

The  
65

Best Tips, Facts &  
Strategies You Need  
to Know About

Medicaid  
Planning

by  
Tom Willoughby, Esq  
407-977-9171  
Tom.WilloughbyJD@gmail.com  
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Welcome!

Thank you for opening my booklet. I hope you read it and take something away that is useful to you.

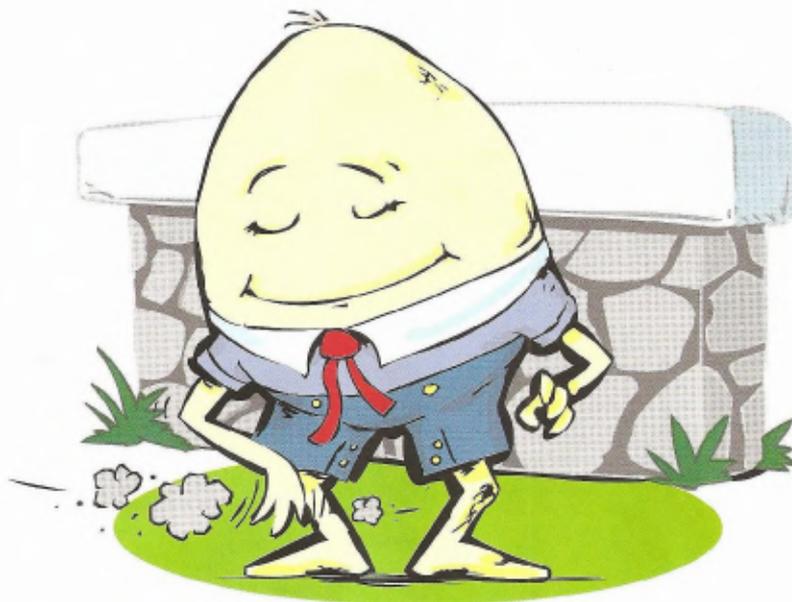
The booklet tries to answer your questions in understandable Plain English, without falling into industry jargon. But the subject is complex and the process is full of “Land Mines” if you try to do it yourself.

My background is in Medicaid Avoidance and Medicaid Crisis Planning, finding strategies that allow you to keep your precious Nest Egg and pay for Long Term Care, whether you are carefully pre-planning or are in last minute crisis planning.

If, after you read this, you want me to help you preserve your life savings, or save all you can when applying for Medicaid, please call or email me.

- Tom Willoughby, JD

[Tom.WilloughbyJD@gmail.com](mailto:Tom.WilloughbyJD@gmail.com)  
407-977-9171



**Humpty Lives!**

(This message is brought to you  
by the **Number 68**. Ask why.)

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# The **65** Best Tips, Facts and Strategies You Need to Know About **Medicaid Planning**



## **Food for Thought...**

Remember...

This is a Florida reference guide. But this IS NOT to be construed as legal advice. Do not do anything mentioned here without professional consultation and advice, after providing full information for a comprehensive strategy, based on your specific situation.



## **5 Basic Facts...**

**You need to know about  
Medicaid. Just to get started.**

1. It's a federal/state program and each state's rules are different.
2. Most of its funding is to pay for Nursing Home patients. Assisted Living Facilities and Home Care are underfunded.
3. In Florida it is administered by the Department of Children and Families.
4. You can apply online at <http://www.myflorida.com/accessflorida/>.
5. Eligibility for Medicaid depends on three different matters:  
physical/cognitive, assets & income.



## **6 Reasons...**

**Why you should not listen to your cousin, Vinnie,  
in New York. Or anybody in any other state.**

1. Our rules may not apply to what "Vinnie heard," somewhere else.
2. Example: many states require you to sell your house if you, your spouse or a dependent did not live in it for the last six months. Proceeds of the sale go to Medicaid to pay for care.
3. Example: many states have no "Income Cap". Strategies are different.
4. Example: some states have a maximum value on the car, e.g. \$4,500, or it becomes a "Countable Asset".

5. The Community Spouse Allowance statute may be interpreted so that only half that Allowance granted in Florida may be allowable to the spouse.
6. There are lots of other differences, such as, the \$35 Personal Needs Allowance could be higher or lower. Ditto for the \$2,000 asset base, the Income Cap in Cap states. And more.



