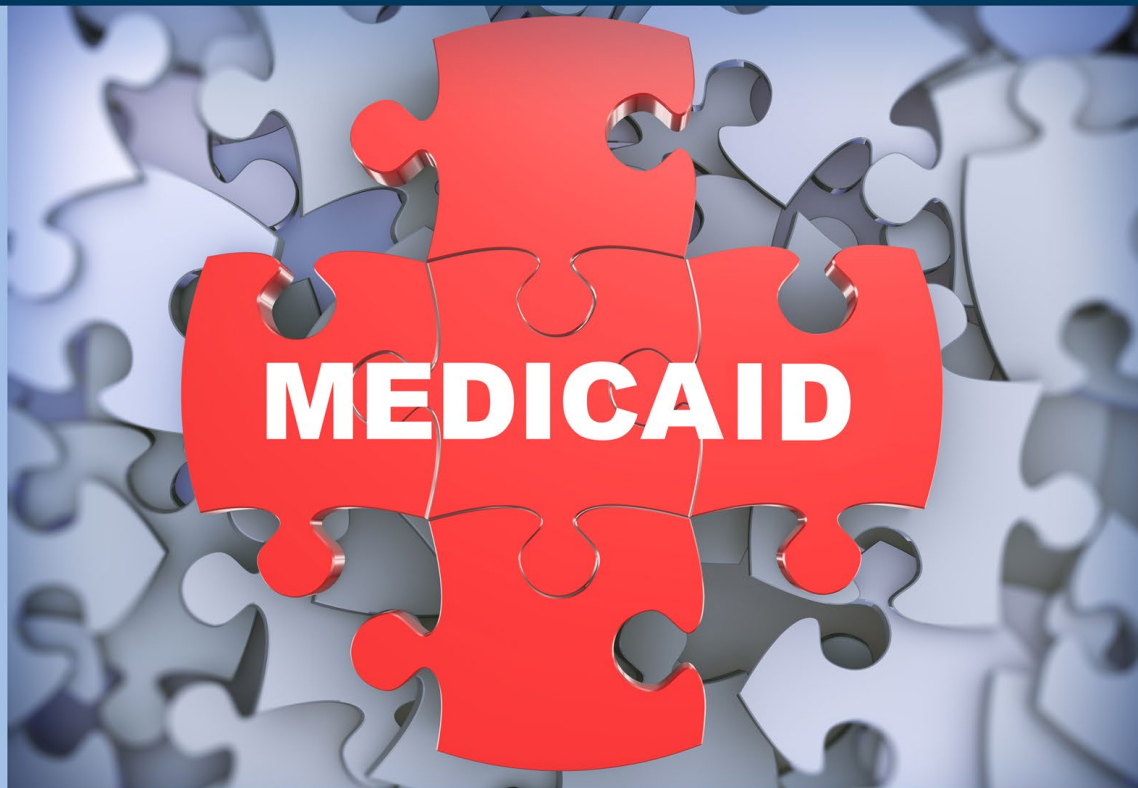




STEPS TO BECOMING MEDICAID ELIGIBLE

BY ATTORNEY WALT SHURDEN



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By Walt Shurden, Elder Law Attorney

Do you need help paying for long term care and want to become eligible for Medicaid? Does the whole process seem daunting to you? I want you to know that it is often achievable. Moreover, it can mean better financial and emotional security for your loved ones. I can help you get past your fears by teaching you specific steps to becoming eligible. Then you can see the benefit of eligibility in actual dollars. I am confident you can be successful after following the steps I suggest.

STEP ONE: Write down your questions about Medicaid!

Don't read anything at first. In fact, stop reading this and begin writing down questions you have about Medicaid. And if you have been told anything about Medicaid by a friend or neighbor, don't just accept that as the truth - write it down as a question and then be on the lookout for the answer.

STEP TWO: Review the details of your own finances.

This review should cause you to do the following, including making clear notes that you could take with you to your elder law attorney:

- (1) Identify the value of each of your financial accounts or assets;
- (2) Record the names that appear as owners or fiduciaries on each account or property;
- (3) Specify whether each account is an IRA, Roth IRA, or a "nonqualified account";
- (4) Analyze your annuities, by noting who is the owner, the annuitant, and the beneficiaries. You should also note any surrender charges and the taxable amount of a full surrender. Finally, you should find out if the annuity has a guaranteed death benefit, or a nursing home rider. You can call and get this information or you can look at your last annual statement and contract; and

(5) Write down the face value, the cash surrender value, and the death benefit of all insurance policies.

I elicit the information in step two from you in the first few minutes of our initial consultation. The more knowledge you have about the details of your income and assets, the more concrete I can be about the best course of action for your situation. So these tips about writing down your questions and studying your finances will help you in two specific ways: (1) it will help you apply the Medicaid rules as you learn them and (2) it will help you prepare for your initial meeting with your Elder Law attorney.

