The Nuts and Bolts of Medicaid Planning

David A. Cutner, Esq., Managing Partner

LAMSON & CUTNER, P.C.
Elder Law and Estate Planning

2 West 45th Street
New York, NY 10036
Phone: (212) 447-8690

84 Calvert Street
Harrison, NY 10528
Phone: (914) 732-3636

Contact Information:
Email: dcutner@lamson-cutner.com
Website: www.lamson-cutner.com

Disclaimer and Copyright Notice

- This presentation is not intended to provide, or to be relied upon as, legal advice concerning your individual situation. Every case has its own unique facts that may call for a different approach or strategy than other cases that may appear to be similar. Only an experienced attorney, giving individual attention to the specific facts of your case, is in a position to provide you with reliable legal advice.
- In addition, Federal and New York State laws and regulations are constantly changing through new legislation and rules, and through new decisions and interpretations handed down by administrative law judges and courts. Sometimes, these changes are subtle or affect only a small number of cases, and thus are not necessarily included in a general informational discussion.
- Individuals who reside in, or who are subject to the laws of other states, should be aware that this presentation is designed primarily to inform residents of New York State. The laws and rules governing Medicaid, trusts, and other matters in this presentation, may differ in your state.
- Lamson & Cutner disclaims any liability for any actions taken or not taken in reliance upon this presentation. Lamson & Cutner disclaims responsibility for any errors or omissions contained in this presentation. This disclaimer is governed by the laws of the State of New York.
- Lamson & Cutner's prior results do not guarantee a similar outcome in future cases. This presentation is Attorney Advertising.

LAMSON & CUTNER, P.C.
Elder Law and Estate Planning

Copyright © 2026 Lamson & Cutner, P.C., All Rights Reserved

No part of this presentation may be used or reproduced in any manner whatsoever without the express written permission of Lamson & Cutner, P.C.

LAMSON & CUTNER, P.C.
Elder Law and Estate Planning

Why should anyone be interested in Medicaid Planning?

Before I answer, let me ask you a question:

What do you consider to be the greatest financial risk you are facing at this point in your life?

Here's the answer:

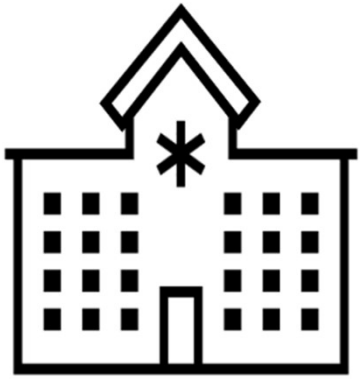
The greatest financial risk you face as an older adult is --

YOUR HEALTH!

LAMSON & CUTNER, P.C.
Elder Law and Estate Planning

WAIT A MINUTE, I HAVE MEDICARE.

DOESN'T IT COVER ALL OF MY HEALTH CARE?



Medicare is medical insurance -- hospitals, doctors, therapy, etc.

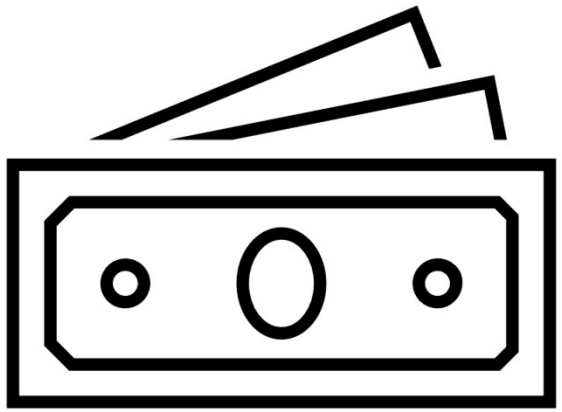
Medicare covers rehabilitation (**up to** 100 days)

Medicare does **not** cover long-term care

"23 percent of all adults – and 45 percent of those 65 or older – incorrectly believe that Medicare will cover [their long-term care]"
The New York Times, 6-8-2025

LAMSON & CUTNER, P.C.
Elder Law and Estate Planning

So, who does pay for long-term care?



- Private Pay (you / your children)
- Long-Term Care Insurance
- Medicaid

7 of 10 people will need long-term care of some kind.

4 of 10 people will need nursing home care.



Long-term care is ruinously expensive.

