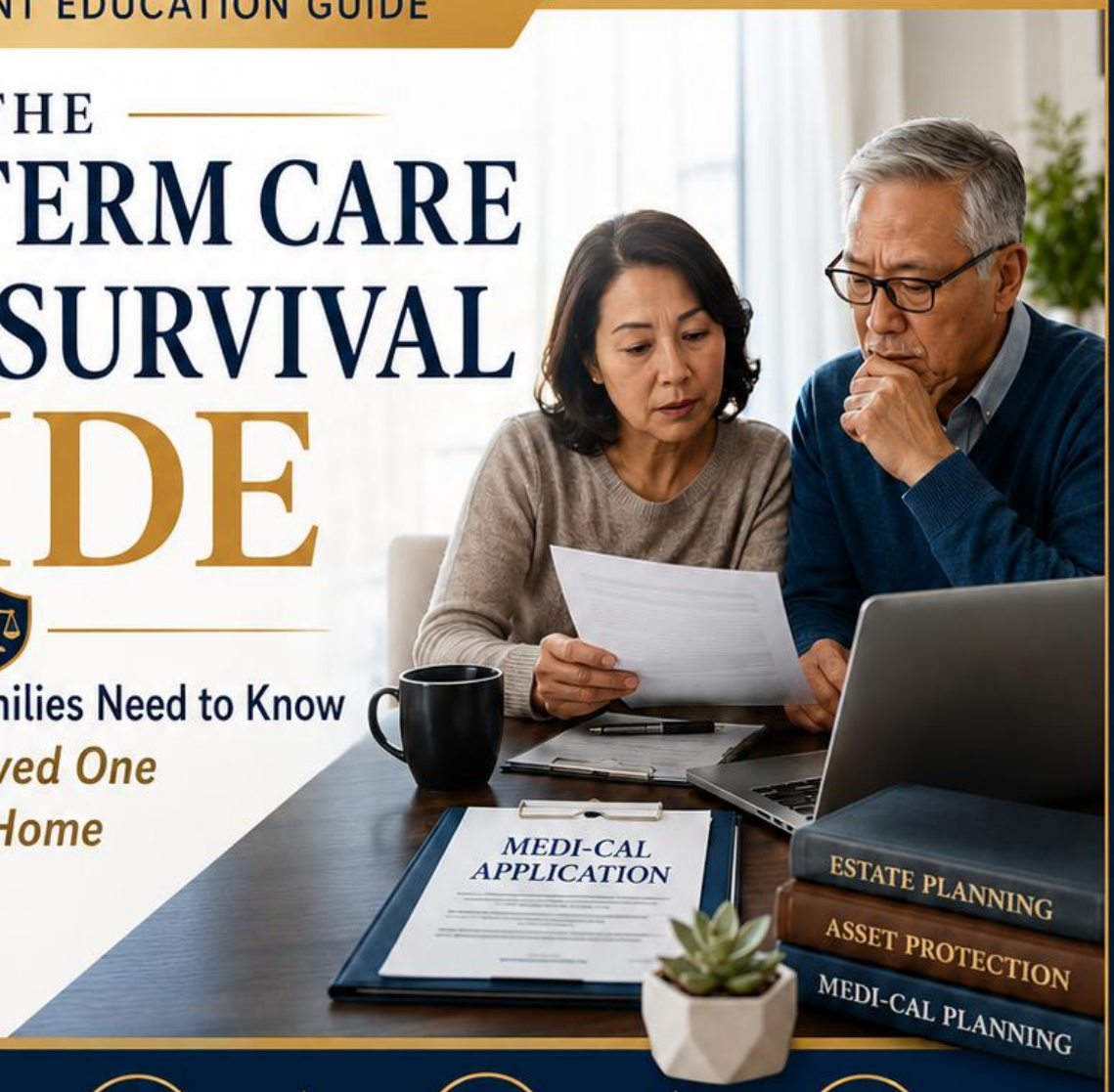
A FREE CLIENT EDUCATION GUIDE

THE LONG-TERM CARE LEGAL SURVIVAL GUIDE

What California Families Need to Know *the Moment a Loved One Enters a Nursing Home*



PROTECT WHAT MATTERS
Your Home, Assets & Legacy

AVOID COSTLY MISTAKES
Know What to Do – and What Not to Do

PRESERVE OPTIONS FOR YOUR FAMILY
Medi-Cal Planning Can Make the Difference

TIME IS CRITICAL
Decisions Made Now Can Affect Your Future Forever

PLANNING TODAY PROTECTS TOMORROW

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The Long-Term Care Legal Survival Guide

You Are Not Alone — But You Are on a Clock

The day a loved one enters a nursing home is one of the hardest days a family will face. The emotions are overwhelming. The paperwork seems endless. And in the middle of all of it, families are asked to make decisions — about finances, about property, about legal documents — that they are not prepared to make.

Most families do not realize that the decisions made in the first days and weeks after a nursing home admission can permanently affect what options are available to protect the family home, qualify for Medi-Cal benefits, and preserve assets for the surviving spouse or children.

