

# A FAMILY GUIDE TO OHIO MEDICAID PLANNING



# PLANNING HOW IT WORKS, AND WHY YOU NEED A PLAN

COURTESY OF  
**ZIMMER LAW FIRM**  
9825 Kenwood Road, Suite 201  
Cincinnati, OH 45242  
513.721.1513  
[www.zimmerlawfirm.com](http://www.zimmerlawfirm.com)  
© 2019 Barry H. Zimmer All rights reserved



## ABOUT ZIMMER LAW FIRM

Zimmer Law Firm has served Greater Cincinnati families with comprehensive estate planning, estate settlement and elder law issues including Medicaid benefit pre-planning and crisis claims since 1993. 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 has held the designation of Academy Fellow since 2008 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 plan and provide care as they age, suffer through grave illnesses, and die. I am a husband, father, and provider, 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 both personally and professionally 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  
Zimmer Law Firm

## HOW TO CONTACT US

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

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



## INTRODUCTION

What is your greatest fear as you age? Studies and surveys on this question abound on the internet and in print media. A few fears commonly show up across the board. Among them are losing independence and outliving your money because of the cost of long term nursing care. According to the study Aging in Place in America, more people over the age of 65 are afraid of requiring long term nursing care in a facility than are afraid of death.

One of the problems with our fears is that so many of us choose to ignore them. Ignoring the possible need for nursing care means that you miss out on the valuable chance to plan ahead. Not only does planning ahead let you shape what your life might look like as you age, it also gives you choices about how you will pay for nursing care or assisted living.

Planning ahead gives you time to find alternatives. If you want to preserve any of your hard-earned assets to provide you with the best quality of life as you age so that you are not a burden on your family, or so that you can leave a legacy to your loved ones, then planning is the key. Without a plan there may be no choices and costly consequences. If, on the other hand, you accept the risk that you may spend all your estate to pay for nursing care, then you can skip asset protection planning altogether.

One of the most-used alternatives to pay for nursing care is Medicaid. Medicaid is there to help families. There are many complexities to Medicaid eligibility and planning. Therefore, planning is the best way to ensure that you can receive the benefits the law provides and receive needed care while protecting as much of your hard-earned assets as the law allows.

While many Americans go broke or almost broke from nursing care costs before they get help through the Medicaid program, that is a voluntary situation and not one required by law. The law allows ways to protect some assets in many situations. But doing so means being proactive. The government will not tell you what to do.

The first step in Medicaid planning is education. The more you know about how Medicaid works, the better you will be able to take advantage of government benefits and the opportunities the law provides.

This guide will give you a basic overview of Medicaid rules and help you understand some of your planning options. It is intended to help prepare you for a meeting with a qualified Elder Law attorney and explain generally how the Ohio Medicaid rules may apply to you. An Elder Law attorney can also help you design a plan that will allow you to retain as much of your assets as possible while applying for long-term nursing care Medicaid benefits.

It is never too late to qualify for Medicaid. However, the earlier you begin to plan, the easier it is to make the most of the safe harbor provisions...and the more likely you will be to keep all or most of your assets, rather than making unnecessary nursing home payments.<sup>1</sup>

---

<sup>1</sup> The information in this Report is current as of March 2019.

---

## WHAT IS MEDICAID?

The topic of this report is nursing care Medicaid. That is a joint federal-state program that pays certain healthcare and nursing care costs. The program is needs-based, meaning that it is available to those who meet certain financial criteria, including income and asset limits. It pays for costs of living in a nursing facility and in some states (including Ohio) for care in your home. The federal government helps to fund the program, and it establishes the program's guidelines. Each state receives varying amounts of matching funds and grants from the federal government, and each state is allowed by federal law to interpret and enforce the Medicaid eligibility guidelines within reason.

With each state empowered to enforce Medicaid guidelines according to its own interpretation, the actual rules for qualifying for Medicaid can vary significantly from state to state. There are even differences from county to county in the same state. People tend to confuse Medicare and Medicaid, but the two programs are not the same.

---

## MEDICARE

Medicare is federally funded health insurance designed for people 65 and older or on Social Security Disability for over two years. The coverage available through the program is divided into four categories, called "parts":

**Part A** is hospital coverage. It helps pay for the cost of inpatient care in a hospital or skilled nursing facility with a limit of 100 days. It also provides some coverage for home health care, as well as hospice care.

