

# **The Medicaid Planning Guidebook**

## **Table of Contents**

### **Section 1**

#### **Medicaid Planning Primer**

|  |   |
|--|---|
| Introduction .....                           | 1 |
| A. Medicaid Public-Private Partnership ..... | 2 |
| B. Medicaid Planner's Role .....             | 3 |
| C. Medicaid Planning Objective .....         | 5 |

### **Section 2**

#### **Medicaid Program Overview**

|   |    |
|---|----|
| A. The Federal-State Partnership.....       | 8  |
| B. Governing Law.....                       | 8  |
| C. Scope of Coverage .....                  | 10 |
| D. Medicare Confusion.....                  | 14 |
| E. Nursing Home Medical Qualification ..... | 16 |

### **Section 3**

#### **Medicaid Eligibility Planning: A Systematic Approach**

|  |    |
|--|----|
| A. Medicaid Planning Timeline .....          | 18 |
| 1. Client Intake and Initial Assessment..... | 18 |
| 2. Asset Assessment .....                    | 19 |
| 3. Income Assessment .....                   | 19 |
| 4. Quick Assessment.....                     | 19 |
| 5. Medicaid Plan Development.....            | 19 |
| 6. Medicaid Plan Implementation.....         | 20 |
| 7. Application Filing .....                  | 20 |
| 8. Verification Process .....                | 20 |
| 9. Eligibility Determination .....           | 21 |
| 10. Post-Eligibility Follow-Up .....         | 21 |
| 11. Post-Death Advocacy .....                | 21 |

|   |    |
|---|----|
| B. Client Intake .....                          | 21 |
| C. Pre-Planning vs. Crisis Planning.....        | 23 |
| D. Preliminary Asset and Income Assessment..... | 25 |

**Section 4**  
**General Asset-Eligibility Rules**

|  |    |
|--|----|
| A. Protected Assets.....                               | 28 |
| 1. Homestead .....                                     | 28 |
| 2. Primary Vehicle .....                               | 30 |
| 3. Personal Items.....                                 | 30 |
| 4. Cash Value Life Insurance.....                      | 31 |
| 5. Certain Business and Non-Business Property.....     | 31 |
| 6. Some Qualified Retirement Accounts.....             | 32 |
| 7. Single Premium Immediate Annuities (SPIA) .....     | 32 |
| 8. Funeral/Burial Plans .....                          | 33 |
| 9. Burial Space .....                                  | 34 |
| 10. Individual Countable Resource Allowance .....      | 34 |
| B. Unprotected Assets.....                             | 35 |
| 1. Cash and Cash Equivalents .....                     | 36 |
| 2. Securities and Other Investments.....               | 36 |
| 3. Qualified Retirement Accounts .....                 | 37 |
| 4. Homestead Owned by Revocable Trust.....             | 37 |
| 5. Excess Homestead Equity and Other Real Estate ..... | 37 |
| 6. Additional Vehicles .....                           | 38 |
| 7. Life Insurance.....                                 | 38 |
| 8. Deferred Annuities.....                             | 39 |
| 9. Divestments.....                                    | 39 |
| 10. Life Care Contracts.....                           | 39 |
| 11. Closely Held Business Ownership.....               | 40 |
| 12. Miscellaneous Assets .....                         | 40 |
| C. Basic Spenddown Calculation .....                   | 40 |

**Section 5**  
**Community Spouse Asset Rules**

|                                    |    |
|------------------------------------|----|
| A. Community Spouse Spenddown..... | 42 |
| B. CSRA Calculation .....          | 43 |
| 1. Snapshot Baseline.....          | 43 |
| 2. CSRA Straight Deduction .....   | 45 |

|  |    |
|--|----|
| 3. One-Half Deduction .....  | 46 |
| 4. Ownership Issues .....  | 47 |
| C. Changing the CSRA .....   | 49 |
| 1. Inflating the Countable Resources Before the Snapshot Date..... | 50 |
| a. Tap Home Equity .....   | 50 |
| b. Revocable Inter Vivos Trust.....                                | 51 |
| 2. Fair Hearing—Error Correction.....                              | 52 |
| 3. Fair Hearing—CSRA Increase.....                                 | 53 |
| a. Conservative Method.....  | 53 |
| b. Liberal Method .....  | 54 |
| 4. Judicial Order .....  | 54 |
| 5. Assignment of Rights/Refusal.....                               | 55 |
| D. Married with No Community Spouse .....                          | 56 |

