

Most people do not think about Medicaid until a parent lands in a hospital bed and the discharge planner quietly mentions “long-term care” and “spend down.” By then, the options are narrower, the stress is higher, and the family is trying to master a complicated system while running back and forth to the facility.

Good Medicaid planning is not about gaming the system. It is about understanding the rules early enough to protect a spouse, preserve a modest legacy, and still qualify for help with crushing long-term care costs. The federal “5-year rule” sits right at the center of that planning, and it connects directly to how you use wills, trusts, beneficiary designations, and gifts.

That is also where a local estate planning and elder law attorney earns their keep. Medicaid rules are federal, but implementation is intensely state specific. What works in New York can backfire in Texas. Having someone near you, who knows the local Medicaid office, the local nursing homes, and the quirks of your state’s trust and probate law, often matters more than any fancy planning strategy you read about online.



The advertisement is a rectangular graphic with a blue border. On the left, the text "PARKER LAW OFFICES" is at the top, with a logo of a scale of justice. Below it, "LAGUNA NIGUEL ESTATE PLANNING ATTORNEY" is written in large, bold, black letters. Further down, "Parker Law Offices" is written in blue, followed by the address "28202 Cabot Rd 3rd floor, Laguna Niguel, CA 92677", the phone number "949 385-3130", and the website "https://www.estateandtrustlawyer.com/comprehensive-estate-planning/". On the right, there is a photograph of a man with glasses and a beard, wearing a suit, sitting at a desk with his hands clasped. Below the photo is a QR code.

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/>



The reality of Medicaid and long-term care costs

When families first sit in my office and ask about Medicaid, they usually start with a simple fear: “Can the nursing home take our house?”

The honest answer is more nuanced. Nursing homes do not take property directly. They send bills. Medicaid, if you qualify, pays those bills. The state, later, may have a claim against your probate estate under “estate recovery” rules. The details vary sharply by state, but the broad picture is the same almost everywhere:

Medicaid is means-tested. To qualify for long-term care Medicaid, you must pass income and asset tests. The exact limits depend on your state and whether you are single or married. A healthy spouse still living at home usually gets to keep more income and assets.

Some assets are “countable,” some are “non-countable.” Primary residences, certain vehicles, and small life insurance policies may be treated differently than bank accounts and investments. Again, each state uses its own formulas and caps.

Medicaid looks backward. Before you qualify, the state checks transfers you made in the past 5 years to see if you gave assets away below fair market value.

That last point is where the famous Medicaid 5-year lookback comes into play and why early planning can save tens or hundreds of thousands of dollars.

The Medicaid 5-year lookback: what it is and what it is not

Clients often ask, “How to avoid Medicaid 5 year lookback?” The blunt answer is that you do not “avoid” it. You plan around it, you respect it, and you use the tools the law actually allows.

The Medicaid 5-year lookback means the state will examine most financial transfers you made in the 60 months before you apply for long-term care Medicaid. If the state finds gifts or transfers for less than fair market value (to kids, to friends, even into certain types of trusts), it can impose a penalty period. During that penalty period, Medicaid will not pay for your nursing home care, even though you otherwise qualify. You are expected to cover the costs out of pocket.

Three important practical points:

First, the lookback is about timing, not tax. Families confuse gift tax rules with Medicaid rules. For example, you may hear that “you can give \$18,000 per person per year without tax.” That is a federal gift tax rule. Medicaid does not care that a gift is “tax free.” A gift of \$18,000 to your son last year can still trigger a Medicaid penalty in most states.

Second, the penalty is not a fine. The state does not take money from your kids. Instead, it calculates how long you must privately pay for care based on the value of the uncompensated transfers. If you gave away \$90,000 and your state’s divisor is \$9,000 per month, you look at a 10-month period in which Medicaid will not pay for your nursing home costs.

Third, the clock is backward-looking. The 5-year rule does not mean your assets become safe five years after you enter a nursing home. It means that if you made a transfer more than five years before you apply, that particular transfer is usually outside the penalty calculation.

The families who benefit most are the ones who start planning while they are still reasonably healthy. Waiting until a crisis hits often leaves you with fewer ethical and legal options.