**Part B** is medical coverage. It helps pay for medical services other than hospital stays, such as doctor's visits, outpatient care, certain types of medical equipment, and home health care.

**Part C** is also known as Medicare Advantage. Under Medicare Advantage, recipients of Medicare can choose to take their Medicare benefits through private health insurance plans, rather than through Medicare Parts A and B.

**Part D** is prescription drug coverage. It helps to defray the cost of prescription medications.

While Medicare covers many healthcare expenses, it does not provide complete coverage. For instance, many people are surprised to discover that the program's coverage for long-term care is extremely limited. It will pay up to 20 days after a hospitalization of at least three days, and then up to another 80 days under certain circumstances with a co-pay of \$161 per day in 2016.

---

## WHO NEEDS MEDICAID?

The goal of the Medicaid nursing care program is to provide health care coverage and help with nursing care for people with limited income and assets.

Because Medicaid offers more comprehensive long-term nursing care coverage than the Medicare program, and because long-term care costs are so high, many seniors rely on Medicaid to pay for their

care. Sometimes this is because of a lack of planning and, as a result, Medicaid benefits kick in when they run out of money. Other times it is because families simply do not have enough resources or income to pay for their cost of care in the first place. The saddest cases are where families would have liked to protect some wealth but were ignorant of the law or took actions based on inaccurate information or beliefs, and lost the opportunity to get benefits without going broke first.

A common misconception about Medicaid is that you have to impoverish yourself and your family completely before you can qualify for nursing care benefits. This is simply not true. Medicaid guidelines allow you to keep certain assets and they allow your spouse who does not need nursing home care to retain his or her income. Also built into the Medicaid guidelines are “safe harbor” provisions that allow you to plan ahead so that you can protect at least a portion of your assets and still qualify for long-term care coverage through Medicaid. The safe harbor provisions (known as “exemptions”) mean that the healthy spouse, known as the “Community Spouse,” does not have to go totally broke before the government will help. But these exemptions are not automatic, and neither the state nor the federal government will tell you how to take advantage of them or shelter any assets. That is up to you, and the rules are complex and frequently changing.

---

## HOW DO THE MEDICAID RULES WORK?

Medicaid has a reputation for being complicated and difficult to qualify for. There are a few reasons for this. First, because each state decides how it will apply and enforce federal Medicaid eligibility guidelines, the details of eligibility vary from state to state. Second, Medicaid guidelines tend to change frequently. Third, each person’s circumstances are different. The way the Medicaid guidelines are applied to your neighbor or to your brother-in-law may not be true for your situation. This is why Estate Planning and Elder Law attorneys do not recommend a do-it-yourself approach to Medicaid planning. That is also why it is critical not to take advice from anyone who is not a qualified and experienced Elder Law attorney.

### Income and Assets

When it comes to Medicaid planning for long-term care, eligibility depends on a handful of factors. After you have demonstrated that you medically are in need of nursing care, two things matter: your income and your assets.

#### ***Countable Assets vs. Exempt Assets***

Viewed through the lens of Medicaid requirements, each of your assets falls into one of two categories: either *countable* or *exempt*.

Countable assets are those assets that you own or control and that have a value that can be realized in cash to be used for your cost of care. It also includes what you gave away as gifts, or in the Medicaid lingo what are called “uncompensated transfers” – within five years of applying for Medicaid. The value of your countable resources is tallied and compared to Medicaid asset limits for purposes of determining eligibility. Exempt assets are those whose values are not looked at for purposes of determining Medicaid eligibility because the law specifically says they are not to be counted as available resources.

Because the list of exempt assets is short, the best definition of a countable asset is an asset that is not on the list of exempt assets.



Exempt assets include:

- Your home, up to certain equity limits (\$585,000 in Ohio for 2019)
- Personal belongings such as clothing, jewelry, furniture and other household items
- One motor vehicle, as long as it is used as transportation for you or a member of your household
- Certain prepaid funeral plans for the Medicaid recipient, spouse, and children (restrictions apply)
- Life insurance policies up to a certain limit
- Certain assets that are considered “inaccessible”
- If you are married and your spouse’s total income does not reach the statutory minimum, certain other assets may be deemed exempt in order to raise your spouse’s total income up to the minimum. Also, other assets may be allocated to the Community Spouse from the ill spouse needed to raise the Community Spouse’s income to the statutory minimum.
- A home owned with a sibling under certain circumstances

