Families usually first hear about the Medicaid “5 year rule” in a hospital discharge meeting, when a social worker mentions that Mom will likely need long term care and Medicare will not pay for it. Panic sets in. Someone has heard that “Medicaid will take the house.” Another relative mentions a neighbor who “put everything in a trust” and was fine. By the time they reach my office, they are overwhelmed and worried they waited too long.

The 5 year rule for Medicaid and irrevocable trusts is not a magic loophole, and it is not a death sentence for your savings either. It is simply a timing rule with very real financial consequences, and with the right planning it can be managed.

This article walks through how that rule works, how irrevocable trusts fit into the picture, and how to avoid the most expensive mistakes I see in practice.

What the Medicaid 5 Year Rule Actually Is

Medicaid pays for long term care for people who meet very strict financial criteria. To keep people from just giving away their assets the week before they apply, federal law requires a “lookback” period. In most states, that period is 5 years prior to the date you apply for long term care Medicaid.

During that 5 year lookback, the state reviews your financial history and asks a simple question: did you give away assets or transfer them for less than fair market value. If you did, those transfers are treated as if you still had the money, and the state imposes a penalty period.

Here is the crucial point many people misunderstand. The 5 year rule does not say that you lose eligibility for 5 years. It says that all gifts and uncompensated transfers made within that 5 year window are added up, and the total is divided by a state specific “penalty divisor,” usually based on the average monthly nursing home cost. The result is the number of months Medicaid will not pay for your care, starting when you are otherwise eligible.

For example, if you gift 120,000 dollars to your children within the lookback, and your state’s penalty divisor is 10,000 dollars per month, the state will impose a 12 month penalty. You will need to find a way to pay for 12 months of care out of pocket or from family help.

The 5 year rule exists to prevent last minute asset sheltering, and that rule is why timing is everything when using an irrevocable trust as part of long term care planning.

How Irrevocable Trusts Interact With the 5 Year Lookback

When you transfer assets into a properly drafted Medicaid irrevocable trust, that transfer is usually treated as a gift for Medicaid purposes. The date the asset goes into the trust starts the 5 year clock for that particular asset. Before that 5 year anniversary, the trust funding can trigger a penalty period if you later apply for Medicaid. After that 5 year mark, the asset in the trust is typically not counted as an available resource for Medicaid.

That simple timeline hides a lot of nuance.

First, the trust must be truly irrevocable and written so that you do not retain excessive control. If you can revoke the trust, pull funds out for yourself, or direct distributions to yourself at will, then Medicaid will likely treat the trust assets as still yours.

Second, not every state analyzes trusts exactly the same way. Some states take a very aggressive view of “availability” and try to count trust assets unless the trust is drafted with care. A cut and paste form trust from the internet is rarely up to the job.

Third, the 5 year rule applies per transfer, not per person. If you fund the trust in stages, each gift has its own 5 year anniversary. For clients who are worried about the size of the gift, or are not ready to move everything at once, we sometimes layer in transfers over two or three years. That can soften the emotional impact, but it also means a longer period before all assets are fully protected.

Finally, using an irrevocable trust is only one piece of the planning picture. We still have to think through income rules, spousal protections, and how the trust interacts with your overall estate plan.

The House: Will, Trust, or Something Else?

Home protection drives many of the questions about Medicaid and trusts. People ask some version of three questions again and again.

Is it better to leave a house in a will or trust. Can a nursing home take your house if it is in a trust. What is the downside of putting your house in an irrevocable trust.

Here is how I walk clients through it.

If you leave your house in a will, that house will pass through probate at your death. Probate is the court process for transferring assets titled in your name to your heirs. It can be straightforward, but it often takes months, involves legal fees, and in some states the file is public. A simple will also does nothing to protect the house from long term care costs during your life.

If you place your house in a revocable living trust, you likely avoid probate for that property, which is a real advantage. Your successor trustee can transfer the property to your children more quickly and privately. However, a revocable trust does not protect the home from Medicaid spend down. Medicaid will still treat the house as your resource, because you can change or revoke the trust.

