Medicaid Long-Term Care Placement Eligibility (Nursing Home Facility)

Must meet all of:

1. US citizenship- there are certain alien eligibility issues.
2. Fla. Residency.
3. 65 years or older, blind or disabled.
4. Residing in AND requiring medical care provided at a skilled nursing Medicaid provider within 45 days of application.
5. Meet Long-Term Care Placement care criteria. Cannot do **all** of: feeding, bathing, toileting, mobilizing, transferring, without assistance.
6. All other benefits must be applied for first: Medicare, VA benefits.
7. Gross income cannot exceed 300% of SSI benefits for that year ($2,742.00) for individual and $5,046.00 for eligible institutionalized couple for 2023.
   QUALIFIED INCOME TRUST MAY ASSIST HERE "QIT." THIS IS GROSS INCOME, NOT NET. (This may be reduced by monthly maintenance needs allowance of spouse $2,465 - $3,435) (7/1/23 to 6/30/24).
8. No more than $2,000.00 in countable resources ($3,000.00 for couple). Community spouse may have in Community Spouse Resource Allowance, CSRA, $148,620 for applications after 1/1/23. The ill spouse may transfer assets to community spouse without penalty.
9. Community Spouse Income Allowance. The Community Spouse is permitted to receive or retain a portion of the Institutionalized Spouse's income which would otherwise have gone to pay the costs of long-term care. The portion which the spouse is permitted to retain is known as the "Community Spouse Income Allowance", or CSIA, which is determined each July. This allowance has two parts:
   a. The minimum allowance is $2,465.00 (7/1/23 – 6/30/24). Maximum allowance cannot exceed $3,716.00, unless there is a court order for support. (1/1/23 – 12/31/23)
   b. An excess shelter allowance may also be allowed to go to the community spouse to cover high housing costs. The shelter allowance is calculated by adding the Community Spouse's monthly expenses for rent or mortgage payments (including principal, interest, taxes and insurance), condominium maintenance fees, and utility costs. If the monthly sum of these items exceeds $740.00, any excess is an additional amount which the Community Spouse may retain or receive from the Institutionalized Spouse's income and the income retained from the Institutionalized Spouse.

   Excess Shelter Determination: Shelter costs (rent or mortgage + property taxes, prorated monthly) + condo or homeowners fees + standard utility allowance of $361.00 = N. Subtract $740.00 and add $1,239.50 (7/01/23 – 6/30/24). This is the excess shelter determination.

Exempt assets/ Non-countable for Medicaid ICP purposes

1. Able Accounts: Tax free contributions (pre-tax dollars), self or others can contribute up to $15,000 a year. Up to $100,000 can be kept in an Able Account. Not a resource from Social Security or Medicaid qualification. Can be used for Qualified disability expenses, funeral and burial expenses – specifically any expenses except gambling or gifts to others. Qualified if 1) Florida resident, 2) disability occurred before age 26, 3) Recognized disability under Social Security disability. Account manager can be a parent, guardian, or

agent under Power of Attorney. Upon death of beneficiary, balance must be paid to Medicaid through Probate process.

2. Homestead- with intent to return (up to $688,000.00 in equity) (2023), if you are single. If married, generally no limit.
3. <u>Homestead in Other States:</u> If homestead is in one of the following states outside Florida, it will still be exempt if it is in: Alabama, Arkansas, California, Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, New Jersey, New Mexico, North Dakota, Ohio, South Dakota, Tennessee, Texas, and West Virginia. If not, Florida will not consider it exempt homestead. [**This policy was addressed on November 13, 2014 by Transmittal P-14-11-0022]**
4. One automobile. Additional autos are exempt if it is between 7 and 25 years old (not luxury or collectible).
5. Prepaid IRREVOCABLE funeral policy (up to $12,000).
6. CD or savings account specifically designated as a funeral or burial fund up to $2,500.00.
7. Cemetery plots.
8. Certain income producing property; income must be over and above expenses and must be provided to Medicaid during Applicant's lifetime.
9. Enhanced Life Estate Deeds: The deed allows grantor to convey remainder interest in property to beneficiaries upon their death but maintain all the rights of ownership during their lifetime. No transfer during lookback penalties apply, because no asset is transferred until Grantor's death. A step-up in basis also applies. These are not honored in some states and can create title problems, especially when there is a mortgage.
10. Life insurance policies with cash/face value that does not exceed $2,500 ($1,500.00 for SSI recipients).
11. Annuities have become less popular planning tools as of February 8, 2006 (but can be used with community spouse and Medicaid as beneficiary.)
12. Personal property and personal effects up to $2,000 are excluded, subject to $500 per item limit.
13. One wedding ring and one engagement ring are exempt.
14. Personal service contract agreements with certain restrictions.
15. Transfers have been eliminated as a planning tool by law. Lookback period: 5 years. The penalty divisor is $10,809 effective August 2022, but disqualification period begins upon date of application.
16. Tax refunds in the 12 months after application are not countable as income to the Applicant.
17. <u>IRA's</u> can be exempt only if RMDs (Required Minimum Distributions) are taken on a regular and periodic (monthly) basis, and no previous distributions were made.
18. <u>Long Term Care Insurance</u>**:** If you can afford it and can find a good policy, this can be an invaluable planning tool. LTC insurance pays a given amount per diem to reimburse for actual amount, not to exceed daily amount paid.