### ***Asset Limits***

With very few exceptions, everything you own that is not identified as an exempt asset is included when your assets are totaled for purposes of determining your (or your spouse’s) Medicaid eligibility. This includes:

- Cash
- Checking and savings accounts
- Stocks and bonds
- Mutual funds
- Certain trusts, including Revocable Living Trusts
- Certain real estate
- Certificates of deposit
- Motor vehicles (other than your primary vehicle) and boats
- Most other assets

The total value of countable assets you are permitted to have as a Medicaid nursing home recipient varies from state to state, and it changes each year based on inflation and other factors. Currently, to qualify for Medicaid in Ohio, a Medicaid applicant may have no more than \$2,000 in countable assets. In Ohio, if you are married, your spouse who does not live in a nursing home (the “Community Spouse”) can generally keep half of the couple’s combined assets up to a maximum of \$126,420, but not less than \$25,284, for 2019. These amounts change from year to year, state by state.

### ***Income Limits***

Medicaid also applies income limits to nursing home residents and their spouses. Currently, nursing home residents are permitted to have up to \$50 per month in income. If your income exceeds the maximum, the excess is paid to the nursing home as a contribution toward the cost of your care (called “Patient Liability”).

If you are married, your spouse is allowed to keep all of his or her income, and certain other exceptions may apply. If you are the main breadwinner and your spouse does not have enough income to live on, he or she is entitled to a *Minimum Monthly Maintenance Needs Allowance*

(*MMMNA*). The *MMMNA* is calculated using a complicated formula, and ranges from \$2,114.00 to \$3,160.50 in 2019. If your spouse's income does not reach the *MMMNA*, then instead of being paid to the nursing home, some of your income in excess of your monthly income allowance can be allocated your spouse in the amount required to boost his or her income to the monthly minimum.

For example, assume Mary and Joe are a married couple. Joe is in a nursing home and Mary is the at-home spouse. Mary's *MMMNA* was set at \$2,100 in 2018 when Mary applied for Medicaid, but she only receives \$1,000 per month in Social Security. Here is what happens to Joe's \$1,800 in Social Security income under the Medicaid rules:

\$ 1,800	Joe's Social Security Income
- 50	To Joe, for his Personal Needs Allowance
<u>- 1,100</u>	To Mary (to allow her to reach <i>MMMNA</i> )
\$ 650	Paid to Nursing Home

Under current rules that became effective in 2016, if your income is too high you will be ineligible for Medicaid, and current Medicaid recipients will become ineligible. To become eligible, Medicaid applicants will need to create a special trust to which their income will be paid. The Trustee then pays back to the Medicaid recipient what you are permitted to keep and pays the balance towards the nursing home cost of care. Or the individual can just pay the excess income to the trust. This type of trust is technically known as a Qualified Income Trust, or a Miller Trust. It must include among other things a provision that pays to the Ohio Jobs and Family Services Department any assets held in the trust when the Medicaid recipient dies, up to the amount the state paid out.

## WHY IS MEDICAID PLANNING IMPORTANT?

What happens if the time comes for nursing care and you have more resources than the Medicaid limits? For too many people, the answer is to enter the nursing home or have at-home care and pay the expenses out of pocket each month until they have spent enough assets to qualify for coverage. Or in other words, until they have spent so much of their estate that what they have left falls at or below the state limits (\$2,000 for unmarried persons, \$3,000.00 for married couples or between \$25,284.00 and \$126,420.00 for a married couple plus the house if there is a Community Spouse, in 2019).

With monthly nursing home bills averaging just under \$91,000 annually in Ohio for semi-private rooms, or just under \$106,000 per year for a private room (2017 Genworth Financial Services study), it is easy to understand how residents can go through their life savings in a matter of months, rather than years, and then rely on Medicaid to take care of them. There are a few problems with this approach.

First, Medicaid pays for a semi-private room in a facility. That is a euphemism for having a roommate. While having a roommate may seem cool when you are in college or just getting started in life, no one wants to be forced to share a room with a stranger in the senior years. Yet that is what happens to a Medicaid recipient unless there is protected money to pay for a private room.

Second, as discussed, Medicaid recipients can only keep \$50 a month from their income. That will not go far to provide a good quality of life in the nursing facility. For example, that will not allow for outings, concerts, movies, hobbies, nice clothes, hair styling and manicures for ladies, and so on, including anything to provide entertainment and recreation. Medicaid recipients often must rely on others to pay for such things.