If you transfer your home to a properly drafted Medicaid irrevocable trust and survive the 5 year lookback, then usually the house is off the table for Medicaid eligibility and estate recovery. That is why many families use this tool. Once you pass the 5 year rule for irrevocable trusts, your children can inherit the ***Comprehensive Estate Planning Attorney Near Me estateandtrustlawyer.com*** house from the trust without Medicaid placing a lien on it for nursing home costs paid on your behalf.

There are important trade offs.

You are giving up direct ownership. You should not be the trustee if we want full protection. You should not have the right to demand the trust give the house back. You can usually retain the right to live there and to control who ultimately inherits the property, but you must be comfortable with a certain loss of control.

That is the core downside of putting your house in an irrevocable trust. Loss of flexibility, difficulty unwinding the plan later, possible family friction if you pick the wrong trustee, and the emotional impact of giving up ownership of something you worked hard to buy.

On the other hand, if you do no planning and end up needing long term care, your options narrow quickly. Medicaid rules around the home are complicated, but in many cases the state can assert a claim against the house after your death to recover what it paid for your care. So in practice, I often tell clients that the real question is not simply “Is it better to leave a house in a will or trust.” It is “If you need long term care, how much are you willing to risk losing to that cost.”

Only Three Good Reasons for an Irrevocable Trust

Clients read horror stories about families losing control of their assets in irrevocable trusts and ask why anyone would do this at all. On the flip side, others come in convinced they must put everything into an irrevocable trust immediately.

In my experience, there are only three reasons you should have an irrevocable trust, and if one of these does not apply, a revocable trust or simpler planning is usually better.

- Long term care and Medicaid planning, to move certain assets, often the home or investment accounts, out of your countable estate in time to clear the 5 year lookback.
- Asset protection for beneficiaries, such as keeping an inheritance safe from a child's divorce, creditors, or poor money management, often using a discretionary lifetime trust.
- Tax driven planning for larger estates, such as a spousal lifetime access trust or irrevocable life insurance trust, when estate tax or income tax consequences justify the added complexity.

Anything beyond those three tends to cause more problems than it solves. When someone tells me they used an irrevocable trust "to avoid probate" alone, I usually see design choices that create unnecessary headaches, with no additional benefit over a revocable trust.

The right question is not whether irrevocable trusts are good or bad. It is whether your goals justify the restrictions, and whether you are early enough in the Medicaid 5 year lookback period to make the trust effective.

Clearing Up Confusion: The 7 Year Rule, 5 by 5 Rule, and Other Myths

The 5 year rule for Medicaid often gets mixed up with other "rules of thumb" that float around the internet.

The 7 year rule for trusts is usually a reference to United Kingdom inheritance tax rules, not U.S. Medicaid. In the U.K., many gifts fall out of the inheritance tax calculation if the donor survives 7 years. That concept does not apply to U.S. Medicaid eligibility. For our purposes, the lookback is 5 years in most states for long term care Medicaid, with some different periods for other programs.

The 5 by 5 rule in estate planning is something else entirely. It usually refers to a "5 and 5 power" in a trust, which allows a beneficiary to withdraw the greater of 5,000 dollars or 5 percent of the trust principal each year without triggering certain gift tax issues. That can be useful in tax oriented irrevocable trust planning, but it has nothing to do with Medicaid's 5 year rule.

Then there is the phrase "Medicaid loophole." I hear it at least weekly. Most of what people label as a Medicaid loophole is simply the law as written. Congress has built spousal protections, exempt assets, and spend down rules into the system. You absolutely can plan to qualify for Medicaid through legitimate strategies, like using an irrevocable trust years in advance, using certain annuities or spousal transfers, or spending on permissible items such as home improvements, debt payoff, or prepaid funerals.

You cannot typically sign paperwork after a diagnosis, shovel your assets to your children the same month you apply, and expect Medicaid to look the other way. That is where the 5 year rule has teeth.

