



It's Not Too Late: Delaware Medicaid Planning for Long-Term Care

When a loved one needs extra care at home, or when a health crisis makes moving to a nursing facility the safest choice, most families don't have a financial plan to pay for it. Almost immediately, a familiar worry sets in: Can we afford this? Will we have to spend everything before we qualify for help?

If that's where you are right now, here's the most important thing to know: even in the middle of a crisis, meaningful planning is often still possible. You don't have to have started five years ago. You don't have to have a trust already in place. And you don't have to drain your savings before getting help.

Delaware families navigate this situation every day, and with the right guidance, many are able to protect significant assets, qualify for Medicaid Long-Term Care benefits, and get care started without first spending down everything they have worked so hard to build.

A Word About Medicaid Long-Term Care

Many people carry assumptions about Medicaid that aren't true, and those assumptions can get in the way of making good decisions for your family.

Medicaid Long-Term Care is not just for people with no money or no options. It is a benefit that Delaware families use every day to get quality care for a parent, a spouse, or themselves. Qualifying for this benefit does not mean settling for poor care or being sent somewhere far from home. Many of Delaware's nursing facilities and in-home care agencies accept Medicaid Long Term Care.

In-home care and nursing facility care are both real options under the Delaware program, and the planning process for both has a lot in common. Whether your family is exploring help at home or considering a move to a care facility, the strategies we use to protect assets and establish benefits apply broadly to both situations.

The goal of planning is to make sure your family receives the full benefit of programs that exist for exactly this purpose, without spending more on care than is required.

What Is "Last-Minute" Medicaid Planning?

Elder law attorneys call it crisis asset protection planning. It is the work that happens when someone needs care now, or very soon.

The goal is twofold: help a person qualify for Delaware's Medicaid Long-Term Care benefits as quickly as possible, while also protecting as many assets as the law allows. Those preserved assets might support a spouse who remains at home, provide a cushion for the family, or simply allow you to pay for extras that Medicaid does not cover.

UNDERSTANDING THE LOOKBACK PERIOD MAKES IT MANAGEABLE. IT'S A RELEVANT PUZZLE PIECE, NOT A BARRIER, THAT HELPS SHAPE HOW PLANNING MUST BE DONE.

Most people are surprised to learn this is possible. They've heard that Medicaid requires you to spend down everything first, or that the five-year lookback period closes the door on planning. Neither of those things is quite right, and understanding why can change everything.

The "Spend Everything First" Myth

One of the most common and harmful ideas in long-term care planning is that qualifying for Medicaid means spending down every last dollar on care until nothing is left.

In reality, Medicaid Long-Term Care eligibility is based on

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how your assets are categorized and set up, not simply on how much you have. Some assets are not counted at all. Others can be lawfully restructured in ways that reduce what Medicaid counts, while still preserving real value for your family.

For married couples, Delaware Medicaid Long-Term Care has specific rules designed to keep the spouse who stays at home from losing everything. That spouse is allowed to keep a portion of the couple's assets, and with careful planning, that amount can often be significantly increased.

Even for people who are not married, thoughtful planning can often protect a meaningful share of assets. Those funds can later help pay for things Medicaid does not cover, whether that means additional in-home help, personal items, or other needs that come up over time.

What About the Five-Year Lookback?

The Medicaid Long-Term Care lookback period is real and it matters, but it is widely misunderstood. In Delaware, when someone applies for these benefits, the state reviews financial transactions from the prior five years. If money was given away or transferred during that time, there may be a waiting period before Medicaid begins paying for care.

Here is what the lookback does not do: it does not permanently disqualify anyone. It does not make planning impossible. And it does not mean that waiting until money runs out is the smarter move.

In fact, the opposite is usually true. Families who speak with an elder law attorney promptly, even when prior gifts have been made and even when care is needed right away, typically have far more choices than those who wait until savings are nearly gone.

Understanding the lookback period makes it manageable. It's a relevant puzzle piece, not a barrier, that helps shape how planning must be done.

What Does Crisis Planning Actually Look Like?

Every family's situation is different. The right approach depends on many things: what assets you have, whether you are married, whether any money was given away recently, how quickly care is needed, and whether care will be at home or in a facility. This is exactly why Medicaid

Long-Term Care planning is not something to try to figure out on your own.

What we can share is what the process generally tries to accomplish. We work to identify which assets Medicaid counts and which it does not. We look for lawful ways to restructure what is counted so less needs to be spent. We focus on protecting the financial stability of a spouse at home. We account for any past gifts or transfers and plan around any waiting period they may create. And we work to get Medicaid benefits in place as quickly as possible so care can begin, whether that care is in the home or in a nursing facility.