This guide is designed to give California families a plain-English overview of the legal and financial issues that arise the moment a loved one enters a skilled nursing facility. It is not a substitute for legal advice. But it is a starting point — so that families understand the landscape before they make choices they cannot take back.

The child trying hardest to help may also be the one most at risk of making a costly legal or financial mistake without knowing it. Read this guide before you act.

Chapter 1: The Cost of a Skilled Nursing Facility

The first question most families ask is: how are we going to pay for this?

In California, the average private pay rate for a skilled nursing facility is approximately $14,440 per month. That is more than $173,000 per year. Most families cannot sustain that cost for long before savings are depleted and retirement accounts are exhausted.

There are only four ways to pay for a skilled nursing facility.

1. Private Pay

Write a check every month from personal savings, retirement accounts, or investment accounts. This is the default for most families at the start. It is also the fastest way to exhaust a lifetime of savings.

2. Long-Term Care Insurance

If the person has a long-term care insurance policy, it may help — but families are often surprised by the limitations. Most policies have elimination periods (a deductible measured in days, not dollars) during which the family must still pay out of pocket. Many policies cover only a portion of the daily rate. Premiums for new policies are expensive, and coverage cannot be obtained once care is already needed.

3. Medicare

Medicare will pay for a skilled nursing facility stay, but only under specific conditions. The person must have had a qualifying hospital stay of at least three days, must be admitted to a Medicare-certified facility, and must continue to show improvement in their condition. Medicare covers up to 100 days per benefit period — and full coverage applies only for the first 20 days. Days 21 through 100 require a significant daily co-payment. Once improvement plateaus or the condition worsens, Medicare stops paying. Medicare is designed for rehabilitation, not long-term custodial care.

4. Medi-Cal

Medi-Cal — California's name for the federal Medicaid program — is the primary program that pays for long-term custodial care in a skilled nursing facility for people who qualify. Medi-Cal pays the full cost of room and board at a certified facility and covers most prescription drugs. For families facing a long-term nursing home stay, Medi-Cal is often the most important financial resource available. But qualifying requires meeting strict asset and income tests, and the rules are technical and subject to change.

Medicare is for rehabilitation. Medi-Cal is for long-term care. Most families confuse the two — and that confusion can cost them months of planning time.

What Is Medi-Cal?

Medi-Cal is California's version of the federal Medicaid program. It is a jointly funded program — paid for by both the federal government and the State of California — that provides health coverage to people who meet certain income and asset requirements. Most people think of Medi-Cal as a program for low-income families. But Medi-Cal also has a long-term care component that pays for the full cost of room and board at a certified skilled nursing facility, along with most prescription drugs. For families facing a nursing home stay that could last months or years, this long-term care benefit is often the most important financial resource available. Without it, a family can exhaust a lifetime of savings in a matter of months.

What Is Medi-Cal Planning?

Medi-Cal planning is the legal process of organizing a person's assets and finances — within the rules the law allows — so that they can qualify for Medi-Cal long-term care benefits without unnecessarily losing everything they have worked for. It is not about hiding assets or cheating the system. The rules themselves allow for certain assets to be exempt, certain transfers to be made, and certain protections for the community spouse. Medi-Cal planning is the work of understanding those rules, applying them correctly to a family's specific situation, and taking lawful action before options are lost. Done properly and in time, Medi-Cal planning can protect the family home, preserve assets for the surviving spouse, and help a family qualify for benefits and prevent having to pay a huge nursing home bill out of pocket.

Chapter 2: Medi-Cal Qualification — What It Actually Requires

To qualify for Medi-Cal long-term care benefits in California, a person must meet both an asset test and an income test. The rules are detailed, but here is a plain-English overview of where most families stand.

The Asset Test

The asset test is the central battleground of Medi-Cal planning. It determines whether a person qualifies for benefits at all — and how much of a family's lifetime savings must be spent on nursing home care before the government begins to help. Understanding what counts as an asset, what is exempt, and what can lawfully be done to reduce countable assets is the foundation of every Medi-Cal plan. Getting this wrong — or acting without advice — can cost a family tens of thousands of dollars and months of unnecessary private pay.

In California, for 2026, a single Medi-Cal applicant may have no more than $130,000 in countable assets. A married couple is allowed up to $195,000 in countable assets when one spouse is applying for nursing home benefits.

Not all assets are counted. The primary residence is generally an exempt asset — meaning it does not prevent a person from qualifying for Medi-Cal, as long as the applicant intends to return home or a spouse or dependent relative continues to live there. One vehicle, personal belongings, and certain other assets may also be exempt.

Countable assets include bank accounts, investment accounts, additional real property, and most other financial assets. If countable assets exceed the allowed limit, the excess must either be used to pay for nursing home care out of pocket (which is not what anyone wants) or be "repositioned" in accordance with State and Federal laws to ensure that the ill person receives Medi-Cal to pay the nursing home. That is what Medi-Cal planning is all about.

