



Medicaid Application Support & Pre-qualification for Assisted Living and Nursing Home Communities

“Avoiding Medicaid Application Traps”

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My Background

- ▶ From Findlay, Ohio now live in Columbus
- ▶ Was a Field Artillery Officer in the Army for six years
- ▶ Went to Capital Law School and have been an attorney for over 10 years
- ▶ Luckily landed in the Elder Law Arena...



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Agenda

- ▶ Best Practices
- ▶ Baseline Knowledge
 - ▶ Income/Asset Limits
 - ▶ QITs
 - ▶ Retirement Funds
 - ▶ The Primary Residence
 - ▶ Medicaid Estate Recovery
- ▶ Planning Pitfalls and Making Medicaid Applications Easier
- ▶ How can we help?
- ▶ Questions



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Baseline Knowledge: Medicaid

Medicaid in Ohio can pay for Assisted Living Communities through the “Waiver” program and pay for Nursing Home Communities through the “Long-Term Care” program

Medicaid is a Federal Law/program and is given to each state to run. Ohio then delegates to the 88 counties. This can sometimes lead to 88 different ways of doing things.

- ▶ CAN be more forgiving but not more restrictive than Federal Law
 - For example, in Florida, generally, the home is completely protected without express planning



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Baseline Knowledge Cont.



Residency:

- a) Living in Ohio at the time of application;
- b) Not receiving benefits from another state;
- c) There is NO 30-day or other requirements

A temporary absence from Ohio cannot terminate residency or disqualify the recipient if they intend to return to Ohio

Age or Disability

Generally, to be eligible you must be either 65 years of age, blind or disabled. Disability usually means the person is receiving SSI or SSDI.

The individual must also must “pass” a level of care assessment to receive Waiver program (PASSPORT or AL).

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Income/Asset Limitations

- ▶ Current Income Requirements
 - ▶ Income limit is \$2,901 a month
 - ▶ If over \$2,901 of gross monthly income, then a Qualified Income Trust (QIT) also called a “Miller Trust” is required
- ▶ Current Asset Requirements
 - ▶ For Married Applicants
 - ▶ Community Spouse: up to a maximum \$157,920 and a minimum of \$31,548
 - ▶ Institutional Spouse: \$2000 maximum
 - ▶ For Single Applicants
 - ▶ \$2000 maximum
 - ▶ Home is technically exempt

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Income



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Qualified Income Trust or “QIT”

- ▶ Required when monthly gross income is greater than \$2,901
 - ▶ Only income goes into and out, monthly
 - ▶ Must be a \$0 balance each month
 - ▶ Must be ready and used for the month of application submission
 - ▶ FPOA can set up if the language of the POA is proper
 - ▶ VA Aid and Attendance benefits are not counted toward the limit
 - ▶ Money from a home equity or reverse mortgage are excluded as income
 - ▶ If not done correctly, no Medicaid and cannot get covered for missed months
- ▶ The only way income is a barrier to Medicaid qualification is if an applicant makes more in income than the monthly cost of care



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Estimated Patient Liability

Patient Gross Monthly Income and Subtract:

- ▶ \$50 personal needs allowance each month
- ▶ \$90 additional dollars allocated if receiving VA Aid & Attendance
- ▶ \$\$\$ Monthly Health Insurance Premiums
- ▶ \$\$\$ Community Spouse Monthly Health Insurance Premiums
- ▶ \$\$\$\$ If qualified, money from the institutionalized spouse to the community spouse
 - ▶ MMMNA:
 - ▶ \$2,643.75 Minimum
 - ▶ \$3,948.00 Maximum

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Medicaid Estate ▶ Recovery

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Medicaid Estate Recovery: Why should I care?



Ohio is the second most aggressive state in the country for Medicaid Estate Recovery (MER). Medicaid can recover against anything the Medicaid recipient (not community spouse) has legal title or interest in at the time of his or her death, including:

- ▶ Countable resources (less than \$2,000)
- ▶ Previously exempt resources (home or car)
- ▶ Probate assets (not limited by 6 months from the date of death)
- ▶ Non-probate assets (possibly includes retirement funds, life estates, cash surrender value of life insurance, revocable trusts)

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Medicaid Estate Recovery Exemptions

- ▶ Typically, there is no recovery during the lifetime of the surviving spouse, or while there is a surviving minor, blind, or legally disabled child
- ▶ Can protect primary residence under child caregiver exemption or a hardship waiver