When planning is done well, the result is often a protected financial reserve that makes a real difference, not just in dollars, but in flexibility, peace of mind, and quality of life.

Why Acting Sooner Makes a Difference

One thing holds true across almost every planning situation: families who act sooner have more choices. The longer a family waits, continuing to pay out of pocket for care, assuming there is nothing left to do, or hoping things will resolve on their own, the fewer good options remain.

Asset protection works best when there are still assets to protect. Getting advice at the start of a care need, rather than after months of private payments, can make a tremendous difference in what your family is able to keep.

Reaching out early is not jumping the gun. It is often the single most valuable step a family can take.



LEGAL MUMBO JUMBO

Legal Language in Layman's Terms

COMMUNITY SPOUSE RESOURCE ALLOWANCE

When one spouse needs care and applies for Medicaid Long-Term Care benefits, the other spouse doesn't have to be left with nothing. Delaware law sets a limit on how much the community spouse is required to spend before Medicaid steps in, and it also guarantees that spouse a minimum amount to keep. It exists because Medicaid was never intended to leave a healthy spouse without financial resources just because their partner needs care.

TIME OUT — STAFF PROFILE

Kally M. Bennett - Estate Planning Coordinator



ON THE CLOCK: Kally is a Sussex County native with a natural gift for connecting with people. In college, she moderated campus debates, honing her ability to listen carefully and navigate different perspectives with grace. She spent nearly a decade in the restaurant industry before joining our team, and anyone

who's worked in restaurants knows it's where you learn to stay calm under pressure and make everyone feel welcome. Kally brings that same warmth and attentiveness to our clients.

OFF THE CLOCK: When not at work, you'll most likely find Kally curled up on the couch with Xena, her spoiled Rottweiler pup who has strong opinions about treat schedules and couch privileges. Add in a good book, a puzzle in progress, and a sweet treat, and that's her happy place. Kally loves spending time with family and planning her next travel adventure, but there's nothing quite like a cozy evening at home with her dog.

UPCOMING EVENTS

- 26 Apr CARES: Member Appreciation
2:00 p.m.
Salisbury, MD
- 21 May Estate Planning & Elder Law Workshop
5:00 p.m.
Selbyville Public Library
- 29 May Virtual Dementia Tour
9:00 a.m. - 4:00 p.m.
Lewes Office - Registration Required
- 5 Jun Virtual Dementia Tour
9:00 a.m. - 4:00 p.m.
Seaford Office - Registration Required

For more information, visit:
pwwlaw.com/events-resources

BELLA'S BRIEF

The Office from a Dog's Perspective



Spring training is in full swing, and I've been thinking about what makes a winning team. It's not just about having the best pitcher or the guy who can hit it out of the park, though those things help. It's about everyone showing up, knowing their position, and trusting that the person next to them has their back. It's about the whole lineup working together, from the starting rotation to the bench players who are ready when called.

I'll admit, I was a little salty when the whole crew packed up and headed to Woodloch without me. Apparently, celebrating last year's wins required some kind of team retreat that didn't include the office mascot. Rude. But here's what I noticed when they got back: they came in energized, reconnected, and ready to chase down this year's goals like they were running the bases. That's what happens when you take time to acknowledge the scoreboard, celebrate the victories, and remind everyone why they're suiting up every day.

That's the thing about a great team: success isn't a destination, it's a rhythm. You celebrate the wins, learn from the strikeouts, and keep your eye on the ball. This crew isn't just playing the game; they're changing how it's played. Setting the pace. Building something that lasts longer than any single season.

So here's to the whole lineup: the rookies and the veterans, the closers and the utility players. Here's to showing up, swinging hard, and remembering that the best teams aren't just talented. They're loyal, they work together, and they genuinely like being in the dugout together.

Now if you'll excuse me, I need to go supervise the post-lunch nap rotation. Someone's got to make sure we're all in peak performance mode.

P.S. If your estate planning team doesn't feel like a championship roster, maybe it's time to switch leagues. We're always looking for MVPs who want to join a winning franchise.

xoxo, BELLA



WHAT YOUR ADVISORS MAY NOT KNOW - *AND WHY IT MATTERS FOR YOUR IRREVOCABLE ASSET PROTECTION TRUST*

For many families, creating an Irrevocable Asset Protection Trust (APT) is one of the most important estate planning decisions they will ever make. It is a legal tool designed to protect savings from the devastating costs of long-term care, while preserving a legacy for the next generation. Assets are transferred to the trust, which owns and protects them, and upon the Grantor's death, whatever remains passes as the creator wished. It is straightforward planning with a profound purpose, and when it is done correctly, it works exactly as intended.

