

If you have aging parents, a spouse with health issues, or you are simply the planner in your family, you have probably heard some version of this line:

"Just put the house in a trust so Medicaid cannot take it."

In my office, that sentence is usually followed by a long pause and then a difficult conversation. The truth is more complicated than internet articles, neighborly advice, and half-remembered seminar notes suggest. There is no magic "Medicaid loophole" that lets you keep all of your assets, qualify for benefits immediately, and avoid every tax or legal consequence.

There are, however, legitimate strategies to protect a home and savings from being wiped out by long term care. They take time, planning, and a clear understanding of how Medicaid, trusts, and estate planning actually interact.

This is the conversation a careful estate planning attorney near you wishes every family heard before a health crisis hits.

## **What People Mean When They Say "The Medicaid Loophole"**

When I ask clients what they think the Medicaid loophole is, I usually hear some version of the following:

1. "If I give away my assets 5 years before I need care, I can qualify for Medicaid and keep everything safe."
2. "If I put my house into an irrevocable trust, a nursing home cannot touch it."
3. "If my kids' names are on the house, the state cannot take it when I die."

Each of these ideas contains a sliver of truth, wrapped in a thick layer of misunderstanding.

Medicaid is a means-tested program. You must meet strict income and asset limits to qualify for long term care coverage. The "loophole" is not a secret rule but rather the fact that certain assets or transfers, if handled correctly and early enough, can be structured so they are not counted against you or are protected from estate recovery.



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So when someone asks, "What is the Medicaid loophole?" the honest answer is:

It is not a single loophole. It is a set of complex rules about asset ownership, timing, and transfers, which can be used for legitimate planning or abused in ways that cause penalties and headaches.

## Understanding the Medicaid 5 Year Lookback

Almost every serious Medicaid planning conversation ends up on the same point: how to avoid the Medicaid 5 year lookback. It helps to understand what that term really means.

When you apply for long term care Medicaid, the state reviews your financial transactions for a period that, in most states, is 5 years before the application date. This is the Medicaid 5 year lookback. If you gave assets away or transferred them for less than fair market value during that period, the state can impose a penalty period. During the penalty, Medicaid will not pay for your care, and you must cover the cost yourself.

Clients often ask if there is a way around this. Once you are within that 5 year window, there is no legal trick to erase past gifts. The focus usually shifts to damage control: partial gifting strategies, "half a loaf" plans in some jurisdictions, or shifting assets between spouses in limited circumstances. These are technical, sometimes controversial, and very state specific.

If you are more than 5 years away from any anticipated need for nursing home care, you have far better options. That is why attorneys keep repeating the same advice: start planning early enough that the 5 year rule for irrevocable trusts and other transfers works in your favor, instead of against you.

## The Role of Irrevocable Trusts in Medicaid Planning

Many people hear just enough about irrevocable trusts to be dangerous. They have also heard phrases like the “7 year rule for trusts” from UK-based tax content online, and then try to apply it to U.S. Medicaid law. The rules are not the same.

In most U.S. Medicaid contexts, the key timeframe is 5 years, not 7. Assets you place into a properly designed Medicaid irrevocable trust are considered transferred as of the date of funding. If you live for at least 5 years after that transfer and do not retain prohibited control or benefits, those trust assets may be excluded when you apply for Medicaid and may avoid estate recovery after your death.

That does not mean an irrevocable trust is right for everyone. You give up meaningful control. You typically cannot revoke the trust or pull the assets back into your own name. Changing terms later is extremely difficult, sometimes impossible.

Clients often ask, “What are the only three reasons you should have an irrevocable trust?” The lists I see usually include asset protection, tax planning, and Medicaid or long term care planning. In real life, those categories overlap and the reasons are rarely limited to just three. Still, the core motivations are usually:

1. Protecting assets from future creditors or lawsuits and, in some cases, from long term care spend-down.
2. Shaping how and when beneficiaries receive money, including protecting inheritances from their creditors, divorces, or poor financial habits.
3. Achieving tax efficiencies, including estate tax reduction in larger estates or managing capital gains issues.

Before you sign an irrevocable trust, someone on your legal or financial team should challenge you with a tough question: “What is the downside of putting your house in an irrevocable trust?”

The downsides can include loss of flexibility, potential difficulty refinancing the home, conflict with mortgage or reverse mortgage terms, and the psychological shift of not “owning” your house in your own name anymore. For some people, those tradeoffs are acceptable. For others, they are not.

## Can a Nursing Home Take Your House If It's in a Trust?

The blunt answer is that a private nursing home itself does not “take” your house. The real issue is whether you can qualify for Medicaid to pay for your care and whether the state can seek repayment from your estate afterward.

