For families facing long term care decisions, few topics create more confusion and worry than the Medicaid 5 year lookback and irrevocable trusts. I have lost count of how many times I have sat across from adult children who say some version of, "My mom might need a nursing home soon. A neighbor told us to put the house in a trust so Medicaid cannot take it. Can we just do that now and be safe?"

The honest answer is, "Maybe, but probably not in the way you have in mind." Timing, structure, and state law all matter. Understanding how the 5 year rule for irrevocable trusts really works can mean the difference between preserving a lifetime of savings or watching it disappear in a few years of care costs.

This is where a knowledgeable estate planning and elder law attorney near you earns every dollar of their fee.

Why the Medicaid lookback exists

Medicaid is a needs based program. It covers long term custodial care in nursing homes and, in many states, through in home services. Unlike Medicare, which is age or disability based and not means tested, Medicaid requires you to meet strict income and asset limits.

Without a lookback period, people with substantial assets could simply give everything to their children in the month before entering a nursing home, claim to be poor, and ask taxpayers to pay the bill. The 5 year lookback is Medicaid's answer to that problem.

In most states, when someone applies for long term care Medicaid, the agency reviews their financial history for the previous 60 months. They search for transfers of assets for less than fair market value. If they find such transfers, they impose a penalty period during which Medicaid will not pay for your nursing home care, even if you are otherwise eligible.

The intent is not to punish generosity. The intent is to stop people from intentionally impoverishing themselves at the last minute to qualify.

The 5 year rule for irrevocable trusts, in plain language

When people talk about the "5 year rule for irrevocable trusts," they are really talking about how Medicaid treats transfers into those trusts during the lookback period.

An irrevocable trust, at least in the Medicaid context, is typically structured so that:

- You give up direct access to the assets.
- You cannot unilaterally revoke the trust and take everything back.
- Someone other than you (often children) controls distributions of principal.

Medicaid then usually treats what you transferred into that trust as a completed gift. If those transfers happened within the 5 year lookback window before you apply for Medicaid, they are almost always considered uncompensated transfers.

That means:

- The amount you moved into the trust gets divided by your state's average monthly nursing home cost.
- The result is the number of months Medicaid will not pay for your care.

For example, if you transferred a $200,000 house into an irrevocable trust three years before applying, and your state's divisor is $10,000 per month, that transfer could trigger a 20 month penalty period. During that time, you need to pay privately, find other funding, or rely on family.

If the same transfer happened more than 5 years before you applied, it usually falls outside the lookback period and does not create a penalty. That is the essence of the 5 Comprehensive Estate Planning Attorney Near Me year rule for irrevocable trusts.

How to avoid the Medicaid 5 year lookback problem

You cannot "avoid" the lookback if you apply for Medicaid. The state will always review your recent financial history. What you can do is structure your affairs so that, when the time comes, your past transfers do not hurt you.

People often talk about a "Medicaid loophole." That phrase makes it sound like there is a secret trick or hack that lets you keep everything and instantly qualify for benefits. In reality, the law is a patchwork of federal rules and state implementation, plus a lot of detailed exceptions and planning opportunities that a good elder law attorney uses within the existing system.

The practical ways to deal with the 5 year lookback are not glamorous:

- Start early. If you move assets to an irrevocable trust, ideally you do it at least 5 years before you might need nursing home care. I realize that is hard to predict, but planning in your late 60s or early 70s is usually much more effective than scrambling at 82 after a stroke.
- Move only what makes sense. You do not have to transfer everything. Often the focus is on the house and perhaps a portion of liquid assets, while keeping enough accessible funds for your lifestyle and unexpected needs.
- Use permitted spend down strategies. Even inside the 5 year period, you can spend your own money in ways Medicaid allows: home repairs, debt payoff, medical equipment, prepaid funerals, and certain types of annuities or care contracts, depending on your state.
- Document fair value transfers. Selling a property to a child at a discount looks like a partial gift. Selling at full appraised value and documenting the payment, by contrast, is generally not penalized.

Those who talk about the "Medicaid loophole" are often referring, in a loose way, to these kinds of lawful planning tools. None of them are magic. They require accurate numbers, careful timing, and a realistic sense of your health trajectory.