Irrevocable trusts and the “5-year rule for irrevocable trusts”

When people hear about the 5-year rule for irrevocable trusts, they are usually hearing a simplified version of something more complex.

If you transfer assets into a properly designed Medicaid asset protection trust, and if that transfer is a true gift (meaning you cannot take the assets back, you cannot demand principal, and you do not retain too much control),

Medicaid typically treats it as a transfer subject to the 5-year lookback. If you get through five years without needing Medicaid, those assets are usually not countable for your later long-term care application.

The challenge is that the trust must be engineered correctly. I often meet people who pulled a template for an irrevocable trust off the internet. On paper, it looks “irrevocable,” but on closer review, the parent is both trustee and beneficiary or has retained a power that makes the assets countable for Medicaid. The state will look at substance over labels.

When clients ask, “What is the 5 year rule for irrevocable trusts?” this is what they are really asking: If I put my house or savings into a trust now, will they still be at risk for nursing home costs later? The answer depends on:

Your state’s rules on what counts as an available resource.

How much control you keep over trust assets.

Whether your transfers into the trust occurred more than 5 years before you apply for Medicaid.

This is where having an estate planning attorney near you, with real Medicaid experience, makes a difference. An irrevocable trust used for Medicaid planning is not the same as a run-of-the-mill irrevocable life insurance trust or a family gifting trust used purely for tax planning.

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

Another source of confusion: people ask about the 7 year rule for trusts. That usually comes from reading about the UK inheritance tax system, which has a 7-year rule for certain gifts. In most US Medicaid contexts, the critical period is 5 years, not 7.

However, some attorneys talk informally about “planning 7 to 10 years out” to build in extra cushion. Health can change quickly. Markets can move. Family circumstances can shift. Planning earlier than 5 years gives you more flexibility to adjust if something unexpected comes up within that window.

So if you are hearing 7 years, ask the attorney or advisor whether they are quoting an actual legal requirement in your state or simply describing a conservative planning horizon.

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

This is one of the rawest fears I see. Parents spent decades paying a mortgage, and they want the house to land with their children or grandchildren, not be consumed by a two-year nursing home stay.

If the house is in your name, and you are single, it is usually a countable asset after a certain equity limit, unless specific exceptions apply. If you are married and one spouse is living at home, the home is typically protected while that spouse lives there, but may be exposed to estate recovery later.

So families ask two related questions: Is it better to leave a house in a will or trust, and can a nursing home take your house if it is in a trust?

The first question is about probate and control. The second is about asset protection.

A simple revocable living trust avoids probate. It can make administration smoother and keep your affairs private. It can help manage property during incapacity. It can also be a good answer if you ask, “Which bank accounts avoid probate?” By titling accounts or real estate into a revocable trust, or by using transfer-on-death or payable-on-death designations, you can keep many assets out of the probate court.

However, a revocable trust generally does not protect your home from Medicaid. You still control it, you can still revoke the trust, and Medicaid typically counts those assets as yours.

An irrevocable trust is different. Properly drafted and funded more than 5 years before you apply for Medicaid, it can shelter your home from being a countable resource and from estate recovery in many states. But the trade-offs matter:

You give up control. You usually cannot pull the house back out in your own name.

Selling or refinancing can be more complex, because the trustees (often children) must sign and coordinate.

You may lose certain tax benefits if the trust is not structured carefully.

So what is the best way to leave your house to your children? For some families, it is a carefully drafted irrevocable trust funded years before any health crisis, with clear instructions for how the next generation will manage the property. For others, particularly where health is already fragile or family dynamics are **Comprehensive Estate Planning Attorney Near Me** tricky, it might be better to use a revocable trust or even a will, and focus on other strategies to help with long-term care.

The wrong move, in my experience, is a rushed deed of the house outright to one child to “protect it from the nursing home” as a medical crisis starts. That can trigger Medicaid penalties, create family strife, and expose the house to that child’s divorce, car accidents, or creditors.

The downside of putting your house in an irrevocable trust

Irrevocable trusts are not magic. I have seen people regret them when they were sold only the benefits and not the downsides.

Common disadvantages include:

You cannot easily change your mind if you need the equity for your own living expenses.

If the trustees are your children, and there is later a family dispute, your access to the property can become a power struggle.

