



Case Studies

Case #1: Client utilizes the services of the in-hospital “Medicaid Enrollment Facilitator” when her mother is hospitalized and needs to be discharged to a skilled nursing facility. Client is grateful for the “free help” and then is horrified to learn after the Mother’s death that a lien has been placed on the mother’s home and that the house could have been protected under one of the Medicaid exceptions to the transfer-of-asset rules.

Case #2: Client uses a Geriatric Care Manager to assist in preparing the Medicaid application because costs are less than that of local attorney. Application results in significant penalty period during which Medicaid will not pay for care due to prior transfers. Geriatric care manager failed to warn client or take steps to mitigate penalty period. Client then retains an elder law attorney to help.

Case #3: Client uses independent Medicaid Application Preparer as recommended by nursing home to prepare application for incapacitated Husband. Client is told to “spend down” excess assets on cost of nursing home care, and does so. Client later learns that she was never advised of her legal rights as spouse and could have pursued other avenues to secure Medicaid for her husband much sooner.

Elder Law Attorneys

We are compassionate and dedicated advocates who will work with you and your family during the often stressful time when Medicaid is needed to pay for long term care. We have the legal and ethical obligation to ensure that you are fully informed of your rights. It is our mission to afford you peace of mind and the knowledge that while you focus on the care you or your loved one needs, we are focused on advocating and protecting your interests. Elder Law Attorneys can be a lifeline and support system for you and your loved ones.



NEW YORK STATE BAR ASSOCIATION
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Why

Your Medicaid Application
Should Be Entrusted to an
Elder Law Attorney

The New York State Bar Association's Elder Law Section makes this informational pamphlet available to you to assist you in understanding the benefits of utilizing an Elder Law Attorney for all your long term care and Medicaid needs.



What Is Medicaid?

Medicaid is the government funded program through which many persons receive care at home or in a nursing home. Medicaid is a state-wide and state specific program, currently administered through each county's Department of Social Services (with the exception of the five counties comprising metropolitan New York, which are administered through the single NYC entity, Human Resources Administration).

The process of applying for Medicaid is complex and often times confusing. Because Medicaid offers many different programs, the eligibility rules and application processes differ. Having an attorney who has a full and thorough understanding of the benefits available through Medicaid, the rules for eligibility, and the process by which to secure those benefits provides a tremendous advantage to the applicant for Medicaid benefits.

The Medicaid Application Process

Information Needed

Depending upon the program for which you are applying, different information may be required. All Medicaid applications, regardless of benefits sought, require extensive personal documentation and detailed proof of income. Certain programs require proof of assets and sixty months of records for all assets held during that period.

Help with the Application

An experienced Elder Law Attorney can advise you on the benefits available, the process for obtaining the benefits you need, the provisions of the law that might enable your family to protect assets, and the rights that certain family members of the applicant may have.

In New York State, it is not required that an attorney assist with the Medicaid application. In fact, you can prepare the application yourself. There are many entities, agencies, or divisions within hospitals and nursing homes which may offer to prepare and submit the application for you

for free or for a reduced fee. However, you must exercise great caution when accepting that help, as those entities and agencies are not obligated to advise you of your rights and are not permitted to give legal advice or implement legal strategies. Using these services might expose you and your family to risk.

Be Wary Of:

- Offers to prepare the Medicaid application free of charge or at a significantly reduced rate—if it's "too good to be true," it probably is!
- Persons holding themselves out as attorneys or giving legal advice without confirming they are admitted to the New York State Bar.
- Guarantees of Medicaid eligibility or other government benefits.
- Agencies, entities or groups which have as their "sole job" the securing of Medicaid benefits for you. These entities may not have any liability to you if they fail to secure Medicaid eligibility.

Exposure to Risks When an Elder Law Attorney Is Not Used

The law has many nuances and intricacies. An Elder Law Attorney has the obligation to ensure that you are fully informed of all the provisions of law related to Medicaid, and to accurately answer any questions you

may have. The Elder Law Attorney does not work for the nursing home. In fact, the Elder Law Attorney has an ethical duty to advocate for you and your interests. Failing to use an Elder Law Attorney could expose you to the following risks:

- Failure to be fully informed of spousal rights;
- Failure to be informed of opportunities for asset protection;
- Incomplete or inaccurate application submission;
- Denial of application due to failure to provide information;
- Failure to be informed of consequences of prior actions;
- Imposition of a penalty period for which mitigation strategies could have been implemented;
- Failure to have a dedicated advocate working with you through the process.