## **Section 6**

### **Asset Eligibility Strategies**

|  |    |
|--|----|
| A. Understanding the Spenddown.....              | 58 |
| 1. Countable to Non-Countable Conversion .....   | 58 |
| 2. Secondary Planning Considerations.....        | 59 |
| 3. Fair-Market Transactions.....                 | 59 |
| 4. Error Margin.....                             | 61 |
| B. Basic Asset-Eligibility Strategies .....      | 62 |
| 1. Tangible Personal Property .....              | 63 |
| 2. Homestead Advantages .....                    | 63 |
| a. Home Renovations .....                        | 63 |
| b. New Home .....                                | 64 |
| 3. Upgrade Vehicle .....                         | 66 |
| 4. Pre-Pay Funeral/Burial .....                  | 67 |
| 5. Long-Term Care Partnership Program .....      | 69 |
| C. Advanced Asset-Eligibility Strategies.....    | 71 |
| 1. Unavailable/Non-Sellable Assets.....          | 71 |
| a. Unavailable Assets .....                      | 71 |
| b. Non-Sellable Assets.....                      | 74 |
| 2. Service Contracts .....                       | 76 |
| 3. Income-Producing Property .....               | 77 |
| 4. Annuities and Promissory Notes.....           | 78 |
| 5. Strategic Divestment .....                    | 81 |
| 6. Caring for Disabled Family .....              | 82 |
| D. Difficult Strategies.....                     | 83 |
| 1. Single Premium Endowment Life Insurance ..... | 83 |

|  |    |
|--|----|
| 2. Complex Transfers and Multi-Year Strategies .....             | 84 |
| 3. Family Limited Partnerships and Closely Held Businesses ..... | 85 |
| 4. Balloon Annuities and Self-Cancelling Installment Notes ..... | 86 |
| E. Executing Strategies .....                                    | 86 |
| 1. Who Can Act .....   | 87 |
| a. Power of Attorney .....                                       | 87 |
| b. Guardian/Conservator .....                                    | 88 |
| 2. Documentation .....   | 89 |
| a. Time Deposits .....   | 91 |
| b. Securities .....  | 91 |
| c. Insurance and Annuity Policies .....                          | 92 |
| d. Qualified Accounts .....                                      | 94 |

## **Section 7**

### **Divestments**

|   |     |
|---|-----|
| Introduction .....                            | 96  |
| A. Divestment Transfers and Exceptions .....  | 97  |
| 1. Transfers/Gifts .....                      | 97  |
| a. Direct Transfer/Gift .....                 | 97  |
| b. Overpayment .....                          | 98  |
| c. Underselling .....                         | 98  |
| d. Creating Joint Ownership .....             | 99  |
| e. Immediate Annuities/Promissory Notes ..... | 100 |
| f. Life Estate .....                          | 101 |
| g. Disclaimer .....                           | 102 |
| 2. Exceptions and Cures .....                 | 102 |
| a. Homestead .....                            | 103 |
| b. All Assets .....                           | 104 |
| c. Additional Exceptions .....                | 107 |
| i. Intent to Dispose .....                    | 107 |
| ii. Exclusively for Another Purpose .....     | 108 |
| iii. Cures .....                              | 110 |
| iv. Hardship .....                            | 110 |
| 3. Lookback Period .....                      | 111 |
| 4. Penalty Period .....                       | 112 |
| a. Calculation .....                          | 112 |
| i. Round Down (Pre-DRA) .....                 | 113 |
| ii. Pro-Rata .....                            | 113 |
| iii. Daily Divestment Divisor .....           | 113 |
| b. Start Date .....                           | 114 |

|  |     |
|--|-----|
| B. Divestment Eligibility Strategies .....                       | 116 |
| 1. Historical Divestment Planning .....                          | 116 |
| a. Divest and Wait.....  | 116 |
| b. Divest and Insure .....                                       | 119 |
| c. Serial Divestment (Prohibited by DRA) .....                   | 121 |
| d. Half-a-Loaf (Prohibited by DRA) .....                         | 122 |
| 2. Modern Divestment Planning.....                               | 123 |
| a. Reverse Half-a-Loaf (Partial-Cure States Only).....           | 124 |
| b. Divest and Purchase Annuity (or Make a Promissory Note) ..... | 126 |

