



# SET THE STAGE FOR MEDICAID ELIGIBILITY





## ABOUT THE FIRM

Zimmer Law Firm has served Greater Cincinnati families with comprehensive estate planning, estate settlement and elder law issues including Medicaid benefits planning since 1993. Their seminars are informative, easy to understand, and reflect of the extensive background and experience of the firm's lawyers. Barry Zimmer, firm founder, is the only area member of the American Academy of Estate Planning Attorney, an exclusive membership organization dedicated to promoting excellence in estate planning and elder law. Zimmer received the designation of Academy Fellow in 2008. He continues to hold this honor in recognition of his commitment and accomplishments in estate planning. He was also selected "Best of Cincinnati – Estate Planning Law" by Best Business Company in 2015 and 2016.



We consider it a great privilege to help families plan their estate and leave a meaningful legacy. We realize that clients entrust us with all their worldly wealth and ask us to make sure it's preserved, not only for their use but for generations to come.

We work to make a difference in our community – one family at a time, and we are passionate about helping families assure their peace of mind.

*Since 1993, I have helped thousands of people protect their families and their wealth. I have personally helped loved ones as they age, suffer through grave illnesses, and die. I am a husband and father and know the angst that clients experience when they think about the future of their family without them. I am legal guardian for my special needs brother.*

*I know firsthand the importance of good planning, and the disruption created by poor planning or no planning at all. I get deep personal fulfillment from helping people plan for these issues. That is why I do what I do.*

**Barry Zimmer**  
**Founder**  
**The Zimmer Law Firm**

## CONTACT US



**Zimmer Law Firm, LLC**  
**9825 Kenwood Road**  
**Suite 201**  
**Cincinnati, OH 45242**

**Phone 513.721.1513**  
**Fax 513.287.8623**  
**[www.zimmerlawfirm.com](http://www.zimmerlawfirm.com)**

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## INTRODUCTION

Incapacity planning is a broad area of law that covers how you are cared for if you become physically or mentally unable to care for yourself. The type of care could range from simple tasks like buying groceries, paying bills, and handling financial matters to more important decisions such as selling real estate or gifting assets to your children.

Within the realm of incapacity planning, there are also arrangements that deal specifically with decisions regarding steps taken to obtain Medicaid benefits. A Trust with “Medicaid triggers” comes into play by allowing your Agent to move forward with decisions that you would have handled yourself, if you were still legally competent to do so. The types of decisions required in this area of planning can vary. For instance, you may outline instructions for a nursing home stay or the repositioning of assets to allow you to qualify for Medicaid while preserving assets for the next generation if you are single, and while protecting your spouse’s financial independence.

When you determine that you want to move forward with this type of planning, it is necessary to work with a qualified estate planning attorney. This attorney will find the optimal solutions for you in the event of your legal incapacity (defined as the inability to manage your own affairs). Because there is a 50-50 chance that the average adult will spend at least one year in a long-term care facility, it becomes painfully clear this type of planning is not only extremely important, but requires immediate attention to ensure you and your family protect your assets.

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## AS WE AGE

Even with the knowledge that our life span is increasing, many of us will encounter chronic or debilitating illness in our final years. While these medical challenges can change our lives dramatically in the physical sense, they can also wreak havoc in our financial lives if we haven’t taken the appropriate measures to safeguard our wealth.

Nursing homes today can cost as much as \$81,000 per year or more, and a long-term stay can easily impoverish all but the wealthiest families. With proper planning, however, you can shelter assets and keep your family’s wealth intact. Keep in mind, that since there is no “one size fits all” solution, a careful analysis of your situation by a competent legal advisor is your best route for incapacity planning.

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## WHEN SHOULD YOU PLAN?

The question of when to begin incapacity planning is fairly easy to answer. Since we cannot be sure how soon, how late, or even if tragedy will strike, implementing the necessary changes as soon as possible brings peace of mind knowing that you are covered should you become legally incapacitated.

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## REASONS TO CREATE A FORMAL LEGAL PLAN

The reasons for incapacity planning are not vastly different than the ones behind creating a Will or a Living Trust. Let's review some of the general reasons why having a formal plan such as a Living Trust is so important. With a Living Trust, you can:

- Avoid the delay, time, cost and publicity of probate.
- Provide for a surviving spouse, other beneficiaries, or loved ones.
- Safeguard your children's inheritance from ex-spouses and creditors.

Ensure that "special needs" beneficiaries or loved ones who receive government benefits do not lose these benefits such as Medicaid, SSI and In-Home Supportive Services.

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## HOW IS INCAPACITY PLANNING DIFFERENT?

In the arena of incapacity planning, there are additional legal measures you can take to ensure your wishes are honored should you become legally incapacitated. This family of options includes the following:

- **A Healthcare Power of Attorney (HPOA)**—this type of POA outlines the specific medical decisions that you would like to see made in the event of your incapacity.
- **A Durable POA for Property**—this type of POA outlines what will happen with assets held outside your Living Trust upon incapacity.
- **Gifting Language**—special language that may be drafted and included with your Trust document and POA to outline your specific wishes.
- **Medicaid Triggers**—these "triggers" or events can put into motion the shift of assets out of the name of the person who is incapacitated.

