

Most families do not think about Medicaid until a parent lands in the hospital, the rehab center says “you need long-term care,” and someone at the nursing home quietly mentions the monthly price. In many regions it ranges from \$8,000 to \$15,000 per month. At that point, every decision suddenly feels urgent, and the 5-year rule for irrevocable trusts becomes more than an abstract idea. It becomes the line between preserving a lifetime of savings and watching it evaporate in a few years of care.

**PARKER**
LAW OFFICES

**LAGUNA NIGUEL
ESTATE PLANNING
ATTORNEY**



Parker Law Offices
28202 Cabot Rd 3rd floor, Laguna Niguel, CA 92677
949 385-3130
<https://www.estateandtrustlawyer.com/comprehensive-estate-planning/>



I have sat across the table from plenty of adult children who say, “I wish someone had told us about this 6 years ago.” Timing is not a detail in Medicaid planning. It is the heart of the strategy.

This article walks through how the 5-year rule for irrevocable trusts really works, how it interacts with other estate planning choices, and where the common misconceptions trip people up.

What the 5-year rule for irrevocable trusts actually means

When people talk about the “5-year rule for irrevocable trusts,” they are usually referring to the Medicaid 5-year lookback. Medicaid reviews transfers made within a certain period before someone applies for long-term care benefits. For most states, that window is 60 months for nursing home Medicaid. The state looks back to see if the applicant gave away assets or transferred them for less than fair market value.

If you move assets into a properly drafted irrevocable Medicaid asset protection trust and then apply for Medicaid within 5 years of that transfer, the state typically treats that transfer as a gift. That can trigger a penalty period during which Medicaid will not pay for your nursing home care, even if you are otherwise financially eligible.

A few key points that people often misunderstand:

First, the 5-year clock starts when the asset is transferred, not when the trust is signed. If you sign the trust in January but do not deed the house into the trust until June, the June date usually controls for that asset.

Second, the rule is not about taxes. Many clients mix this up with the tax rules for gifts or inheritance. The Medicaid 5-year rule is its own separate concept, based on federal and state Medicaid law, not the IRS.

Third, the rule is not a “ban” on applying within 5 years. You can apply at any time. The issue is whether the transfers inside that 5-year window create a penalty period. In some crises, we deliberately accept a penalty and use a partial spend-down strategy to save part of the estate.

Fourth, the penalty is based on the value transferred, divided by a state-specific “penalty divisor,” which is usually pegged to the average monthly cost of nursing home care in that state. That means a \$200,000 transfer can translate into many months of ineligibility, depending on local rates.

When people ask how to avoid the Medicaid 5-year lookback, the honest answer is: you cannot erase it. You can only plan around it by acting early enough that the transfers you make today are outside the lookback when you eventually need care.

Medicaid planning near you: why local details matter

Medicaid is a joint federal and state program, which means broad rules are similar across states, but local details differ in ways that really matter. The income cap for eligibility, how “countable” assets are defined, how your home is treated, and when the state can place a lien or claim vary by jurisdiction.

From a distance, people talk about “the Medicaid loophole,” as if there were a single magic trick that works everywhere. In practice, there is no permanent loophole that allows you to keep all your wealth and immediately qualify for benefits. There are, however, carefully built strategies allowed by law, which are meant to strike a balance between protecting a modest estate and preventing abuse.

For example, some states allow “Medicaid-compliant annuities” in spousal cases. Some offer more generous protections for the house if a spouse or disabled child remains there. Others are stricter about what counts as an exempt asset.

That is why comprehensive estate planning in this context always starts with your state’s rules and your county’s Medicaid office practices, not a generic article or a family story from three states away.

Irrevocable trusts vs revocable trusts vs wills

Clients often ask: is it better to leave a house in a will or trust? The answer depends on your goals: probate avoidance, control, tax efficiency, and long-term care planning all pull in slightly different directions.

A will alone passes property at death but does not avoid probate. Your executor must file the will, go through the court process, pay creditors, and then distribute assets. That can be orderly and perfectly fine, but it is not private, and it does not help with Medicaid spend-down during life.

A revocable living trust avoids probate if funded properly, keeps things more private, and makes disability management smoother, since your successor trustee can step in without a court guardianship. However, for Medicaid purposes, a revocable trust is usually treated as if you still own the assets. You can revoke it, change it, and access the property, so Medicaid counts it as yours.