## **1 Reason...**

**Why you should not listen to any friend,  
neighbor or relative in Florida, either.**

1. This stuff is REALLY complicated! Don't try it at home – with or without your friends, neighbors or relatives.



## **4 Actions...**

**You must never, ever take when  
Medicaid seems imminent.**

1. Don't move assets from Patient's name without consulting an expert.
2. Especially the home. It's a Double Whammy.
3. Don't make gifts to anyone other than your spouse – including to charities. They are Transfers for Less Than Value and bring on a Penalty.
4. The result may be “The Penalty”. It starts with a five year “look-back” to check for transfers. Take the amount you gifted and divide it by \$5,000 (the 2011 number). The answer to that math problem is the number of months you are not allowed on Medicaid. Ex: \$100,000 gifted ÷ \$5,000 = 20 months ineligibility.
5. If you can't remember #2 and #3, then re-read #1.



## **4 Basic Rules...**

**They will tell you at the nursing home.  
They're true, but take them with a grain of salt.**

1. You must spend down your assets until you have only \$2,000.
2. To be Medicaid eligible, you may have no more than \$2,022 in monthly income (in 2011).
3. Of that \$2,022, you can keep \$35 for personal needs.
4. If or when you hit those numbers, then come back and we'll help you apply for Medicaid.



## **5 Special Rules...**

**They PROBABLY WON'T  
tell you at the nursing home.**

1. You may only be allowed to keep \$2,000 of assets, but there are a number of legal ways to turn "Countable Assets" into "Non-Countable Assets".
2. Some assets may look "Countable" but may be "Unavailable", and they may be OK to keep.
3. There is a very special place to legally move excess assets, and you can become immediately Medicaid eligible without spending down – all approved by federal & state law.
4. Florida has an "Income Cap" on what you can earn monthly, but there is a legal way to become eligible even if your income exceeds that cap.
5. Some "assets", such as rental properties, can be considered "income" instead, eliminating the need to liquidate them.



## **3 Facts...**

### **You need to know about Income Limits to qualify for Medicaid.**

1. As stated, in Florida the rule is that you can have no more than \$2,022 a month income, including Social Security, pension, annuity, 401(k), IRA, and anything else.
2. But, your income can be placed in an “Irrevocable Income Cap Trust” and your income qualification issue is no longer a problem.
3. You don’t get any more money for yourself by doing this, but your income won’t disqualify you, and you are on an even footing with those states where there is no income cap.



## **5 Facts...**

### **You must know to limit or avoid losing all your assets, and still qualify.**

1. Assets can be “Countable”, “Non-Countable” and “Unavailable”.
2. Only Countable Assets must be spent down to \$2,000.
3. The key is to convert Countable Assets into Non-Countable Assets.
4. Medicaid has a rule of thumb, “If you can get it [an asset], we can get it”.
5. Unavailable Assets, such as real estate owned by more than one person, may be “Unavailable” since someone else also has to sign off to liquidate it.



## **5 Strategies...**

### **To convert Countable Assets into Non-Countable Assets.**

1. You could fix the House, if the Patient “intends” to live in it again (whatever that means). Thus, needed upgrades, like a new roof, new A/C, carpets, appliances, landscaping, are a good idea.
2. You might replace the old car that is in the Patient’s name. There is no value restriction on a car in Florida.
3. Set up a “Burial Account” at a bank for \$2,500, with a “Payable on Death” provision to a family member. You can’t touch it, except for final expenses, but it passes on after death.
4. Consider purchasing a Pre-Paid Funeral/Burial Plan for any reasonable value. You can do this, in addition to the Burial Account in #3, above.
5. You might consider purchasing a “Funeral Directors Life Insurance Policy”, which you can do in addition to #'s 3& 4, above. This is allowable up to \$15,000 in Florida.
6. Have the Caregiver look into a Personal Services Contract to pay for some of the needed assistance.



## **3 Differences...**

### **Between Countable Assets and Non-Countable Assets.**

1. Countable Assets include Savings, Checking, IRA’s,
2. Non-Countable Assets include your Home, your Furniture, Furnishings and Fixtures, your Car.

3. Other Non-Countable Assets are: a Burial Account, a Pre-Paid Funeral/Burial Plan, a special, Final Expense Life Insurance Policy, as stated above.



## **4 Reasons...**

### **Why being married is a good thing.**

1. A spouse living at home is the “Community Spouse” (“CS”) and must be protected under the “Spousal Impoverishment” laws.
2. The “CS”, in Florida, may retain \$109,560 in assets (in 2011), in addition to the Patient’s (“Institutional Spouse’s”) assets.
3. The Community Spouse has no income limits if he or she has no need to receive income from the Patient’s income.
4. If the Community Spouse DOES need some of the Patient’s income to make ends meet, it can be done, but that limits the CS’s income, based on a “Minimum Monthly Maintenance Needs Allowance” (MMMNA).



