include light gray/blue assets in Total



Given “gifts” to anyone in the last 5 years?

The transfer/gift test.....

As part of the eligibility determination process, Florida Medicaid requires applicant’s and their spouse’s to disclose any gifts or transfers where they received less than fair market value in return (gifts) that were made within 5 years prior to the month of application for Medicaid benefits.

Gifts or transfers where less than fair market value is received in return results in a penalty period from Medicaid eligibility. Transfers by a spouse during that same time frame will also be looked at and deemed as a gift by the applicant.

Certain gifts are exempt from penalty including, but not limited to, gifts between spouses, or to “disabled” family members. Transfer of Medicaid exempt assets do not result in a penalty (*this does not include the homestead. Penalties may apply in transfer of a homestead interest*).

The Medicaid penalty period begins, not from the date of the gift or transfer, but from the date the applicant puts in an application for Medicaid benefits and otherwise meets all other eligibility requirements,

gifts and transfers aside. This has been the law in Florida since November 1, 2007.

The Medicaid penalty period in Florida is equal to one month of assisted living facility or nursing home coverage Medicaid benefits for every \$8,346.00 of gifts.

Total all “gifts” and/or transfers by the applicant or his/her spouse for less than fair market value made in contemplation of applying for Medicaid or where it appears medically inevitable that long term care will be required by the transferor or his/her spouse within the look-back period (emphasis added). Then divide the total gifts by \$8,346.00.

So let’s look at gifts. List any gifts made in the last 5 years (60 months). Do not worry if you made gifts. There may be methods available to cure such gifts.

Client GIFT/TRANSFER LOG			Penalty (\$8,346.00 Denominator) (In Months)
	Transfer Date	AMOUNT (\$) TRANSFERRED	Penalty Period (Months)
1			
2			
3			
4			
5			
6			
7			
8	TOTAL		

Were the gifts made when it appeared inevitable that the transferor or his/her spouse was going to require some level of skilled care? If so, a Medicaid penalty period will apply. If not, then it is possible to rebut Medicaid's presumption that the gift was made in contemplation of applying for Medicaid. To make this argument one should retain an elder law attorney who understands the laws and can assist with presenting this type of case.

Incidentally, the \$8,346.00 is representative of what Florida Medicaid determines as the average cost of one month of nursing home care. Nursing home private pay costs are actually closer to \$8,500.00 to \$10,000 per month. There is no rounding of the Medicaid penalty period months.

Also, even if the applicant is determined to not be eligible due to "gifts" or transfers, the applicant will still receive Community Medicaid, but the assisted living facility or nursing home will not be paid for during the Medicaid penalty period.

Next, we cover Income and how Medicaid applies its "Income Test"



So how does Medicaid treat Income?

It depends....

The Florida Medicaid gross income limit for an applicant in 2015 is \$2,199.00 per month. Certain income is exempt by Florida Medicaid (*i.e.*, *SSI payments, Veterans Aid & Attendance, Vietnam Veterans Agent Orange payments*). There is no cap on the amount of income a spouse can have. More about the spouse's income later.

Even if the applicant is over the income cap, there are planning techniques to allow an applicant to obtain financial eligibility for Florida Medicaid assisted living facility or nursing home care. That planning technique employs the use of a Qualified Income Trust. The Qualified Income Trust is a complex legal trust document and requires the assistance and guidance of an elder law attorney to properly draft and utilize it.

The reason one should use an elder law attorney to assist is that there are complex state and federal laws related to compliance with Medicaid income limits when one's income exceeds \$2,199.00 a month. In addition, one must make sure the right amounts of the total gross income flow into the Qualified Income Trust checking

account each month and that the checking account is set up according to state and federal legal requirements.



Non-Lawyers Preparing Medicaid Qualified Income Trusts

A word of caution

There are state agencies and non-lawyer Medicaid planners using qualified income trust forms. Truth is, for the most part, these individuals are not CPA's or attorneys and do not have the proper legal qualifications or licenses to provide such guidance and advice on the use of the Qualified Income Trust. Not being licensed or regulated, the applicant has no recourse against those parties who are not lawyers when that unlicensed person's advice is wrong or not complete. With the Qualified Income Trust it is not the form, but the language contained in the trust and how the trust is funded that makes or breaks the law.

Okay, so let's see how Tom and Sue retained assets while still getting Tom qualified for Medicaid....



Tom and Sue moved assets and qualified Tom for Medicaid

Applying the Florida Medicaid laws on exempt assets mentioned above, Tom and Sue's house does not count, nor do the funeral plans valued at \$2,500.00 each. Tom and Sue's Toyota automobile is also exempt.

However, Tom and Sue have to address the cash value of the life insurance owned by Tom totaling \$20,000.00 (*because the total cash value exceeds \$2,500.00 Medicaid exemption cap for life insurance cash value*). Tom and Sue will also have to address how to handle the jointly held CD's and brokerage account worth \$200,000.00.

So, how do Tom and Sue move assets around to qualify Tom for Medicaid?

