



ElderNeedsLaw.com

**Offices in:**

Aventura, Plantation, Boca Raton &  
Spring Hill  
(serving the entire state)

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# Elder Law Medicaid-Planning 101

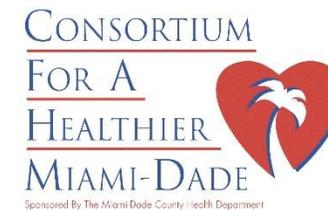
Medicaid Long Term Care, Estate & Incapacity Planning, and  
Probate

**Central Scheduling: 305-902-4476**  
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# Jason's Story



ELDER LAW





## What is elder law?

Elder Law attorneys handle a wide range of legal matters – affecting an older or disabled person.

Some that you are likely familiar with e.g., incapacity planning, enhanced durable powers of attorney, advanced directives, health care surrogate, living wills, trusts, estate planning, probate & guardianship.

Other areas that are more niche: e.g., long-term-care planning, **Medicaid-planning**, and special needs planning.



# What is Medicaid Planning?

**BIG QUESTION: How will you or your loved one pay these bills?**

As we live longer, odds become greater that you/spouse will need LTC

Average cost of a skilled-nursing facility in Florida is: \$10,438.00/month (as of January 2025).

- Home health care and ALF care are pricey as well!

# Five Ways to Pay for Long Term Care

1

Cash / Private Pay

2

Medicare (but only for max 100 days, if admitted to hospital for at least three days) – skilled nursing/rehab only.

- Day 1-20 (100%)
- Day 21-100 (\$209.50/day copay – as of 2025 – a good Medicare Supplement Policy may cover this)
- After Day 100 (you are on your own)

3

VA (but only meaningful for home health/ALF care)

4

LTC Insurance (less than 10% have\* and getting harder to obtain)

5

**Medicaid**





# What is Medicaid?

- Medicaid is Federal/State Partnership and an umbrella term for a variety of programs (most common is health insurance for the destitute)
- Means Tested
  - Asset Test:  $\leq$  \$2,000
  - Income Test:  $\leq$  \$2,901/month (as of January 2025)

**But I'm too rich to qualify for Medicaid!**

# Medicaid Planning?

Using federal and state rules to legally and ethically protect assets and income for someone who may need skilled LTC.



## Institutional Care Program (ICP)

- Applicant must be medically qualified (unable to perform 3/6 ADLs, disabled per SSA guidelines, dementia or over age 65)
- Applicant must be financially qualified
  - i.e., pass both asset & income test

## Medicaid Waiver (Home and Community Based)

- For home care / ALF care
  - Same Asset/Income Test as ICP
  - Discuss **PDO and PACE**

## QMB

- For Medicare Premiums, Co-Pays
  - Different Asset/Income Test

# Income Test

\$2,901.00/month

If income (from all sources: e.g., SSR, pension, 401k/IRA distributions, annuity payments, etc.)

- filter excess through a Qualified Income Trust (a/k/a “Miller Trust” or d4B Trust)

Drawback – irrevocable with Medicaid payback obligation.

# Asset Test

• **\$2,000 total**

• But some assets are exempt/non-countable:

- Homestead (up to \$730,000 equity limit as of January 2025)
- 1 automobile + household goods
- Irrevocable pre-paid funeral contract
- Life Insurance (if face value of all policies combined does not exceed \$2,500)
- Income Producing Property
- DRA compliant annuities
- DRA compliant Promissory Notes
- Special needs trusts

• **Virtually all other assets are countable** - bank accounts, CDs, brokerage accounts, vacation homes, most annuities, IRA/401k (if not in payout mode)

• **Community Spouse Resource Allowance (CSRA): \$157,920.00** (as of January 1, 2025)

# So, what does an elder law attorney do to protect assets?

The art of the spenddown.

