

# SUMMARY OF CONTENTS

SECTION 1: INTRODUCTION.....	1
SECTION 2: WHAT IS “MEDICAID”? .....	7
SECTION 3: WHAT IS COVERED BY “MEDICAID”? .....	9
SECTION 4: APPLYING FOR BENEFITS.....	15
SECTION 5: MEDICAL QUALIFICATION RULES .....	23
SECTION 6: INCOME QUALIFICATION RULES .....	24
SECTION 7: ASSET QUALIFICATION RULES .....	36
SECTION 8: TRANSFERRING ASSETS (GIFTS).....	55
SECTION 9: TRUSTS .....	66
SECTION 10: STRATEGIES TO QUALIFY .....	88
SECTION 11: THE HOME: PLANNING IDEAS.....	116
SECTION 12: ANNUITIES .....	131
SECTION 13: PROMISSORY NOTES.....	153
SECTION 14: TRANSFER (GIFT) STRATEGIES.....	158
SECTION 15: POST-ELIGIBILITY ISSUES .....	176
SECTION 16: ESTATE RECOVERY .....	185
SECTION 17: CASE STUDIES .....	196
SECTION 18: VETERANS PENSION: HOW IT WORKS.....	228
SECTION 19: VETERANS PENSION: PLANNING TECHNIQUES .....	241
SECTION 20: TAXATION: TRUST, ESTATE, and GIFT .....	250
SECTION 21: PRE-DRA PLANNING .....	270
APPENDIX .....	273
GLOSSARY .....	281
ANNUITY (LIFE EXPECTANCY) TABLE .....	290
LIFE ESTATE TABLE (UNISEX) .....	291
STATE NUMBERS.....	292
FEDERAL STATUTES.....	302
RESOURCES .....	304

# DETAILED TABLE OF CONTENTS

- SECTION 1: INTRODUCTION ..... 1
  - How to Use This Manual..... 2
  - Is It Ethical?..... 3
  - Is Medicaid Planning Illegal? ..... 5
- SECTION 2: WHAT IS “MEDICAID”? .....7
  - How is Medicaid Administered? ..... 8
- SECTION 3: WHAT IS COVERED BY “MEDICAID”? ..... 9
  - Medical Coverage ..... 9
  - Care in the Home .....10
  - Assisted living ..... 11
  - Nursing Homes..... 11
  - Medicare Coverage of Nursing Home Expenses.....12
  - State Coverage Options .....13
- SECTION 4: APPLYING FOR BENEFITS..... 15
  - Who May Apply ..... 15
  - When to Apply ..... 15
    - Applying Too Late* .....15
    - Applying Too Early* .....15
  - Where to Apply .....16
  - List of State Agencies .....16
  - Application Process .....16
  - Retroactive Coverage.....17
  - Documentation of Citizenship .....18
  - Nursing Home Bills Before Medicaid Eligibility..... 20
- SECTION 5: MEDICAL QUALIFICATION RULES ..... 23
- SECTION 6: INCOME QUALIFICATION RULES ..... 24
  - Types of Income ..... 24
    - Earned*..... 24
    - Unearned* ..... 24
    - In-Kind*..... 25
    - Exclusions from Income*..... 25
  - Unmarried ..... 25
    - Income-cap States* ..... 25
    - Spenddown ("Medically Needy") States* ..... 27
  - Married ..... 27

<i>Share of Costs</i> .....	28
<i>MIA/MMMNA Rules</i> .....	29
<i>Increasing the MMMNA</i> .....	31
<i>Excess Shelter Allowance (ESA)</i> .....	31
<i>Borrowing to Increase the ESA and MMMNA</i> .....	33
<i>Family Allowance</i> .....	34
<i>Fair Hearings</i> .....	34
<i>Court Order of Support</i> .....	35
<b>SECTION 7: ASSET QUALIFICATION RULES</b> .....	<b>36</b>
What's Counted, What's Excluded?.....	36
Valuation.....	36
Countable Assets .....	36
Unavailable Assets.....	37
Excluded Assets .....	37
<i>\$2,000 Cash</i> .....	38
<i>The Home</i> .....	38
<i>One Automobile</i> .....	41
<i>Personal Property</i> .....	41
<i>Funeral and Burial Funds and Spaces</i> .....	42
<i>IRAs</i> .....	43
<i>Property Used in a Trade or Business</i> .....	44
<i>Non-Business Property Used for Self-Support</i> .....	44
<i>Life Insurance</i> .....	45
<i>Married</i> .....	45
<i>Community Spouse Resource Allowance (CSRA)</i> .....	45
<i>"Snapshot" Rule</i> .....	46
<i>Fifty Percent States</i> .....	47
<i>Hundred Percent States</i> .....	48
Increasing the CSRA .....	49
<i>Fair Hearing</i> .....	49
<i>Court Orders</i> .....	51
Implementing the CSRA .....	52
Post-Eligibility Changes to the CSRA.....	52
<i>Sale of Community Spouse's Assets</i> .....	52
<i>Gift of Community Spouse's Assets</i> .....	52
What if <i>both</i> spouses are in a nursing home? .....	53
<b>SECTION 8: TRANSFERRING ASSETS (GIFTS)</b> .....	<b>55</b>
Penalty Period .....	55
<i>Penalty Start Date: Pre-DRA Gifts</i> .....	57
<i>Penalty Start Date: Post-DRA Gifts</i> .....	57