STEP THREE: Hire the right person to help.

Don't hesitate to ask for help. But hire the right person. One of the best ways to hire the right person is to pretend that you're asking your interview questions to a person across the table from you. By doing this in advance of an actual first meeting, you can focus on your ideal advisor's qualifications without the interference of a skilled salesman. After you think of your interview questions, read my list of recommended questions at **Exhibit A**.

If you cringe at digging into all these details, use this E-Book as a guide and then seek help. Personally, as an asset protection lawyer and former C.P.A., I am qualified and comfortable looking at your financial details. I can review your assets and recognize the implications for Medicaid, Veterans Benefits, probate, and estate plans. If you know that you are going to get someone to help you with the Medicaid planning and application process, make sure you spend your time with someone you trust.

STEP FOUR: Understand the application process.

The application starts the ball rolling. But before filing an application, focus your efforts on the tests for eligibility. Know the tests, pass the tests, and then document that you have done so. Some Medicaid applications are approved about 30 to 60 days after filing. However, we are often forced to file an appeal to overcome excessive delay

You can file your own application on line and a caseworker should contact you within about 10 days. The caseworker will ask you to document your eligibility. This documentation is what proves your eligibility.

STEP FIVE: Substantiate required level of medical need.

The person applying for Medicaid must meet a required level of medical need. That need must be substantiated by the Florida Department of Elder Affairs' Comprehensive Assessment and Review for Long Term Care Services (CARES). This is commonly referred to as the "medical need test". The CARES unit will review the admitting physician's forms and physically meet your family member at their location.

STEP SIX: Prove required monthly countable income.

The person applying for Medicaid must have monthly countable income below \$2,742 for 2023. If the Medicaid applicant is married, their spouse has no limit on their income. Determining a person's countable income begins by determining the person's "gross" income.

Gross income cannot be determined by simply looking at the applicant's monthly income deposits into their checking account. Payers like social security and private pensions often withhold monies for taxes and health insurance benefits. So, to know a person's gross income you must obtain a current year income verification letter from the paying institution. This letter must show the gross payment and any amounts being withheld. Also, distributions from Individual Retirement Accounts are counted as income for Medicaid purposes.

If gross income exceeds \$2,742 for 2023, a Qualified Income Trust (QIT) can reduce a Medicaid applicant's gross income below this limit. But here you will need to consult an attorney for the preparation of the QIT. Once the QIT is established, you will open a checking account owned by the QIT. You can then reduce the applicant's income below the limit of \$2,742 for 2023 by depositing monthly income to the QIT checking account. Every dollar deposited to the QIT reduces the applicant's income by exactly one dollar.

STEP SEVEN: Calculate patient responsibility (PR)

PR is the monthly amount payable to the nursing home after Medicaid approval. Knowing PR is very important. It helps you understand how much money you will save by being eligible for Medicaid. For example, if the nursing home costs \$10,000 per month private pay and \$2,000 per month after Medicaid approval, then the monthly benefit from becoming Medicaid eligible is \$8,000.

How do you calculate PR? You start with gross income, then deduct \$130 allowed for personal needs. Other deductions are allowed for the applicant's Medicare supplemental insurance premiums. If the Medicaid applicant is married and the spouse lives at home (not also in the nursing home) the spouse may also be allowed to keep some of the applicant's income. After consideration of all these deductions, the net amount owed to the nursing home each month is determined. See **Exhibit B** for a copy of the spreadsheet we use to calculate patient responsibility for a married couple.

STEP EIGHT: Understand Medicaid's resource limits.

This is sometimes referred to as the "asset test." A single applicant must have less than \$2,000 in countable resources. (Here Medicaid is testing your savings. In step six above Medicaid was testing how much new money you receive each month.) If the applicant is married and the spouse lives in the community, the spouse must have less than \$148,620 for 2023 in countable assets.

Which assets count in this test? This is not always straight forward.

Generally, Medicaid counts the following assets: stocks, bonds, bank accounts, annuities, REITS, non-homestead real estate, etc. These are counted at the lesser of fair market value or surrender value.

Medicaid excludes your personal residence if the value is under \$688,000 or the applicant's spouse continues to reside in the home, rental real property, IRAs, and 401(k)s that are making regular periodic distributions to you, prepaid burial contracts, one automobile over seven years old and a second of any value, as well as other miscellaneous exemptions.

Take a few minutes at this point to classify each of your assets as either exempt or countable. Add up the countable assets and compare them to the resource limit of \$2,000 for the Medicaid applicant and \$148,620 for 2023, for the community spouse. If you are under the asset limit (and the income limit above), you may be able to file for benefits without further action. If you are over the asset limit, you'll need to take further action to become Medicaid eligible.