## **4 Strategies...**

### **Using the Community Spouse’s separate rules. (But, don’t do any of this without professional assistance)**

1. These strategies are IN ADDITION to those mentioned above for the patient, alone.
2. You are allowed to transfer any or all the assets you want to between spouses, without triggering the “Transfer for Less Than Value” penalty.
3. First, you may consider transferring the Patient’s countable assets to the CS’s name.

4. If that transfer exceeds the spouse's asset limit (\$109,560 in 2011) look into converting enough assets to get below that amount into a Medicaid approved immediate annuity for the CS (remember, the CS can have unlimited income).



## **4 Ways...**

**How you can - and why you must if at all possible –  
keep your real estate out of probate.**

1. Check out the Enhanced Life Estate Deed (a/k/a “Ladybird Deed”). It sort of works like a Transfer on Death that’s used for Mutual Funds (TOD), but for real estate.
2. The Ladybird Deed (a) avoids the Transfer for Less Than Value Rules, (b) eliminates real estate from your asset base, and (c) by-passes Probate on death.
3. If you own real estate with someone else, don’t panic. It may be an “Unavailable Asset” since some else also has to sign off to liquidate.
4. The reason this stuff is important is called “Estate Recovery”. More below.



## **3 Major Facts...**

**You need to know about  
Estate Recovery.**

1. The estate of a deceased Medicaid recipient is supposed to pay back as much of Medicaid’s costs as possible.

2. By far Medicaid's most effective collection tool is through Probate court.
3. Estate Recovery is not done if there is a surviving spouse or dependents of the Medicaid recipient.



### **3 Important Facts...**

**To help you to keep some life insurance  
and still be Medicaid eligible.**

1. If you have life insurance with more than \$2,500 in Death Benefit, any Cash Value in that policy is a Countable Asset. The policy may have to go. Term insurance has no cash value and is not countable.
2. You may be able to convert a small part of that policy to a special policy without a new health questionnaire.
3. You may be able to borrow from your existing policy some cash value to convert to non-countable assets.



### **5 Reasons...**

**Why you must review your Power of  
Attorney (PoA) with an Elder Law  
Attorney every year or two.**

1. Your "Attorney-in-Fact" (the person you gave the power to) may have moved, died or gotten mad at you.
2. You may have gotten married, widowed or divorced.
3. Some people – especially bankers – get nervous if your Power of

Attorney is 6 months, 1 year, 2 years old (pick a number, pick a banker).  
The time frame depends on how easily they get nervous.

4. There is no legal reason why they should reject a PoA, unless they have reason to believe it is fraudulent or that the maker (Grantor) revoked it, or is dead.
5. But if they do question its validity, an affidavit where you swear that the Grantor hasn't revoked the PoA, and he's still alive, should settle the matter. But it can still be a real pain in the... pocketbook.



## **And Finally, An Amazing Resource**

**To help you qualify for Medicaid, even if your assets exceed the legal limitations—the Pooled Special Needs Trust.**

1. There may be a time, after the strategies mentioned here are done and there are still Countable Assets left. Spend Down? Maybe, maybe not.
2. Remaining assets, of any amount, can be placed in an Irrevocable Pooled Special Trust, and you can qualify for Medicaid immediately.
3. The funds go to a non-profit trust, with an independent Trustee, who manages the funds and reimburses the Beneficiary Advocate (Caregiver) for monies spend for any Special Needs of the Patient.
4. The Caregiver, then, does not have to go out of pocket for miscellaneous expenses, as would otherwise happen.
5. Then, Medicaid collects what it has spent, up to the amount in the Trust if needed to pay the bill. Any excess goes to the Patient's beneficiaries.



## *About Tom Willoughby, Esq.*

Tom is a graduate of the University of Toledo and practiced law there for a dozen years. At first that was in a broad general practice.

Tom's law partner formed an investment company, and Tom was their General Counsel, introducing himself to Securities Law, and then to Marketing in the Financial world.

Tom uses his unique combination of legal and financial/marketing experience to focus on "Retirement, A to Z", meaning he works with retirees and pre-retirees to prepare financially for their next life phase, including appropriate investment products to avoid clients out-living the Nest Eggs.

Part of this involves Long Term Care Planning, and then Medicaid, Social Security, and VA Benefits Planning, to preserve as much of his clients' assets as possible under the laws.

Tom still maintains his Ohio law license, but limits his Florida practice to Social Security and Veterans benefits law.

He is also affiliated with an Oviedo law firm to assist with Estate Planning, Medicaid documents and Probate.

He and his wife, Karen, have been Florida residents for nearly 30 years and have lived in Oviedo for the last 14 years. They have a son, Geoff, and three grandchildren.

He can be reached at:

*407.977.9171 or Tom.WilloughbyJD@gmail.com*

*www.TheRetirementRescuer.com*