Medicaid planning is really the art of turning countable assets into non-countable resources in a way that increases their purchasing power while living and preserves and protects the client's estate as much as possible:

1

The client is well taken care of and can live the best possible life (Medicaid doesn't pay for everything); and

2

To increase the chance that the client has something to pass onto their heirs.



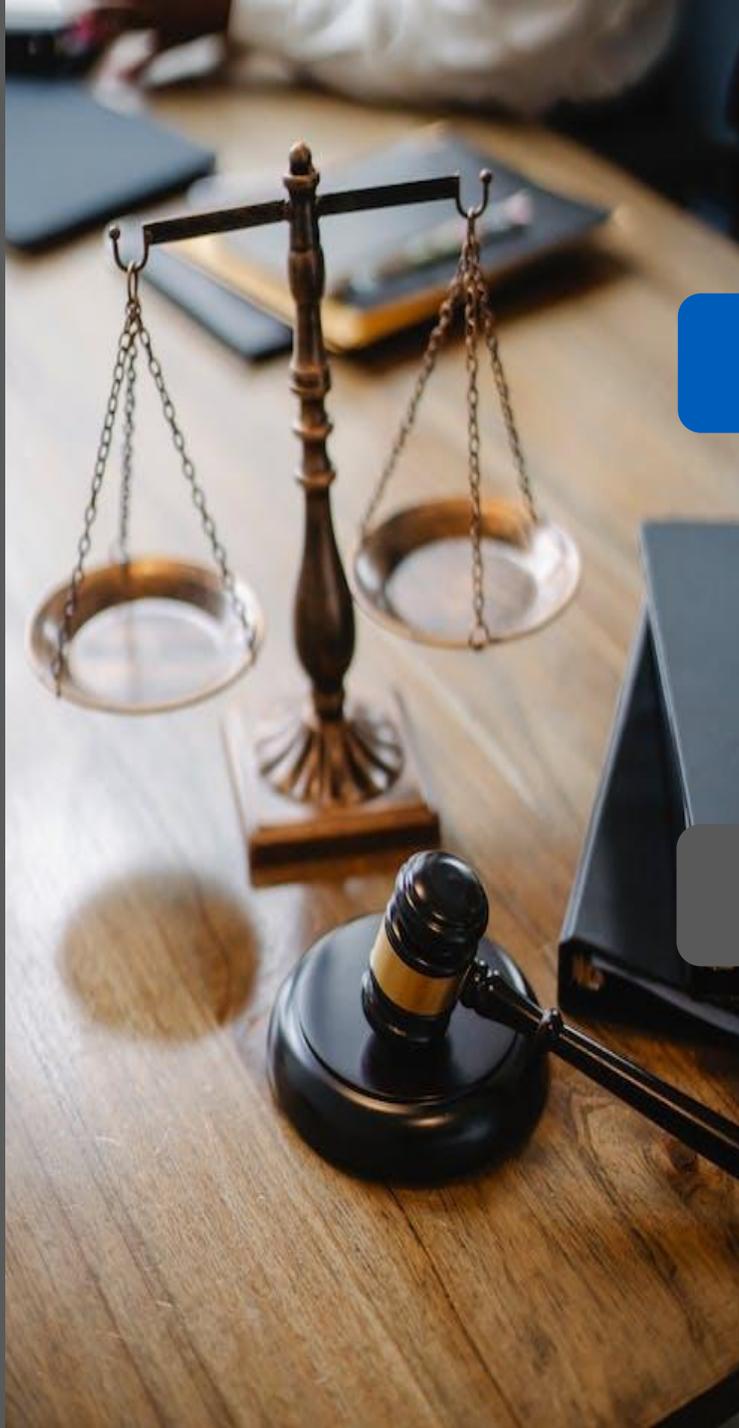
## Sad Story - Janis

- Sold sister's house and down to last \$7,000.00
- Thought had to wait five years

**What can I do?**

# Lookback Period – 5 years

Common Misconception: If I don't have 5 years to plan, not worth seeking advice of an elder law attorney.



