

Estate planning takes on a different edge when long term care and Medicaid enter the picture. It is no longer just about “who gets what” after you die. The question becomes: how do you protect a lifetime of savings, possibly your home, and still qualify for help with nursing home or assisted living costs if you need it?

Families usually reach out to me at one of three moments. A parent has just entered a nursing home and the first bill has arrived. A recent diagnosis suddenly makes the risk of long term care very real. Or adult children are starting to see early memory issues in a parent and want to act before it is too late.

In each of these situations, the surface questions are about wills and trusts, but the real concern sits underneath: “Are we going to lose everything?”

A thoughtful, comprehensive estate plan, done with Medicaid in mind, can dramatically change the outcome.

What “comprehensive estate planning” really means

People often ask, “What is comprehensive estate planning, and how is it different from just doing a will?”

At its core, comprehensive estate planning means organizing both your lifetime planning and your after death planning so they work together. It is more of a coordinated strategy than a stack of documents.

In practice, a comprehensive plan typically addresses:

1. Who can make financial and medical decisions for you if you cannot
2. How your assets are titled, and how they pass at death
3. Tax planning for larger estates or special assets
4. Long term care and Medicaid eligibility
5. Family dynamics, vulnerable beneficiaries, and conflict prevention

For most middle class families, especially those near or in retirement, the long term care and Medicaid piece is often the missing segment. They may have a will and a basic revocable trust, but nothing that would actually protect the house or savings if nursing home care becomes necessary.

A comprehensive approach pulls it all together into one roadmap, so your will, trusts, beneficiary designations, and powers of attorney all point in the same direction.

How much does it cost to have an estate planning attorney?

The cost of working with an estate planning attorney varies, but there are some patterns I see across the country.

For a straightforward will, powers of attorney, and health care directives, many attorneys charge a flat fee in the range of a few hundred to a couple of thousand dollars, depending on the region and the lawyer’s experience. Once you start adding revocable trusts, Medicaid planning, and tax sensitive structures, fees commonly move into the mid four figures and can reach higher for complex, multi property or blended family situations.

What often surprises people is that comprehensive planning can be less expensive in the long run than piecemeal work. I have seen families spend far more cleaning up after inadequate planning than they ever would have spent building a solid plan at the outset. Probate disputes, emergency Medicaid applications, and last minute asset transfers done wrong can burn through tens of thousands of dollars very quickly.

When you interview attorneys near you, ask not just, “How much does it cost to have an estate planning attorney?” but “What do your typical Medicaid planning or asset protection cases cost, and what is included?” A clear, written scope of work helps you compare apples to apples.

Your house: will or trust, and how it ties into Medicaid

Homeowners inevitably ask, “Is it better to leave a house in a will or trust?”

For purely post death estate planning, as in, “I want my daughter to inherit the house smoothly,” a revocable living trust is often more efficient than a will. A house inside a properly funded revocable trust avoids probate in most states, which can save months and legal fees and keeps the transfer private. A will alone usually means the house passes through probate.

However, against the backdrop of Medicaid and nursing home care, the analysis shifts.

A revocable trust, by itself, generally does not shield the home from Medicaid. For Medicaid eligibility purposes, assets in a revocable trust are counted as yours, because you can revoke the trust and access the property. So while a revocable trust can be excellent for probate avoidance and management if you become incapacitated, it typically does not protect the house from long term care costs.

That is where irrevocable trusts enter the conversation.

Irrevocable trusts, Medicaid, and the “5 year rule”

The phrase “irrevocable trust” makes many people nervous, and with good reason. Once you place assets into a properly drafted irrevocable trust, you typically cannot take them back or directly control them. That loss of control is exactly why some states view those assets as protected from your future creditors, including Medicaid, after enough time passes.

This is where the Medicaid “5 year rule” for irrevocable trusts comes into play. In most states, Medicaid has a 5 year lookback period on gifts and transfers. If you transfer your house into an irrevocable Medicaid asset protection trust today and apply for Medicaid three years from now, Medicaid will likely treat that transfer as if you still owned the asset and may assess a penalty period of ineligibility.

If, on the other hand, you transferred the home into an appropriately drafted irrevocable trust more than five years before applying, that transfer is outside the lookback window. In many cases, the house held in that trust is no longer countable for Medicaid eligibility and is not available to be taken to pay the nursing home.

People often search for “how to avoid Medicaid 5 year lookback” or “what is the Medicaid loophole.” The hard truth is there is no legitimate loophole that lets you transfer assets out at the last minute without consequences. There are, however, lawful strategies that can soften the blow if planning was delayed, such as carefully structured “half loaf” gifting and annuities in some states. These are technical, time sensitive moves that really require a seasoned elder law attorney, because a misstep can make things far worse.

The key judgment call is timing. The earlier you start planning, the more options you have, and the less drastic the measures need to be.