<i>Tacking</i> .....	58
<i>Gifts by Married Persons</i> .....	59
<i>Joint Interests</i> .....	59
Valuing the Gift .....	60
<i>Automobiles</i> .....	60
<i>Bank Accounts, CDs</i> .....	60
<i>Life Insurance</i> .....	60
<i>Real Estate</i> .....	60
<i>Stocks, Bonds, Mutual Funds</i> .....	61
<i>Partial Gifts</i> .....	61
Lookback Period.....	61
<i>Outright Gifts</i> .....	61
<i>DRA Transition Rules</i> .....	63
<i>Gifts to Trusts</i> .....	63
Taxable Gifts.....	63
Fraudulent Transfers .....	64
<b>SECTION 9: TRUSTS</b> .....	66
Revocable Trusts .....	66
<i>All Trust Assets Countable</i> .....	66
<i>Transfers To and From</i> .....	66
Irrevocable Trusts .....	68
<i>Transfers To and From</i> .....	68
<i>Planning with Irrevocable Trusts</i> .....	71
<i>"IIOTs": Irrevocable Income-Only Trusts</i> .....	72
<i>Principal Distributions to Children ("Back Door")</i> .....	74
<i>Valuing Gifts into the Trust</i> .....	75
<i>Dealing with Trust Income</i> .....	75
<i>Trigger Trust Option</i> .....	76
<i>Avoiding Estate Recovery</i> .....	76
Irrevocable Trusts vs. Outright Gifts.....	77
Self-Settled Trusts .....	79
Pooled Trusts .....	80
<i>Upon the Contributor's Death</i> .....	81
<i>Reasons for Using Pooled Trusts</i> .....	82
Third-Party Trusts.....	82
<i>"Supplemental Needs" Limitations</i> .....	83
Trusts Created Within a Spouse's Will.....	83
Children-Funded Trust .....	84
Supplemental Needs: List .....	86

SECTION 10: STRATEGIES TO QUALIFY .....	88
Hiding Assets: Don't Do It!.....	88
Spenddown .....	89
Converting Countable Assets to Non-Countable .....	89
<i>Home Improvements</i> .....	89
<i>New Home, Bigger Home</i> .....	90
<i>Personal Property</i> .....	92
<i>New Auto, Bigger Auto</i> .....	92
<i>Funeral/Burial Expenses</i> .....	93
<i>Income-Producing Property</i> .....	93
<i>Single Premium "No Cash Value" Life Insurance</i> .....	94
<i>Annuities</i> .....	95
Converting Non-Countable Assets to Countable .....	95
Decreasing the Home Equity Amount.....	97
Transferring Excluded Assets .....	101
IRAs.....	102
Income-Producing Property .....	103
"Just Say No" (Spousal Refusal to Support) .....	104
Personal Services Contracts.....	105
<i>Life Care Contract</i> .....	106
<i>Types of Services Allowed</i> .....	107
<i>Income Taxes/Reporting Requirements</i> .....	108
<i>Payments for Past Services</i> .....	108
Long-Term Care Partnership Programs.....	109
Liquidating Assets .....	112
<i>Annuities</i> .....	112
<i>Real Estate</i> .....	112
<i>CDs</i> .....	113
<i>IRAs</i> .....	114
Questionable Techniques.....	114
<i>Family Limited Partnership</i> .....	114
<i>Self-Canceling Installment Notes ("SCIN")</i> .....	114
SECTION 11: THE HOME: PLANNING IDEAS.....	116
What to Do With the Home: The Goal .....	116
Do Nothing .....	116
Outright Transfer to Children.....	117
<i>Medicaid Gift</i> .....	117
Add Child's Name to Deed .....	117
<i>Gift Value</i> .....	118
<i>Exposure to Child's Creditors</i> .....	119