STEP NINE: Understand your options.

Even if your assets are over the resource limits, you have some options to become Medicaid eligible. The following is a list of actions that can be taken.

1. An applicant may make a transfer to a "pooled trust" and then proceed to Medicaid approval. Federal Law allows not-for-profit entities to create and maintain what is called a "pooled trust." Disabled individuals can transfer their monetary assets to this trust. The value transferred does not count towards the beneficiary's Medicaid resource limit. Here is the good news! You may now receive substantial help from Medicaid paying for care while you have your nest egg available to pay for anything you need, including maintaining any real property owned. And here is the bad news! When the beneficiary of the pooled trust account dies, Medicaid must be repaid from the trust. Thus, this is asset protection for the institutionalized person only.
2. An applicant may pay someone a lump sum under a written personal services contract and then proceed to Medicaid approval. The lump sum payment must be reasonable, and it must be paid to someone who is contractually obligated to provide the applicant with ongoing services. These services often include serving as power of attorney, paying bills, running errands, helping with communications with out of state family members, advocating at the nursing facility, etc. The good news here is that a presumably friendly and helpful family member receives the money with no Medicaid lien at the applicant's death. A considerable drawback, however, is that the payment to the caregiver is taxable income to the caregiver, subject to federal income and payroll taxes. In addition, if the caregiver dies or ceases to perform the services promised, the applicant is in a poor position to receive any benefit from the contract.
3. An applicant may use excess countable assets to obtain an exempt asset, or increase the value of an exempt asset. So, for example, a

car loan or house loan could be paid off, decreasing countable cash assets and increasing the equity value of the exempt car or house. Once the countable assets are reduced below the resource limit, then the applicant could proceed to Medicaid approval.

4. An applicant may purchase income-producing real property with excess countable assets and then proceed to Medicaid eligibility. The property is only exempt if it is actively marketed for rent at a substantiated fair rental value. Once rented, the net rental income is calculated to be part of the applicant's required monthly payment to the nursing home, or "patient responsibility". Note that this rental property is not protected from Medicaid recovery after death unless it is deeded with a special deed that names beneficiaries upon the death of the owner. This is referred to as a "Lady Bird" deed and its purpose is to pass the property to the applicant's intended beneficiaries without going through probate.
5. A married applicant can transfer all his assets to his spouse living in the community. To the extent the community spouse's assets then exceed the resource limit, then he or she can loan excess countable assets under a promissory note to a family member. The note must comply with terms laid out in the Deficit Reduction Action of 2005. The promissory note has the effect of reducing the community spouse's excess assets by converting them to a stream of income that is in fact the repayment under the promissory notes. The applicant can then proceed to Medicaid approval. This technique compares favorably to the commercial annuity option discussed below because unlike the commercial annuity, Medicaid has no lien on the promissory note if the community spouse were to die before the note is fully repaid. In addition, the promissory note is preferred because the loan duration can generally be shorter than commercial insurance companies require.
6. A married applicant can transfer all his assets to his spouse living in the community. To the extent the community spouse's assets then exceed the resource limit, then he or she can purchase a commercial annuity. The commercial annuity has the effect of reducing the community spouse's excess assets by converting them to a stream of income. One serious drawback here is that Medicaid requires that the primary beneficiary of the annuity be the State of Florida for the full amount of medical assistance provided to the institutionalized spouse of the annuitant. Also not helpful is the requirement of many issuing insurance companies that the annuity term be at least three years. So,

if the community spouse dies within the term of the annuity, the State of Florida will get some if not all of the unpaid balance of the annuity.

7. An applicant may transfer assets to an adult disabled child and then proceed to Medicaid eligibility. Disability must have been determined by social security administration.

STEP TEN: Transfers can be problematic.

Recognize in advance that when an application is made, questions will be asked if transfers have been made within five years. Medicaid rules state that a transfer occurs when an individual, their spouse, a legally authorized representative, or a joint owner of a jointly held asset does not receive fair compensation when: (1) disposing of an asset (by selling it or giving it away) or decreases the extent of the individual's or spouse's ownership interest in an asset; or (2) decreasing the value of a countable asset in the process of converting it to an excluded asset.

If a transfer has occurred and is reported, then Medicaid may calculate and start a period of ineligibility for Medicaid benefits. Medicaid periodically takes a survey of the average cost of one month's care in a Florida nursing home. The current average is \$10,809. When an applicant for Medicaid reports a transfer, Medicaid will divide the amount of the transfer by the \$10,809 (average cost of one month's care) to calculate how long the applicant is ineligible. So a transfer of \$50,000 reported on an application will result in a period of ineligibility of 5.15 months ($\$50,000/\$10,809=4.62$).

STEP ELEVEN: Get help if you need it!