Problem when people try to play amateur Medicaid planner:

“Kids, all that I own is now yours....now give me my Medicaid.” or

“Let me start giving each of your \$19,000/year because the IRS says it is OK.”

Medicaid, by federal law, must **look back five years** (will check with IRS, ask for bank records, run a background check) and penalize the Medicaid applicant for any gifts or transfers for less than FMV.

# Countable Non-Countable Assets

We are going to develop a plan that can involve a combination of the following:

Special Needs Trusts

Personal Services Contracts

Medicaid Compliant Annuities

Promissory Notes

Investments aligned with estate plan

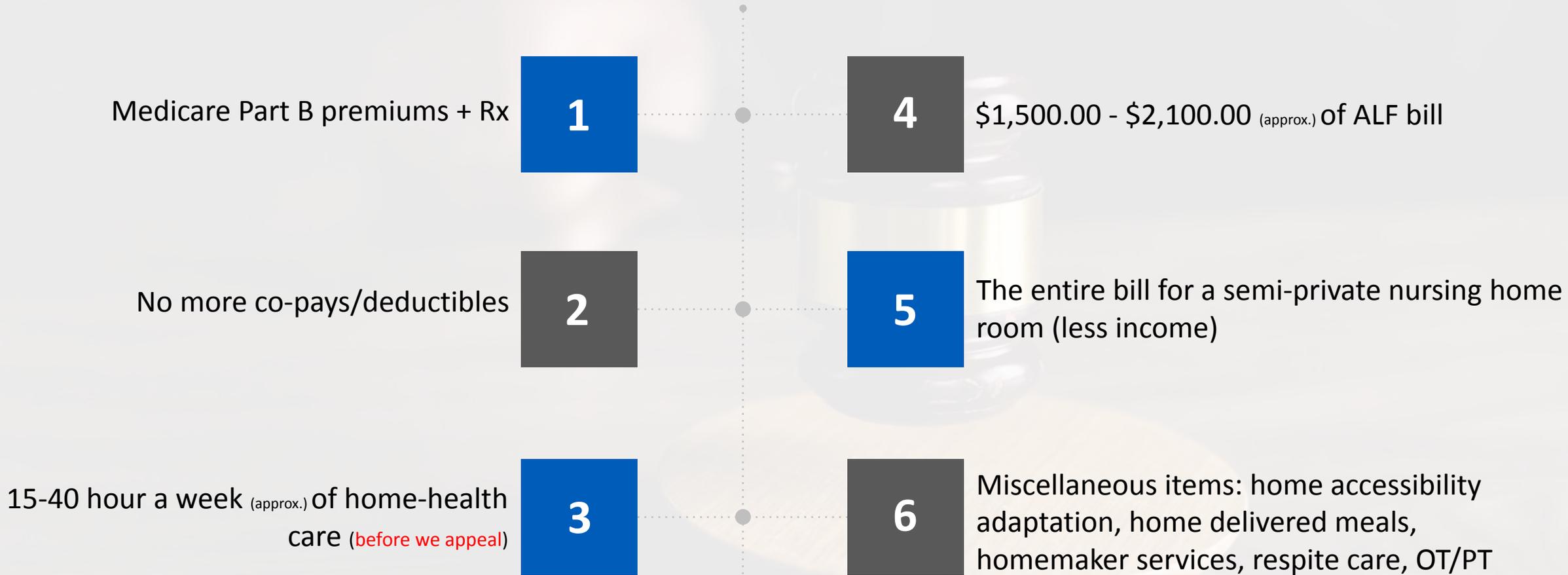
Spend money to improve quality of life



# Happy Story!

- Larry needs long-term care.
- Larry and his wife Angela have \$350,000.00 in the bank + a home worth \$575,000.00
- Do they need to spend it all before qualifying for Medicaid?
- Will they need to sell the home?