Third, Medicaid allows you to keep only \$2,000 of resources, or \$3,000 for a married couple who are both receiving Medicaid. That's not much to make sure you have "things" to make your life as comfortable and meaningful as possible.

Last, spending your assets in this manner leaves your loved ones with no financial legacy. Wouldn't it be a shame to let a lifetime of savings go to nursing care costs, leaving your family without a safety net in the event they are faced with their own crisis in the future, when the law does not require this to happen?

As discussed, there is often no need to spend all or even most of your assets on nursing home care before you can qualify for Medicaid coverage. The Medicaid guidelines have built-in "safe harbor" provisions and opportunities that allow you to plan ahead and protect your assets.

However, because the rules are complicated, many people do not seek expert help and end up making one of two mistakes: they either spend more than they should, or they run afoul of the rules and subject themselves to harsh penalties.

All too often, people do not even know what they do not know. Worse yet is those who think they know the system and act on misinformation. The famous author Mark Twain stated this very well when he said, "It ain't what you don't know that gets you into trouble. It's what you know for sure that just ain't so."

### **Why Not Just Give Away Your Assets? The Look-Back Period**

Some people mistakenly believe that they can simply give some or all of their assets to their children or other relatives in order to qualify for Medicaid. The truth is, part of Medicaid planning may involve giving away some of your assets. However, this has to be done with extreme caution and should only be done with the advice of an experienced attorney. If you give away your assets at the wrong time or use the wrong method, you can face tough penalties.

In 2006, the federal government passed a law called the Deficit Reduction Act (DRA). As a result of this law, it is harder to qualify for Medicaid than before. One of the tough provisions of the DRA is the five-year "look-back period."

This provision imposes a penalty, tied to your state's average cost of nursing home care, to certain transfers made within the five years before you apply for Medicaid coverage.

In general, in 2019 every \$6,570 worth of assets that you give away within 60 months of applying for Medicaid (the "look-back period") will make you ineligible for benefits for one month under Ohio law.

This 60 month look-back period is how the government monitors those who may want to game the system and give their estate to their heirs while they are still alive so that they can get Medicaid. The government enforces the rule by requiring applicants to produce five years of financial records and income tax returns. They scour those records for signs of any transfers of assets without value received in return.

Does this mean that you must *always* wait 60 months to get Medicaid if you give your assets away? The fact is that Medicaid planning often involves asset transfers. But the transfers must be done with great care and in certain manners to avoid being considered improper transfers. Think of the 60 month look-back period like a box and in that box holds records of the last 60 months of your financial life. It is what Medicaid sees in that box that affects your eligibility. What happened before the 60-month period is not in that box. If you make the proper planning decisions, you may qualify sooner than 60 months, perhaps even immediately, even if the "box" contains information that might make you ineligible for Medicaid if you did not have a good plan.

There are some important exceptions to the countability of transferred assets in the look-back period that can make a big difference. For example, you can make transfers to a spouse, a blind or disabled child, certain types of trusts, or an adult caregiver child living in the home, without affecting Medicaid eligibility. Because the rules are strict and the penalties are harsh, you should rely on the advice of an experienced Elder Law attorney before you attempt to give away any assets.

### Why Not Just Give Away \$15,000 Per Year?

A common myth about Medicaid eligibility is that people can give away up to \$15,000 per year to get qualified for coverage. This myth stems from confusion between tax law and Medicaid law. Under federal gift tax law, you are permitted to give away up to \$15,000 annually, per recipient, to an unlimited number of recipients without the need to file a gift tax return or pay a gift tax. (The amount of annual gifts in excess of the annual gift exclusion reduces the \$11.2 million exemption for gift tax and estate tax dollar for dollar. Thus, making a taxable gift does not mean paying a gift tax liability, because the taxable gift may be exempt under the \$11.2 million lifetime exemption from gift and estate taxes.) While gifting certain assets can be part of Medicaid pre-planning, gift tax rules do not apply to the Medicaid program. In other words, Medicaid applicants do not enjoy an absolute, penalty-free right to give away any amount of property, no matter how small. Just because a small gift will not cause a gift tax does not mean it will not be an improper transfer in the eyes of the Medicaid agency.

### When Should You Plan?

It is never too late to get help with Medicaid planning, even if you or your loved one is in a nursing home. However, the sooner you begin to plan, the better. Estate Planning and Elder Law attorneys divide Medicaid planning into two categories based on how far in advance it is started. These categories are *crisis planning* and *pre-need planning*.