The “5 by 5 rule” in estate planning

Another phrase that confuses people is “What is the 5 by 5 rule in estate planning?” It has nothing to do with Medicaid and everything to do with trust tax and creditor treatment.

The 5 by 5 rule refers to a common provision in certain trusts that gives a beneficiary a limited power to withdraw the greater of 5,000 dollars or 5 percent of the trust principal each year. This can allow the trust to qualify for certain favorable tax treatment while limiting how much the beneficiary can actually demand in any one year.

From a practical perspective, if you are leaving assets in trust for a child or grandchild, the presence or absence of a 5 by 5 power affects how much control they have and how their creditors might view the trust. It does not, by itself, make a trust suitable or unsuitable for Medicaid planning, but it is one of many technical levers your attorney will adjust.

The “7 year rule” for trusts and why it confuses people

Another point of confusion is the “7 year rule for trusts.” That phrase usually comes from the United Kingdom’s inheritance tax system, where gifts made more than seven years before death can sometimes escape certain death duties.

In the United States, most families are dealing instead with Medicaid’s 5 year lookback and our estate and gift tax rules. As of 2024, the federal estate and gift tax exemption is 13.61 million dollars per person, scheduled under current law to drop roughly in half at the end of 2025. Many people can inherit far more than previous generations without paying federal estate tax, though some states have their own lower estate or inheritance tax thresholds.

So if you hear someone referencing a “7 year rule for trusts” in a U.S. Medicaid or estate planning context, recognize that they are likely mixing systems. What matters most for Medicaid eligibility in your state is usually [orange county trust administration lawyer](#) the 5 year lookback, not a 7 year rule.

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

Families often ask this bluntly, and it captures their fear: “Can a nursing home take your house if it is in a trust?”

A nursing home does not literally seize property. What happens is more subtle. If assets are available to you, either in your name or in certain kinds of trusts, then you may be required to spend those assets on your care before Medicaid will step in. Later, after you die, the state can sometimes seek reimbursement from your estate through Medicaid estate recovery.

If your house is in a revocable trust that you control, Medicaid generally treats that home as if you still own it. The house can be subject to spend down rules and estate recovery, subject to each state’s homestead protections and spousal protections.

If, by contrast, your home has been placed into a properly drafted irrevocable Medicaid asset protection trust more than five years before you apply, the picture is different. In many cases, the house is not counted for eligibility and cannot be reached by Medicaid estate recovery, because it is no longer part of your estate. You may still have the right to live there or to receive income, but you typically cannot pull the house back out.

The devil is in the drafting. I have reviewed “Medicaid trusts” created from online forms that were entirely ineffective because of one or two poorly worded powers or retained rights.

When does an irrevocable trust make sense, and what are the downsides?

Clients sometimes come in saying they heard that “the only three reasons you should have an irrevocable trust” are asset protection, tax planning, or special needs planning. That is a helpful starting framework, but it is not law,

and reality is messier.

Asset protection, including Medicaid planning, is a major reason for an irrevocable trust. Certain tax driven structures, like irrevocable life insurance trusts or grantor retained annuity trusts, are another. Special needs trusts for disabled beneficiaries are a third. But blended families, business succession, and charitable goals can all justify irrevocable arrangements too.

From the client's perspective, the downsides of putting your house in an irrevocable trust are very real:

You lose direct control. You usually cannot refinance or sell the home without the trustee's cooperation, and the sale proceeds would typically stay in the trust, not in your hands.

You give up flexibility. If your family situation changes, you cannot simply revoke the trust. There are modern tools like decanting and nonjudicial settlement agreements, but they are not a perfect substitute for control.

You might affect tax treatment. With careful design, you can often preserve favorable step up in basis at death, but poorly drafted trusts can inadvertently create capital gains exposure for the kids.

You may unsettle family dynamics. Placing the house into an irrevocable trust and naming one child as trustee can create tension among siblings if expectations are not communicated clearly.

Irrevocable trusts can be very effective, but they are not casual tools. I rarely recommend them without a detailed conversation about what you are trading away.

The best way to leave your house to your children

The "best" way depends on your priorities: simplicity, speed, asset protection, tax efficiency, and family harmony. For many middle class families not facing Medicaid issues, a well drafted revocable trust or a transfer on death deed (in states that allow them) can be a clean solution.

When Medicaid and long term care are in the picture, the best way to leave your house to your children may be through that Medicaid focused irrevocable trust, created early enough to clear the 5 year lookback. The trust can be written so that:

You can still live in the house

The trust can sell and buy another residence if you downsize Your children ultimately inherit upon your death without probate

Where people get into trouble is with do it yourself deeds that simply "give" the house outright to one child. I have seen outright gifts cause tax problems, expose the home to that child's divorce or creditors, and create ugly feuds with siblings.

Bank accounts, probate, and beneficiary traps

While the house often gets most of the attention, bank and investment accounts are just as important.