<u>SSI VS. SSDI</u>

<u>SSI Requirements</u>

1. Basically the same asset/income requirements as ICP Medicaid eligibility (with a few variations – see page 4).
2. Disabled.

SSI Benefits

1. 2023 - $914.00 individual, $1,371.00 couple
2. Automatic qualification for Medicaid.

SSDI Requirements

1. Worked 40 quarters.
2. Disabled.
3. Qualification is not based on assets/other income.

SSDI Benefits

1. Benefit is variable, usually higher than SSI and based on what was paid into program.
2. After 24 months, applicant is qualified for Medicare regardless of age.

Estate Tax Credit

The phase in of the estate tax credit is as follows:

For Decedents Dying and Gifts During	Applicable Exclusion Amount
2020	$11,580,000
2021	$11,700,000
2022	$12,060,000
2023-2025	increases each year
2026	$ 5,490,000*

*reverts to approximately this amount

Annual Exemption – Gift Tax

2022: $16,000 per person per year. Otherwise must file 709 gift tax return.
2023: $17,000 per person per year. Otherwise must file 709 gift tax return.

Special Needs Trusts

What are they? Funding vehicles that allow individuals to stay qualified for Medicaid, Social Security Income/Medicare, and other medically needy programs. There are many advantages to establishing a Special Needs Trust for purposes of reducing countable assets in order to qualify for SSI, but more importantly for the Medicare and Medicaid benefits that come with that qualification. Assets in these trusts cannot be used for certain things without a penalty- food and shelter are excluded uses.

There are basically two different types of Special Needs Trusts—"D4A Trusts"

1. Self-settled Trust or Disability Trust: 42 U.S.C. 1396p(d)4(A). Must be under 65 years old to establish this trust. These are best for our SSI issues. The beneficiary must be disabled. The trust is funded with the beneficiary's own money/assets. It can be established by self, a parent, grandparent, legal guardian or the court. The beneficiary can now establish the trust herself. The assets cannot be used for food or shelter without penalty or reduction of social security of benefits. Upon the beneficiary's death, the trust must provide repayment of Medicaid assistance paid on behalf of the beneficiary from any remaining assets in the trust. Irrevocable.
    a. (d)4(B): Qualified Income Trusts: Not really the same as SNTs; we will discuss these below.
    b. (d)4(C) Trusts: Pooled Trusts- Disabled. Often used for Beneficiaries 65 years of age or older or for small amounts of assets. The Pooled Trust is a resource for those who otherwise could not afford such a transaction. Unlike an (A) trust, it can be established by the individual. Otherwise, same rules as (A) trusts.
2. Third Party Special Needs Trusts:
    a. Created by a parent or grandparent with the third party's assets (not with assets of

the Beneficiary). It is created by another for the benefit of a disabled family member (not a spouse). Can be established during the grantor's lifetime, at their death (testamentary trust), or through an intervivos gift. Beneficiary cannot have authority to control assets. No requirement to repay Medicaid, but it is still a supplemental trust (no food or shelter without a penalty or reduction in social security benefits).

<u>Other Planning Tools</u>-

(d)4(B) Qualified Income Trust ("QIT"):

Medicaid imposes a monthly income limit in order to qualify. However, if the Medicaid Applicant's income exceeds the limit ($2,742.00 for 2023), a QIT may be established to qualify. Basically, the income that is over the allowed amount is deposited into the QIT from the personal account, then sent to the nursing home. $160.00 goes to the beneficiary, and then Medicaid reduces the payment to the nursing home by that amount. These must be administered painstakingly, but are a useful tool to get otherwise ineligible individuals qualified.

Reverse Mortgages: These can assist when you are dealing with a low-income community spouse who wishes to stay home, but needs additional income. Recommended for those over 62 who plan to stay in home for at least 5 years. The reverse mortgage payment is not income.