An irrevocable Medicaid asset protection trust is a different creature. Once you transfer assets into it, you typically give up the right to pull them back or use principal for yourself. You can carefully reserve certain powers, such as

the right to change who ultimately inherits, but you cannot retain full access to the assets and still expect Medicaid to disregard them.

That loss of control is not theoretical. It leads directly to the core practical question: what is the downside of putting your house in an irrevocable trust?

The downsides usually include:

You give up direct control and flexibility. If you later want to sell, refinance, or move, the trustee, not you, legally controls the property. A well drafted trust can allow a sale and purchase of a replacement home, but it requires coordination and good drafting.

You complicate access to equity. If you need cash from a reverse mortgage or home equity line to pay for living expenses, the trust structure may limit that. Some lenders do not want to work with irrevocable trusts at all.

You create friction in family dynamics. Naming a child as trustee can strain relationships if you feel you must “ask permission” about your own house. And if siblings disagree, it can turn into a long running dispute.

You lock yourself into a plan that may not fit unexpected later-life choices, like moving to another state or buying into a continuing care community.

Despite those downsides, an irrevocable trust can still be the best way to leave your house to your children if your primary concern is protecting the home from long-term care costs and probate. The key is knowing that you are trading flexibility for protection, and that trade is usually only wise when you reasonably expect to stay put and you have other liquid assets for your own comfort.

The 7-year rule vs the 5-year rule

People who read British articles or talk to relatives in the UK often ask about the “7 year rule for trusts.” That rule is part of UK inheritance tax law, not Medicaid. It says that gifts made more than 7 years before death can be free of certain inheritance tax, subject to specific conditions.

In the United States, we do not have a general 7-year rule for trusts. We have the Medicaid 5-year lookback for transfers, federal gift and estate tax rules, and state specific inheritance or estate taxes in some places. The 5-year rule for irrevocable trusts is about Medicaid eligibility timing, not federal estate or gift tax thresholds.

So if you see references online to 7 years and trusts, check whether the source is talking about UK law. For Medicaid planning near you in the US, the operative number is almost always 5, not 7.

The 5-by-5 rule in estate planning: a different “5”

Another point of confusion is the “5 by 5 rule in estate planning.” This has nothing to do with Medicaid, but it does arise in trust design.

The 5 by 5 rule typically refers to a power given to a trust beneficiary to withdraw the greater of 5,000 dollars or 5 percent of the trust principal each year without triggering certain adverse tax consequences. This is often used in irrevocable life insurance trusts or other irrevocable structures to allow limited access while preserving estate tax benefits.

It is an estate and gift tax concept, not a Medicaid eligibility concept. Both involve the number 5, but they live in completely different parts of the law.

When planning for both taxes and Medicaid, a good attorney pays attention to how withdrawal powers, limited powers of appointment, and trustee discretion interact, since too much access may ruin Medicaid protection, and too little flexibility may cause unintended tax or practical headaches.

What should not be included in a will and beneficiary mistakes to avoid

Some of the biggest headaches in estate administration come not from complex tax issues, but from simple beneficiary mistakes. The most common inheritance mistake I see is inconsistent paperwork. A beautifully drafted will leaves everything in neat percentages, but the largest assets pass outside the will through outdated beneficiary forms, joint ownership, or transfer-on-death designations.

When clients ask which bank accounts avoid probate, the short answer is: accounts with valid beneficiary designations, pay-on-death (POD) or transfer-on-death (TOD) instructions, or joint accounts with rights of survivorship often pass outside probate. Retirement accounts with named beneficiaries also avoid probate in most cases.

The trap is this: avoiding probate is not always the same as achieving your actual intent. If you name one child as the sole beneficiary of an account “for convenience” and tell them to split it with siblings, the law recognizes only the form, not the side conversation. That child legally owns 100 percent.

Another recurring problem: naming the wrong people as beneficiaries. When people ask who should I not name as a beneficiary, I usually caution against a few categories, subject to careful exceptions:

1. Minor children directly, without a trust, since the court will appoint a guardian and tie the funds up in ways you might not like.
2. Individuals with serious creditor issues, addictions, or special needs who could lose government benefits or blow through the inheritance quickly.
3. Ex-spouses or estranged relatives whose status has changed, but who linger on old beneficiary forms out of inertia.
4. Casual acquaintances or caregivers who may raise questions of undue influence, inviting contests and family resentment.
5. People you do not fully trust to handle money for others, such as a sibling named to “hold” funds for nieces and nephews, when a properly drafted trust would do that job better.