## **Section 8**

### **Trusts**

|  |     |
|--|-----|
| Introduction .....   | 130 |
| A. Revocable Trusts .....                                      | 131 |
| 1. History and Use .....                                       | 131 |
| 2. Funding Revocable Trusts.....                               | 132 |
| 3. Medicaid Interplay .....                                    | 133 |
| 4. Strategic Uses .....  | 134 |
| a. Increase CSRA .....   | 134 |
| b. Revoke/Defund Trust.....                                    | 135 |
| B. Irrevocable Trusts .....                                    | 136 |
| 1. Non-Divestment Trusts.....                                  | 137 |
| a. “Solely-for-the-Benefit-of-Spouse” Trust .....              | 137 |
| b. “Solely-for-the-Benefit-of” a Blind or Disabled Child ..... | 138 |
| c. Trust for Sole Benefit of Disabled Person under 65 .....    | 141 |
| d. (d)(4)(A) Supplemental Needs Trust .....                    | 141 |
| e. (d)(4)(C) Pooled Trusts .....                               | 144 |
| f. Qualified Income Trust (QIT) (a/k/a Miller Trust).....      | 146 |
| g. Third-Party Trusts .....                                    | 147 |
| h. Testamentary Trust.....                                     | 149 |
| 2. Divestment Trusts.....                                      | 150 |
| a. Self-Settled No-Access Trust.....                           | 151 |
| b. Self-Settled Limited-Access Trust.....                      | 152 |
| c. Third-Party Limited Access Trust .....                      | 154 |
| C. Practical Trust Issues .....                                | 156 |
| 1. Trust Creation .....  | 157 |
| 2. Trust Funding .....   | 161 |
| 3. Trust Management .....                                      | 163 |
| 4. Trust Taxation.....   | 164 |
| 5. Trust Termination .....                                     | 165 |
| a. True Revocation/Defunding .....                             | 165 |
| b. Trust Settlement/Fulfillment .....                          | 167 |
| c. Trust Busting/Reformation .....                             | 168 |

## **Section 9**

### **Annuities and Promissory Notes**

|   |     |
|---|-----|
| A. Annuities .....  | 170 |
| 1. Medicaid Annuity Evolution.....                            | 174 |
| 2. Modern Medicaid Annuity Requirements.....                  | 178 |
| 3. Modern Medicaid Annuity Strategies .....                   | 181 |
| a. Divestment and Annuity .....                               | 181 |
| b. Convert Countable Assets to Annuity (Married Couple).....  | 184 |
| c. Annuity as Divestment .....                                | 186 |
| d. Double Annuity Half-a-Loaf.....                            | 188 |
| e. Medicaid Annuity as Leverage.....                          | 190 |
| f. Qualified Medicaid SPIA .....                              | 193 |
| i. Qualified Account—Single Patient.....                      | 193 |
| ii. Qualified Account—Married Patient with Community Spouse . | 194 |
| iii. Qualified Account—Community Spouse Owner .....           | 195 |
| 4. Special Annuity Concerns.....                              | 196 |
| a. Commissions .....  | 197 |
| b. Surrender Fees .....                                       | 199 |
| c. 1035 Exchanges .....                                       | 202 |
| d. Qualified Rollovers/Transfers.....                         | 205 |
| e. Effective Date .....                                       | 208 |
| f. Free-Look Period .....                                     | 210 |
| g. Valuation.....   | 211 |
| h. Illustrations.....   | 212 |
| i. Private Annuities .....                                    | 213 |
| B. Promissory Notes.....                                      | 213 |
| 1. Creating Promissory Notes.....                             | 213 |
| a. Definition .....   | 213 |
| b. History of Promissory Note Uses .....                      | 213 |
| c. Modern Promissory Notes.....                               | 214 |
| 2. Using Promissory Notes .....                               | 216 |
| a. Community Spouse Excess Asset Conversion .....             | 216 |
| b. Promissory Note as Leverage.....                           | 217 |

## **Section 10**

### **Income Eligibility**

|                           |     |
|---------------------------|-----|
| Introduction .....        | 220 |
| A. Income Inventory ..... | 221 |
| 1. Source Type .....      | 221 |
| a. Earned Income. ....    | 221 |
| b. Unearned Income .....  | 222 |
| c. Exclusions.....        | 223 |