The 2027 Warning

California Governor Gavin Newsom has proposed budget changes that, if enacted, would revert the Medi-Cal asset limit to $2,000 beginning in 2027 — down from the current $130,000 for individuals and $195,000 for couples. This proposed change is projected to save the California state General Fund hundreds of millions of dollars. If this change takes effect, the number of families who can qualify for Medi-Cal without first paying for nearly all of their care out of pocket will drop dramatically. Families who act before 2027 may have access to planning options that will not be available later.

What the 2027 Change Actually Means for Your Family

For a single person, the consequences are severe. Under the current 2026 rules, a single person can have up to $130,000 in countable assets and still qualify for Medi-Cal. Under the proposed 2027 rules, that limit drops to $2,000. A single person with $130,000 in savings who needs nursing home care after 2027 would have to pay $128,000 out of pocket before Medi-Cal would begin paying. At $14,440 per month, that is nearly nine months of private pay — almost $130,000 gone — before a single dollar of Medi-Cal assistance begins.

For a married couple, the impact is equally serious. Under current rules, a married couple can have up to $195,000 in countable assets when one spouse applies for nursing home benefits. The at-home spouse — called the community spouse — has federal protections that allow them to keep a significant portion of those assets. Under the proposed 2027 rules, the asset limit for the applicant spouse drops to $2,000. While federal community spouse protections may still apply to shield some of the at-home spouse's assets, the overall restriction becomes far more severe and the path to qualification far more costly.

The families who will be hurt most are those in the middle — not wealthy enough to pay for nursing home care indefinitely, but not poor enough to qualify under a $2,000 asset limit without first paying nearly everything they have out of pocket.

Families who act before 2027 — while the current limits are still in place — may be able to structure their assets lawfully to qualify for Medi-Cal without having to pay a huge nursing home bill out of pocket first. Families who wait until after 2027 may find that most of their options are gone.

The Medi-Cal rules are not designed to be understood without help. An error in the application — including an improper transfer or gift made before applying — can result in a penalty period during which Medi-Cal will not pay for care. Get legal advice before acting.

The Income Test — Singles and Married Couples

The Medi-Cal income rules work differently depending on whether the applicant is single or married. Understanding the distinction matters because it directly affects how much money the family has to live on while a loved one is in a skilled nursing facility.

For a Single Person

A single person who qualifies for Medi-Cal long-term care benefits must contribute almost all of their income to the nursing home as a share of cost. Medi-Cal pays the remainder of the facility's charges. The single person is allowed to keep only $35.00 per month for personal needs. They are also allowed to pay the premium for a Medicare supplement insurance policy from their income before the share of cost is calculated. Everything else goes to the nursing home. A single person with Social Security income of $2,000 per

month, for example, will keep $35.00, pay their Medicare supplement premium, and send the rest to the nursing home every month for as long as they remain on Medi-Cal.

For a Married Couple

When one spouse enters a nursing home and qualifies for Medi-Cal, the income rules become more nuanced — and more protective of the spouse who remains at home.

The ill spouse follows the same basic rule as a single person: they keep $35.00 per month and may pay their Medicare supplement premium from their income. The rest of their income goes to the nursing home as a share of cost — unless the well spouse's income falls below a threshold called the Minimum Monthly Maintenance Needs Allowance, or MMMNA.

The MMMNA is the minimum amount of monthly income California determines the community spouse — the spouse who remains at home — needs to meet basic living expenses. In 2026, that amount is $4,067 per month. If the well spouse's own income is below $4,067 per month, the ill spouse's income can be diverted to the well spouse — up to the amount needed to bring the well spouse's total income to $4,067. This diversion reduces or eliminates the ill spouse's share of cost to the nursing home.

If the well spouse's own income is already at or above $4,067 per month, no diversion is allowed. The ill spouse's income goes fully to the nursing home as a share of cost.

The Name on the Check Rule

Medi-Cal determines whose income belongs to whom using what is called the name on the check rule. Income belongs to whichever spouse's name is on the check — or, in the case of direct deposit, whichever spouse's name the payment is made to. Social Security paid to the husband is the husband's income. A pension paid to the wife is the wife's income. It does not matter how the couple has historically pooled their finances or how they think of the money. For Medi-Cal purposes, the income belongs to the person named on the payment.

This rule has significant planning implications. The allocation of income between spouses — and the resulting share of cost calculation — depends entirely on whose name is on each income source. Understanding the name on the check rule is essential to calculating what the family will actually have to live on during a nursing home stay and to determining whether any income diversion to the community spouse is available.

The Living Trust Estate Plan and Estate Recovery: The Essential Foundation

Understanding the asset test and the income rules is only part of the picture. Medi-Cal planning — including repositioning assets, protecting the family home from estate recovery, and ensuring that the right legal tools are in place — cannot be done properly without a Living Trust Estate Plan that has been designed with Medi-Cal in mind. The

Living Trust Estate Plan is not optional. It is the legal foundation on which every other part of the Medi-Cal plan is built. Without it, many of the most important planning strategies are simply unavailable. Chapters 3 and 4 cover what a Living Trust Estate Plan is, why it is essential, and how it — along with other trust planning tools — protects your family's assets from estate recovery.