First step is, Tom and Sue will utilize the 100% exemption for asset transfer penalties for any transfers between spouses. There are no penalties for transfers between spouses (*More on exempt transfers later in this book*). Tom will transfer all ownership in the brokerage account and the life insurance policy to his wife, Sue. Sue is allowed to retain up to \$119,220.00 and Tom would still qualify for Medicaid benefits. However, even if Tom transfers all the assets to Sue, she is still over the \$119,220.00 allowable asset cap. Since Sue will remain at

home and needs funds to sustain the household, she will utilize the legal technique allowed in Florida known as the “spousal refusal” technique to enable her to keep in excess of the \$119,220.00

“Spousal Refusal” is a legal concept that involves proper application of the law, proper planning and a thorough understanding of why this technique is available, how that law works, how to date documents related to spousal refusal, and if it is applicable to the facts of the case. This technique is wrought with possible traps if not utilized properly under the guidance of an elder law attorney who knows that law and how to apply it to a case.

There are many other techniques that Tom and Sue could use in combination with the technique they chose to implement. Sue could have elected to purchase a Medicaid compliant annuity, spent funds down on fixing their house, purchased a new car, transferred assets to a disabled family member (*brother sister, mother, father, child, grandchild*), set up a special needs trust.

It is not a question of what planning technique to use, but how and which combination of planning techniques to apply in order to “stretch” the money as far as possible to maximize its usefulness over time.

Using the right combination of planning techniques is what “Medicaid Planning” means.



Medicaid Patient Responsibility

What's this?

The saying in the Medicaid eligibility world is, "There is no free lunch" when it comes to Medicaid benefits for assisted living facility or nursing home benefits.

The next issue relates to the Medicaid applicant's gross income. The concept is referred to as "Medicaid Patient Responsibility".

All of the applicant's gross income minus \$105.00 must be contributed towards the costs of care. This is the "Medicaid Patient Responsibility". However, the applicant is also allowed to keep some income for certain costs related to out-of-pocket medical care such as Medicare supplemental insurance premiums.

If the applicant is married, there is good news!

Florida Medicaid does not count the income of the applicant's spouse. The spouse can have unlimited amounts of income.

Florida Medicaid allows a deduction from the applicant's income to provide funds to the spouse to help pay for living expenses. This occurs if the spouse's income is not high enough. If not high enough, the

spouse is entitled to what is referred to as the spousal monthly minimum maintenance needs allowance (MMMNA). The MMMNA is taken out of the applicant's income. Florida's MMMNA in 2015 is \$1,991.00 per month. The law allows the spouse's income level to be brought up to a least \$1,991.00 per month by drawing from the applicant's gross income. The maximum MMMNA Medicaid will approve in 2015 without court order or a Medicaid department administrative hearing is \$2,981.00 a month.

So let's use Tom and Sue as an example. Tom's gross monthly income is 2,000.00. He pays out-of-pocket \$150.00 per month for Medigap supplemental health insurance coverage. Sue's gross income is \$550.00. Following is the worksheet to determine the MMMNA and Tom's projected patient responsibility.

They will use the married couples patient responsibility calculation worksheet on the next page.

Tom and Sue	
Proejected Patient Responsibility and CSIA Effective 8/1/2012	
	Monthly
Mortgage Payment/Rent - Shelter	\$800
Property Taxes	\$150
Home Insurance	\$100
Condo Assoc Dues	\$50
Utilities (\$343/month fixed allowance per DCAF - 2013)	\$343
Subtotal Shelter Costs	\$1,443
LESS: 30% of the MMMNA (\$1,991 - 2015)	\$597
<i>Excess Shelter Costs (If less than zero will reflect zero)</i>	\$891
ADD BACK: MMMNA (Fixed Minimum Allowed \$1,991 - 2015)	\$1,991
Allowable Shelter Deduction	\$2,430
LESS: Community Spouse Gross Income	\$550
Community Spouse Income Allowance	\$1,880
Patient Responsibility	
Applicant - Gross Countable Income	\$2,000
LESS: Pesonal Needs Allowance (\$105/month)	\$105
LESS: Medicare Supplemental Insurance (Applicant)	\$200
LESS: CSIA (\$1,991 to maximum allowed at \$2,981 - 2015)	\$1,880
Projected Patient Responsibility	-\$115

Since the patient responsibility is a negative number, Tom does not have to pay any money towards his cost of Medicaid care. Sue gets Tom's income as the spousal MMMNA to help her pay for living expenses.

Now on the next page, it's your turn. Enter your information

- ☐ Complete the income sheet below:

Client Monthly Income		
DATE: _____		
Income	Applicant	Spouse
Soc Sec (RIB)		
Pension		
IRA (RMD)		
Annuity Income		
VA Pension		
VA Compensation		
Rental Property Income		
Net Self Employment Income		
Dividend Income		
Interest Income		
COUNTABLE INCOME		
VA Aid Attend (Non-Countable)		
GRAND TOTAL INCOME		

- ☐ Next? Complete the appropriate Patient Responsibility worksheet on the next page.