|  |     |
|--|-----|
| 2. Frequency.....                                  | 223 |
| B. Income Limits.....                              | 225 |
| 1. Spenddown States .....                          | 226 |
| 2. Income-Cap States.....                          | 226 |
| C. Determining the Copay .....                     | 227 |
| 1. Single Patient Copay .....                      | 227 |
| a. Determining Gross Income .....                  | 227 |
| b. Determine Total Deductions .....                | 228 |
| i. Personal-Needs Allowance .....                  | 228 |
| ii. Health Insurance Premiums .....                | 229 |
| iii. Pre-Medicaid Medical Bills.....               | 230 |
| iv. Guardian/Conservator Expense .....             | 231 |
| v. Limited Housing Maintenance .....               | 231 |
| c. Determining the Copay .....                     | 232 |
| 2. Married Copay .....                             | 233 |
| a. Determining the Spousal Allowance (MMMNA) ..... | 234 |
| i. No MIA .....                                    | 236 |
| ii. Partial MIA.....                               | 236 |
| iii. Full MIA .....                                | 236 |
| b. Calculating the Copay.....                      | 237 |
| D. Income Conservation Strategies.....             | 238 |
| 1. Health Insurance Premiums .....                 | 238 |
| 2. Increase Shelter Expense.....                   | 239 |
| 3. Fair Hearing.....                               | 241 |
| 4. Court Order.....                                | 242 |
| 5. Family Allowance.....                           | 243 |
| 6. Terminate Income Source .....                   | 243 |

## **Section 11**

### **Special Concerns for the Homestead and Family Farm**

|  |     |
|--|-----|
| Introduction .....                         | 245 |
| A. Valuation.....                          | 246 |
| 1. Scope of Property .....                 | 246 |
| 2. Intent to Return.....                   | 250 |
| 3. Establishing the Value of Property..... | 251 |
| 4. Overlimit Homestead .....               | 254 |
| a. Home Equity Loan .....                  | 255 |
| b. Reverse Mortgage .....                  | 257 |
| c. Divest Equity .....                     | 258 |
| d. Sell Equity.....                        | 258 |
| e. Segregate or Lease a Portion .....      | 260 |

|  |     |
|--|-----|
| B. Protection Strategies.....            | 262 |
| 1. Divest Home (Full or Partial).....    | 263 |
| a. Total Divestment.....                 | 264 |
| b. Divest Home and Keep Life Estate..... | 266 |
| c. Divest Small Fractional Share.....    | 268 |
| 2. Occupant/Family Exclusion.....        | 270 |
| a. Community Spouse.....                 | 270 |
| b. Caregiver Child.....                  | 271 |
| c. Sibling Joint Owner.....              | 273 |
| d. Child under 21.....                   | 274 |
| 3. Miscellaneous Techniques.....         | 274 |
| a. Buy More Equity.....                  | 274 |
| b. Beneficiary Deed.....                 | 275 |
| c. Compound Strategy.....                | 276 |

## Section 12 Veterans' (VA) Benefits

|  |     |
|--|-----|
| Introduction.....                              | 277 |
| A. Eligibility in General.....                 | 278 |
| 1. Basic Eligibility.....                      | 278 |
| 2. Wartime Service.....                        | 278 |
| B. Health Care Benefits.....                   | 278 |
| 1. Basic Eligibility.....                      | 278 |
| 2. Financial Eligibility.....                  | 278 |
| 3. Medical Services and Medication Copays..... | 279 |
| 4. Home Improvement.....                       | 279 |
| 5. Nursing Home Care.....                      | 279 |
| a. Community Living Centers.....               | 279 |
| b. State Veterans' Home.....                   | 279 |
| c. Contract Care.....                          | 280 |
| d. Home Care.....                              | 280 |
| C. Pension.....                                | 280 |
| 1. Eligibility.....                            | 280 |
| 2. Reduction.....                              | 280 |
| 3. Financial Assessment.....                   | 280 |
| 4. Accredited Advisors.....                    | 281 |
| D. Life Insurance.....                         | 282 |
| 1. Types of Life Insurance.....                | 282 |
| 2. Borrowing Against a Policy.....             | 282 |
| 3. Contacting VA Insurance Center.....         | 283 |



|   |     |
|---|-----|
| E. Burial and Memorial Benefits .....               | 283 |
| 1. National Cemeteries .....                        | 283 |
| 2. Headstones and Markers .....                     | 283 |
| F. VA Advocacy .....                                | 284 |
| 1. Commencing an Appeal .....                       | 284 |
| 2. The Board of Veterans' Appeals .....             | 284 |
| 3. U.S. Court of Appeals for Veterans' Claims ..... | 284 |