Long-Term Care is Ruinously Expensive



Home Care: $35 – $40 per hour
*(e.g., $*40 x 8 hrs x 365 = **$116,800** per year)

Assisted Living: $8,000 - $15,000+ per month
(*e.g.*, $12,000 per month = **$144,000** per year)

Nursing Home: $15,000 - $18,000+ per month
(*e.g.*, $16,000 per month = **$192,000** per year)

New York's Medicaid Program

Medicaid is a federal / state partnership, administered by the states under state law.

New York's program is the best in the U.S., by far.

Medicaid covers home care, adult day care, assisted living care, nursing home care, medical care, plus many special programs.

There is no such thing as a "Medicaid facility." Virtually all providers are privately owned, and they are required to provide the same care to all.

New York has two distinct categories of Medicaid benefits

Community Medicaid

- Home Care
- Adult Day Care
- Assisted Living (ALP)
- Programs for special needs, e.g., Traumatic Brain Injury
- PT and OT, Hospital and Medical Care, Prescription Drugs

Institutional Medicaid (Nursing Home)

- Care in a Nursing Home
- PT and OT, Hospital and Medical Care, Prescription Drugs

LAMSON & CUTNER, P.C.
Elder Law and Estate Planning

Community Medicaid Eligibility
(Home Care and Other Programs)



Medicaid Eligibility is based on **resources**.
($33,038 in 2026)



Income is not a factor in determining eligibility, but Medicaid has an "income limit" which is currently $1,836 per month.



If monthly income is above the limit, the excess is "surplus income." The surplus income must either be (a) contributed to the cost of care, or (b) deposited to a **Pooled Income Trust** account.

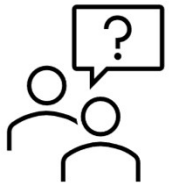
I've heard that I can become eligible for Community Medicaid by transferring my assets out of my name.

But I have some questions about doing that:

- **What about the "look back"?**
- **Will I get in trouble?**

LAMSON & CUTNER, P.C.
Elder Law and Estate Planning

Q & A



What about the "look back"?

- New York has never had a "look back" for Community Medicaid.
- The "look back" applies only to Medicaid Nursing Home applications.

Will I get in trouble if I transfer my assets?

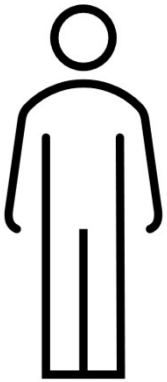
- Nobody will be sued or get in trouble.
- Transfers are permitted under New York law.
- There is nothing illegal or improper about it.

The important question is:

To whom should the transfer be made?

If Assets Must Be Transferred to Achieve Medicaid Eligibility --

Should assets be transferred:





To an individual?

or

To a trust?





LAMSON & CUTNER, P.C.
Elder Law and Estate Planning

How to Protect Your Assets and Achieve Medicaid Eligibility



Consider possible exempt transfers.

Transfer savings and other assets to an irrevocable trust, or to family members. Even if the transfer is non-exempt, all or at least a substantial amount can be saved.

Trusts have advantages over gifts to family members or friends.

Exempt Transfers include:

Blind or disabled child of any age

Trust for the sole benefit of a disabled person under 65, including a 1st Party Supplemental Needs Trust

Spouse

(Spousal Refusal may be needed)

Transfer of the home to a caregiver child, or to a sibling with an equity interest

Caregiver Agreement

LAMSON & CUTNER, P.C.
Elder Law and Estate Planning

Isn't my home exempt?



When applying for **Community Medicaid**,

- If your home is your primary residence, **and**
- Your home equity is no more than $1,130,000,

The home is treated as an exempt resource.

However, the exemption will be lost when the home is no longer your primary residence.

Once the exemption is lost -- Medicaid will put a lien on your home and seek to recover its expenses from your home equity.

≈≈≈

When you are in a **Nursing Home** and applying for **Medicaid**:

- The home is no longer your primary residence, and it is not exempt.
- It is a Medicaid resource, and it will be a significant obstacle to your eligibility.

LAMSON & CUTNER, P.C.
Elder Law and Estate Planning

Transfers to Family Members or friends: The Risks

- Bankruptcy, lawsuits, debts
- Divorce
- If they predecease you, the assets are in their estate
- Misuse of funds
- No “step up” in tax basis / capital gains tax

LAMSON & CUTNER, P.C.
Elder Law and Estate Planning

Trust Basics

A trust is a legally-created entity or person, like a corporation or LLC, except that trusts do not have owners. No court proceeding is needed to distribute assets from a trust.

A trust is created by an agreement between the person who is funding it (the "Grantor" or "Settlor"), and the person who will manage it (the "Trustee").

