

LAWYER FOR *Life*

KEEPING YOUR FAMILY HEALTHY, WEALTHY & WISE

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State Rules Matter: Why Medicaid Planning is Not One-Size-Fits-All

When it comes to planning for long-term care, many people are surprised to learn that Medicaid—while a federal program—can look very different from state to state. This difference can have a big impact on how your Medicaid Asset Protection Trust (MAPT) works and whether it achieves the goal of protecting your hard-earned assets.

Medicaid is funded in part by the federal government, which sets out baseline rules and regulations. But each state administers its own Medicaid program and has some leeway in interpreting and applying those federal rules—so

long as the state’s approach is not more restrictive than the federal guidelines allow. That means your neighbor across state lines might be dealing with very different Medicaid planning rules than you are.

For example, some states treat certain types of retirement accounts, like IRAs, as “countable” resources that could affect eligibility. Others treat them as exempt. Some states allow the use of promissory notes or Medicaid-compliant annuities as planning strategies; others may restrict or disallow these tools entirely. Even spousal protections, like how much income or assets a healthy spouse can



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keep when the other spouse applies for Medicaid, vary widely.

When using a MAPT to protect your assets, understanding these state differences is critical. A well-drafted MAPT in one state might inadvertently disqualify you from Medicaid benefits in another. For instance:

- **Trustee Provisions:** Some states are stricter about who can serve as trustee, especially when the grantor retains any control or oversight over trust decisions.
- **Income and Principal Rights:** States differ in how they treat income rights in a trust. What's safe in one state might count against Medicaid eligibility in another.
- **Homestead Exemptions:** Rules about your home—and whether you can continue living there while it's held in a trust—can vary significantly. Some states let you retain a right to use your home in a trust, while others may view that as an available resource that could disqualify you.

The bottom line is this: Medicaid planning is not a one-size-fits-all solution. A trust or strategy that works in one state may not work in another—and could even make things worse if not tailored to local

laws. That's why it's so important to work with a professional who understands both federal Medicaid rules and your state's specific approach to Medicaid eligibility.

Though Congress is currently debating significant cuts to Medicaid programs, one thing will remain certain: The cost of long-term care is going to rise, and more people are going to need it. If the federal government cuts substantial funding, each state will be left to fill in the gaps. Understanding how you can protect your hard earned assets will create peace of mind when you might need skilled care, whether in your home or at a skilled nursing care facility.

If you're thinking about using a Medicaid Asset Protection Trust—or any other Medicaid planning strategy—reach out to an estate planning attorney familiar with your state's rules. They can help ensure your plan is built to succeed where you live, giving you and your family peace of mind.



The Role of Portability in Estate Tax Planning

When it comes to estate planning, one tool that often flies under the radar is portability—a valuable option that allows married couples to transfer unused estate tax exemption amounts from one spouse to the other. This can be a powerful way to reduce or eliminate estate taxes, but it's not automatic, and it has limitations that you should understand to make the most of it.

Portability allows a surviving spouse to claim the unused portion of their deceased spouse's federal estate tax exemption. Currently, the federal estate tax exemption is quite generous—\$13.99 million per person in 2025. That means that an individual can pass up to that amount to heirs without paying federal estate tax. With portability, a married couple can potentially double that exemption to nearly \$28 million.

However, portability isn't automatic. It's a post-death election—meaning that after the first spouse dies, the estate's executor must file a federal estate tax return (Form 706) to elect portability and preserve any unused exemption for the surviving spouse. This is required even if the estate itself isn't large enough to owe any estate tax.

So why does this matter a little bit extra right now?

Under current law, the estate tax exemption is scheduled to sunset at the end of 2025, dropping back to around \$7 million per person (adjusted for inflation). Whether Congress will act to extend the current higher limits is uncertain. This makes portability even more valuable: by capturing the unused exemption now, a surviving spouse may be able to preserve that higher amount—even if the exemption is lower when they pass away.

While portability can be a helpful safety net, it's not always the best solution for every family. Plus, one spouse has to die in order to take advantage of portability so timeliness cannot be controlled. Here

are a few key limitations:

- **Post-Death Election:** As mentioned, portability must be elected on a timely filed estate tax return, typically within nine months of the first spouse's death (with extensions available). Miss that deadline, and the exemption is lost.
- **GST Tax:** Portability doesn't apply to the generation-skipping transfer (GST) tax exemption, which means it won't help if you want to plan for grandchildren or further generations.
- **State Estate Taxes:** Some states impose their own estate taxes and do not allow portability, which could create a tax liability even if the federal estate tax is avoided.

While portability is a useful tool, it's not the only one in the toolbox. Lifetime gifts, irrevocable trusts, charitable giving, and other planning strategies can help reduce the size of your taxable estate—sometimes more efficiently than relying on portability alone.

Portability offers a valuable opportunity to double up on estate tax exemptions and provide significant tax savings for your family. But it's important to act thoughtfully—and promptly—to ensure it's preserved. Given the uncertainty about whether the current high exemptions will continue beyond 2025, now is an especially good time to review your estate plan and make sure you're not missing out on this key benefit.



A PERSONAL NOTE FROM KIMBERLY

Dear Clients and Friends,

Thank you for reading our newsletter! We hope you find the insights helpful in enriching your knowledge in the area of estate planning.

Life changes, and your plan should keep up with it too. If it's been a while since your last review, now is a great time to ensure it still aligns with your wishes.

Schedule an appointment today to update your planning and secure peace of mind.