## **Section 13**

### **Applying for Medicaid**

|  |     |
|--|-----|
| A. Determining the Applicant .....                           | 285 |
| 1. Patient .....   | 285 |
| 2. Community Spouse .....                                    | 286 |
| 3. Authorized Agent .....                                    | 287 |
| a. Power of Attorney .....                                   | 287 |
| b. Guardian/Conservator .....                                | 288 |
| B. Timing .....  | 289 |
| 1. Month-Based System .....                                  | 289 |
| 2. Retroactive Application .....                             | 289 |
| 3. Annual Redetermination .....                              | 292 |
| 4. Medicare Overlap .....                                    | 292 |
| 5. Eviction and Medicaid-Pending Status .....                | 294 |
| 6. Promptness of Processing .....                            | 295 |
| 7. Applying Too Early .....                                  | 296 |
| C. Completing and Filing the Application .....               | 296 |
| 1. Full Disclosure .....                                     | 296 |
| 2. Filling out the Application .....                         | 297 |
| 3. Attaching Exhibits .....                                  | 299 |
| a. Identification and Health Insurance Cards .....           | 299 |
| b. Proof of Citizenship .....                                | 300 |
| c. Asset, Income, Expense, and Divestment Verification ..... | 301 |
| 4. Waiver of Confidentiality .....                           | 302 |
| 5. Filing Locations .....                                    | 302 |
| D. Verification Process .....                                | 302 |
| 1. Asset Verification .....                                  | 303 |
| a. Real Property .....                                       | 303 |
| b. Vehicles .....  | 304 |
| c. Financial Accounts .....                                  | 304 |
| d. Annuity and Life Insurance Policies .....                 | 305 |
| e. Commercial Paper .....                                    | 306 |

|  |     |
|--|-----|
| 2. Income Verification .....   | 307 |
| a. Social Security .....   | 307 |
| b. Pensions and Pension Annuities .....                                | 307 |
| c. Immediate Annuities, Promissory Notes, Land Contracts, & Trusts ... | 308 |
| d. Earned Income .....   | 308 |
| 3. Expense Verifications .....   | 309 |
| a. Health Insurance Premiums.....                                      | 309 |
| b. Shelter Expenses.....   | 309 |
| i. Rent Expense.....   | 310 |
| ii. Mortgage Expense .....   | 310 |
| iii. Homeowners or Renters Insurance .....                             | 310 |
| iv. Property Taxes .....   | 310 |
| v. Utilities.....  | 310 |
| 4. Transfer and Divestments Verifications .....                        | 311 |
| a. Significant Fair-Value Transactions .....                           | 311 |
| i. Source.....   | 311 |
| ii. Mode .....   | 311 |
| iii. Transaction Receipt.....  | 312 |
| iv. Resultant Asset .....  | 312 |
| b. Divestment-Penalty-Causing Transfer .....                           | 312 |
| c. Exempt Transfers.....   | 313 |
| 5. Timing.....   | 313 |
| a. Deadlines.....  | 314 |
| b. Best Evidence.....  | 314 |
| c. Shift the Burden .....  | 314 |
| d. Denial for Timelines .....  | 315 |
| E. Appealing Adverse Decisions .....                                   | 315 |
| 1. Fair Hearing.....   | 316 |
| 2. Representation and Advocacy.....                                    | 316 |
| 3. Appeals to a State Court .....                                      | 316 |

## **Section 14**

### **Post-Eligibility Issues**

|  |     |
|--|-----|
| A. Post-Approval .....                   | 317 |
| 1. Notification.....                     | 317 |
| 2. Monthly Copay/Income Procedures.....  | 318 |
| 3. Audits .....                          | 319 |
| 4. Annual Redeterminations .....         | 319 |
| 5. Unreported Income Notifications ..... | 320 |
| 6. Change Notification .....             | 321 |
| 7. After-Acquired Assets.....            | 322 |
| 8. Fee Anticipation.....                 | 323 |

|   |     |
|---|-----|
| B. Asset Issues .....                               | 323 |
| 1. Retitle CRSA Assets.....                         | 323 |
| 2. Update Estate Plans.....                         | 324 |
| a. Patient’s Estate Plan.....                       | 324 |
| b. Community Spouse’s Estate Plan.....              | 326 |
| i. Elective Share .....                             | 327 |
| ii. Divorce .....                                   | 328 |
| 3. Community Spouse Eligibility Planning .....      | 329 |
| C. Income Issues .....                              | 329 |
| 1. Changes Impacting Copay .....                    | 329 |
| 2. Boosting Expenses.....                           | 330 |
| 3. Petitioning for Increased Spousal Allowance..... | 330 |
| D. Miscellaneous Issues.....                        | 331 |
| 1. Moving.....                                      | 331 |
| a. Intrastate Move .....                            | 331 |
| b. Interstate Transfer.....                         | 332 |
| 2. Bed Holds.....                                   | 332 |
| 3. Correspondence and Communication .....           | 333 |