Financing and reverse mortgages are harder or impossible.

In some designs, you may lose certain property tax exemptions or run into issues with capital gains tax, if the drafting is poor.

That is why I often tell clients that irrevocable trusts make sense in only a few core situations. When someone asks, “What are the only three reasons you should have an irrevocable trust?” my answer is usually some variation of:

You want to engage in serious asset protection, including Medicaid planning, and you are willing to give up control of those assets.

You have a specific tax planning goal, such as removing appreciating assets from your taxable estate in a way that still provides for your heirs.

You need someone else to control the asset long term because of a vulnerability in the next generation, such as addiction, disability, or severe financial irresponsibility.

Even then, the trust must be tailored to your state’s law and your family’s reality, not built off a generic template.

Wills, what not to include, and the most common inheritance mistake

People focus intensely on who gets what. They often spend very little time thinking about how those assets will actually transfer and who should not be named as a beneficiary in certain situations.

"What should not be included in a will?" is not asked often enough. In my experience, you should avoid:

Trying to control things you do not own outright, like assets already governed by beneficiary designations.



The advertisement for Parker Law Offices features a blue and white color scheme. At the top left is the logo with a scales of justice icon and the text "PARKER LAW OFFICES". Below this, the text "ORANGE COUNTY ESTATE PLANNING ATTORNEY" is displayed in large, bold, black letters. To the right of this text is a photograph of a tablet displaying a website with the heading "Estate Plan" and subtext including "Testament", "Health Care Directive", and "Statutory Power Of Att...". Below the main text, the address "28202 Cabot Rd 3rd floor, Laguna Niguel, CA 92677" and phone number "949 385-3130" are listed, along with the website URL "https://www.estateandtrustlawyer.com/orange-county-estate-planning-attorney/". A QR code is located in the bottom right corner of the advertisement.

Long, complex instructions for minor children's money without a proper trust.

Outdated personal property lists that refer to items you no longer own.

Promises to leave assets that might not exist when you die.

The most common inheritance mistake I see has nothing to do with the will language itself. It is failing to coordinate the will with beneficiary designations and joint ownership. People spend time with an attorney on a carefully drafted will, then forget that their largest IRA still names an ex-spouse or a deceased parent, or that their checking account is joint with the oldest child only, which completely overrides the equal distribution language in the will.

The question "Who should I not name as a beneficiary?" comes up most often in three contexts:

Beneficiaries with serious debt or legal problems, where an outright inheritance will be swept away by creditors.

Beneficiaries receiving needs-based public benefits, where a direct inheritance will disqualify them.

Beneficiaries struggling with addiction or predictable financial chaos.

In those cases, leaving assets to a properly structured trust for their benefit can be far kinder and more effective than naming them outright as beneficiaries.

Bank accounts, probate, and Medicaid

Families often hear that certain bank accounts avoid probate. That can be true. Payable-on-death (POD) or transfer-on-death (TOD) designations on accounts, joint tenancy with right of survivorship, and revocable trusts can all keep accounts out of the probate estate.

From a Medicaid perspective, however, ownership and access matter more than probate. If your name is on the account and you can withdraw the funds, Medicaid will usually treat it as your asset, regardless of whether the account would pass outside probate when you die.

So yes, you might avoid probate with joint accounts or beneficiary designations. But you may also create gift issues, expose those funds to the co-owner's creditors, and complicate Medicaid eligibility if planning is not done carefully.

A local estate planning attorney who also handles elder law can walk through each account type and ask the two key questions: Will this account avoid probate, and will it harm or help Medicaid planning?

Gifting, taxes, and helping adult children

Another frequent conversation starts with: "What is the best way to gift money to an adult child?" and "How much can you inherit from your parents without paying taxes?"

On the tax side, many people are relieved to learn that inheritances are generally not taxable income for the recipient under federal law, though some states have their own inheritance taxes, and retirement accounts like traditional IRAs carry income tax burdens when the beneficiary takes distributions.

For federal estate and gift tax, the thresholds are currently very high, in the multimillion dollar range per person, and subject to political change. On top of that, you have the annual exclusion amount, which allows you to give a set amount per person per year without using your lifetime exemption. That annual number has been in the mid-to-upper teens in recent years, and tends to adjust periodically for inflation.