As for what should not be included in a will, some common items are digital passwords, everyday instructions such as funeral playlists, and assets already controlled by beneficiary designations. Your will should focus on property that actually passes through your estate, not things governed by contract or titling.

Can a nursing home take your house if it is in a trust?

This question reflects a real fear. Families picture the nursing home “taking” a house. In practice, nursing homes do not have the legal power to seize property simply because someone fails to pay. They act like any other creditor: they can sue for unpaid bills, obtain a judgment, and then potentially attach assets if the law allows.

The real issue is Medicaid estate recovery. After a Medicaid recipient dies, the state may attempt to recover benefits paid from the person’s estate, often by placing a claim or lien against the house. Whether the state can

reach a house in a trust depends heavily on when and how it was transferred, whether the trust is revocable or irrevocable, and state specific rules on what counts as the “estate” for recovery.

If the house is in a properly structured irrevocable trust, transferred more than 5 years before Medicaid application, and the trust does not allow the grantor access to principal, many states will not treat it as part of the Medicaid estate for recovery. That is one major reason people use these trusts.

However, if the trust is revocable, or if the transfer was made within the 5-year lookback, or if the trust reserves too much control to the grantor, then yes, effectively the house may be exposed. The state may count it for eligibility or reach it in recovery, even if the nursing home itself never “takes” anything directly.

When an irrevocable trust is actually worth doing

Irrevocable trusts are powerful tools, but they are not casual documents. Every year I talk people out of them because the costs, complexity, and loss of control outweigh the realistic benefit.

When people ask about the only three reasons you should have an irrevocable trust, I usually frame it this way, with some overlap among them:

First, you need asset protection that a revocable trust cannot provide. That might be Medicaid planning, shielding assets from your own future creditors, or protecting an inheritance for a child with financial or marital risks.

Second, you are pursuing a specific tax objective, such as removing future appreciation from your taxable estate, owning life insurance outside your estate, or shifting growth assets to the next generation.

Third, you want long-term control over how and when beneficiaries receive assets, beyond your lifetime, in a way that is sturdier than simple beneficiary designations. This is common where there are blended families, vulnerable beneficiaries, or business interests that must be managed by trusted people.

If none of those reasons resonate, or if you are primarily interested in avoiding probate and keeping things private, a revocable trust may be sufficient, and you do not need the 5-year Medicaid timing burden that comes with an irrevocable structure.

How much can you inherit from your parents without paying taxes?

Many adult children are surprised to learn that, for federal purposes, there is usually no income tax just for inheriting money. The federal estate and gift tax system taxes the estate of the person who dies, not the recipient, and the exemption is very high. For deaths in 2024, the federal exemption is more than 13 million dollars per person, though it is scheduled to drop roughly in half in 2026 unless Congress acts.

Some states have separate estate or inheritance taxes with much lower thresholds. Those can apply even when there is no federal estate tax. That is where local advice matters.

The more common tax issue for beneficiaries is income tax on certain items, like traditional IRAs, where distributions are taxed as ordinary income. Property such as a house or a taxable investment account usually receives a step-up in basis at death, reducing or eliminating capital gains if sold shortly thereafter.

So when you wonder how much you can inherit from your parents without paying taxes, the real answer is: likely quite a lot, at least for federal taxes, unless your parents had a very large estate. The planning focus for most families is not federal estate tax, but coordination of Medicaid, income tax, and family harmony.

The best way to gift money or a house to children

Clients often ask what is the best way to gift money to an adult child. From a tax standpoint, you can give up to a certain annual exclusion amount per child per year without even having to file a gift tax return. For larger gifts, you may need to file a return, but you usually will not pay actual gift tax until your cumulative lifetime gifts exceed the federal exemption.

The trick is that large lifetime gifts can create problems for Medicaid if made within the 5-year lookback, or for the child if gifted in a way that feeds poor financial habits or exposes the money to divorce or creditors. Sometimes, the best way is not an outright gift, but a trust that provides structure.