## **Section 15** **Estate Recovery**

|  |     |
|--|-----|
| Introduction .....                                   | 334 |
| A. Federal Requirements .....                        | 335 |
| 1. History of Estate Recovery .....                  | 335 |
| 2. Breakdown of 42 U.S.C. §1396p .....               | 337 |
| a. Liens (a/k/a TEFRA Liens).....                    | 337 |
| b. Allowable Recovery .....                          | 338 |
| c. Mandatory Recovery .....                          | 338 |
| d. Delay of Recovery .....                           | 339 |
| e. Undue Hardship.....                               | 339 |
| f. Estate Scope .....                                | 339 |
| g. Long-Term Care Insurance Partnership Program..... | 340 |
| h. Recovery from Community Spouses’ Estates.....     | 342 |
| i. Annuity Beneficiary Designations.....             | 345 |
| B. State-by-State Overview .....                     | 345 |
| 1. Alabama (AL).....                                 | 346 |
| 2. Alaska (AK).....                                  | 346 |
| 3. Arizona (AZ) .....                                | 347 |
| 4. Arkansas (AR) .....                               | 349 |
| 5. California (CA).....                              | 350 |
| 6. Colorado (CO).....                                | 354 |

|                               |     |
|-------------------------------|-----|
| 7. Connecticut (CT) .....     | 356 |
| 8. Delaware (DE) .....        | 357 |
| 9. Florida (FL) .....         | 359 |
| 10. Georgia (GA) .....        | 360 |
| 11. Hawaii (HI) .....         | 363 |
| 12. Idaho (ID) .....          | 364 |
| 13. Illinois (IL) .....       | 367 |
| 14. Indiana (IN) .....        | 369 |
| 15. Iowa (IA) .....           | 372 |
| 16. Kansas (KS) .....         | 373 |
| 17. Kentucky (KY) .....       | 375 |
| 18. Louisiana (LA) .....      | 376 |
| 19. Maine (ME) .....          | 377 |
| 20. Maryland (MD) .....       | 378 |
| 21. Massachusetts (MA) .....  | 379 |
| 22. Michigan (MI) .....       | 380 |
| 23. Minnesota (MN) .....      | 381 |
| 24. Mississippi (MS) .....    | 383 |
| 25. Missouri (MO) .....       | 384 |
| 26. Montana (MT) .....        | 385 |
| 27. Nebraska (NE) .....       | 387 |
| 28. Nevada (NV) .....         | 388 |
| 29. New Hampshire (NH) .....  | 389 |
| 30. New Jersey (NJ) .....     | 391 |
| 31. New Mexico (NM) .....     | 393 |
| 32. New York (NY) .....       | 394 |
| 33. North Carolina (NC) ..... | 396 |
| 34. North Dakota (ND) .....   | 397 |
| 35. Ohio (OH) .....           | 399 |
| 36. Oklahoma (OK) .....       | 400 |
| 37. Oregon (OR) .....         | 402 |
| 38. Pennsylvania (PA) .....   | 402 |
| 39. Rhode Island (RI) .....   | 405 |
| 40. South Carolina (SC) ..... | 406 |
| 41. South Dakota (SD) .....   | 407 |
| 42. Tennessee (TN) .....      | 408 |
| 43. Texas (TX) .....          | 409 |
| 44. Utah (UT) .....           | 412 |
| 45. Vermont (VT) .....        | 413 |
| 46. Virginia (VA) .....       | 413 |
| 47. Washington (WA) .....     | 415 |
| 48. West Virginia (WV) .....  | 416 |
| 49. Wisconsin (WI) .....      | 417 |
| 50. Wyoming (WY) .....        | 418 |

|  |     |
|--|-----|
| C. Advocacy .....                            | 419 |
| 1. Probate and Non-Probate Estates .....     | 419 |
| 2. Estate Administration Guidance .....      | 420 |
| 3. Claim Negotiation .....                   | 420 |
| 4. Claim/Statute Challenge .....             | 420 |
| D. Additional Recovery Avoidance .....       | 421 |
| 1. Probate Estate Avoidance .....            | 421 |
| 2. Avoid Expanded Estate Assets.....         | 421 |
| 3. Planning Sooner .....                     | 422 |
| 4. Delay Estate Administration.....          | 422 |
| 5. Move the Patient (to another state) ..... | 422 |
| 6. Move the Patient (home) .....             | 422 |
| 7. Divorce .....                             | 423 |

