

Rules changing on house trusts to duck Medicaid claim

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We want our sons to get our house. We also want to protect it from Medicaid if we need nursing home assistance in the future. Should we put it in a trust?

This popular Medicaid planning strategy is about to become less effective due to a recent change in state law -- but how much less effective isn't yet clear. The law's full impact -- and even its effective date -- await publication of the New York [Department of Health](#) regulations.

Medicaid eligibility is based on financial need. A prevalent (and legal) way to make yourself eligible but preserve your children's inheritance is to transfer your house directly to them, or to a trust for their [benefit](#), keeping a lifetime occupancy right for yourself.

If you do this at least five years before applying for Medicaid assistance, the transfer won't delay your eligibility. After you die, Medicaid can recover what it paid for your care from your estate -- but until recently, it couldn't recover from assets you had transferred to a trust, or from the value of your lifetime rights in property you had given to someone else.

The new law lets Medicaid recover against those assets to the extent that you retained an interest in them. [Bernard Krooks, a New York City elder-law attorney](#), says the pending regulations may limit Medicaid's recovery to asset transfers that occur after the law's effective date; limit its recovery from an irrevocable trust to any undistributed income; and say that your life interest in a house has no value after you're dead. But in the worst-case scenario, the law could apply retroactively, and permit Medicaid to claim a dollar value for your retained life estate in a house after your death.

The bottom line. Consult an elder-law attorney about the impact of the new law before doing any Medicaid planning.