People frequently ask, "Which bank accounts avoid probate?" In general, accounts with a valid pay on death (POD) beneficiary, transfer on death (TOD) designation, or joint ownership with right of survivorship will pass outside probate. Retirement accounts with designated beneficiaries, like IRAs and 401(k)s, also typically avoid probate.

That convenience can cause its own problems. The most common inheritance mistake I see is relying too heavily on beneficiary designations and joint accounts, without coordinating them with the overall plan. One child ends up being joint on the main account "for convenience," and legally they inherit the entire balance, even though the will

says everything should be split equally. That child then has to choose between honoring the spirit of the plan or keeping a windfall.

Another trap appears in the question, "Who should I not name as a beneficiary?" Red flags include:

Minor children, because a court proceeding may be required before a minor can receive funds

Beneficiaries with serious creditor issues, addictions, or spending problems, who might be better served by a trust
share Disabled individuals on needs based benefits, who may lose those benefits if they inherit directly
Ex spouses or estranged relatives left on old beneficiary forms
People you intend to "hold" assets for someone else, like an older child "for all the kids," which invites disputes and tax headaches

Part of comprehensive planning is reviewing every beneficiary form, on every account and policy, against the big picture.

What should not be included in a will

A will is not a catchall. Certain assets and instructions do not belong there.

Beneficiary designated accounts, like life insurance and retirement plans, are governed by their own contracts. You should not assume that leaving your IRA "to my estate" in your will changes the beneficiary on file with the custodian. It does not.

You also generally should not include detailed step by step funeral instructions or organ donation statements only in a will. Wills are often read after those decisions have already been made. Use separate documents or tell your family directly.

Similarly, you should not include assets that are already owned in joint tenancy with right of survivorship or in a properly funded trust as if the will controls them. Doing so breeds confusion and false expectations. Your attorney's job is to align titles, beneficiary designations, and will provisions so they do not conflict.

Gifting, taxes, and adult children

People worry about "How much can you inherit from your parents without paying taxes?" At the federal level, most families are under the estate tax radar, given the current multi million dollar exemption. Income tax, however, can still arise when you sell inherited assets. A well structured plan often preserves the step up in basis at death to minimize capital gains for your heirs.

When parents want to help children during life, the question shifts to, "What is the best way to gift money to an adult child?" Often, the starting point is the annual exclusion, which lets you give up to a certain amount per person per year without using any of your lifetime exemption. As of 2024, that annual exclusion is 18,000 dollars per recipient, but this number is indexed and can change.

Beyond bare numbers, the method of gifting matters. Outright gifts are simple but offer no protection. Gifting into a trust can guard against divorce or creditors but adds cost and complexity. If Medicaid planning is part of the picture, lifetime gifts also interact directly with the 5 year lookback, potentially creating periods of ineligibility.

This is another place where trying to use a so called "Medicaid loophole" or neighborhood advice can backfire. I have seen well meaning parents make large gifts to children, thinking they were "spending down" for Medicaid, only to discover that those gifts created a penalty period that left them in a dangerous gap between private pay and Medicaid eligibility.

Medicaid planning in crisis vs early planning

In an ideal world, Medicaid planning starts while you are still relatively healthy, often in your late fifties to early seventies, when you have time to set up irrevocable trusts or other tools and live through the 5 year rule.

Real life is messier. Many families come to an elder law attorney after a stroke, a fall, or a dementia diagnosis. At that point, the question is less about how to avoid Medicaid 5 year lookback and more about how to manage its impact.

There are still options. For a married couple, shifting assets between spouses, spousal refusal in some states, or converting countable resources into exempt ones can help. For an unmarried person, partial gifting combined with a specially structured annuity sometimes makes sense, depending on state rules. Every approach carries trade offs: loss of flexibility, scrutiny from Medicaid caseworkers, and risk if the health situation changes again.

Early, comprehensive planning gives you three advantages that crisis planning rarely can: more control over timing, more choice of strategies, and less emotional strain.

Pulling it together: what to expect from an estate planning attorney near you

When you sit down with a local estate planning or elder law attorney and ask about comprehensive estate planning near you, expect the conversation to go beyond documents. A good advisor will want to understand:

Your family structure and any vulnerable members

Your assets and how they are currently titled

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Your health and realistic risks of needing long term care Your feelings about control versus protection Your tolerance for complexity and administrative load

From there, the plan might combine a revocable trust for probate avoidance, carefully chosen beneficiary designations, updated powers of attorney and health care directives, and, where appropriate, an irrevocable trust or other strategies aimed at long term care and Medicaid.

The result should not be a folder of forms no one can interpret, but a coherent strategy your family understands. The true measure of a comprehensive estate plan is not how impressive it looks on the day you sign it, but how well it holds up when the first nursing home bill arrives, or the first child has to step in and start using it.

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