How to Think About "Avoiding" the Medicaid 5 Year Lookback

People sometimes ask how to avoid the Medicaid 5 year lookback. The honest answer is that you do not avoid it. The lookback is part of the eligibility rules. What you can do is act early enough that, when you eventually need care, the gifts or trust transfers are already outside that 5 year window.

That requires three things.

First, you need to accept that planning has to happen before the crisis. I see two patterns. Some clients in their late 60s or early 70s who watched a parent go through long term care are ready to plan proactively. Others wait until they have clear health issues, or have already had a stroke or dementia diagnosis. At that point, options narrow, and we are usually looking at partial protection strategies, like carving out a share for a healthier spouse and accepting that other assets will be spent down.

Second, you must be comfortable giving up some control if you use an irrevocable trust. That is why I often spend more time on trustee selection and trust design than on the raw tax or Medicaid rules. A well chosen trustee, with clear distribution standards and a practical plan for when and how to help you if your needs change, matters more than the finest technical drafting.

Third, the rest of your financial picture has to line up. It is unwise to put every last dollar into an irrevocable trust just to beat the 5 year rule, then discover you do not have enough outside the trust to live comfortably. We usually leave a meaningful amount in your own name or in a revocable trust, then use the irrevocable trust for the "never spend" bucket.

Cost, Scope, and What "Comprehensive" Really Means

When clients first call, one of the early questions is predictable: how much does it cost to have an estate planning attorney. Fees vary by region and complexity, but for context, in many areas a basic will plan might run from several hundred to a couple of thousand dollars. A comprehensive estate planning engagement that includes revocable and irrevocable trusts, tax planning, Medicaid analysis, and detailed beneficiary designations can easily range several thousand dollars or more.

The more important question is what you get for that fee.

Comprehensive estate planning is not just a thick binder of documents. It is a coordinated strategy that addresses who will manage your assets if you become incapacitated, who will make medical decisions, how and when your heirs receive assets, how to minimize taxes and court involvement, and how to integrate beneficiary designations, business interests, and long term care planning. In short, it brings your legal documents, your financial accounts, and your family goals into alignment.

I have seen inexpensive plans that combined a will, a revocable trust, and a "Medicaid trust" in a way that actually harmed the client's position. For instance, the same person was named trustee of both the revocable and irrevocable trust, with powers that made the irrevocable trust fully countable for Medicaid, wiping out the protection they thought they had.

A well designed plan usually involves:

- Clear powers of attorney for finances and healthcare, with specific language for Medicaid planning if appropriate.
- A revocable living trust for probate avoidance, tax efficiency, and disability management.

That second list is our only other allowed list, and it highlights how the components fit together around the central question of long term care risk.

Probate, Beneficiaries, and Accounts That Bypass the Court

When we talk about avoiding probate, many people immediately think of trusts. Trusts are powerful, but they are not the only tool.

Certain bank accounts avoid probate if they are titled correctly. Payable on death (POD) or transfer on death (TOD) designations can transfer funds directly to named beneficiaries without going through the estate. Joint accounts with rights of survivorship also bypass probate at the first death, although they raise other issues if used haphazardly.

Similarly, retirement accounts like IRAs and 401(k)s, and life insurance policies, pass by beneficiary designation. That is where another of the most common inheritance mistakes shows up. Forms are filled out once and forgotten. Ex spouses linger as beneficiaries. Estates are named as beneficiaries, which forces probate and can accelerate income taxes. New children or grandchildren are left out.

The most common inheritance mistake I see is not a bad trust or a weak will. It is outdated or thoughtless beneficiary designations that undermine a carefully drafted plan.

So who should you not name as a beneficiary. In most cases, you should avoid naming minor children outright, people receiving needs based government benefits without a special needs trust, and sometimes individuals with heavy creditor or divorce risks. Naming your estate as beneficiary is also usually a bad idea. Each situation is unique, but those red flags repeat.

What Not to Put in Your Will

Clients are often surprised when I tell them that some of the most important things in their lives do not belong in a will. A will is a blunt instrument. It directs the distribution of assets that pass through your probate estate and appoints guardians and executors. That is it.