WHY SHOULD I CARE? Liability

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Assets

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Assets: Retirement Funds Treatment

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- ▶ **Retirement funds:** public/private pension, disability, or retirement plans; defined benefit employer pension plans, profit-sharing pension plans, 403(b) pension plans, money purchase pension plans, employee stock ownership plans, individual retirement accounts (IRA); KEOGH pension plans, Roth IRAs, simplified employee pension plans (SEP-IRA), and 401k pension plans; other plans authorized under 401, 403, 408 of the Internal Revenue Code (IRC) as outlined in 26 U.S.C., etc.
 - ▶ Retirement funds are generally 'Non-Countable' for Medicaid's eligibility purposes... under certain circumstances, including where a regular, periodic payment is being distributed. This often equates to Required Minimum Distributions or other regular monthly distributions from the principal **BUT...**

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Retirement Funds BUT...

- ▶ **Retirement Funds** of the community spouse: Both the income stream and principal are 100% protected if in payout status, even from MER.
- ▶ **Retirement Funds** of the institutionalized spouse: Countable towards the income limit if in payout status. The principal is protected, but the income stream is not.
 - ▶ If the community spouse wants to protect the principal of IS IRA, generally must liquidate IS assets

* Medicaid Eligibility Procedure Letter (MEPL) No. 164 changed everything...

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Assets: The Home

- ▶ **Primary Residence:**
 - ▶ **Married Couple:** Primary residence is exempt, but more planning is needed once the institutional spouse approved for Medicaid
 - ▶ **Single Person:** Primary residence is exempt BUT...
 - ▶ Going on and off Medicaid
 - ▶ Too overwhelmed with the home sale process
 - ▶ **Child Caregiver Exemption:** If a child moves into their parent's home and then provides care for 2 years immediately before their loved one enters into Assisted Living or a Nursing Home, the home can be transferred to the caregiver-child free of penalty.
 - * Must document care needs at the time of move-in
 - ** Need caregiver agreements if getting compensated for care

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The Home: Example Problem

Problem:

A single resident enters Assisted Living. She owns a primary residence worth approximately \$150,000 but does not want to sell the house “just yet”. Resident completes their private pay period and is approved for Medicaid with the house “exempt”. Two years later, the resident died after receiving approximately \$110,000 in benefits. The family opens the estate to sell the house. What will happen next?

ANSWER:

- ▶ The Ohio Attorney General’s office will produce a claim for the \$110k against the estate

What could have happened:

- ▶ Worked with partners and sold home ASAP. Allowing the resident, a longer private pay period and keeping some of the home sale proceeds

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Tips for a Smooth Medicaid Application Process...



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Planning Pitfalls BEFORE Medicaid is Needed

- DIY Documents
 - No documents at all, just added a child to all accounts
 - Use of statutory financial powers of attorney that lack the powers needed to go through the Medicaid process
- Previous Gifting
- Paying family members for in-home care without caregiver agreements in place
- Failure to consider the needs of the community spouse
- Not considering VA Benefits for Independent Communities, thereby having the benefit already in place before moving to AL

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Financial POA

The Principal gives their Agent authority to make legal and financial decisions on their behalf. The most basic POA will cover:

- ▶ Banking/Business/Bills
- ▶ Real Estate

Must need to specifically enumerate for “advanced” powers:

- ▶ Can they cash out OPERS accounts
- ▶ Gifting/Changing rights of survivorship or beneficiary designations.
- ▶ Apply for Government Benefits
- ▶ Can POA create a QIT

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Tips for a Smooth Medicaid Application Process...

Prior Gifting

- ▶ Is the gift or money available to give back (cure) to the resident (usually NO)
- ▶ The Medicaid process needed to start yesterday
 - ▶ Did you prequalify the resident before moving in?
 - ▶ Did you have them sign a waiver about the previous 5 years of gifting?
 - ▶ Can clear restricted coverage periods when there is money still left?

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Prior Gifting Example Problem

Problem:

The resident enters into Assisted Living. The AL has a one-year private pay period before they will accept Medicaid as a payor. The resident has enough money to get through the private pay period, but not much else. 3 years ago, he paid for both of his grandchildren to go to college. \$100,000. What is the proper course of action?