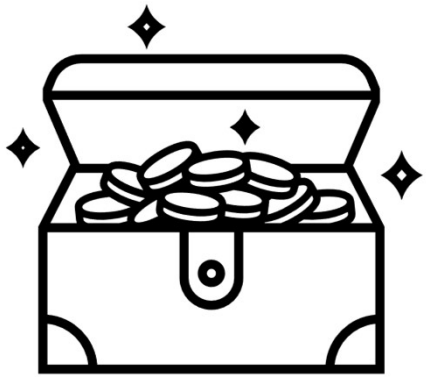
A trust can own any kind of asset: real estate, co-op shares, cash or securities, tangible personal property. The trust governs the assets that it owns.

If one of the goals is Medicaid eligibility, an Irrevocable Trust will be needed.

LAMSON & CUTNER, P.C.
Elder Law and Estate Planning

The Medicaid Asset Protection Trust ("MAPT")

- Your assets are protected during your lifetime
- You can access Medicaid benefits
- No probate proceeding, no court involvement
- Your assets are distributed according to your wishes, privately and without delay or expense
- Your beneficiaries avoid capital gains tax on unrealized gains that accrued during your lifetime



LAMSON & CUTNER, P.C.
Elder Law and Estate Planning

The MAPT is an IRREVOCABLE TRUST



You cannot control an Irrevocable Trust, and you must appoint an independent Trustee (who can be a family member other than your spouse, or a friend).

The MAPT is legally a separate "person." The assets in the trust don't belong to you and therefore cannot be counted by Medicaid or reached by creditors.

LAMSON & CUTNER, P.C.
Elder Law and Estate Planning

Irrevocable Trust – Grantor's Rights

Many people who consider an Irrevocable Trust are concerned about giving up control, as they must name an independent Trustee, and they cannot withdraw or control the assets in the Trust.

However, The Grantor can retain a number of important rights without compromising asset protection or access to government benefits such as Medicaid:

- *The right to receive all of the net income of the Trust*
- *The right to use and occupancy of a residence transferred to the Trust*
- *The right to change the beneficiaries of the Trust by a subsequent Will*
- *The right to exchange property of equal value for assets owned by the Trust*
- *Discretion can be given to the Trustee to distribute principal (to persons other than the Grantor) that can be used by the recipient to benefit the Grantor*

LAMSON & CUTNER, P.C.
Elder Law and Estate Planning

THE MEDICAID ASSET PROTECTION TRUST -- A RELIABLE AND FULLY-INTEGRATED PLAN

- ✓ The risks of transferring to individuals are avoided
- ✓ Your assets are protected during your lifetime
- ✓ You can obtain Medicaid and other benefits
- ✓ No probate proceeding, no court involvement
- ✓ Your assets are distributed according to your wishes, privately and without delay or expense
- ✓ Your beneficiaries avoid capital gains tax on the appreciation in value of your assets that accrued during your lifetime.



LAMSON & CUTNER, P.C.
Elder Law and Estate Planning

Once you're receiving Community Medicaid benefits, the amount of monthly income you are permitted to keep is limited.

Protect what Medicaid calls your "surplus income" with a **Pooled Income Trust**



What is a Pooled Income Trust?

A Pooled Income Trust is a special kind of trust operated by certain nonprofit organizations.

New York's laws permit Medicaid recipients to contribute "surplus income" to a Pooled Income Trust instead of contributing it toward the cost of their care if they are "disabled."

The definition of "disabled" is a flexible one depending on age and health. Almost all seniors who need home care will qualify.



How is a Pooled Income Trust used?

Each month you send to the Trust the bills and invoices you have received. For example, your rent, co-op or condo charges, mortgage, credit cards, utility bills, phone bills, etc.

Essentially any goods or services are eligible for reimbursement, as long as they are for you. Some Trusts will give you a debit card that you can use for items such as groceries or pharmaceuticals.

The Trust must approve the expenses because your Pooled Income Trust funds are only permitted to be used to pay your expenses. Once the Trust approves the expenditures, it pays them for you.

Any funds that are not spent while you are in the Community Medicaid program remain with the Trust.

LAMSON & CUTNER, P.C.
Elder Law and Estate Planning

Medicaid Nursing Home Eligibility



Medicaid Eligibility is based on **resources**.
($33,038 in 2026)



Income is NOT a factor of eligibility, but all income except $50 is must be paid to the nursing home (this is called the "NAMI," or Net Available Monthly Income).

