

# ELDER LAW UPDATE

Vouga Elder Law, LLC  
Veterans & Seniors Asset Protection

Helping YOU Get YOUR Ducks In A Row



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## The Basics of Medicaid or... “What You CAN and CANNOT Keep”

In order to understand Medicaid qualifications, you first need to know how Medicaid treats your assets. Basically, Medicaid breaks your assets down into two separate categories. The first are those assets that are exempt and the second are those assets which are non-exempt or countable.

Exempt assets are those that Medicaid will not take into account (at least for the time being). Listed below are the following assets that are generally exempt.

- **The Home** (so long as the equity is not greater than \$500,000.) The home must be the principle place of residence. The nursing home resident may be required to show some “intent to return home,” even if this never actually takes place.
- **Household and personal belongings**, such as furniture appliances, jewelry and clothing.
- **One vehicle**, there may be some limitation on value.
- **Prepaid funeral plans/burial plots and/or cash value of life insurance policies**, as long as the face value of all policies added together does not exceed \$1,500. If it does exceed \$1,500 in total face amount, then the cash value in these policies is countable. Also, term life insurance is exempt.
- **Cash** (e.g. a small checking or savings account) not to exceed \$999.99.

Those are basically the assets that Medicaid will ignore, at least for now. Keep in mind, however, that the estate recovery unit may come back to recoup payments made to a Medicaid recipient after the death of the recipient and the recipient’s spouse, if they are married.

Most other assets that are not exempt (*i.e.* the ones not listed earlier) are countable. This includes checking accounts, savings

accounts, certificates of deposit, money market accounts, stocks, mutual funds, bonds, IRAs, 401(k)s, pensions, second cars and so on. While there are some minor exceptions to these rules, for the most part, all money and property, as well as any item that can be valued and turned into cash is a countable asset, unless it is one of those listed earlier as exempt.

While the Medicaid rules themselves are complicated and somewhat tricky, for a single person it’s safe to say that you will qualify for Medicaid so long as you have only exempt assets plus a small amount of cash, (*i.e.* \$999.99).

For a married couple the “community spouse” (*i.e.* the one not needing nursing home care) can generally keep one half of the couples assets up to a maximum of \$109,560. Of course, there are things that can be done to protect assets beyond these levels. This issue of Elder Law Update is designed to review the basics in the way which a caseworker from Division of Family Services would do so. Call to attend one of our workshops to learn some of the things that can be done to preserve and protect assets from Medicaid.

## Medicaid Myths

### “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

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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.

**“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 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.

**“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.

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