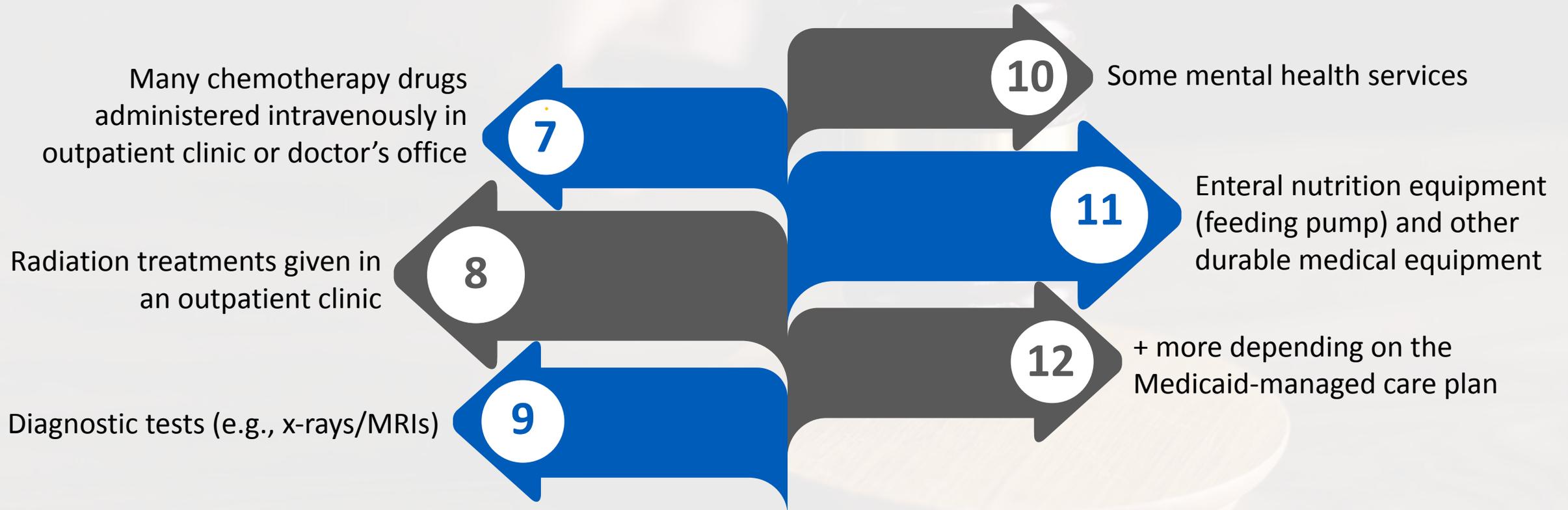
# What will Medicaid Pay for?