The 7 year rule for trusts and why people confuse it

Another source of confusion is the "7 year rule for trusts." That phrase usually comes from United Kingdom inheritance tax rules, where gifts and some transfers to trusts become fully outside the estate for inheritance tax if the donor survives 7 years.

In the United States, Medicaid long term care rules are separate from estate and gift tax rules. The Medicaid lookback is generally 5 years, not 7. There is no 7 year rule for Medicaid in most states.

For U.S. Federal estate and gift tax, different timelines and thresholds apply. You may have heard that there are "only three reasons you should have an irrevocable trust" from a tax perspective: to remove assets from your taxable estate, to hold life insurance, or to solve specific generational or asset protection problems. That is a tax planner's lens, and it ignores Medicaid and long term care.

The key point is this: the 5 year rule for Medicaid and the 7 year concept for UK inheritance tax are unrelated. If you have read articles from both systems, do not blend them. When you meet with an attorney near you, make sure you are talking about your state's Medicaid rules, not something pulled from another country's tax code.

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

Families typically care less about the abstract 5 year rule and more about one concrete fear: losing the family home.

If your house is owned by an irrevocable trust that was properly drafted and funded more than 5 years before you apply for Medicaid, then in many states that house is not counted as your asset for eligibility purposes. In that case, the state generally cannot force a sale of the trust property to pay for your care, nor pursue estate recovery against that house after your death, because you did not own it when you died.

However, there are important caveats:

- If you created the trust and kept too much control or retained certain benefits, the state may treat it as your asset anyway.
- If you apply within the 5 year lookback, the transfer of the house into the trust is likely a penalized transfer.
- Some states have more aggressive trust rules and constantly update their statutes to limit perceived "Medicaid shelter" strategies.

So can a nursing home take your house if it is in a trust? If it is a properly drafted, funded irrevocable trust, created outside the lookback period, with no retained rights that cause inclusion, then usually the nursing home and the state have far less leverage. If the trust is sloppily drafted, underfunded, or too recent, your house might still be at risk.

This is one of those areas where template documents from national websites routinely fail people.

The downside of putting your house in an irrevocable trust

Clients often arrive with a one sided picture: "If we put the house in an irrevocable trust, Medicaid cannot take it, so why would we not do that?" The downsides are real and should be weighed, especially if you are relatively healthy.

Key trade offs include loss of flexibility. You cannot simply change your mind and take the house back. If you later want to sell and move, you have to work through the trustee and the trust terms. Sometimes the trust can buy a smaller house, but that has to be baked into the document.

You may also lose favorable tax treatment if the trust is not structured correctly. For example, if your children receive the house at your death outright, they typically get a step up in basis to date of death value. If the trust is drafted in a way that removes the house from your taxable estate completely, the children may instead inherit your original basis, setting them up for capital gains if they sell. A seasoned attorney can often design the trust to retain the step up, but it is not automatic.

There are also emotional and relational downsides. Once you place the home in trust with your child as trustee, you have ceded legal control. If there are family tensions, divorces, or creditor issues, that can become uncomfortable. I have seen cases where a child trustee refused to allow a surviving parent to sell the house and move closer to another sibling. The law might ultimately protect the parent, but the conflict is real.

So while asset protection is appealing, the answer to the question, "Is it better to leave a house in a will or trust?" is highly fact specific. For some families, a simple revocable living trust is best, primarily to avoid probate and manage incapacity. For others, especially where long term care risk is high and savings are modest compared to likely care costs, an irrevocable trust may make sense despite its restrictions.

The best way to leave your house to your children

From a pure estate administration standpoint, the best way to leave your house to your children is usually in a manner that:

- Avoids probate, or at least simplifies it.
- Preserves the step up in tax basis.
- Reduces the risk of family conflict.

In many states, a revocable living trust accomplishes these goals well. You keep full control while alive, the trust owns the house, and at your death the successor trustee can transfer or sell the property without the delays and public nature of probate. Properly drafted, this also handles incapacity by allowing a trusted person to step in if you can no longer manage your affairs.