---

## CRISIS MEDICAID PLANNING

Crisis planning is for people who are facing an imminent need for long-term care. Sometimes, this is because they have experienced a health crisis and, while they are in the hospital or a rehabilitation center, their doctor has told them that they will not be able to return home. Sometimes, they are already in a long-term residential facility, such as a nursing home, or they are paying for in-home care.

Whatever the reason, many people find themselves suddenly facing the possibility of using their life savings to pay for care. As discussed, at today's cost of nursing care averaging over \$91,000 to \$106,000 a year in Ohio (median figures), a lifetime's worth of savings could disappear in a few short years, if not a matter of months. And remember what "median" means. Some costs are higher and some are lower. It is not unusual to pay \$10,000 a month or more for a high level of nursing care, in the nicest facilities.

Often, people in this type of crisis situation find themselves unable to qualify for Medicaid because their assets exceed the qualification limits – they own too much. The biggest mistake many people make is to assume that it's too late to seek help and engage in Medicaid planning. They think their only option is to pay out of pocket for care until they've depleted their assets enough to qualify for coverage.

The truth is, even if you or your spouse are in a nursing home, you can still get help from an experienced Elder Law attorney and put together a crisis plan. Remember the discussion of *countable*

and *exempt* assets? One type of crisis planning focuses on shifting assets from the countable column to the exempt column. For instance, your attorney might advise you to:

- Replace your car (or purchase one, if you do not already own one)
- Buy a prepaid funeral plan(s)
- Make certain improvements to your home
- Prepay estimated income or capital gains taxes
- Buy furniture for your home

Depending on your circumstances, your attorney might also advise you to take other steps, such as pay off certain debts, buy a “Medicaid-qualified” annuity, or enter into a life care contract under which you pay one of your children for providing you with care giving services.

There may be certain circumstances in your family that open the door to other more valuable opportunities to protect resources from being countable. An Elder Law attorney will know the right questions to ask and what to look for.

All of these strategies serve a common purpose: they protect your savings and preserve it so that it benefits you and your loved ones. At the same time, these strategies allow you to play by Medicaid rules to change the way the Medicaid program views your financial situation, allowing you to qualify for coverage without depleting all of your assets.

### **Disadvantages of Crisis Medicaid Planning**

Crisis planning can be an incredible help to those facing an immediate need for Medicaid benefits. However, it has its disadvantages. Because of the intensive nature of legal work involved, this type of planning tends to be more expensive than pre-need planning. It also tends to be more stressful for you and your family, because it takes place during a time in your lives that is already marked by illness and difficult transitions. Finally, because crisis planning prevents you from taking advantage of the five-year look-back period, it may limit the amount of assets you are able to preserve.

---

## **PRE-NEED MEDICAID PLANNING**

The best way to plan for long-term care is to do so well before the need arises. Elder Law attorneys call this pre-need Medicaid planning, and it gives you the most options for preserving your assets.

In fact, some people who engage in pre-need planning find that they can buy long-term care insurance and limit, or even avoid, their need for Medicaid coverage. However, long-term care insurance is not an option for everyone. Some people have medical conditions that prevent them from qualifying for coverage. Others find that the premiums are too expensive.

Pre-need Medicaid planning that begins early enough allows you to take advantage of the five-year look-back period. This means that, in addition to the crisis planning strategies detailed above, you may be able to gift property or establish an Irrevocable Medicaid Trust. These additional strategies not only allow you to preserve your assets and avoid using them to pay for nursing home care in the short-term, they can also protect your property from Medicaid liens and from recovery claims by the State after your death.

## Gifts

Generally speaking, gifts to people other than your spouse trigger a transfer penalty if they occur within the five years before you apply for Medicaid. Planning more than five years in advance eliminates the worry about transfer penalties, so under some circumstances, it makes sense to give certain assets to your children or other loved ones as part of a Medicaid plan.

The problem with gifting assets in this way is that once you give away your property, it is gone. You have no way to control what happens to your assets, and even under the best of circumstances, your loved one can lose them.

For example, imagine you are currently healthy, but you have a family history of Alzheimer's disease. Anticipating the need for nursing home care in the future, you decide to plan in advance and give a large portion of your savings to your adult son, who has a stable job and has always been very responsible. After all, you want him to have this money eventually. Also you are confident that he will return money to you if you need it, for whatever reason.