## **Section 16**

### **Advocacy Opportunities**

|   |     |
|---|-----|
| A. Administrative Advocacy .....                            | 424 |
| 1. Fair-Hearing Use .....                                   | 424 |
| a. Increase the CSRA .....                                  | 424 |
| b. Correct CSRA Error .....                                 | 425 |
| c. Correct Income Errors .....                              | 425 |
| d. Increase MMMNA .....                                     | 425 |
| e. Object to Wrongful Denial .....                          | 425 |
| f. Hardship Waivers .....                                   | 426 |
| 2. Fair Hearing Procedure .....                             | 426 |
| a. Request .....  | 426 |
| b. Hearing .....  | 427 |
| c. Representation.....                                      | 427 |
| d. Appeal Adverse Ruling .....                              | 428 |
| B. State Court Advocacy .....                               | 428 |
| 1. Appeal Administrative Decisions .....                    | 428 |
| 2. Mandamus Actions .....                                   | 428 |
| 3. Increase CSRA.....                                       | 429 |
| 4. Increase Community Spouse Monthly Income Allowance ..... | 430 |
| 5. Legally Incapacitated Individuals .....                  | 430 |
| a. Establishment of Guardian/Conservator .....              | 431 |
| 6. Ratification of Agents Actions .....                     | 431 |
| 7. Ratify Medicaid Plan .....                               | 431 |
| a. Divestments .....  | 431 |
| b. Non-divestment Penalty Transfers.....                    | 432 |
| c. Conflict of Interest .....                               | 432 |
| d. Termination of Spousal Rights.....                       | 432 |
| 8. Trust Creation and Modification .....                    | 433 |

|                                       |     |
|---------------------------------------|-----|
| 9. Divorce .....                      | 433 |
| 10. Heir Representation.....          | 433 |
| 11. Decedent Probate.....             | 434 |
| C. Federal Court Advocacy .....       | 434 |
| 1. Reigning in State Law.....         | 434 |
| 2. §1983 Claims.....                  | 435 |
| D. Miscellaneous Issues.....          | 435 |
| 1. Client Identification .....        | 435 |
| 2. Conflicts of Interest.....         | 436 |
| 3. Multi-licensed Professionals ..... | 436 |
| 4. Unauthorized Practice of Law.....  | 436 |

## **Section 17**

### **Practical Application (Examples)**

|                             |     |
|-----------------------------|-----|
| A. Planning Scenarios ..... | 438 |
| 1. Example.....             | 438 |

Clients: Robert is 78, and Dorothy is 76. Robert recently suffered a stroke.

Assets/Income: \$100,000 securities; \$600,000 home (no debt); Robert has SSI of \$1,500 and a pension of \$2,000 a month; Dorothy has monthly income of \$700.

|                 |     |
|-----------------|-----|
| 2. Example..... | 441 |
|-----------------|-----|

Client: Ruth, age 87 who is suffering from the degenerative effects of Alzheimer’s disease. She has four children and several older grandchildren. Ruth’s behavior became so erratic that 24-hour care became essential.

Asset/Income: SSI of \$1,450 per month and a \$225 per month from a pension; three CDs with surrender values of \$25,602, \$74,325 and \$69,421; a deferred annuity with a net surrender value of \$100,300; a checking account with \$31,175; one vehicle with a blue-book value of \$5,400; debt free home with a value of \$101,300.

3. Example..... 446

Client: Geraldine is 77 and suffers from severe arthritis that is degenerative in nature and will likely be fully debilitated within the next four to six years. Her mother suffered from Alzheimer's before her death. She has two older sisters who are both exhibiting signs of the dementia and one is already in a nursing home.

Asset/Income: A \$600,000 home with no debt that includes a small working farm that both of her sons use to make their living; a deferred annuity worth \$72,600; a brokerage account with conservative bond investments totaling \$123,765; six CDs valued respectively at \$52,703, \$49,457, \$72,153, \$42,259, \$51,108, and \$27,075; a checking account with a \$22,700 value; SSI of \$1,370 per month plus \$515 from the interest/dividends of her securities; an older model sedan worth approximately \$3,150.