<u>Social Security Income (SSI)</u>

<u>Resource exclusions</u>. Certain items are not counted as resources in determining SSI eligibility, by operation of law. 20 C.F.R. §416.1210; 42 U.S.C. 1382b(a). They include:

1. An **individual's home** regardless of value. A home includes any adjacent land and related buildings on it, 20 C.F.R. §416.1212; 42 U.S.C. 1382b(a).
2. **Household goods** and personal effects are excluded without regard to value. Household goods are defined as "items of personal property, found in or near the home, that are used on a regular basis, and needed by the householder for maintenance, use and occupancy of the premises as a home;" EXCEPT items "acquired or held because of their value or as an investment are not considered household goods." "Household goods include, but are not limited to, furniture, appliances, electronic equipment such as personal computers and televisions." Personal effects are defined as "items of personal property that are worn or carried by an individual" or "items that have an intimate relation to the claimant;" including but not limited to, "clothing, jewelry, personal care items, prosthetic devices, and educational or recreational items such as books, musical instruments, or hobby materials." POMS SI 01130.430. and 20 C.F.R. §416.1216.
3. **One automobile**, regardless of value, if used to provide necessary transportation. For SSI purposes, "automobile" means any vehicle used for transportation. Vehicles used for transportation include but are not limited to cars, trucks, motorcycles, boats, snowmobiles, animal-drawn vehicles, and even animals. Not included is a vehicle that is used only as a recreational vehicle (e.g., a boat used on weekends for pleasure) which can NOT be excluded as "personal property" and whose equity value is counted as a resource. POMS SI 01130.200 and 20 C.F.R. §416.1218;
4. **Special Needs Trusts** pursuant to Foster Care Independence Act of 1999 (P.L. 106-169). Section 205; 42 U.S.C. 1382b; and Third-Party Special Needs Trusts. See POMS SI 01120.201 et seq.
5. **Life insurance with a face value of less than $1,500** with some caveats, 20 C.F.R.

§416.1230 (Note: This amount is different than ICP Medicaid);

6. **Burial spaces regardless of cost, and burial funds up to $2,500**, 20 C.F.R. §416.1231;
7. **Title XVI (SSI) or Title II (SSDI, DAC or RIB) retroactive payments** as provided in CFR §416.1233;
8. Restricted allotted Indian lands, 20 C.F.R. §416.1234;
9. Property of a trade or business without limit;
10. Non-business property of a reasonable value that is needed for self-support;
11. Resources of a blind or disabled individual that are needed to carry out an approved plan for achieving self-support, 20 C.F.R. §416.1225-1227;
12. Disaster relief, 20 C.F.R. §416.1237;
13. Payments or benefits are excluded by provisions of a Federal statute other than Title XVI of the Social Security Act;
14. Housing assistance as provided in CFR §416.1238;
15. Refunds of Federal income taxes and advances made by an employer relating to an earned tax credit as provided in CFR §416.1255;
16. Shares of stock held by a native of Alaska in a regional or village corporation during the 20-year period in which, under the provisions of the Alaska Native Claims Settlement Act, such stock cannot be transferred;
17. Payments received as compensation for expenses incurred or losses suffered as a result of a crime for nine months following receipt, 20 C.F.R. §416.1229;
18. Relocation assistance from a State or local government for nine months; and
19. Dedicated financial institution accounts required to be established for the payment of past-due benefits to disabled children as provided in 20 CFR 416.1247.

Deeming of Income and Resources. Under certain circumstances, all or portions of the income or resources of a spouse, parent, or sponsor of an alien are "deemed" to be the income or resources of the claimant. Pension funds owned by an ineligible spouse or by an ineligible parent or spouse of a parent are excluded from resources for deeming purposes. Pension funds are defined as funds held in Individual Retirement Accounts (IRA's) or in work-related pension plans. **Note**: Deemor's IRAs and pensions funds are excluded, but not the <u>claimant's</u> IRAs or pension funds under the theory that the claimant's IRAs can be converted to purchase food and shelter and therefore are NOT excluded in determining eligibility. 20 C.F.R. §416.1160.

THE MILLER ELDER LAW FIRM

INTERPLAY BETWEEN SSDI, MEDICARE, SSI & MEDICAID PROGRAMS

	Monthly Cash Checks	Medical Benefits
DISABLED INDIVIDUAL CONTRIBUTED TO PROGRAM (Insurance)	Program: **SOCIAL SECURITY DISABILITY (SSDI)** Benefit: Monthly check based on FICA payments during prior work years Criteria: Medically disabled, fully insured (40 credits) and currently insured (20/40 rule). *If monthly payment is below a certain amount, the individual may also be eligible for SSI (See below).	Program: **MEDICARE** Benefit: Part A – Hospitals & limited nursing home care Part B – Doctors Part D – Prescription drugs (extra premium) Criteria: Age 65+ or have received SSDI for the past 24 months (and in other limited circumstances).
NO CONTRIBUTION REQUIRED (Supplemental Welfare Programs)	Program: **SUPPLEMENTAL SECURITY INCOME (SSI)** Benefit: Monthly check for food, clothing, shelter Criteria: Age 65+, or medically disabled **AND** meet the low income and resource criteria of the program requirements.	Program: **MEDICAID** Benefit: Pays medical providers, physicians and hospitals directly. Also pays for prescription drugs and extended nursing home care. Criteria: Automatically qualified in Florida if you receive $1 of SSI benefits. Can also meet if not on SSI but have low income and resource limits.