**PROBATE ATTORNEY
ORANGE COUNTY**



Parker Law Offices

28202 Cabot Rd 3rd floor, Laguna Niguel, CA 92677
(949) 385-3130
<https://www.estateandtrustlawyer.com/orange-county-probate-attorney/>



From a Medicaid perspective, however, those “tax free” gifts are not invisible. They still count as transfers within the 5-year lookback. If your main worry is long-term care costs, the best way to gift money to an adult child is usually inside a coordinated plan that takes both tax and Medicaid implications into account.

Sometimes that means modest, affordable gifting while you are still robustly healthy, combined with long-term care insurance or other resources. Sometimes it means saving more for your own care and planning to leave a larger inheritance later rather than pushing money out too early.

What is comprehensive estate planning in the context of Medicaid?

People often think estate planning is just deciding who gets the house and the bank accounts. That is part of it, but comprehensive estate planning adds several layers that are critical if you ever need long-term care.

A truly comprehensive estate plan will address:

Decision-making while you are alive. Powers of attorney, health care proxies, and living wills are vital if you need someone to act for you in a Medicaid application, sign nursing home admissions, or manage financial affairs.

Asset alignment. Making sure your titling and beneficiary designations match your actual wishes and work with any trusts you establish.

Long-term care strategy. Evaluating whether Medicaid planning, long-term care insurance, or a self-funding approach (or a mix) makes the most sense.

Tax implications. Coordinating capital gains, income tax, and any potential estate tax exposure so that your heirs are not left with unnecessary tax bills.

Family dynamics. Anticipating conflicts, blended family issues, or vulnerable beneficiaries and structuring the plan accordingly.

Medicaid is not a separate world from estate planning. It is one branch hanging off the same tree. Ignoring it while only focusing on simple wills or online forms is a missed opportunity for many middle-class families.

The much-talked-about “Medicaid loophole”

People sometimes ask me bluntly, “What is the Medicaid loophole?” They have heard neighbors brag about how they “gave everything to the kids and Medicaid paid anyway.”

In reality, there is no single secret loophole. There are lawful strategies built into the system, and there are abuses that courts and agencies push back against when discovered.

Legitimate planning tools include:

Using a properly drafted irrevocable trust funded more than 5 years before care is needed.

Making allowed transfers to a spouse or certain disabled children.

Spending money down on legitimate needs, home modifications, prepaid funerals, or debt payments rather than simply gifting to kids.

The line between creative planning and problematic behavior often lies in timing and transparency. Last-minute schemes to shift assets under market value, fabricated caregiver agreements without proper records, and sham transfers that leave you still effectively controlling the assets are where families run into accusations of fraud or face long penalty periods.

An experienced, ethical elder law attorney will help you explore permissible strategies and will also tell you when a so-called “loophole” is really a risk.

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

The question “How much does it cost to have an estate planning attorney?” is reasonable, but the honest answer is: it depends on your region, the complexity of your situation, and the scope of the work.

In many parts of the country, a straightforward will-based plan for a married couple might run in the low thousands of dollars. Adding revocable trusts, carefully engineered irrevocable Medicaid trusts, and more complex tax or business planning can move the fee into the mid or upper thousands. Hourly rates can range widely, commonly from the low hundreds per hour in smaller towns to several hundred per hour in major metropolitan areas.

I encourage clients to look at the value, not just the price tag. A single drafting error or a misunderstanding of your state’s Medicaid rules can cost tens of thousands of dollars in lost benefits or unnecessary taxes. On the other hand, you do not need every advanced strategy in the book. A good local attorney will tell you when a simple, less expensive plan is enough.

Ask up front how the fee works, what is included, and whether Medicaid planning, document updates, or future consultations are part of the package or billed separately. Clear expectations prevent surprises later.

Why it matters that your attorney is “near you”

With online forms and national call centers, people sometimes wonder whether it really matters if their estate planning attorney is local.

For pure tax planning, maybe not. For Medicaid planning and trust work that must mesh with your state's property and probate laws, local knowledge is invaluable.