<i>Loss of Control</i> .....	119
Transfer to Children, Keep Life Estate.....	120
<i>How to Calculate the Gift</i> .....	120
Joint Interest vs. Remainder Interest: Gift.....	121
Transfer to Trust, Keep life Estate.....	122
Outright Transfer to Trust.....	123
Ladybird Deed.....	124
Purchase Life Estate in Child’s Home.....	125
Purchase Joint Interest in Child’s Home.....	126
Joint Interest vs. Life Estate: Purchase.....	127
Parent’s Child Moves into the Home (“Caretaker Child”).....	128
Parent’s Sibling Moves into the Home.....	128
Income Tax Basis of the Home.....	128
Reverse Mortgages.....	129
<b>SECTION 12: ANNUITIES</b> .....	<b>131</b>
Background.....	131
Medicaid Planning Annuities.....	132
Why Annuities Work in Medicaid Planning.....	133
General Requirements.....	133
Retirement Plan Annuities.....	134
Payback to State.....	135
<i>General Rule</i> .....	135
<i>Notice Requirements</i> .....	136
Single Person Annuity Purchase.....	136
<i>Age</i> .....	136
<i>Amount</i> .....	136
<i>Term: Possible Gift</i> .....	136
Example.....	137
<i>Payments</i> .....	137
<i>How to Estimate the Monthly Payments</i> .....	137
<i>Normal Life Expectancy</i> .....	139
<i>Shorter Than Normal Life Expectancy</i> .....	139
Married Couple Annuity Purchase.....	142
<i>Effect on Community Spouse’s Income</i> .....	144
<i>Effect on Community Spouse’s Assets (CSRA)</i> .....	146
<i>Deciding on the Length of the Annuity Term</i> .....	146
<i>Too-long a Term Can Cause a Gift</i> .....	147
<i>Advance Large Annuity Purchase by the Community Spouse</i> .....	147
<i>How Large Can the Annuity Be?</i> .....	148
<i>Long-Term Care Insurance Option</i> .....	149

<i>Planning for the Community Spouse Entering a Nursing Home</i> .....	149
<i>Recent Developments</i> .....	150
IRAs and Converting to an Annuity .....	150
Private Annuities .....	151
Balloon Payment .....	151
<b>SECTION 13: PROMISSORY NOTES</b> .....	<b>153</b>
Length of Payment Term .....	153
Equal Payments.....	154
Other Important Clauses of the Note .....	154
Interest Rate Charged .....	155
Recent Developments .....	156
<b>SECTION 14: TRANSFER (GIFT) STRATEGIES</b> .....	<b>158</b>
The “Half-A-Loaf” Method .....	158
Why the Classic Half-A-Loaf Method No Longer Works .....	160
New Half-A-Loaf Alternative Methods .....	161
<i>Gift + Return of Half the Assets (Reverse Half-a-Loaf)</i> .....	161
<i>Gift + Annuity</i> .....	162
<i>Gift + Promissory Note</i> .....	162
<i>The “Too Much Income” Problem</i> .....	163
<i>Gift of Interest in Home + Sale of Balance</i> .....	163
Exceptions .....	165
<i>Transfer to Spouse</i> .....	165
<i>Trust for the Sole Benefit of the Spouse</i> .....	166
<i>Transfer to Blind or Disabled Child</i> .....	166
<i>Trust for the Sole Benefit of a Blind or Disabled Child</i> .....	167
<i>Trust for the Sole Benefit of a Person Under Age 65</i> .....	167
<i>Transfer of the Home: Caretaker Child</i> .....	168
<i>Transfer of the Home: Resident Sibling</i> .....	169
<i>Transfer of the Home: Minor, Blind or Disabled Child</i> .....	169
<i>Transfers Exclusively for Non-Medicaid Purposes</i> .....	170
<i>Hardship Waiver</i> .....	170
<i>Nursing Home Eviction Rules</i> .....	171
Transfers to Community Spouse .....	172
Purchase Long-Term Care Insurance, Make Gift .....	173
Disclaiming an Inheritance.....	174
<b>SECTION 15: POST-ELIGIBILITY ISSUES</b> .....	<b>176</b>
Patient’s Share-of-Costs.....	176
Personal Needs Allowance .....	176
Health Care Expenses .....	176