We have heard it more than once: a client returns from meeting with their accountant, shaken, after being told their Irrevocable Asset Protection Trust is “**a financial mess,**” or worse, that it was set up incorrectly. In some cases, the accountant has even applied for a new EIN, or suggested the family should never have transferred certain assets into the trust at all. The reality is straightforward: not all irrevocable trusts are created equal, and an advisor who assumes otherwise can cause unnecessary stress, cost, and second-guessing for families who did everything right.

Standard irrevocable trusts created by many attorneys are non-grantor trusts; they are treated as entirely separate taxpayers, require their own EIN, and file their own tax returns at compressed trust tax rates. Our firm's Irrevocable Asset Protection Trusts are structured differently, and intentionally so. (While we do occasionally draft non-grantor trusts to accomplish unique planning goals, it is the rare exception rather than the rule.) Through specific drafting provisions, including the power to add charitable beneficiaries under Section 9.12 of the trust, which creates a power of disposition under IRC §674(a), our APTs qualify as Grantor trusts for federal income tax purposes. The Grantor is treated as the owner of trust assets *for tax purposes* throughout their lifetime.

What this means practically:

No separate EIN required. The Grantor's Social Security Number is used. Prior to 2017, PWW Law obtained a separate EIN for APTs as a matter of practice; however, those trusts remain Grantor trusts and all income should still be reported on the Grantor's Form 1040, regardless of the EIN.

All income should be reported on the Grantor's Form 1040. There is no trust-level income tax.

Stepped-up basis preserved at death. Assets are included in the Grantor's estate under IRC §1014, so heirs inherit at the date of death value.

Assets are shielded for Medicaid purposes. Trust assets are treated as completed gifts for benefit eligibility, but not for tax purposes. Both goals are achieved simultaneously.

In 2023, the IRS clarified that completed gifts to Grantor trusts do not receive a stepped-up basis at death. Some advisors read this ruling and worried. For our clients, it does not apply. Because Grantors retain a limited testamentary power of appointment, they maintain “dominion and control” over trust assets for tax purposes, meaning the assets are included in the gross estate and do receive the step-up in basis. This was not an accident. It was the plan.

We deeply respect the role that accountants and financial advisors play in their clients' lives, and we want to work *with* you, not around you. We also understand that our trusts look different at first glance. If you have encountered one of our trusts and something appears unfamiliar, we ask one thing before drawing conclusions: call us. We will walk you through the trust structure, the IRC provisions that govern its tax treatment, and the intentional planning behind every decision. Whether you are a client who received unexpected news, or a professional encountering one of our trusts for the first time, we welcome the conversation. Our planning is deliberate, and we're happy to explain.

Real Estate Reporting Rule: Here Today, Gone Today (But Likely Back Tomorrow)

On March 19, 2026, the Financial Crimes Enforcement Network (FinCEN) introduced a new rule requiring certain all-cash real estate purchases by LLCs and Trusts to be reported to the federal government, including disclosure of the individuals behind those entities. The goal was to prevent anonymous transactions used for money laundering. A federal court in Texas struck the rule down entirely, holding that FinCEN exceeded its authority under the Bank Secrecy Act.

What this means right now: There is no reporting requirement in effect.

What this likely means soon: The federal government will appeal, revise the rule, or pursue similar reporting requirements through other channels. This issue isn't going away.

What you should know: If and when a version of this rule takes effect, most routine estate planning transfers won't trigger reporting. Deeding property you already own into your Trust or LLC, or making true gifts with no money exchanged, would generally be exempt. Purchases, partial sales, or exchanges involving value could require disclosure.

We're monitoring developments and will keep you informed as this situation evolves. For now, no action is required, but expect less privacy in certain real estate transactions involving entities and trusts in the future.

A note from the attorneys...

Spring is the season for fresh starts and deep cleaning, whether that's your home, your car, or your estate plan. Just like Mr. Washy Washy (the legendary hand-washing attendant Amber recently met aboard Utopia of the Seas) brings enthusiasm and attention to detail to every interaction, we encourage you to bring that same energy to reviewing your planning documents. When's the last time you looked at your estate plan, including your beneficiary designations? Life changes, laws change, and your plan should keep pace. Let's make sure everything is as clean and current as it should be.



APRIL 16TH: NATIONAL HEALTHCARE DECISIONS DAY

National Healthcare Decisions Day is a perfect reminder to ensure your medical wishes are documented and legally protected. In Delaware, an Advance Health Care Directive allows you to specify your preferences and appoint someone you trust to make healthcare decisions if you're unable to do so. Completing this document is one of the greatest gifts you can give your family, sparing them the burden of making difficult decisions without knowing your wishes. Whether you're young or old, healthy or facing challenges, having this in place brings peace of mind to you and those you love. Contact our office to learn how we can help you put this vital document in place.

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