4. Example..... 451

Client: Thomas is 81 and has been in and out of the hospital over the past two months with bouts of dementia. Thomas and his brother Paul inherited Thomas's home as joint owners when their mother passed away 20 years ago. Thomas has been living with the mother and then just continued to live in the home after she died. Paul decided to move in with Thomas and has been living there for ten months. Thomas has no children.

Asset/Income: The home is valued at \$300,000, and both brothers have a one-half of interest with all rights transferring to the survivor at death; Thomas has his funeral prepaid; he has \$6,575 in checking and \$5,043 in savings. He has three CDs each worth \$75,000; Thomas retitled his car to daughter Sarah two years ago (\$7,500 value) and he gave his other daughter Melissa a check for \$7,500 at the same time he gave the car to Sarah. He has 30 savings bonds worth about \$1,000 each.

5. Example..... 455

Client: Edward and Martha (married). Ed is starting to show signs of memory lapse that is believed to be the early onset of Alzheimer's. Neither has purchased LCTI and Ed would no longer qualify; Martha does qualify, but the premiums are over \$6,000 a year far beyond what her budget can afford. They have two daughters who they would like to see inherit their estate.

Asset/Income: Together they own a home value at \$150,000 (no debt) and a combined total of \$90,000 in certificates of deposit and \$18,000 in checking; Edward receives a monthly SSI check of \$1,657 and a monthly pension of \$1,035. Martha receives a monthly SSI check of \$725.

6. Example..... 458

Client: Dolores is in the hospital for a week and the doctor in charge of supervising her believes she is ready for discharge to a nursing home as soon as a bed becomes available. She has two daughters, Darla and Darcy. Darla, the oldest, is named as an agent under Dolores's power of attorney. Darcy is permanently blind, and lives in a group home, and is surviving on SSI and Medicaid.

Asset/Income: Dolores has a home valued at \$600,000 (no debt); \$173,000 in checking, savings, and certificates; no vehicle; monthly SSI of \$1,375 and a survivor pension of \$881.

7. Example..... 464

Client: Ray and Sophie (ages 82 and 79, respectively) have been married for over 50 years. Ray's health has deteriorated to the point where he no longer recognizes Sophie. He has been in a hospital for several weeks and was discharged to a nearby nursing home for rehabilitative care; but as he has seen no improvement in his full month at the nursing home, it is likely that he will be staying indefinitely. They jointly own most assets. They have two children who are both actively helping Sophie deal with the fallout from Ray's health crisis.



Asset/Income: Two sedans worth \$8,975 and \$5,034; a modest ranch-style home worth \$295,000 (no debt); a stock portfolio worth \$127,550; a deferred annuity worth \$72,250 (with a cost basis of \$35,000); and three CDs worth \$39,055, \$62,121, and \$51,308 respectively; Ray has an IRA solely in his name worth \$37,716; he also has SSI of \$1,396 a month and a monthly pension payment of \$903. Sophie SSI income of \$895 a month and a small monthly pension of \$103.

8. Example..... 469

Client: Isaac and Agnes find themselves dealing with Agnes’s declining health. Isaac is having memory lapses. Agnes, however, has started wandering off; and her dementia has gotten so bad that she is now in the nursing home after a weeklong hospital stay. Isaac never prepared for dealing with a long-term care stay beyond getting an estate plan in place. Isaac and Angie had gone to a lawyer to get a trust; but the lawyer told them that, with their limited amount of assets and the use of beneficiary designations, a will would be sufficient. However, Isaac insisted on getting a trust after attending a local estate planning workshop.

Asset/Income: Home valued at \$105,000 (no debt) which was deeded to their inter-vivos trust at the time they completed their estate plan; a checking account of \$7,221; a \$62,703 CD; a family sedan valued at \$12,000; Isaac and Agnes receive monthly SSI payments of \$1,105 and \$767 respectively.

9. Example..... 472

Client: George and Mary do not have much, but they are proud to have paid off their home before retirement. George is suffering from Alzheimer’s and has spells that have gotten out of control, necessitating 24-hour care. Mary is worried about keeping what she has to live on, how much the nursing home will cost her, and if they can leave their home to their two children. Their two daughters live out of town but have flown home to help Mary get things in order.

Asset/Income: A small \$3,271 savings account; an annuity in Mary's name with a \$20,768 CSV; a sedan worth \$6,595; George's monthly SSI is \$986 and he receives a \$197 monthly pension payment; Mary receives a monthly SSI payment of \$895.