If your home is in a properly drafted and funded Medicaid irrevocable trust, created and funded beyond the 5 year lookback, and if you did not retain prohibited rights, then in many states that home will not be considered an available resource for Medicaid eligibility and may be shielded from estate recovery. The details are very state specific.

If your house is in a revocable living trust, the story is different. A revocable trust is essentially you, in a different legal outfit. You still have full control, so for Medicaid, those assets are usually treated as if you owned them directly. A nursing home paid by Medicaid will not itself put a lien on your trust, but your state may try to recover from your revocable trust assets after your death.

People also ask, “Is it better to leave a house in a will or trust?” If the goals are to avoid probate, provide a smoother transition, and sometimes to support **Comprehensive Estate Planning Attorney Near Me** tax planning, a trust often wins. For pure Medicaid protection, a revocable trust does very little. An irrevocable trust may help but requires planning years before care is needed and a real willingness to give up control.

For some families, the best way to leave your house to your children combines multiple tools: a carefully structured irrevocable trust if Medicaid risk is high and timing allows, or a revocable trust or transfer-on-death

deed if the main priority is probate avoidance and ease of transfer, not Medicaid.

## The 5 by 5 Rule in Estate Planning and Why It Matters Less Than People Think

The 5 by 5 rule in estate planning usually refers to a common clause in irrevocable trusts that gives a beneficiary a right each year to withdraw the greater of 5 percent of the trust principal or [Parker Law Offices Comprehensive Estate Planning Attorney Near Me](#) 5,000 dollars. It is used in various tax-driven and asset protection contexts, such as Crummey powers or beneficiary withdrawal rights.

For Medicaid-focused clients, this rule is rarely the star of the show. It can play a role in how much control a beneficiary has, and in some technical tax calculations, but it is not the “Medicaid loophole.” If anything, badly drafted withdrawal rights can undermine asset protection if they give a beneficiary too much access and thus invite their creditors or ex-spouses into the picture.

The lesson is simple. Trust drafting involves more than copying a friend’s document or pulling a form off the internet. Seemingly minor clauses like a 5 by 5 withdrawal right can have consequences far beyond what the signer realizes.

## Probate, Bank Accounts, and What Actually Avoids Court

Families often obsess over whether a nursing home can take the house and completely ignore more basic questions, like which bank accounts avoid probate and which do not.

In general, bank or brokerage accounts that have valid beneficiary designations, such as payable on death (POD) or transfer on death (TOD) instructions, usually avoid probate and pass directly to the named person. Joint accounts with rights of survivorship also bypass probate, although they create their own set of risks, including exposing the funds to the joint owner’s creditors or divorce.

Accounts held inside a properly funded revocable living trust also typically avoid probate, because they are owned by the trust, not by you individually at death.

The fact that an account avoids probate does not mean it is protected from Medicaid spend-down or estate recovery. Nor does it mean it is the best tool for long term planning. It simply means the court does not need to oversee that particular transfer when you die.

## Wills, Trusts, and What Should Not Be Included

Many clients begin with a will before they think seriously about Medicaid planning. The question “What is comprehensive estate planning?” often comes up when they realize a will alone will not address nursing home costs, beneficiary mismanagement, or tax issues.

Comprehensive estate planning usually includes some combination of a will, one or more trusts, beneficiary designations, powers of attorney, healthcare directives, and, for some, long term care insurance or Medicaid planning strategies. It is not just documents. It is a coordinated plan that looks at incapacity, lifetime asset protection, tax consequences, and family dynamics.

Some assets and instructions do not belong in a will. Retirement account beneficiary designations, life insurance benefits, and POD/TOD accounts are usually governed by their own contracts and beneficiary forms, not by the will. Sensitive instructions for digital assets, passwords, or private letters to heirs are often better handled in separate documents.

When clients ask, "What should not be included in a will?" I mention at least three categories: assets that pass by contract or title (like those with beneficiaries), overly detailed funeral instructions that might not be found in time, and anything you cannot legally do, such as conditions that require someone to divorce or break the law in order to inherit.

## **Common Inheritance Mistakes That Undermine Medicaid Planning**

The most common inheritance mistake in this context is simple: people wait too long. They assume they will "deal with it later," then a stroke, fall, or diagnosis arrives and suddenly the 5 year lookback becomes an immediate obstacle.

Two other frequent errors show up in Medicaid conversations. One is naming the wrong people as beneficiaries. When we talk about who should I not name as a beneficiary, the list often includes minor children directly, individuals with serious creditor or addiction issues, or beneficiaries who are themselves on needs-based government benefits that might be disrupted by an outright inheritance. In those cases, a trust for their benefit is usually safer.