Chapter 3: Estate Recovery — The Threat Most Families Never See Coming

Qualifying for Medi-Cal solves one major problem: getting the government to pay for nursing home care. But there is a second problem that most families never see coming — and it arrives after the Medi-Cal recipient has died. It is called estate recovery, and it can cost a family the home they spent a lifetime paying for.

What Is Estate Recovery?

Estate recovery is the legal process by which the State of California seeks reimbursement for what it paid for a person's nursing home care under Medi-Cal. When a Medi-Cal recipient dies, the state files a claim against the person's estate to recover the full cost of all care that Medi-Cal paid. For a person who spent two years in a skilled nursing facility at $14,440 per month, that recovery claim could exceed $340,000. The asset most often in the crosshairs is the family home.

Medi-Cal planning that addresses only the asset test — and ignores estate recovery — is incomplete planning. A family that successfully qualifies a loved one for Medi-Cal but fails to protect the home from estate recovery may win the battle and lose the war. Both issues must be addressed together, and the tools available to address estate recovery must be in place before Medi-Cal benefits are paid, not after.

How SB 833 Changed Everything

Before January 1, 2017, California had some of the most aggressive Medi-Cal estate recovery rules in the country. The state could pursue recovery against assets that passed outside of probate — including assets held in living trusts. That made Medi-Cal planning significantly harder and more limited, because the primary tool used to protect the home today was not effective against estate recovery before 2017.

SB 833 changed everything. Effective January 1, 2017, California enacted SB 833, which limited Medi-Cal estate recovery to the probate estate only — bringing California into conformity with the federal rule under 42 U.S.C. § 1396p. By limiting recovery to assets that pass through the court probate process, the legislature made the properly funded trust the most powerful Medi-Cal estate recovery protection tool available to California families.

A home held in a living trust that would have been subject to estate recovery before 2017 is now protected under current law. This is why families who do not yet have a living trust, or who have an unfunded trust, are leaving the home exposed to a risk that the law now allows them to avoid.

How Trusts Protect Assets from Estate Recovery

In California, Medi-Cal estate recovery is currently limited to the probate estate — assets that pass through the court probate process after death. Assets held in a properly funded trust do not go through probate. Because they do not go through probate, they are not subject to Medi-Cal estate recovery under current California law. This protection applies to both revocable living trusts and irrevocable trusts. Whether the trust holding a family's assets is a revocable living trust or an Irrevocable Income Only Trust, assets properly titled in either type of trust are shielded from the state's estate recovery claim under current California law.

This is not a loophole. It is how the law is written. A trust that is properly created and properly funded — meaning the home and other major assets are actually titled in the name of the trust — can protect those assets from a Medi-Cal estate recovery claim after death.

An unfunded trust — one that was created but never had assets transferred into it — protects nothing. The trust must hold title to the assets to provide any protection.

Estate recovery can wipe out the family home after years of Medi-Cal benefits have been paid. The protection is available — but it requires the right trust documents, properly funded, before Medi-Cal begins paying. Do not wait until after.

Chapter 4: The Living Trust Estate Plan — The Foundation of Every Medi-Cal Plan

Medi-Cal planning does not exist in isolation. It cannot be done properly without a complete estate plan in place — and in California, that means a living trust estate plan with the right documents and the right provisions.

Families who try to address the Medi-Cal asset test without first having the proper legal foundation in place will find that the tools available to them are limited, and in some cases unavailable entirely. The living trust and the documents that go with it are not optional extras. They are the framework within which Medi-Cal planning is done.

What Is a Living Trust Estate Plan?

A living trust estate plan is a coordinated set of legal documents designed to protect a person's assets during their lifetime, provide for management of those assets if they become incapacitated, and distribute those assets after death without going through the court probate process. For families facing the possibility of long-term care, a living trust estate plan serves an additional and critical purpose: it is the essential tool for protecting the family home and other assets from Medi-Cal estate recovery.

A complete living trust estate plan typically includes:

- A revocable living trust — the central document that holds title to the home and other major assets
- A pour-over will — a backup document that directs any assets outside the trust into it at death
- A durable power of attorney for finances — giving a trusted person legal authority to manage financial matters if the person becomes incapacitated
- An advance health care directive — giving a trusted person authority to make medical decisions and expressing the person's wishes for end-of-life care

Why the Power of Attorney Must Have the Right Provisions

A durable power of attorney for finances gives a designated person — called the agent — legal authority to act on behalf of the person who signed it. For Medi-Cal planning purposes, the power of attorney must contain specific provisions that authorize the agent to do the kinds of transactions that Medi-Cal planning requires — including the ability to make gifts, create or fund a trust, and take other planning actions on behalf of the incapacitated person.

A generic or outdated power of attorney may not include these provisions. A bank-issued power of attorney, a form downloaded from the internet, or a document prepared years ago without Medi-Cal planning in mind may be completely inadequate when a crisis arrives. If the power of attorney does not authorize the necessary planning transactions,

those transactions cannot be done — and the planning options that would otherwise be available are lost.

