

MEDICAID MYTHS PART 1

By Ira Stewart Wiesner

Hello Friends & Colleagues!



Over the years I've been continually amazed at how much misinformation swirls around Medicaid eligibility for long-term care coverage. I have heard them called "myths" but I call them voodoo because believing them can be harmful. The purpose of this article is

to dispel the most common Medicaid Myths. We will address five such myths this issue and five more next.

Five Common Florida Medicaid Myths:

Myth #1: I have to spend all of my money before my husband can qualify for Medicaid.

No. While it is true that the nursing home resident can have no more than \$2,000 in countable resources, the spouse at home ("community spouse") may keep up to \$123,600! This allowance is in addition to the exemption for the house. For couples with more assets, there are strategies available to protect the excess assets.

Myth #2: This is our second marriage and we signed a pre-nuptial agreement keeping our assets separate. Will that protect my funds?

No. Medicaid counts the assets of the applicant and the spouse, whether they own them individually or jointly. Medicaid ignores the pre-nuptial agreement.

Myth #3: The State or the Nursing Facility will take our Home.

No. When you or your spouse applies for Medicaid, your homestead is exempt from the Medicaid asset calculation. If you are single, the home is exempt so long as you wish to return (even if that is medically unlikely). The home is also exempt if a spouse lives there.

Myth#4: Will the State Take My Home When I Die.

No. Generally. Florida residents who die owning a homestead are protected from creditors so long as it passes to an heir at law under the Florida intestacy statutes. This protection, however, can be lost if someone other than a protected heir receives the home. The protection can also be lost if you "abandon"

the homestead. This can occur if you move out of the home permanently and, for example lease the property. This can be a problem because while Medicaid won't "count" the home when you apply, you are not left funds to pay for the taxes, insurance and repair of the home. This often leaves a family with a home that is exempt but no way to cover the expenses. In such a case, a special kind of deed, called a "Lady Byrd Deed," can be used which permits the rental of the home without the State laying claim when you die.

Myth #5: If I put everything into a revocable living trust, I can qualify after the five year look-back period

No. Funds held in a revocable trust ("living trust") are attributed to the Medicaid applicant if the Trust is set up by the husband, the wife or jointly. Assets placed in a carefully drafted Irrevocable Trusts are not counted after the five year look-back period.

About Ira Stewart Wiesner

Ira Stewart Wiesner is a nationally recognized elder law attorney and founder of Advocates in Aging, the first elder law firm in Sarasota, Florida. He has lectured frequently and written on the subjects of asset preservation, care-giving of spouses and parents with chronic illnesses, drafting special needs trusts for disabled children and financing long-term care. He devotes a significant portion of his practice to sophisticated estate planning. However, the principal commitment and focus of his practice is on resolving the legal needs of the elderly and their families, and assisting families with planning for the needs and protection of disabled and dysfunctional children.

Mr. Wiesner is Board Certified as a Specialist in Elder Law. He holds a Master of Laws in Taxation (LL.M) degree from the University of Florida and a Master's Degree (M.A.) in Transpersonal Psychology from Naropa University. Ira has also earned Graduate Certificates from the University of South Florida in Advanced Gerontology and from Naropa University in Authentic Leadership.

Ira is a former President of the National Academy of Elder Law Attorneys as well as Past Chair of the Elder Law Section of the Florida Bar. In recognition of his efforts in advancing the legal needs of seniors, Mr. Wiesner has been honored as one of a select group of attorneys nationwide who have been selected as a Fellow of the National Academy of Elder Law Attorneys as well as a Fellow of the American College of Trust and Estate Counsel. Ira formerly served as a member of the Board of Directors and as Vice Chair of Jewish Children and Family Services, Inc., is a member of the Advisory Committee of the Academy of Special Needs Planners and various committees of the American Society on Aging.

For over 40 years, our firm has been laser-focused on providing legal guidance and direction to an aging population and those concerned about them. We are here to serve our clients and their families in a

supportive and understanding, yet organized and efficient manner. Our commitment is to provide top-quality, cost-effective, and responsive representation through hard work, scholarship, and dedication.

Our principal goal is to provide our clients with the most advantageous strategies, professional assessment, and information to ensure that their goals are achieved. This encompasses the following fundamental questions:

- (1) What kind of legacy do I wish to leave?;
- (2) Who will care for me when I no longer can?;
- (3) How can I assure my wishes will be carried out?; and
- (4) How is my family going to pay for this?

Our firm goal is to provide holistic, client-centered, and comprehensive solutions to effectively address our clients' concerns. This is what "elder law" is and has always been.

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