State law differences are real. The way your state applies the Medicaid 5-year lookback, treats annuities, calculates spousal allowances, and [Comprehensive Estate Planning Attorney Near Me estateandtrustlawyer.com](https://estateandtrustlawyer.com) pursues estate recovery can vary considerably from the next state over.

Court culture and agency practice matter. Some Medicaid agencies are more aggressive on certain kinds of transfers. Some probate courts have strong preferences about how trusts are drafted and administered. Local attorneys learn, through repeated cases, what works and what tends to stall.

You and your family will need support when health changes. A crisis rarely unfolds neatly over email. Being able to sit down with someone who already knows your history, or have your kids meet them quickly, can be a real relief.

The law may be published online, but judgment develops through seeing families navigate it repeatedly in the same local context. That is the value of "near you" in this field.

When to act and what to do next

There is a misconception that Medicaid planning only makes sense if you are very old or already in a nursing home. In practice, the families who do best start the conversation much earlier, often in their late 50s or 60s, when they still feel perfectly healthy. That does not mean moving everything into trusts right away. It means mapping the landscape before the storm hits.

Here is a simple, focused checklist that I often suggest as a starting point:

- Gather key financial documents: deeds, account statements, retirement plan summaries, life insurance policies, and any existing estate planning documents.
- Make a rough projection of your likely retirement income and expected expenses, including a realistic view of long-term care costs in your area.
- Identify your core goals: protecting a spouse, keeping a family home in the bloodline, supporting a disabled child, or leaving charitable gifts.
- Schedule a consultation with a local estate planning and elder law attorney, and bring questions about Medicaid, the 5-year rule, and your house.
- After the meeting, decide on a phased plan: what to handle now, what to revisit in a few years, and what signs should trigger a faster follow-up.

If you already have a parent in failing health, your checklist looks different. Time is tighter, and the focus shifts to crisis planning, making sure powers of attorney are in place, and exploring what limited transfers or trust strategies are still workable without triggering unmanageable penalties.

For families where a parent is already in a nursing home or clearly headed that way, the planning window is narrower but not closed. I have seen attorneys help preserve meaningful resources for a healthy spouse at home, or for disabled children, even when the 5-year lookback makes broader asset shifts impossible.

A brief word on the "5 by 5 rule in estate planning"

Occasionally, people mix up the Medicaid 5-year rule with “the 5 by 5 rule in estate planning.” That 5 by 5 rule is a trust concept that typically allows a beneficiary to withdraw the greater of 5 percent of the trust principal or \$5,000 per year without adverse estate tax consequences, under certain older planning structures.

It has almost nothing to do with Medicaid. However, if an older trust uses a 5 by 5 power and a beneficiary regularly exercises that withdrawal right, those distributed funds can become part of the beneficiary’s own assets and may be relevant for their own Medicaid eligibility later.

Again, this is where a qualified local attorney, looking at your entire picture, can spot connections that a piecemeal or online-only approach might miss.

One more practical list: when an irrevocable trust truly belongs on the table

Clients sometimes leave a first meeting with the impression that irrevocable trusts are the default answer for Medicaid. They are not. Many families do just fine with solid wills, revocable trusts, updated powers of attorney, and disciplined financial planning.

Here are situations where I am more likely to raise the idea of an irrevocable trust seriously:

- You are at least 5 to 10 years away from any anticipated need for nursing home care, and your health is relatively stable.
- Your primary goal is to preserve a specific asset - typically a family home or a family business - for the next generation, even if you personally end up in long-term care.
- You are comfortable giving up direct control of certain assets and trust your chosen trustees to act responsibly.
- You understand that there may be administrative and tax trade-offs, and you are willing to work with the attorney and your tax advisor each year as needed.
- You have had a thorough discussion of alternatives, like long-term care insurance, life estates, or more modest gifting, and still prefer the irrevocable trust route.

Used in the right context, with honest advice, irrevocable trusts can be powerful tools. Used blindly, sold as a one-size-fits-all “Medicaid loophole,” they can create more problems than they solve.

Thoughtful Medicaid and estate planning is less about clever tricks and more about timing, clarity, and coordination. The 5-year rule is a constraint, not a catastrophe, if you understand it early and build it into a broader, comprehensive plan with someone who practices in your state every day.

Parker Law Offices

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

9493853130