Not All Living Trusts Are Created Equal

A living trust prepared by an attorney who does not understand Medi-Cal planning may not contain the provisions necessary to support a Medi-Cal plan when a crisis arrives. The document may look complete. It may avoid probate. It may accomplish basic estate planning goals. But if it was not drafted with Medi-Cal planning in mind, it may be missing critical provisions — in the trust itself, in the power of attorney, or in both — that are essential when long-term care becomes necessary.

This is not a criticism of estate planning attorneys generally. It is a recognition that Medi-Cal planning is a specialized area of law. The rules are technical, they change, and they interact with the trust documents in ways that a general practitioner may not anticipate. A trust drafted without those considerations is not a Medi-Cal-ready plan. It is a basic estate plan — and when the nursing home crisis arrives, the family may discover too late that the plan they thought would protect them does not do what they needed it to do.

Families who want a living trust estate plan that will actually work for Medi-Cal planning purposes need an attorney who understands both estate planning and Medi-Cal — not just one or the other.

If You Already Have a Living Trust — Get It Reviewed

If you already have a living trust, do not assume it will work for Medi-Cal planning purposes. Many families have trusts that were prepared years ago by attorneys who did not focus on Medi-Cal. Those trusts may avoid probate and accomplish basic estate planning goals — but they may be missing the specific provisions that Medi-Cal planning requires. The power of attorney that came with the trust may not authorize the transactions that a Medi-Cal plan requires. The trust itself may not be funded. The home may still be titled in the person's name rather than the trust.

If a living trust was not specifically reviewed for Medi-Cal planning purposes, it should be reviewed now — before a crisis occurs. A review by a qualified attorney can identify what is missing, what needs to be updated, and what needs to be done before the plan will actually work when it is needed.

A properly funded living trust may protect the family home from Medi-Cal estate recovery in California. But the trust must be properly funded — the home must actually be titled in the trust. An unfunded trust does not protect anything.

Assets That Must Be Addressed: Property and Assets Over the Limits

The Medi-Cal asset test looks at countable assets — and for many families, those assets exceed the allowed limits. When they do, the excess must be addressed before Medi-Cal will begin paying. Simply giving assets away is not the answer. Improper transfers trigger penalty periods. But there are lawful strategies that a qualified attorney can use to address assets that are over the limits — and understanding what those assets are is the starting point.

Rental Properties

Rental properties present a particular challenge in Medi-Cal planning. Unlike the primary residence — which is generally exempt as long as the applicant intends to return home or a spouse lives there — rental properties are typically countable assets. A family with one or more rental properties may be significantly over the Medi-Cal asset limit. The rental property cannot simply be given away without triggering a transfer penalty. And unlike bank accounts that can be used to pay legitimate expenses, real property requires a legal strategy to address — one that must be carefully structured to avoid disqualifying the applicant while still protecting the asset to the greatest extent the law allows.

Assets Above the Limits

Bank accounts, investment accounts, brokerage accounts, certificates of deposit, and other financial assets that push the total above $130,000 for a single person or $195,000 for a married couple are countable assets that must be addressed. The options available depend on the specific assets, the timing of the nursing home admission, the health and circumstances of both spouses, and the overall structure of the family's finances. Some assets can be converted into exempt assets through lawful planning strategies. Others can be used to pay for legitimate expenses — home repairs, pre-paid funeral arrangements, medical equipment — that reduce countable assets without triggering a transfer penalty. Others may require more sophisticated planning tools that only a qualified attorney can properly implement.

The key point is this: having assets above the Medi-Cal limit does not mean a family is on its own. It means a family needs legal advice — promptly — to understand what options are available before those options disappear.

The Irrevocable Income Only Trust

For families with rental properties or assets significantly above the Medi-Cal limits, one of the most powerful planning tools available is the Irrevocable Income Only Trust — sometimes called an IIOT. This is an advanced planning strategy that, when properly structured and implemented within the rules, can allow a family to protect assets that would otherwise have to be paid out of pocket to the nursing home before Medi-Cal begins.

The planning strategy works like this: assets — including rental properties and financial assets over the Medi-Cal limits — are transferred into the Irrevocable Income Only Trust. The person who created the trust retains the right to receive the income those assets generate during their lifetime, and retains meaningful control over the trust and its assets. The term irrevocable does not mean the creator loses all control. Certain provisions of the trust can be changed. What the creator cannot do is directly benefit from the principal of the trust. That restriction — the inability to reach the principal — is what makes the assets potentially unavailable for Medi-Cal purposes.

The result is significant: the creator of the trust gains the benefit of Medi-Cal eligibility while still retaining control over their assets. This is not a give-everything-away strategy. It is a carefully structured legal plan that accomplishes what most families are trying to accomplish — protecting assets and qualifying for benefits — without the serious problems that come with simply transferring assets to children.