The problem with this approach is that even if your son is very cautious, the money is not as safe as it could be. What would happen if he lost his job and lost the ability to pay his debts, or was sued through no fault of his own? His creditors could sue him and gain access to the money you gave him. What if he gets divorced and the Domestic Relations Court awards his ex-spouse half of what you gave him? What if he is forced to file bankruptcy? Your money would be considered his money and would be lost to pay his creditors.

There are other risks. If your son dies, then what happens to the money? If he becomes incapacitated, then your assets would be countable resources against him and he may have to spend your money to pay for his care, making that money unavailable to you.

There are tax disadvantages to giving the money away like that. In short, lifetime outright gifting means that the donees of the gifts will have to pay capital gains taxes on the appreciation in the value of stocks, mutual funds, bonds and real estate that you bought, when they want to sell them.

Often, Estate Planning and Elder Law attorneys recommend a more secure solution that avoids these risks: one of three types of Irrevocable Trusts.

## Trust Planning

Trusts can be an effective Medicaid planning tool. However, in order to be effective for Medicaid purposes, a trust must conform to strict rules.

For example, only an Irrevocable Trust – one that you cannot change after it is created – meets Medicaid guidelines. This means that a Revocable Living Trust (the kind many people use for probate avoidance purposes) is not an effective Medicaid planning strategy.

Further, not all Irrevocable Trusts work as Medicaid planning tools. For example, if you establish an Irrevocable Trust that allows payments of trust principal to you or your spouse, then the assets in that trust are treated as countable assets under Medicaid rules.

The best way to make sure a trust is effective as a Medicaid planning tool is to work closely with an experienced Estate Planning and Elder Law attorney.

Like gifts, many assets transferred to an Irrevocable Medicaid Trust are subject to the five-year look-back rule. Therefore, this planning strategy is generally best for people who can plan as far in advance as possible.

For those who are in a position to take advantage of an Irrevocable Medicaid Trust, the arrangement offers a number of benefits:

- Once the five-year look-back period expires after transferring assets to the trust, whatever is held in the trust will not be countable resources. Those assets are protected for your possible use and for your family one day. This will allow you to qualify for Medicaid benefits when the time comes.
- Allows you to control and change who has access to your money while you are living.
- Allows you to ensure your assets are protected and preserved for your chosen beneficiaries at your death, and to change those decisions if you wish.
- Allows you and your spouse to use the trust income to supplement your living expenses, if necessary.
- Protects against the risks to your assets that would threaten them if transferred directly to your children.
- Preserves the same income tax savings for inherited stocks, bonds, mutual funds, and real estate that you would have at your death if you still owned the assets outright.

Even though you cannot direct the withdrawal of money from the irrevocable trust to yourself personally, you can have access to your money if needed through an indirect process. That is, the Trustee (who can be you in many cases) makes distributions to one or more of those people you name in the Trust Agreement as permissible recipients of money or assets from the trust during your lifetime. They can then give money to you personally from their own personal accounts.

## Estate Recovery

Another advantage of an Irrevocable Medicaid Trust is that it can help protect your home from a state and federal policy known as estate recovery.

Under federal law, after a Medicaid recipient dies, the state is required to recover whatever benefits it paid for that person's care from the recipient's estate. However, the state cannot try to recover any benefits if the recipient leaves behind any of the following:

- a living spouse
- a blind or disabled child
- a child under the age of 21

Because of the way Medicaid eligibility rules work, most recipients die leaving their home as their most valuable asset. Therefore, most estate recovery efforts focus on recipients' homes.

In Ohio as of the writing of this report, the surviving spouse of a deceased Medicaid recipient can protect the house or the value of the house from estate recovery with careful planning. The spouse may also protect the house or its value in case of his or her own incapacitation with careful planning, often using an Irrevocable Trust. The Community Spouse can transfer other exempt or non-



countable resources to an Irrevocable Trust as well in order to plan for his or her own incapacitation and possible Medicaid application. This is a very complex topic and professional guidance in planning is important to avoid the “land mines”.

---

## **AVOID COMMON MISTAKES**

Asset protection planning for nursing care costs requires understanding of state and federal Medicaid law, the law of trusts, property law, and other aspects of law. The rules often change based on law changes or court or agency rulings. This is an area of law where those who act without help from an Elder Law attorney are more likely to get it wrong than right.

