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Retirement Assets and Medicaid Crisis Planning: Part 2



Presented by:
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About Krause

Krause Financial is an attorney-led firm that provides asset preservation solutions for estate planning and elder law attorneys and their clients. Using our specialized insurance products, resources, and support, we help attorneys streamline the process of advising clients planning for long-term care.

Our Mission:

> Empower legal professionals to navigate long-term care planning with confidence.

30+
Years of Experience

40+
Professionals on Staff

400+
MCA Cases Monthly

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Mark Munson, CELA

Mark is an attorney with Ruder Ware and headquartered in Wausau, Wisconsin. He is a Certified Elder Law Attorney (CELA) by the National Elder Law Foundation.

Mark's active participation in the elder law community ensures he stays abreast of the latest planning techniques, bringing direct benefit to firm clients. He is an engaged member of the National Academy of Elder Law Attorneys (NAELA), where he has been sharing insights on trusts and taxes at its annual meetings since 2009, attracting elder law attorneys nationwide. Mark also served on NAELA's national board of directors from 2016 to 2020.

When he's not criss-crossing the country to educate attorneys on elder law planning techniques, Mark is a devoted father of three. He is a voracious reader who loves music, often travelling to concerts.



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Recap of Part 1

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Types of Retirement Accounts or Plans

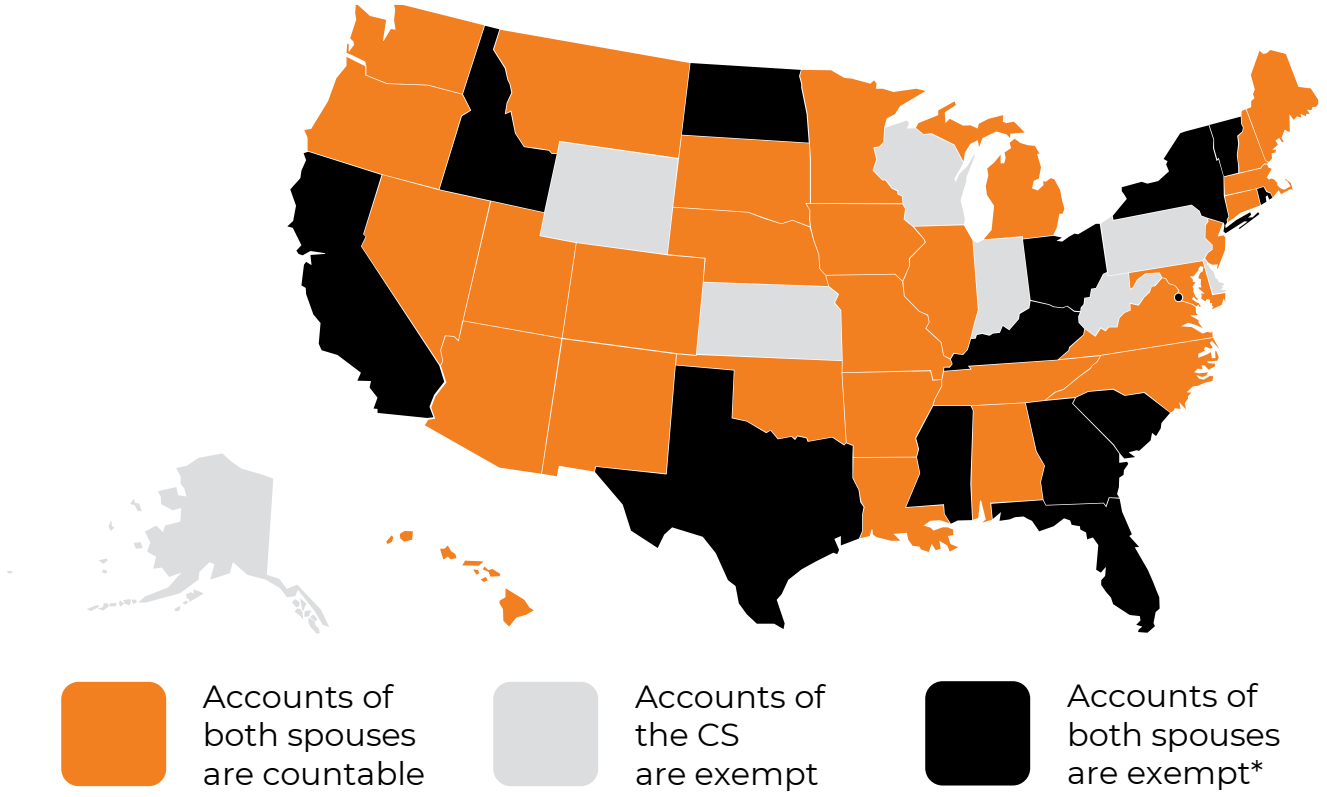
- **Traditional Individual Retirement Account ("IRA"):** contributions to the account may be fully or partially deductible, and generally, amounts in a traditional IRA are not taxed until you take a distribution.
  - See Internal Revenue Code (IRC) Section 408
- **Roth Individual Retirement Account ("IRA"):** you cannot deduct contributions to a Roth IRA, and qualified distributions are tax free (tax was previously paid). There are no required minimum distributions.
  - See IRC Section 408A