The trust is also designed with an additional layer of flexibility: the trustee has the ability to make gifts out of the trust principal to named lifetime beneficiaries. This provision allows the trust to respond to changing circumstances while still maintaining the structure necessary for Medi-Cal planning purposes.

Why Simply Giving Assets to Your Children Is Not the Answer

Many families believe the solution is simple: just give the assets to the kids before applying for Medi-Cal. This is one of the most common and most costly mistakes a family can make. The problems with this approach are serious and often irreversible.

First, Medi-Cal has a look-back period for transfers. Any gift or transfer made within the look-back period before a Medi-Cal application is reviewed by the county. If the transfer is found to be a disqualifying gift, Medi-Cal imposes a penalty period — a period of time during which Medi-Cal will not pay for nursing home care, even if the person has no assets left. The penalty period is calculated based on the amount transferred. A large gift can result in a penalty period of months or even years. During that period, the family must pay the nursing home out of pocket — with money they no longer have because they gave it away.

Second, once assets are given to a child, they belong to the child. The parent has no legal right to get them back. If the child divorces, the assets may become part of the divorce proceedings. If the child is sued, the assets may be reachable by creditors. If the child dies before the parent, the assets may pass to the child's heirs rather than back to the parent. If the child has financial problems, the assets the parent transferred for safekeeping may be lost entirely.

Third, transferring appreciated assets — such as a rental property or a home — to a child as a gift eliminates the step-up in basis the child would have received if they had inherited the asset at death. When the child later sells the property, they may owe significant capital

gains taxes on the entire appreciation in value over the parent's original purchase price. An inherited asset gets a new basis at the date of death — a gift does not. The tax consequences of a gift can be far greater than the Medi-Cal benefit the family was trying to obtain.

Fourth, giving assets away does not solve the estate recovery problem. Certain transfers made to qualify for Medi-Cal may still be subject to recovery claims or challenge by the state depending on how and when they were made.

The Irrevocable Income Only Trust avoids all of these problems. The assets are not given away. The parent retains control. The income continues. The children are protected as named beneficiaries within a proper legal structure. And the assets are positioned — within the rules the law allows — to support Medi-Cal eligibility without having to pay a huge nursing home bill out of pocket first.

The IIOT and Estate Recovery

The Irrevocable Income Only Trust does not just address the asset test. It also protects the assets held inside it from Medi-Cal estate recovery after death. Because the assets in the IIOT are not owned by the Medi-Cal recipient — and because they do not pass through probate — they are not subject to the state's estate recovery claim under California's current rules established by SB 833. This means that rental properties and other over-property assets that were transferred into the IIOT are protected not only during the Medi-Cal qualification process but also after death, when the state might otherwise seek to recover what it paid for nursing home care.

This is a significant advantage. A family that uses only a revocable living trust protects the primary residence from estate recovery. A family that also uses an IIOT protects the rental properties and excess financial assets from estate recovery as well. Together, the two trusts provide the most complete protection available under current California law — for both the asset test and estate recovery.

How the IIOT Works After Death

One of the most practical advantages of the Irrevocable Income Only Trust is what happens when the creator dies. Unlike some irrevocable trusts that require complex administration or court involvement after death, the IIOT is administered at death just like a regular revocable living trust. The assets pass to the named beneficiaries according to the terms of the trust, without probate, and without the delays and costs that probate involves. The family receives the same clean, private, court-free distribution that a revocable living trust provides — with the added benefit that those assets were protected during the creator's lifetime for Medi-Cal purposes.

Two Trusts Working Together

A person or couple who has over-property assets and needs to plan for Medi-Cal will likely end up with two trusts working together. The revocable living trust holds the primary residence and other assets that are already within or close to the Medi-Cal limits. It protects those assets from probate and from Medi-Cal estate recovery under SB 833. The Irrevocable Income Only Trust holds the assets that are over the Medi-Cal limits — rental properties, excess financial assets — and positions them outside the applicant's available property for Medi-Cal purposes while still keeping them within the family's control.

These two trusts are designed to work together as a coordinated plan. The revocable trust handles the core estate plan. The IIOT handles the over-property assets. Together they address both of the central issues in Medi-Cal planning — the asset test and estate recovery — in a way that neither trust could accomplish alone.

This is precisely why Medi-Cal planning requires an attorney who understands both estate planning and Medi-Cal law. The two trusts must be drafted to work together, funded correctly, and coordinated with the power of attorney and other planning documents. It is not a simple plan. But for families with assets worth protecting, it is the plan that works.

These trusts must be drafted properly by a seasoned attorney who understands Medi-Cal planning. An IIOT that is not drafted correctly may fail to keep the assets out of the Medi-Cal applicant's available property — defeating the entire purpose of the planning.