When the question is what is the best way to leave your house to your children, we have to mesh tax, caregiving, and practical concerns. A few general patterns:

If the primary goal is simplicity and tax efficiency, leaving the house at death through a will or trust so the children receive a stepped up basis and then can sell without large capital gains often works well.

If the priority is avoiding probate and keeping administration smooth, a revocable living trust or a transfer-on-death deed (in states that allow it) can be powerful.

If the driving concern is long-term care exposure, an irrevocable trust funded more than 5 years before a likely need for care can protect the home, at the cost of flexibility.

The wrong move, in many cases, is deeding the house outright to the children during your lifetime without any planning. That can trigger unintended gift tax reporting, loss of property tax exemptions, exposure of the house to your children's divorces or creditors, and Medicaid penalties if done within the lookback.

The so-called Medicaid loophole and what timing really buys you

There is a reason policymakers built a 5-year lookback into Medicaid law. Without it, wealthy people could simply transfer all assets to children the week before entering a nursing home and shift the entire burden to taxpayers. The 5-year rule is meant to force a clear choice: either plan early and accept some loss of control, or retain full control and accept the risk that your assets may be used for your care.

People sometimes speak of a "Medicaid loophole" as if there were a way around this structural choice. In reality, what timing buys you is [Comprehensive Estate Planning Attorney Near Me](#) certainty. If you transfer assets into an irrevocable Medicaid trust and remain healthy for more than 5 years, those assets are generally outside the reach of the Medicaid system, both for eligibility and often for estate recovery. You still must follow state specific rules, but the major hurdle has been cleared.

If you wait until the first fall, the first serious stroke, or the first dementia diagnosis before acting, you are already deep inside that 5-year circle. That does not mean all hope is lost, but planning becomes more defensive. We may use partial transfers, spousal strategies, or "half a loaf" approaches to protect some assets, but the clean, full protection that was available 6 or 7 years earlier is usually gone.

The real question, then, is not how to avoid Medicaid's 5-year lookback, but how to decide whether you care enough about that 5-year line to make changes in your 60s or early 70s when you still feel well.

What comprehensive estate planning looks like and what it costs

People often start this journey with a practical question: how much does it cost to have an estate planning attorney? Fees vary by region, complexity, and the lawyer's experience. For a basic will, power of attorney, and health care directives, you might see flat fees from a few hundred to a few thousand dollars. For comprehensive

estate planning that includes a revocable trust, tax planning, and coordination of beneficiary designations, five-figure fees are not unusual in high cost areas, but many families fall in the low to mid four figure range.

Medicaid planning with an irrevocable trust generally costs more than a simple revocable trust plan. The drafting is more complex, the analysis more delicate, and the attorney is effectively underwriting your long-term care risk. That might mean an additional few thousand dollars up front, sometimes more if there are business interests, family conflicts, or multi-state issues.

When lawyers talk about comprehensive estate planning, they mean something more than “getting a will.” A comprehensive plan looks at:

Your asset mix and titling: which bank accounts avoid probate already, which need to be retitled, and where beneficiary designations need updating.

Your family structure and vulnerabilities: blended families, special needs, shaky marriages, or addiction issues change the calculus.

Your long-term care risk and preferences: whether Medicaid planning, long-term care insurance, or self funding is realistic.

Your tax exposure: whether federal **Comprehensive Estate Planning Attorney Near Me** or state estate taxes, capital gains, or income taxes on retirement accounts should drive certain structures.

A good planner will also tell you what should not be included in a will, what belongs in separate letters of instruction, what should move into trusts, and where you genuinely do not need complexity.

The cost of doing nothing is rarely zero. It simply shows up later, as family conflict, emergency spend-down, or a rushed guardianship proceeding that could have been avoided with better documents.

Thoughtful planning around the 5-year rule for irrevocable trusts is not about gaming the system. It is about respecting the reality that long-term care is expensive, that Medicaid has rules, and that timing affects almost every outcome. If you start early enough, you can usually shape a plan that balances protection, flexibility, and dignity. If you wait, you may still salvage a great deal, but you will need sharper trade-offs and fewer guarantees.

The best time to ask these questions is before a crisis, while you still have options instead of only reactions.

Parker Law Offices

28202 Cabot Rd 3rd Floor, Laguna Niguel, CA 92677

9493853130