Here are several things that generally should not be included in a will:

- Assets that already pass by beneficiary designation, like life insurance or retirement accounts, unless you are deliberately naming your estate as beneficiary for a specific tax reason.
- Very detailed funeral instructions, which are often not read until after services have already occurred. A separate, accessible letter or pre arrangement is far better.
- Specific, constantly changing personal property distributions, like individual pieces of jewelry or household items, which can be handled in a memorandum referenced by the will in many states.
- Conditional gifts that attempt to control a beneficiary's life choices in intrusive ways, such as requiring marriage to a certain type of person, which can be unenforceable or create bitter disputes.

- Provisions meant to control non probate assets, like trying to change a joint account or payable on death designation through the will, which simply does not work.

Many of these issues tie back to Medicaid and trust planning as well. For example, if you intend to protect a disabled child's benefits, you might use a supplemental needs trust rather than leaving assets directly in the will. If you want to shelter long term care risk, you may combine an irrevocable trust for the house with a revocable trust and carefully updated beneficiary designations.

Taxes, Gifting, and Family Support

Questions about Medicaid and long term care quickly slide into questions about taxes and gifts. People ask how much can you inherit from your parents without paying taxes, or what is the best way to gift money to an adult child. The answers depend heavily on whether we are talking about federal estate tax, state inheritance tax, income tax, or capital gains.

As of my latest information, the federal estate tax exemption is in the multi million dollar range per person, and many families will not face federal estate tax. Some states, however, have their own estate or inheritance taxes with much lower thresholds. That means you can often inherit substantial amounts from your parents without federal estate tax, but you may still face state level consequences or income tax on inherited retirement accounts.

For lifetime gifts, the federal system allows annual exclusion gifts up to a set amount per recipient without using any of your lifetime exemption, and larger gifts simply chip away at that exemption. Many people never file a gift tax return because they do not exceed the annual exclusion. From a Medicaid perspective though, even small gifts can count during the 5 year lookback, because Medicaid does not use the same tax thresholds.

As for the best way to gift money to an adult child, I ask clients what they are really trying to achieve. If they want to help with a home purchase, paying expenses directly, or helping with a larger down payment while keeping some documentation, can make sense. If they want to transfer wealth in a more structured way, a trust for the child, with protections against creditors or divorce, may be better. If they are also concerned about their own long term care, we look carefully at how those gifts intersect with Medicaid's 5 year rule.

One careful point: using gifts to adult children as an informal "Medicaid strategy" rarely works when done late. I have had more than one client show me a spreadsheet of gifts to children over the past few years, expecting credit for "spending down." What they actually created was a record that the state would use to calculate a long penalty period. If gifting is going to be part of the plan, it should be coordinated with trust planning, timing, and a realistic view of your own needs.

Choosing the Best Way to Leave Your House to Your Children

When families sit around the kitchen table and talk about the house, they usually want a simple answer. What is the best way to leave your house to your children. There is no single answer that fits everyone, but there are patterns.

If probate avoidance and simplicity are the only concerns, a revocable living trust that holds the house and directs it to the children at your death, possibly with a right to live there for a spouse, is often best.

If long term care risk is a major concern, and you are reasonably healthy and able to plan at least 5 years before you might need care, a carefully drafted irrevocable trust that holds the house and preserves your right to live there, while protecting the property from Medicaid after 5 years, is often worth serious consideration.

If flexibility, control, and low complexity are more important than Medicaid protection, a will with a transfer on death deed, where available, can be a good middle ground.

The common thread in the families who feel satisfied years later is that they matched the tool to their real concerns, rather than chasing a one size fits all “loophole.” They considered the Medicaid 5 year rule, but did not let it dominate every other value. They understood the downsides of an irrevocable trust and used it only where it really added value.

Thoughtful planning for long term care and inheritance is not about beating the system. It is about understanding the rules, including the Medicaid 5 year lookback and its impact on irrevocable trusts, then making calm, early decisions that fit your family, your health, and your finances.

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