If Medicaid is a concern, the calculus shifts. A revocable trust does not protect the house from Medicaid, because you still control it and can revoke the trust. An irrevocable trust can add protection, but at the cost of flexibility and access, as described earlier.

Deeds with transfer on death designations or life estate deeds sometimes appear attractive as low cost options. They bypass probate and keep control in your hands during life. However, they can complicate Medicaid planning, especially if done late, and can create tax quirks. I Comprehensive Estate Planning Attorney Near Me have spent many hours unwinding poorly thought out life estate deeds that blocked needed planning later.

The “best way” is therefore not a product, but a plan that fits your health, finances, and family dynamics.

Which bank accounts avoid probate?

Avoiding probate is a separate goal from Medicaid planning, though the tools overlap.

Many bank and brokerage accounts can avoid probate if they use mechanisms like joint ownership, transfer on death (TOD) designations, or payable on death (POD) designations. In some states, beneficiary designations on accounts work much like a beneficiary on a life insurance policy and pass outside the will.

Here is a short list of account types that often bypass probate when properly set up:

- Accounts with valid POD or TOD beneficiaries.
- Retirement accounts, such as IRAs and 401(k)s, with named beneficiaries.
- Joint accounts with rights of survivorship, where state law supports survivorship.
- Accounts owned by a revocable or irrevocable trust, with a successor trustee in place.

Avoiding probate does not mean the asset is protected from Medicaid. A POD account that names your child as beneficiary still counts as your asset while you are alive. If you need nursing home care, Medicaid will expect you to spend it down before they pay.

Common inheritance mistakes that derail good planning

You can have a beautifully drafted irrevocable trust and still sabotage your goals through errors elsewhere in the plan. When I think about the most common inheritance mistake, it is not a technical drafting error. It is inconsistency.

For example, your will might leave everything equally to three children, but your largest accounts are in joint names with only one child or list only two of them as beneficiaries. Or your house is protected in an irrevocable trust, but you leave a large, non trust brokerage account to a troubled child outright, inviting creditor issues or substance abuse spending.

Another frequent problem is naming the wrong beneficiaries. When clients ask, “Who should I not name as a beneficiary?” I usually mention a few categories: minors who cannot legally manage money, beneficiaries with serious creditor issues, and individuals receiving needs based disability benefits who might lose eligibility if they receive an outright inheritance. For those people, a properly drafted trust share is usually far better than a direct bequest.

There is also confusion about what should not be included in a will. Certain assets, like life insurance with named beneficiaries, retirement accounts with beneficiary designations, and POD accounts, do not pass under the will at all. Mentioning them in the will does not override the beneficiary form. If you change your will but never update outdated designations, your old intentions can still win.

Coordinating all of this is what attorneys mean when they talk about “comprehensive estate planning.” It is not just drafting a will or trust. It is inventorying assets, aligning titling and beneficiary forms, anticipating taxes, and, for many families, integrating long term care and Medicaid planning into the picture.

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

Taxes loom large in many planning conversations, sometimes more than they should.

At the federal level, estate tax applies only if the total estate exceeds a very high exemption, currently in the multi million dollar range per person. Many middle class families will never come close. So when people ask, “How much can you inherit from your parents without paying taxes?” the answer is often, “A lot more than you think, at least from a federal estate tax standpoint.”

However, state level estate or inheritance taxes can apply at much lower thresholds in a minority of states. Inheritance tax can also depend on the relationship between the decedent and the beneficiary. For example, children might pay less or nothing, while more distant relatives pay more.

Income tax is a different animal. You do not generally pay income tax on what you inherit as such, but you may pay income tax on future earnings from those assets, and you may pay capital gains tax when you sell appreciated assets. The step up in basis at death is a crucial protection, which is why sloppy irrevocable trust drafting that jeopardizes this benefit can be so costly.

This is one more reason to work with an estate planning attorney near you who understands both your state’s tax regime and its Medicaid rules. Good planning tries to solve more than one problem at a time.

Gifting money to adult children and the Medicaid shadow

Clients often want to help adult children now rather than waiting. They ask about the best way to gift money to an adult child, and sometimes they have already been making generous gifts.