Post-eligibility Transfers by the Community Spouse .....	177
If the Community Spouse Dies First .....	179
<i>Elective Share Problem</i> .....	180
<i>Change Beneficiary Designations</i> .....	181
<i>Divorce Option</i> .....	181
Post-Gift Transfers by Children.....	182
Moving from State to State .....	183
<b>SECTION 16: ESTATE RECOVERY .....</b>	<b>185</b>
Definition of “Estate” .....	186
Expanded Definition of “Estate” .....	186
Planning for Change.....	187
Exceptions .....	187
Timing of the Recovery Claim .....	188
Procedure and Time limit .....	189
Waivers .....	190
Married Couples’ Issues.....	190
<i>If the Nursing Home Spouse Dies First</i> .....	190
<i>If the Community Spouse Dies First</i> .....	191
Avoiding Estate Recovery .....	191
<i>Eliminate Probate Assets</i> .....	192
<i>Transfer House Shortly Before Death</i> .....	193
Liens.....	194
<i>When Applied</i> .....	194
<i>Exceptions</i> .....	195
<b>SECTION 17: CASE STUDIES .....</b>	<b>196</b>
Summary of Case Studies.....	196
Study #1: Single, no home, in nursing home .....	197
<i>If George Is Already In The Nursing Home</i> .....	197
<i>What If George Is Not Yet In The Nursing Home?</i> .....	200
<i>Dealing With The Auto</i> .....	200
Study #2: Single, owns home, in nursing home .....	202
<i>If Maria Is Already In The Nursing Home</i> .....	202
<i>The Home: Possible Solutions to Avoid Estate Recovery</i> .....	204
Study #3: Married, owns home, in nursing home .....	209
Study #4: Married, owns home, not in nursing home .....	216
Study #5: Single, no home, not in nursing home .....	221
<b>SECTION 18: VETERANS PENSION: HOW IT WORKS.....</b>	<b>228</b>
Introduction.....	229
What is Pension? .....	229

Eligibility Tests .....	230
<i>Service Requirement</i> .....	230
<i>The Medical Needs Test</i> .....	230
<i>The Income Test</i> .....	231
<i>The Asset Test</i> .....	234
How is Pension Calculated?.....	235
<i>Establishing the Maximum Allowable Pension Rate (MAPR)</i> .....	235
<i>Doing the Calculation</i> .....	238
<b>SECTION 19: VETERANS PENSION: PLANNING TECHNIQUES</b> .....	<b>241</b>
Decisions by VA Are Based on Guidelines Instead of Specific Rules.....	241
Net Worth in Excess of a Reasonable Amount Will Disqualify for Pension.....	241
Assets Must Be Completely Divested Including No Life Estates .....	242
Exempt Assets .....	242
Converting Assets to Cash Should Not Result in Substantial Sacrifice .....	242
The Possibility of a 12-Month Lookback Penalty on Divestment of Assets.....	243
Planning Opportunities for Reallocating Assets to Qualify for Pension.....	244
<i>Transfers At Least 12 Months Prior to Application</i> .....	244
<i>Converting Assets into an Income Annuity</i> .....	244
<i>Converting Assets into a Financial Product or Ownership Form with Little or No Cash Value</i> .....	245
Incorporating Veterans' Benefits Assistance into Your Practice .....	246
<i>Charging for Advice; Accreditation</i> .....	247
<i>Helpful Resources re Veterans Benefits</i> .....	248
<b>SECTION 20: TRUST TAXATION: INCOME, ESTATE, GIFT</b> .....	<b>250</b>
Income Taxation.....	250
Type of trusts – simple vs. complex .....	251
Computing the Taxable Income of Trusts .....	252
Grantor Trusts .....	254
What Makes a Trust a Grantor Trust? .....	254
§ 673. <i>Reversionary interests</i> .....	256
§ 674. <i>Power to control beneficial enjoyment***</i> .....	257
§ 675. <i>Administrative powers</i> .....	261
§ 676. <i>Power to revoke</i> .....	263
§ 677. <i>Income for benefit of grantor</i> .....	263
§ 678. <i>Person other than grantor treated as substantial owner</i> .....	265
Application To Medicaid Trusts .....	266
Application to Trusts for Children.....	267
Gift Taxes .....	268
Estate Taxes .....	268
Real Estate Transfer Taxes .....	269

SECTION 21: PRE-DRA PLANNING .....	270
APPENDIX .....	273
The Importance of a Durable Power of Attorney.....	273
Avoiding Unauthorized Practice of Law Claims .....	273
Attorney Organizations for the Elder Lawyer .....	275
<i>Local Bar Association Elder Law Committees</i> .....	275
<i>NAELA</i> .....	275
<i>CELA Designation</i> .....	276
<i>ElderCounsel</i> .....	277
<i>ACTEC</i> .....	277
<i>Martindale-Hubbell®</i> .....	278
<i>State Certification</i> .....	278
Who Is the Client? .....	278
Aggressive State Regulations .....	279
2010 Figures .....	280
GLOSSARY .....	281
ANNUITY (LIFE EXPECTANCY) TABLE .....	290
LIFE ESTATE TABLE (UNISEX) .....	291
STATE NUMBERS.....	292
1. Individual Countable Resource Allowance.....	294
2. Monthly Divestment Penalty Divisor .....	296
3. Monthly Maintenance Needs Allowance (MMMNA).....	298
4. Standard Shelter Amount/Heating and Utility Allowance .....	299
5. Community Spouse Resource Allowance (CSRA) .....	301
FEDERAL STATUTES.....	302
RESOURCES .....	304