With the appropriate incapacity language in place, you can effectively designate who will manage your affairs if you become incapacitated. Using legal tools such as a Revocable Living Trust, Durable Power of Attorney, and gifting or sheltering plans, you can set the stage to allow your spouse or your children to properly manage your assets should you need nursing home care and be unable to do these things for yourself.

The special language in a Trust with "Medicaid triggers" can give your Trustee the authority to handle certain types of planning, even though you—the person applying for Medicaid—are not capable of signing the necessary documents.

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## WHAT INCAPACITY PLANNING DOES NOT COVER

Now that you have a handle on the reasons to plan, and what planning can cover, it's important to know what your Trust with Medicaid triggers will not do for you. Your Trust will not establish your eligibility for Medicaid, or serve as long-term healthcare insurance. Establishing Medicaid eligibility and purchasing healthcare insurance are separate actions that require the execution of special forms unrelated to your Trust documents.

Additionally, Medicaid triggers will not guarantee your Medicaid qualification because eligibility and qualification are based on a number of financial variables and the type of illness you have. Whereas Medicaid triggers do not change the size of your estate, they can outline how assets could be restructured to help you qualify for Medicaid.

A fundamental advantage of having Medicaid triggers outlined in your Living Trust is the peace of mind that comes from knowing the proper steps to apply for Medicaid benefits will be carried out on your behalf, just as if you were competent. Should a person become incompetent before including Medicaid triggers in his or her Trust, it would likely mean these important steps would not occur, and this could signify a loss of potential Medicaid benefits. It's another reason to handle this matter now, while you are still managing your own affairs.

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## ESTABLISH A COMPLETE ESTATE PLAN WITH MEDICAID TRIGGERS

Regardless of how solid your health is today, there is no way to know what tomorrow brings. We invite you to take the time to discuss this important topic with us. Call our office today to schedule a meeting. In this meeting, we can address several issues including living probate and disability, Medicaid planning options, death probate and taxes.

With the proper plan in place, you can rest easy knowing that whatever the future holds, you have formally outlined your wishes and made the proper arrangements for you and your family.

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## ABOUT THE ACADEMY

This report reflects the opinion of the American Academy of Estate Planning Attorneys. It is based on our understanding of national trends and procedures, and is intended only as a simple overview of the basic estate planning issues. We recommend you do not base your own estate planning on the contents of this Academy Report alone. Review your estate planning goals with a qualified estate planning attorney.



The Academy is a national organization dedicated to promoting excellence in estate planning by providing its exclusive Membership of attorneys with up-to-date research on estate and tax planning, educational materials, and other important resources to empower them to provide superior estate planning services.

The Academy expects Members to have at least 36 hours of legal education each year specifically in estate, tax, probate and/or elder law subjects. To ensure this goal is met, the Academy provides over 40 hours of continuing legal education each year. The Academy has also been recognized as a consumer legal source by *Money Magazine*, *Consumer Reports Money Adviser* and Suze Orman in her book, *9 Steps to Financial Freedom*.

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## ADDITIONAL REPORTS

Request any reports of interest to you or your family. Simply call our office at 513.721.1513 or visit our website at **[www.zimmerlawfirm.com](http://www.zimmerlawfirm.com)**.

- A Child with Special Needs, Needs Special Planning
- A Family Guide to Ohio Medicaid Planning
- Aid & Attendance: Special Care Pensions Wartime Veterans
- Are Your Bank Accounts Safe? FDIC Insurance Can Cover You – with the Right Planning
- Asset Protection: Reducing Risk, Promoting Peace of Mind
- Beware of Living Trust Scare Tactics
- Charity Begins at Home: The Charitable Remainder Trust
- Creating a Lasting Legacy: The Best Things in Life Aren't Things
- Dangers of Do-It-Yourself Wills and Living Trusts
- Estate Planning Basics for Families with Young Children
- Estate Planning with Individual Retirement Accounts (IRAs)
- Family Farm: The Next Generation
- Family Wealth Trust: Calculating the Benefits
- Funeral Planning: Options for You and Your Family
- Getting the Most Out of Your Life Insurance: The Irrevocable Life Insurance Trust
- Grandparents' Guide to Second Generation Planning
- Keeping Up with the Ever-Changing Estate Tax
- Living Trusts Weighing the Benefits
- Paying for Nursing Home Care: A Guide to Medicaid Planning
- Peace of Mind: Planning for All of Life's Contingencies
- Planning It Right the Second Time Around
- Probate: A Process, Not a Problem
- Probate: An Executor's Role and Responsibilities
- Protecting Your Assets with the Family Limited Partnership
- Protecting Your Assets with the Limited Liability Company
- Should You Trust Your Estate Plan – Estate Plan Reviews Ensure Protection for Your Family and Assets
- Special Valuation Benefits for Farms and Other Business Real Property
- The Impact of Divorce on Your Estate Plan
- The Nightmare of Living Probate
- The Trouble with Joint Tenancy
- To My Dog Lucky I Leave \$10,000
- Trust Administration: Prior Planning Prevents Problems
- 23 Non-Tax Reasons to Make a Living Trust
- What Every Senior Should Know About Probate
- Where There's a Will, There's Probate
- Your Life, Your Final Say