A Critical Warning: Improper Gifts Can Block Medi-Cal Entirely

One of the most serious mistakes a family can make — often with the best intentions — is giving away assets improperly in an attempt to qualify for Medi-Cal. California Medi-Cal has a look-back period during which any gifts or transfers made for less than fair market value are reviewed. If the county determines that assets were transferred to reduce the applicant's countable assets and gain Medi-Cal eligibility, it will impose a penalty period. During a penalty period, Medi-Cal will not pay for nursing home care — even if the person has no money left to pay for it themselves. The nursing home bill continues to accrue, the family has no funds to pay it because they gave the assets away, and Medi-Cal is sitting on the sidelines refusing to help. The penalty period is calculated based on the value of the improper gift, and it can last for months or even years. Families who give away assets without legal advice thinking they are protecting themselves often end up in a far worse position than if they had done nothing at all. Any transfer or gift involving a person who may need Medi-Cal must be reviewed by a qualified attorney before it is made.

Chapter 5: What If It Is Too Late to Get an Estate Plan?

Not every family has a living trust or a power of attorney in place when a loved one enters a nursing home. Sometimes the crisis arrives without warning. Sometimes planning was put off year after year until it was no longer possible. If a person enters a skilled nursing facility without a trust and without a valid power of attorney, the planning options are more limited — but they are not gone. What can be done depends on the specific circumstances, and it will require working with an attorney who knows what they are doing.

Can We Still Qualify for Medi-Cal?

Yes — in most cases, Medi-Cal can still be achieved even when a person enters a nursing home without any estate plan in place. The path is harder, the process takes longer, and it costs more than planning done in advance. But for families who are willing to work together and follow the process, long-term Medi-Cal benefits can still be obtained. The goal is the same: qualify the ill person for Medi-Cal so the government pays for nursing home care, and protect as many family assets as possible in the process.

The Problem Without a Power of Attorney

A power of attorney must be signed by a person who has legal capacity — the ability to understand what they are signing and what it means. If a person has already lost that capacity by the time they enter a nursing home, it is too late to sign a power of attorney. Without a valid power of attorney, no family member has legal authority to manage the ill person's finances, transfer assets, create a trust, or take any of the planning steps that Medi-Cal planning normally requires. The family is legally stuck — unless they go to court.

Conservatorship: The Court's Answer

When a person lacks capacity and has no power of attorney, the legal remedy is a conservatorship. A conservatorship is a court proceeding in which a judge appoints a responsible person — usually a family member — to manage the affairs of the incapacitated person. A conservator of the estate has the legal authority to manage assets, pay bills, and in some cases take the planning steps that Medi-Cal planning requires — including transferring assets on behalf of the conservatee.

A conservatorship is not a quick process. It requires filing a petition with the court, serving notice on family members, attending hearings, and obtaining the court's approval for major financial decisions. It is time-consuming and expensive. But for a family facing a nursing home crisis without any legal documents in place, it may be the only available path to protecting assets and qualifying for Medi-Cal.

An Important Limitation: Why a Conservatorship-Based Trust Is Not the Answer

Families sometimes ask whether the conservatorship court can simply authorize a trust to be created for the ill person — solving the estate recovery problem the same way a living trust would. The answer is that California law imposes a critical limitation that makes this approach generally unworkable for Medi-Cal planning purposes. If a court authorizes the creation of a trust for a person who is on Medi-Cal or applying for Medi-Cal, the law requires that the State of California be named as a beneficiary of that trust, up to the full amount that the state pays for the person's medical care through the Medi-Cal program. In other words, the very tool that would normally protect assets from estate recovery is, in the conservatorship context, required by law to guarantee the state's recovery claim. A conservatorship-based trust does not protect assets from estate recovery — it codifies the state's right to them.

For this reason, a conservatorship-based trust is not a strategy that a knowledgeable Medi-Cal planning attorney would typically use. Instead, there are other methods available within the conservatorship context to address estate recovery and protect family assets — methods that depend on the specific assets involved, the family's circumstances, and the approach taken by an attorney who understands both conservatorship law and Medi-Cal planning. What those methods are and whether they apply in a given case is something that requires a direct consultation.

What Can Still Be Done

The specific planning options available without an estate plan in place depend on several factors: whether the ill person is single or married, what assets are involved, and how the family is able to work together. For married couples, the community spouse's legal protections under federal and California law provide a foundation that exists regardless of whether any planning was done in advance. For single individuals, the options are more limited, but the conservatorship process may still allow for asset repositioning that supports Medi-Cal eligibility.

There are also ways — through the conservatorship and related legal proceedings — to move assets out of the ill person's name so that they are not consumed by nursing home costs or lost to Medi-Cal estate recovery after death. This is not a simple process, and what can be accomplished depends heavily on the facts of each case. But when the family is willing to work together and follow the attorney's guidance, it is often possible to achieve long-term Medi-Cal eligibility and preserve meaningful assets for the family.

It Is Expensive — But Worth It

A conservatorship-based Medi-Cal plan is more expensive than planning done in advance. There are court filing fees, attorney fees for the conservatorship proceedings, ongoing reporting requirements, and additional legal work throughout the process.