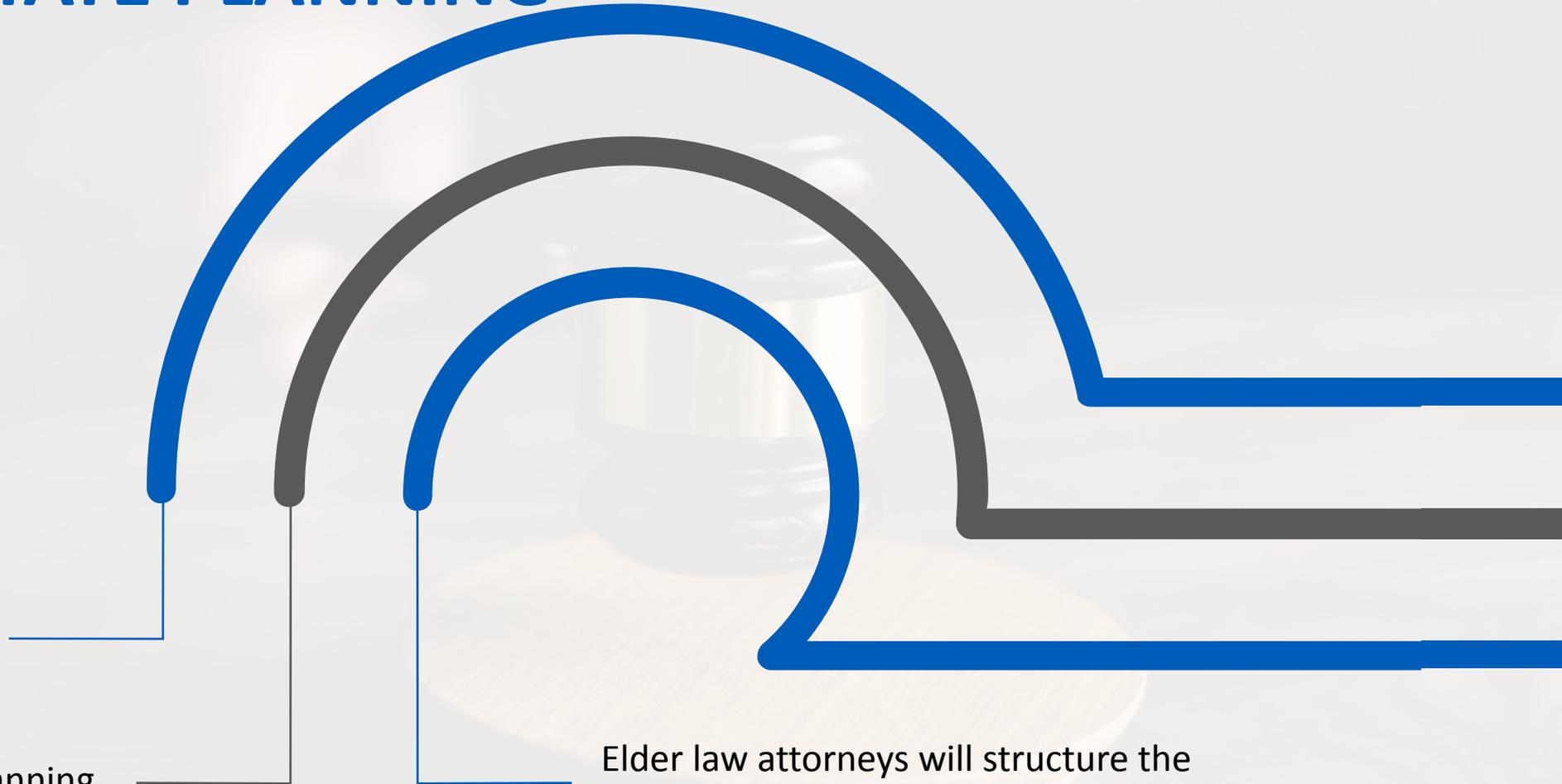
**\*\* (waitlist for ALF and home-care services | no waitlist for skilled nursing care) \*\***

# What ELSE will Medicaid Pay for?

## MEDICARE-APPROVED



# Minimize Medicaid Estate Recovery / ESTATE PLANNING



Medicaid asserts a lien over probatable assets.

## Pre-Planning vs. Crisis Planning

- Importance of Medicaid-Compliant POA
- Estate Planning

Elder law attorneys will structure the Medicaid-plan in a way that minimizes or eliminates what your estate will need to payback to the state.

# Medicare Savings Programs

In Florida there are several Medicaid benefits that fall under the category of “Medicare Savings Programs” - design to, as you may have guessed, to pay for Medicare premiums, deductibles, coinsurance and copayments for those who qualify.

