

# ELDER LAW UPDATE

Vouga Elder Law, LLC  
Veterans & Seniors Asset Protection

Helping YOU Get YOUR Ducks In A Row



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## Medicaid Myths

Medicaid was considered a complicated program when President Lyndon B. Johnson first signed it into law at the Truman Library in Independence, Missouri, and it has grown even more complex during each of the thirty-four years since. Although it is a national program, it is administered by each state. The rules and regulations are constantly changing and can vary widely from state to state. So, it's no wonder there are many myths and inaccuracies surrounding the program.

### **Myth: “My mother heard about someone who.....”**

All too often, we meet people who have heard horror stories about Medicaid from well-meaning friends or family members. These stories are often filled with inaccuracies and half-truths that frighten people into spending every last dime on nursing home care for themselves or a loved one before turning to Medicaid for help.

Similar stories have also prompted people to assume that what worked for a friend will work for them as well. So, they may give their house or all of their assets to a child in hopes that impoverishing themselves will immediately qualify them for benefits. Unfortunately, they soon find out that these transfers mean they are unable to receive benefits for several months or even years after the money is gone.

That's why it is important to contact an attorney who concentrates his or her practice in Elder Law. With a clear picture of your specific situation, an Elder Law attorney can explain those laws that should allow an individual or married couple to preserve their house and enough of their assets to live as comfortably as possible for the rest of their lives.

### **“My father is already in the nursing home so there's nothing we can do now.”**

It's true that a family can wait longer than they should to contact an Elder Law attorney, but it's rarely too late to establish a good plan. A good rule of thumb is that the earlier a plan is put in place, the more assets can be protected.

So, when is the right time to call an Elder Law attorney? You should pick up the phone right now if you or a loved one does not have a Medicaid Asset Protection Power of Attorney in place for financial and health care decisions. It's important that these documents are put in place **BEFORE** a gradual or sudden decline in mental competency

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occurs. It's also very important to make sure the financial Power of Attorney contains the right language so Medicaid Asset Protection is possible.

You should also call right now if you think that nursing home care will be needed by a loved one. This may be due to a diagnosis of a terminal or debilitating illness, such as Alzheimer's, Parkinson's or ALS. It may also be that your loved one is being discharged from the hospital and told he or she will be unable to care for themselves at home. All of these situations should be reviewed by an Elder Law attorney as soon as possible to determine what type of planning can be done.

### **“I have to give away everything I own before I can get Medicaid”**

All Medicaid recipients are able to keep some of their assets and still qualify for benefits. The key is to understand what Medicaid considers an “exempt” versus a “non-exempt” asset in your state.

For instance, a single person in Missouri can keep a few items, including the house they lived in before going into a nursing home, one automobile, a specific type of pre-paid funeral plan, personal belongings and up to \$999.99. The laws surrounding what a married couple can keep are even more complicated and vary depending on each individual's specific set of circumstances.

That's why it's important to have an Elder Law attorney review your financial situation before you apply for benefits.

### **“The Medicaid office can just give me the paperwork.”**

Those who work in the Medicaid office cannot offer you legal advice. You may not learn about laws that may allow you to receive Medicaid and still keep part or all of your spouse's income as well as your own. Nor can they represent you or give you advice on the laws that, depending on your specific situation, may allow you to keep all of your assets without spending down a single penny. Medicaid has rules and regulations in place to ensure families don't lose everything to nursing home costs. An elder law attorney can explain how those laws may benefit you and your family.

### **“I can only give away \$13, 000 per year or I won't qualify for benefits”**

We frequently hear from individuals who have lost the opportunity to preserve thousands of dollars because they believe this myth. In fact, the \$13,000 figure is an IRS rule regarding when a gift tax return should be filed and has nothing to do with Medicaid law. The truth is that every state has a different amount of money that seniors can give away without creating a long period in which they are ineligible for benefits. When done correctly, the state allows individuals to give away far more than \$13,000 a year.

In fact, Missouri has laws in place that allow individuals with a disabled child to give away all of their assets, including their home, and still qualify immediately for benefits.

But this must be done with the assistance of expert legal advice.

**“Our pre-nuptial agreement shows that everything belongs to my husband”**

The state does not take pre-nuptial agreements into consideration when determining Medicaid eligibility. All assets owned by either spouse are considered jointly owned and must be divided and spent-down exactly as they would if there was no pre-nuptial agreement in place. The only way a pre-nuptial agreement is effective is if the couple actually divorces.

Proper estate planning and expert legal advice can ensure that the wishes of both spouses are honored regardless of which one needs nursing home care.

**If you would like more information about Elder Law and/or Medicaid, or reserve a seat at one of our upcoming workshops, please contact us at Vouga Elder Law LLC, 636-591-0089**

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