SINGLE

Single Client Worksheet	
MONTHLY INCOME	
Nursing Home Medicaid - Patient Responsibility	
DATE: _____	
Applicant's Monthly Gross Countable Income	
Less: Monthly Supplemental Health Insurance Premium Allowance	
Less: Personal Needs Allowance (\$35/month)	
Projected Patient Responsibility	

MARRIED

MARRIED APPLICANT - ICP	
DATE: _____	
Proejected Patient Responsibility and CSIA Effective July 1, 2015	
	Monthly
Mortgage Payment/Rent - Shelter	
Property Taxes	
Home Insurance	
Condo Assoc Dues	
Utilities (\$343/month fixed allowance per DCAF - 2015)	\$343
Subtotal Shelter Costs	
LESS 30% of the MMMNA (\$1,991 - 2015)	\$597
<i>Excess Shelter Costs (If less than zero will reflect zero)</i>	
ADD BACK MMMNA (Fixed Minimum Allowed \$1,991 - 2015)	\$1,991
Allowable Shelter Deduction	
LESS: Community Spouse Gross Income	
Community Spouse Income Allowance	
Patient Responsibility	
Applicant - Gross Countable Income	
LESS Pesonal Needs Allowance (\$105/month)	\$105
LESS: Medicare Supplemental Insurance (Applicant)	
LESS: CSIA (\$1,991 to maximum allowed at \$2,981 - 2015)	
Projected Patient Responsibility	



Medicaid Asset Sheltering and Planning Techniques

The moment you have been waiting for is here! It's the "magician's secret" of the Medicaid world. What one can do to legally shelter assets when they are over the Medicaid asset limits and still qualify for Medicaid assisted living facility or nursing home benefits.

Yes both single applicants and married applicants have planning opportunities. Read on and learn about some of the techniques available.

PLANNING TECHNIQUES

- | |
|---|
| <input type="checkbox"/> Paying off existing debt. |
| <input type="checkbox"/> Purchase exempt assets. |
| <input type="checkbox"/> Purchase a pre-paid funeral plan (make it irrevocable) |
| <input type="checkbox"/> Set up a burial set-aside account (maximum \$2,500.00) |
| <input type="checkbox"/> Purchase burial plots (for self and immediate family) |
| <input type="checkbox"/> Enter into a care management contract |
| <input type="checkbox"/> Set up a special needs trust |
| <input type="checkbox"/> Purchase a level pay Medicaid compliant actuarially sound annuity |
| <input type="checkbox"/> Employ the Florida Medicaid spousal refusal concept (<i>married applicants only</i>) |
| <input type="checkbox"/> Purchase income producing property |

This is not an exhaustive list, but only an example of the most commonly used techniques.



So what strategy should you use?

The overall objective should not be to consider just one planning technique. One should look to employ a combination of the planning techniques in order to come up with the solution that yields the highest, best use of money to “stretch” savings as far as possible into the future.

Medicaid planning is an art when done properly. It is not necessarily just using one planning technique. To yield a good return on your investment, the planner should work with you to provide options and discuss pro’s and con’s of each planning technique available given your circumstances.

Each planning technique involves some level of legal issues, tax implications, real estate, inheritance, and/or estate planning impact on your currently financials, as well as its impact into the future.

If your asset levels are already within the Medicaid asset cap, you have no real planning to be done. All you need is help completing the application. You do not need a lawyer to do that. Most facilities have in-house staff who are designated as Medicaid specialist to help you fill out the application documents. This means in-house staff who should be doing it for free. This does not mean instances where the facility social

worker or admissions director hands you a brochure of a Medicaid planning company or lawyer and refers you to them.

Now if you have assets that exceed the cap, your gross income exceeds the \$2,199.00 a month cap, or you have gifts to deal with, then yes you need to engage an elder law attorney who specializes in Medicaid and veterans benefits type planning.

**Trust your life savings and care to a
Certified Elder Law Attorney**



Offices in Boynton Beach, Boca Raton, and
Hollywood, Florida

Palm Beach: 561-347-1071

Broward: 954-961-1064

Email: Info@bocaelderlaw.com

Website: www.bocaelderlaw.com



About the author

Since 1995 Gregory G. Glenn, Esq. has dedicated his legal career to helping the elderly. He is a **Certified Elder Law Attorney** by the National Elder Law Foundation. He is a member of the National Academy of Elder Law Attorneys and the Florida Bar Elder Law Section. He served on the Board of Directors for the Academy of Florida Elder Law Attorneys. He lectures at continuing legal education seminars for elder law attorneys on Medicaid Planning.

He is an advocate with government agencies as well as state and federal legislators for laws that benefit the elderly and veterans. He remains politically active in the community. He has a background in preparing tax returns, financial management and budgeting.

If you feel you have a complex situation, call him to see if he will consider your case.

Palm Beach: 561-347-1071

Broward: 561-961-1064