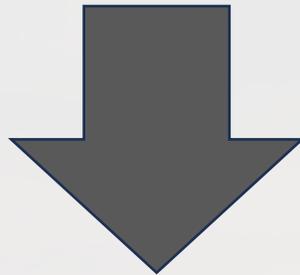
(no waitlist for these programs)

The Medicare Savings Programs I encounter:

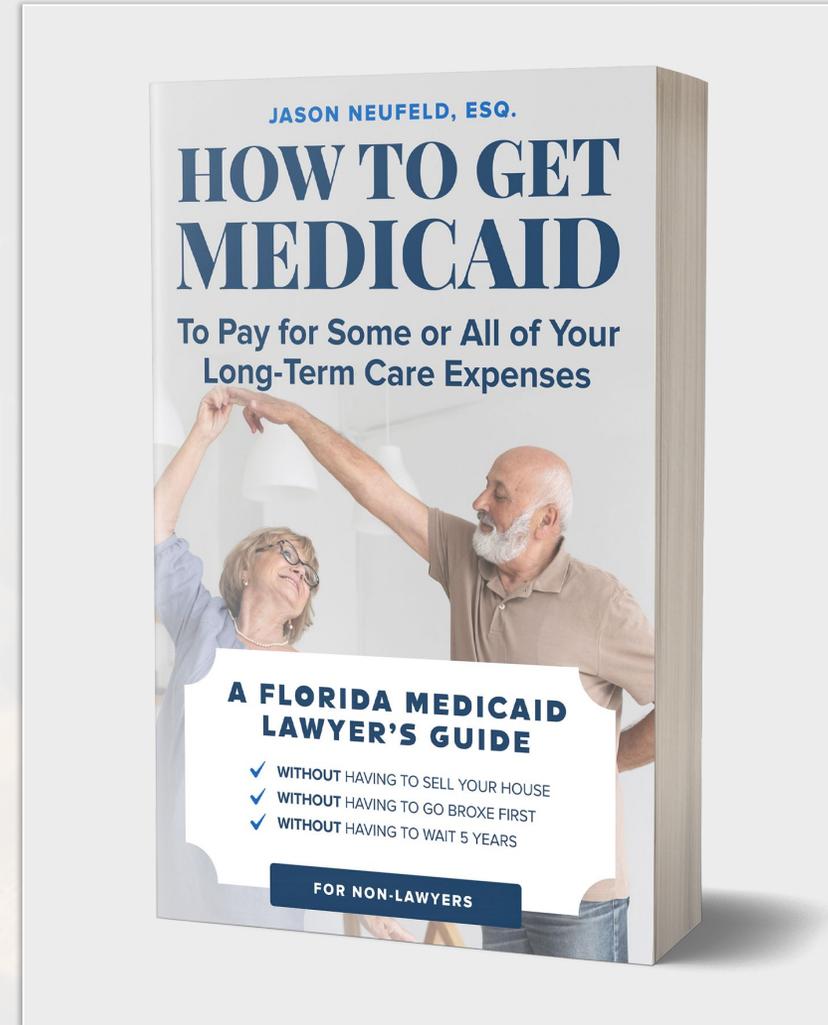
- ◆ Qualified Medicare Beneficiary (QMB)
  - ◆ Special Low-Income Medicare Beneficiary (SLMB)
  - ◆ Qualifying Individuals (QI-1).
- ◆ D-SNP Plans (even more value, including cash benefits)



Book Available on  
[Amazon.com](https://www.amazon.com)



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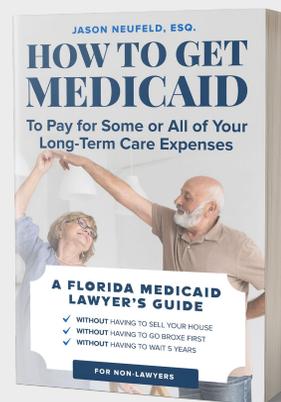
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**Free Giveaways at the End**

- Estate Planning and/or Medicaid Planning Booklet  
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[scheduling@elderneedslaw.com](mailto:scheduling@elderneedslaw.com)

If your question was not answered, we WILL get back to you soon! Not ready for a consult, check out our free/low-cost educational materials



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