If after reading this E-Book you are comfortable that you or your family member will be approved, you can then apply for benefits online by doing a web search for "access Florida" and following the links to apply for benefits. But if you believe that more work is needed to ensure a successful application, you would be wise to reach out to a trusted Florida Bar Board Certified Elder Law Attorney in your community for representation.

Conclusion

Becoming Medicaid eligible is vitally important for many individuals. But what happens along the way to eligibility also matters. Making mistakes, like unknowingly triggering taxes and surrender penalties on existing assets that don't really need to be surrendered can be costly. If you work with an attorney or planner that has a financial product to sell, or has their own pooled trust, you can probably expect to hear recommendations that are colored by the planner's own incentives. Beware! You should not allow that dynamic to enter this planning process.

You should identify your family goals and then try to end up as close as possible to your goals with the least adverse consequences. Since sharing the details of your family finances and medical conditions are highly personal, you must make sure you rely on someone that will hold your information in confidence and advocate only for "your" best interest.

Proactive people are always thinking of some new course of action that will improve the lives of their more vulnerable family members. I think that being instrumental in helping your loved one receive funding for their long term care needs is that type of proactive leadership. For families who meet the tests for eligibility, it may only require you filing an application and providing documentation to a caseworker.

If you are over assets or income you should probably seek qualified help. And candidly, there is a difference in depth of knowledge between a Board Certified Elder Law Attorney and others. Hiring right will do wonders for your family and will be well worth the effort.

At Walter B. Shurden, P.L. we help people like you achieve Medicaid eligibility. We focus on well-reasoned actions and timely results. When you first call our office we will ask you a few questions about your medical need, income and assets. If it looks like we can help you, we will be delighted to set your appointment.

At our first meeting we look closely at your situation and have you evaluate various solutions.

We will present various asset protection strategies tailored to your specific needs. Identifying various pros and cons of these strategies, we will help you choose the best mix of these strategies for your purposes. We do not sell any financial products or steer you towards any plan that is not in your best interest. We advocate for you.

We provide comprehensive services to meet your personal needs. These include planning for future and current Medicaid eligibility, specialized estate planning for those at risk of needing long term care, and avoiding Medicaid recovery after death. We also represent fiduciaries in probate and trust administrations.

Thank you so much for taking the time to read these materials. I wish your family the best possible outcome at this important time of life.

Walt Shurden

Exhibit A

Questions to ask an “Advisor” before paying them for their Long Term Care Advice:

(1) Do you hold any Florida licenses to sell financial products?

(You can check this yourself on line at <https://licenseesearch.fldfs.com/>).

(2) Have you ever dealt with Florida Medicaid recovery in the settlement of a lien?

(3) Do you know if there are any situations when a homestead is not exempt from Medicaid recovery at death?

-The Florida homestead is subject to creditors, including Medicaid, if it is devised to someone that is not closely related. It is also arguably not protected if the homestead is rented and the owner goes into the long term care system.

(4) Can you advise me on the tax implications of different strategies? What is your tax background?

(5) Have you even been convicted of a felony?

-This may sound shocking but Pinellas County Florida has the distinction of having at least two persons convicted of fraud who are receiving referrals from health care facilities to advise seniors on their asset protection strategies.

- You can check for a criminal record at <http://www.fdle.state.fl.us/Criminal-History-Records/Obtaining-Criminal-History-Information.aspx>

(6) If you are not an attorney can you describe how you will comply with the January 2015 Florida Supreme Court decision regarding non-attorney Medicaid planners?

The Florida Supreme Court recently ruled that preparing Qualified Income Trusts and advising the public on how Florida law applies to a person's long term care situation is the practice of law. See Florida Supreme Court Opinion at

<https://www.floridasupremecourt.org/content/download/323022/2897690/file/sc14-211.pdf>

Exhibit B

Calculating Patient Responsibility

	<i>Applicant</i>	<i>Spouse</i>
Income		
Social Security	\$1270	\$980
Florida Retirement System	\$800	
Total Income	\$2,070.00	\$980.00

Community Spouse	Housing Expenses
Monthly Rent	\$0.00
Flood Insurance	\$0.00
Taxes	\$0.00
Ins-home, renter	\$0.00
Condo Fees	\$450.00
Mand Assoc Fees	\$0.00
Std Utility Allowed	\$370.00
Total Shelter Cost	\$820.00

MMIA	\$2,289.00
Shelter Cst > 687	\$133.00
Total	\$2,422.00
Less CS Income	\$980.00
CS Income Allow	\$1,442.00
Applicant's Income	\$2,070.00
Pers. Needs Allow	(\$130.00)
Health Ins.	\$0.00
CS Income Allow	(\$1,442.00)
UMED Credit	0
PATIENT RESP	\$498.00