The other mistake is titling the house jointly with an adult child as a shortcut. This can trigger gift tax reporting, expose the house to the child's lawsuits or divorce, and create capital gains problems when the property is sold after death, because the child may not receive a full step-up in basis for the portion already in their name.

An estate planning attorney near you has probably seen those scenarios go wrong more times than they care to count.

## **Gifting, Taxes, and What You Can Inherit Without Paying Tax**

Medicaid planning often overlaps with tax questions, especially around gifting. People ask, "How much can you inherit from your parents without paying taxes?"

In the U.S., heirs typically do not pay income tax on inheritances themselves, although they may pay income tax on earnings generated by inherited assets. Federal estate tax applies at death if the estate exceeds a very high exemption amount, which as of 2024 is in the multi-million dollar range per person, subject to future changes. Many families will never touch that threshold, although some states have their own separate estate or inheritance taxes with lower limits.

The better question is often, "What is the best way to gift money to an adult child?" For modest gifts, direct annual gifts within the federal annual exclusion amount per recipient are straightforward. For larger sums, especially for children with financial or marital vulnerabilities, gifting into a trust is usually safer than handing money outright. From a Medicaid perspective, gifting triggers the lookback problem if care is needed within 5 years, so generosity has to be balanced against long term care risk.

Trying to use gifting as a last minute Medicaid strategy almost always backfires. The timing and pattern of gifts matter, and haphazard transfers to children raise red flags.

## **How Much Does It Cost to Have an Estate Planning Attorney?**

People often worry about the cost of planning and wait until a crisis, which ends up costing more in both money and stress. Fees vary widely by region, attorney experience, and the complexity of the plan.

For a very rough sense, a basic will-based plan with powers of attorney and healthcare directives might range from a few hundred to a couple of thousand dollars. A more comprehensive trust-based plan, especially one that

includes a Medicaid-focused irrevocable trust, typically costs more, sometimes several thousand dollars or more depending on how intricate the structure is and whether business interests or multiple properties are involved.

Many attorneys offer a flat fee for standard packages and hourly rates for more complex or evolving Medicaid planning. The real question is not just, "How much does it cost to have an estate planning attorney?" but "What is the cost of not planning at all?" Years of nursing home payments at 8,000 to 12,000 dollars per month can dwarf the fee for a carefully designed plan.

## **A Simple Checklist Before You Talk About "Loopholes"**

If you are starting to think about Medicaid planning, use a short checklist so your first conversation with an attorney near you is productive.

1. List your major assets: home, retirement accounts, bank accounts, life insurance, and any businesses or rental properties.
2. Note how each asset is titled and whether it already has a beneficiary designation or is in a trust.
3. Write down any health issues or family history that might affect your chances of needing long term care.
4. Clarify who you want to protect most: spouse, disabled child, all children equally, charitable causes.
5. Gather copies of any existing wills, trusts, and powers of attorney, even if they are old.

Walking into a meeting with that information at hand saves time and helps your attorney give you specific, realistic options instead of generalities.

## **A More Honest Way to Think About the Medicaid "Loophole"**

Medicaid planning is not about cheating the system. It is about using the rules as written, with full transparency, to avoid unnecessarily impoverishing a spouse or leaving nothing for children or grandchildren after decades of work.

When clients ask how to avoid the Medicaid 5 year lookback, what they usually mean is, "How do I protect what I have without getting into trouble or being unfair?" The legal answer is that truly effective protection almost always requires acting at least 5 years before you need nursing home care. For some families, that means setting up an irrevocable trust and living with the loss of direct control. For others, it means accepting that assets will be used for care and focusing instead on smart tax planning, probate avoidance, and family harmony.

There is no single "best way" to leave your house to your children or to structure your accounts. There are only better or worse fits for your health, your finances, and your values.

A good estate planning attorney near you will talk less about loopholes and more about tradeoffs. They will explain why a seemingly simple maneuver, like putting a child on the deed or emptying accounts into gifts, can create more problems than it solves. They will help you decide whether an irrevocable trust is worth the constraints, and how the 5 year rule for irrevocable trusts interacts with your risk of future care.

Most importantly, they will urge you not to wait until the hospital discharge planner is asking where your spouse should be transferred for rehab. By then, the menu of options is smaller, the penalties more severe, and the so-called loophole largely closed.

Careful planning, done early and thoughtfully, is not a loophole. It is simply responsible stewardship of what you have built, for your own security and for the people you care about.

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