However, the "Community Spouse" is entitled to a share of the institutionalized spouse's income if the Community Spouse's monthly income is less than $4,066.50 (the "MMMNA").



The Look Back - If you are in the nursing home, and "otherwise eligible" for Medicaid, but made non-exempt gifts or transfers of money or property during the 5 years preceding the date of your application, you will be ineligible for Medicaid benefits for a period of time determined by the amount gifted or transferred. This is called the "penalty period."

Asset transfers are permitted under New York law – they are not illegal or improper.



How the Medicaid "look back" works:

- Determine the amount or value of assets transferred during the "look back" period.
- Divide by the Regional Rate = the number of months of ineligibility for Medicaid (the "Penalty Period").
- The Penalty Period begins when the applicant is otherwise eligible for services covered by Medicaid but for the transfer penalty.

LAMSON & CUTNER, P.C.
Elder Law and Estate Planning

2026 Regional Rates*

New York City = $15,282

Nassau & Suffolk = $15,193

Westchester = $15,024

*Used to calculate a Penalty Period if there have been asset transfers within the “look back” period

LAMSON & CUTNER, P.C.
Elder Law and Estate Planning

"Look Back" Illustration part 1:



- Mom lives in NYC in a rental apartment. She is starting to suffer from Alzheimer's disease and she has other medical issues as well. She has $400,000 in savings.
- In December 2023, she transfers $370,000 to her children. She applies for Medicaid home care and qualifies for a home health aide.
- In December 2025, she falls and breaks a hip. After surgery and rehab, she is unable to return home and is discharged to a nursing home.
- Mom applies for Medicaid in January 2026. She has only $25,000 in savings.

LAMSON & CUTNER, P.C.
Elder Law and Estate Planning

"Look Back" Illustration continued:



- Mom's transfer of $370,000 in December 2023 is in the "look back" period, since the transfer was made only 2 years prior to her Medicaid Nursing Home application in January 2026.

- Divide $370,000 by $15,282 (NYC Regional Rate)

- Mom's transfer makes her **ineligible** for Medicaid nursing home services for **24 months.**

- The nursing home's private pay rate is $15,000 per month, so her children will wind up spending almost the entire amount that mom had gifted to them in 2023.

LAMSON & CUTNER, P.C.
Elder Law and Estate Planning

How to Reduce the Penalty, and Protect Part of Your Assets

- Transfer about 50% of your assets to a family member or friend, which results in a Penalty Period.

- Purchase a Private Annuity Contract, often from the same transferee, with the remaining 50% of your assets. Percentage varies depending on (a) other non-annuity income, and (b) cost of nursing home.

- During the Penalty Period, monthly payments from the Private Annuity, plus non-annuity income, are used to pay the nursing home.

- At the end of the Penalty Period, Medicaid starts to pay the nursing home. The initial transfer to a family member or friend is preserved.

LAMSON & CUTNER, P.C.
Elder Law and Estate Planning

Reducing the Penalty: Example

- Mom lives in White Plains and is 85 years old. She is in rehab following surgery and is about to be discharged to a nursing home. Her life's savings total $183,240. If she keeps $33,000, and gifts $150,240 to her son to qualify for Medicaid, she will be subject to a Penalty Period and will be ineligible for 10 months, because the gift would be made during the "look back" period.

- Upon the advice of her Elder Law attorney, Mom instead gifts only $75,120 to her son, which results in a Penalty Period of 5 months.

- At the same time, Mom transfers another $75,120 to her son pursuant to a Private Annuity Contract prepared by her Elder Law attorney. Under the terms of the Annuity, her son pays her $15,024 per month for 5 months.

- Mom uses her Private Annuity income to pay the nursing home. After 5 months, Medicaid takes over and pays the nursing home bills.

- Mom's son keeps the initial gift of $75,120, and Mom has the $33,000 that Medicaid allows her to keep.

LAMSON & CUTNER, P.C.
Elder Law and Estate Planning

Planning sooner rather than later usually produces better outcomes



Thank you for your attention today,

David

The Nuts and Bolts of Medicaid Planning

David A. Cutner, Esq., Managing Partner

LAMSON & CUTNER, P.C.
Elder Law and Estate Planning

2 West 45th Street
New York, NY 10036
Phone: (212) 447-8690

84 Calvert Street
Harrison, NY 10528
Phone: (914) 732-3636

Contact Information:
Email: dcutner@lamson-cutner.com
Website: www.lamson-cutner.com