Families sometimes hesitate when they hear what it will cost. But the right question is not what the legal process costs — it is what the alternative costs. Without any plan, the nursing home bill runs $14,440 per month out of pocket until assets are exhausted, and then Medi-Cal estate recovery may claim the family home after death. Compared to losing everything to the nursing home or to the state, the cost of a conservatorship-based Medi-Cal plan is very often worth the investment.

If a loved one is already in a nursing home without a power of attorney or a trust, do not assume nothing can be done. Call an attorney who knows Medi-Cal planning and conservatorship law. The sooner you call, the more options remain available.

Chapter 6: What Not To Do — And What To Do Instead / What Legal Planning Can Still Do

The decisions made immediately after a nursing home admission are often the most consequential a family will make. The worksheet below identifies the most common mistakes, explains why each one causes serious harm, and shows what should be done instead. Following the worksheet is a summary of what a qualified attorney can still do — even after a loved one is already in a nursing home.

✗ What Families Often Do — And Why It Hurts	✓ What To Do Instead — And Why It Helps
Give assets to children right away. Medi-Cal reviews transfers made within the look-back period. An improper gift triggers a penalty period during which Medi-Cal refuses to pay the nursing home — even if the money is gone. The family is left with no assets and no Medi-Cal.	**Consult a Medi-Cal planning attorney before transferring anything.** A qualified attorney knows which transfers are lawful, how to structure them correctly, and how to avoid triggering a penalty. Acting without advice is one of the most costly mistakes a family can make.
Add a child's name to the deed. Transferring real property — even partially — may trigger a Medi-Cal transfer penalty. It can also create capital gains tax problems for the child and title complications that are difficult and expensive to undo.	**Do not change title to real property without legal advice.** Real property decisions in a Medi-Cal crisis require careful planning. There are lawful ways to address the home — but adding a child to the deed is almost never the right one.
Assume Medicare will keep paying. Medicare covers skilled nursing care only for rehabilitation and only for up to 100 days. When improvement stops, Medicare stops — often without warning. Families caught off guard have no plan and no time.	**Start Medi-Cal planning while Medicare is still paying.** The window while Medicare is covering care is the best time to evaluate Medi-Cal options. More choices are available, and there is time to do the planning correctly.
Ignore the community spouse's legal rights. The spouse who remains at home has significant federal and California protections for income and assets. Families who do not claim these protections may give up assets the at-home spouse was legally entitled to keep.	**Understand and claim every community spouse protection available.** The Minimum Monthly Maintenance Needs Allowance, the community spouse resource allowance, and other protections can make a major difference in what the family keeps. These rights must be asserted — they are not automatic.
Wait until the crisis is fully developed to get legal help. Planning options shrink with every passing day. Some strategies require time to implement. Waiting too long eliminates choices that would have been available weeks or months earlier.	**Call a Medi-Cal planning attorney as soon as a nursing home admission occurs — or before.** Even if a loved one is already in a facility, options may still exist. The earlier an attorney is involved, the more can be done. Do not wait for the situation to get worse before asking for help.

Even after a loved one has entered a nursing home, legal planning options may still be available. But they shrink with every passing day. Do not wait.

It Is Not Too Late to Call

The worksheet above shows what not to do. But it also points to a more important truth: in most situations, even after a loved one has already entered a nursing home, there are still things a qualified attorney can do to help. The earlier an attorney is called, the more options exist. But even families who call late — after mistakes have been made, after assets have already moved, after weeks or months have passed — may find that meaningful help is still available.

A Medi-Cal planning attorney can review the family's complete financial picture and identify which assets are countable, which are exempt, and what can lawfully be done to reposition the excess. The attorney can calculate the community spouse's income and asset protections and make sure those protections are claimed correctly. The attorney can evaluate any transfers that have already been made and advise on whether they are likely to cause a penalty — and in some cases, steps can be taken to cure a problem transfer before it causes irreparable harm.

If an existing living trust is in place, the attorney can review it to determine whether the home and other assets are properly titled in the trust, whether the trust contains the provisions Medi-Cal planning requires, and whether any corrections need to be made before a Medi-Cal application is filed. If there is no trust and no power of attorney, the attorney can advise on whether a conservatorship is needed and what the conservatorship process can accomplish.

Most importantly, the attorney can help the family understand the difference between what they think they need to do and what the law actually allows — and in most cases, the law allows more than families realize. The Medi-Cal rules are not designed to strip families of everything they have. They are designed to qualify people who need help. A knowledgeable attorney can navigate those rules in a way that most families cannot do on their own.

There is almost always something that can be done — but options shrink with every passing day. Call before taking any action on your own.

Chapter 7: Your Next Step

If your family is facing a nursing home admission — or if you are trying to plan ahead before a crisis occurs — the most important thing you can do is speak with a qualified attorney who understands Medi-Cal planning and California elder law.

Miller Home Protection Law helps California families navigate the legal and financial issues that arise when a loved one needs long-term care. We work with families throughout California on Medi-Cal planning, living trust creation and funding, trust updates, powers of attorney, and related estate planning matters.

This guide is free. A consultation is the next step.

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We help families protect what they have worked for — before a crisis takes it away.

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