ANSWER:

- ▶ File for Medicaid NOW and get the restricted coverage period started

Common Response:

- ▶ Do nothing and file for Medicaid when the resident is out of money
- ▶ Never knew about the gift in the first place

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Tips for a Smooth Medicaid Application Process...

Request a need assessment at least 30 to 45 days before an application is submitted (Waiver).

- ▶ If the local agency conducting the assessment is delayed, the family and the building can miss out on payment
- ▶ Some counties will pay back to the 1st of the month of the application date
- ▶ BUT it is trending that counties will only pay back to the assessment date, regardless if the resident is otherwise eligible

* Make sure the client is presenting as if it is one of their “bad” days

** Ensure the AL community is charting the needs of at least two ADLs

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Tips for a Smooth Medicaid Application Process...

After the Medicaid application is submitted and pending, the resident only pays the estimated patient liability.

- ▶ There needs to be a financial need or the application will be denied
- ▶ If you require payment in full while the application is pending:
 - ▶ Resident has spent down to \$2,000, where is the money coming from?
 - ▶ Cannot “have money to pay during the application” will be denied for over-resource
 - ▶ You cannot keep the private pay AND the State’s money = Medicaid Fraud
 - ▶ Refunding the resident will (usually) make them over-resourced
 - ▶ This may have been working but will fail in the annual recertification
 - ▶ DO NOT refund “adjacent” family members = Medicaid Fraud

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Tips for a Smooth Medicaid Application Process...

COMMUNICATION!

- ▶ If you do not take Medicaid, start having the conversation with families at least one year before they run out of money.
 - ▶ Have time to find a new place
 - ▶ Have funds to move
 - ▶ Have money to cover move-in costs
- ▶ If you do take Medicaid, start the process at least one year in advance.
 - ▶ Enough lead time to “fix” issues
 - ▶ Third-party companies can take a long time to provide verifications
 - ▶ Families do not have the additional stress of “time”

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VA Aid & Attendance

Two Married Veterans: **\$3,740** a month

Married Veteran: UP to **\$2,795** a month

Single Veteran: UP to **\$2,358** a month

Widow of a Veteran: UP to **\$1,515** a month

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What ELC Can Do for You!

1. Free Medicaid pre-qualification for potential residents before they move in, turnaround time is 48 hours or less.
2. We can let the community know how long the potential resident can privately pay before needing Medicaid
3. For Assisted Living Waiver communities, we can ensure families make it through the private pay period without incident before Medicaid is applied for
4. Reduce the number of unpaid beds because of Medicaid denials
5. Elderlaw Connection has never received a permanent Medicaid denial

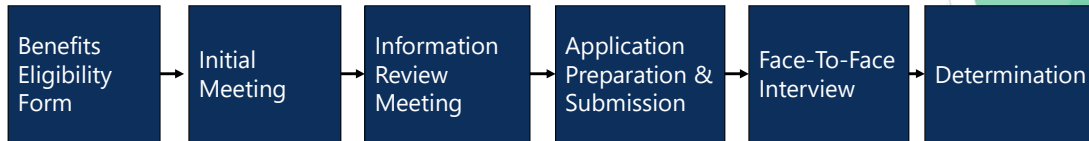
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What ELC Can Do for You!

6. Eliminate the need for your Executive Directors or Business Office Managers to deal with Medicaid applications. Freeing up their time for other tasks that keep the building running and employees happy.
7. Faster learning curve for new hires in the BOM position, Medicaid can take a long time to learn the nuances, that when done incorrectly leave a community with unpaid beds
8. ELC can eliminate the need for evicting residents for Medicaid ineligibility, thereby saving the dignity of the residents and the communities standing in the surrounding area.
9. Medicaid applications take a long time to learn how to do them correctly. More complicated Medicaid applications can take 40 to 60 hours of total work to receive approval.
10. ELC works directly with the family and gets paid by the family in most cases.

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Medicaid Crisis Workflow



- ▶ Completed Benefits Eligibility form sent to Elderlaw Connection
- ▶ Elderlaw Connection has a 72 Hour or less turnaround on initial evaluation
- ▶ Elderlaw Connection contacts community to advise on initial eligibility issues, if any
- ▶ If initial screening is positive, receive verifications from the potential resident
- ▶ Once verification documents support initially provided numbers, work with community on move-in the

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Contact Us to Learn How We Can Help YOU!

Please visit www.ElderlawConnection.com to learn more about the business

Setup a Discovery Call:

Call us at: 614-568-1237

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