Little mistakes can have grave and irreversible consequences, even when done innocently and without the intent to violate the rules. Common mistakes include making outright gifts of assets before filing for Medicaid, putting accounts or real estate in joint names with someone other than the recipient’s spouse, filing an application too soon, filing for Medicaid when you have too much resources or income, waiting too long to get help, not having a detailed Power of Attorney with specialized provisions for Medicaid planning that is made after the 2012 law change, and having inappropriately drafted trusts.

Another common mistake is assuming that nursing facilities or hospitals are a good source of information. Even if they were to offer to file a Medicaid application for you, they have no obligation (and often are unable) to advise you on how best to protect your assets.

If you are healthy and not in a crisis situation, then you should look into long term care nursing insurance. An annual premium for quality policies for a married couple is usually less expensive than just one month of nursing home care for one spouse. Insurance is often the best way to achieve the commonly expressed goal of aging in the home, not in a facility. Plus, Ohio offers a substantial incentive to residents to plan for their care with insurance. Under the Ohio Partnership for Long-Term Care Insurance Program, once a resident with a certain type of nursing insurance policy expends all policy benefits, he or she can keep personal assets when applying for Medicaid equal to the total amount of nursing care costs the policy paid.

---

## **ADDITIONAL HELP FOR VETERANS AND THEIR SPOUSES**

Many people who enter nursing homes or get nursing care at home are war-time veterans or living or surviving spouses of war-time veterans. They may have valuable benefits in addition to Medicaid available even before they can be Medicaid eligible.

The improved pension benefit for veterans and their spouses that helps pay for nursing care expenses is known as Aid and Attendance. This topic is outside the scope of this report, but is mentioned because the same tools and often the same techniques for Medicaid planning can also work to qualify for the VA benefit. Contact Zimmer Law Firm for a report on this topic or visit the Firm’s website.



## WHERE CAN YOU GO FOR HELP?

As you can see, the legal and financial issues that surround Medicaid eligibility and planning can be particularly complex and difficult to untangle. Many people find it obvious that they need help navigating all the guidelines, rules, and exceptions to the rules.

How do you know where to go for help? Medicaid planning falls under the category of Estate and Elder Law planning. Attorneys who focus their practice in these areas help their clients with a variety of issues including estate and tax planning, disability planning, and finding and paying for quality long-term care.

Before you settle on an attorney, it is important that you do some legwork. Be careful to investigate the attorney's background and credentials, and make sure you choose a lawyer with plenty of experience – not just in the general practice of law or general estate planning, but with Medicaid planning in particular.

Start by checking with friends, family members, and colleagues. Have they used a Medicaid planning attorney? Were they pleased with the services they received?

Check with [www.AVVO.com](http://www.AVVO.com), an online source for reviews of lawyers and assistance in locating a lawyer in your community who works in specific areas of law.

When the time comes to meet with an attorney, do not be afraid to ask lots of questions. Find out how long the attorney has practiced law. Ask what percentage of the firm's practice involves Medicaid planning. Ask questions that will give you an idea of the lawyer's experience. For example:

- How much of the lawyer's practice is devoted to Elder Law and Estate Planning?
- Is he or she a member of any Elder Law organizations?
- What about bar organization committees that focus on Elder Law or Medicaid issues?
- Is the lawyer knowledgeable and qualified to help with the VA Aid and Attendance benefit?
- What does he or she do to keep up with developments in Medicaid law and to stay educated on planning techniques?
- How many families has the lawyer helped?
- Has he or she written articles on the topic?

While an attorney can be knowledgeable about Medicaid planning without engaging in any of these activities, participation in such activities is a clue that the attorney is focused on Medicaid planning and may be considered knowledgeable by others in the field.

A final tip: While you are interviewing an attorney, do not just pay attention to the answers he or she gives you; pay attention to *how* he or she answers your questions. Does the attorney listen carefully and courteously, and give you complete answers in language you can understand? Or does he or she cut you off, talk over you, or talk in legalese?

Remember, this is someone you will be trusting to guide you through some pretty complex areas of law – you should be comfortable talking to each other.

## WHEN TO BEGIN YOUR PLANNING

There's no way to know what tomorrow will bring. That's why, when it comes to Medicaid planning, there's no time like the present.

The first step is simple: Do not act on your own. The concepts and recommendations in this report are for education only. Find a trusted attorney to guide you – one with proven experience in Estate Planning and Elder Law. From there, he or she can help you navigate the rules and make sure you have the best possible plan in place.

---

## 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 other consumer publications.