From a tax perspective, you can generally give up to the annual exclusion amount per recipient each year without using any of your lifetime gift and estate tax exemption. Larger gifts are still often tax free to the recipient but chip away at that lifetime exemption.

From a Medicaid perspective, however, these same gifts can be very problematic if they occur within the 5 year lookback. Medicaid does not care that your gifts were under the annual exclusion. They still count as transfers for less than fair value. A pattern of gifting $10,000 to each of three children every year for five years can create a large penalty period if you apply for long term care Medicaid in year six.

Sometimes the best way to “gift” support is to pay for things that benefit the child indirectly but are clearly for your own needs: paying a fair wage for care they provide, hiring them for home maintenance at market rates, or investing in home modifications that help you age in place. In other cases, channeling help through 529 plans for grandchildren or making direct payments for tuition or medical expenses can be tax efficient, though you still need to consider Medicaid timing.

This is an area where estate planning, tax planning, and Medicaid planning collide. What seems like a simple gift can look very different when a stroke or dementia appears unexpectedly.

Estate planning attorneys, cost, and locating the right one near you

Eventually, most families reach the point where online articles and neighborly advice are not enough. They ask, “How much does it cost to have an estate planning attorney?” and “Do I really need one near me, or can I just use an online service?”

Fees vary widely by region and complexity. In many parts of the United States, a straightforward will based plan might run from a few hundred dollars to a couple of thousand. A more comprehensive estate plan, with revocable trust, power of attorney, health care directives, and beneficiary coordination, may be in the low to mid four figures. Medicaid focused planning with irrevocable trusts and detailed asset restructuring often sits at the higher end, but even then the cost is usually a fraction of a single year of nursing home care.

When you look for an attorney near you, prioritize experience with elder law and Medicaid, not just estate planning. Ask how many Medicaid applications the firm handles, how they coordinate with financial advisors, and how they charge, whether flat fee or hourly.

If you decide to move forward, the basic steps to start Medicaid focused planning with an attorney typically look like this:

- Gather a full list of your assets, including ownership, beneficiary designations, and current values.
- Bring at least five years of financial records, or be prepared to obtain them, especially bank and brokerage statements.
- Be honest about family dynamics, including any past gifts, caregiver arrangements, or problem beneficiaries.
- Discuss your health realistically, including family history, so your attorney can gauge the time horizon for planning.
- Ask the attorney to explain not just the recommended documents, but also the trade offs involved.

Do not be shy about asking what comprehensive estate planning means in their practice. You want someone who thinks beyond documents, who talks to you about incapacity, caregiving, housing options, and how your plan works if circumstances change.

Where the 5 by 5 rule fits in

Along the way, you may run into another technical phrase: the 5 by 5 rule in estate planning. This usually refers to a power of withdrawal in a trust that lets a beneficiary withdraw the greater of 5 percent of trust assets or $5,000 each year.

From a tax perspective, this can keep property in the beneficiary’s estate for step up in basis, while limiting the inclusion amount for gift tax when they choose not to exercise the power. From a creditor and Medicaid perspective, however, such a right of withdrawal can be problematic if the beneficiary is also trying to qualify for needs based benefits.

The 5 by 5 rule is therefore yet another example of a planning tool that makes sense in one context and creates issues in another. Your attorney's job is to balance tax, asset protection, and benefit eligibility.

Pulling it together

The 5 year rule for irrevocable trusts is not a standalone trick. It is a timing rule that interacts with your entire financial life: your house, your bank accounts, your gifting habits, your family structure, and your health.

Used thoughtfully, an irrevocable trust can be a powerful part of comprehensive estate planning, particularly for those who sit in the uncomfortable middle, with too many assets to comfortably self fund years of long term care yet not enough to shrug at losing half a million dollars to facility bills. For others, the downsides of early, irrevocable transfers outweigh the potential Medicaid benefits.

If you take anything from this discussion, let it be this: guessing and last minute scrambling rarely end well. A candid conversation with an experienced estate planning and elder law attorney near you, ideally years before a crisis, is the best way to decide whether an irrevocable trust, and the 5 year rule that comes with it, belongs in your family's plan.

Parker Law Offices
28202 Cabot Rd 3rd Floor, Laguna Niguel, CA 92677
9493853130