Types of Retirement Accounts or Plans

- **401(k) plans:** allow employees to contribute a portion of their wages to individual retirement accounts. Salary deferrals are excluded from the employee's taxable income, and employers can contribute to employee's accounts.
  - See IRC Section 401
  - See IRC Section 402A (for Roth 401(k) plans)
- **403(b) plans (tax sheltered annuity):** offered by public schools and certain non-profits these are similar to a 401(k) where employees can defer some of their salary to individual accounts. Employers may contribute to these plans as well.
  - See IRC Section 403(b)
  - See IRC Section 402A (for Roth 403(b) plans)

Retirement Accounts as Countable Resources?

- Exempt or countable status for retirement accounts **vary by state**.
  - *In some states, retirement accounts of both spouses are considered exempt.*
  - *In other states, only retirement accounts belonging to the community spouse are exempt.*
  - *In most states, retirement accounts belonging to either spouse are considered countable assets and must be spent down.*



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*In some states, an IRA is only exempt if the owner is taking their Required Minimum Distributions.

Types of Annuities

- **Deferred Annuities:** principal is invested and can be either withdrawn or annuitized at a later date.
  - Generally countable resources
    - Resources defined: cash or other liquid assets or any real or personal property that an individual owns and could convert to cash to be used for his or her support and maintenance.
      - 20 CFR 416.1201
  - ***Example language from Wisconsin Medicaid manual:***

    "Annuities that are considered available, countable assets that include: Annuities that can be surrendered…"



Types of Annuities

- **Immediate Annuities:** it is annuitized within a year of purchase, which means it pays out principal and income over a certain period of time (either life expectancy or a term of year or months).
  - Generally, the election to annuitize an annuity is irrevocable and cannot be undone so as to change the annuity from immediate to deferred.
  - ***Example language from Wisconsin Medicaid manual:***

    "An irrevocable annuity may or may not be considered an available, countable asset depending on when it was purchased and whether it can be sold on the secondary market"

Annuities and Medicaid



Availability

- Federal rule: countable resources generally include liquid assets the applicant owns and could convert to cash. 20 CFR 416.1201
- State rule example (Ohio):
  - **Resources:** means cash, funds held within a financial institution, investments, personal property and real property an individual and/or an individual's spouse has an ownership interest in, has the legal ability to access in order to convert to cash, and is not legally prohibited from using for support and maintenance. OAC Rule 5160:1-1-01
- Deferred annuities vs. immediate annuities

Purchase of a Medicaid Compliant Annuity



Irrevocable

The contract cannot be revoked or altered.



Non-Assignable

The contract cannot be transferred to another party or sold on the secondary market.



Actuarially Sound

The term of the annuity must be equal to or less than the owner's Medicaid life expectancy.



Equal Payments

The contract must provide equal monthly payments with no deferral or balloon payments.



State as Beneficiary

The state Medicaid agency typically must be named primary beneficiary to the extent of benefits paid on behalf of the Medicaid recipient, though exceptions exist.

USING MCAS IN CRISIS PLANNING

Generally – Non-Qualified Funds

- Client has available assets above the individual or community spouse resource allowances.
- Client "purchases" an immediate Medicaid Compliant Annuity (MCA) to create a stream of income and to remove a countable asset.
- Because the MCA is written to comply with the Medicaid rules, the annuity is not considered a transfer for less than fair market value or an asset because it cannot be sold on the secondary market.



USING MCAS IN CRISIS PLANNING

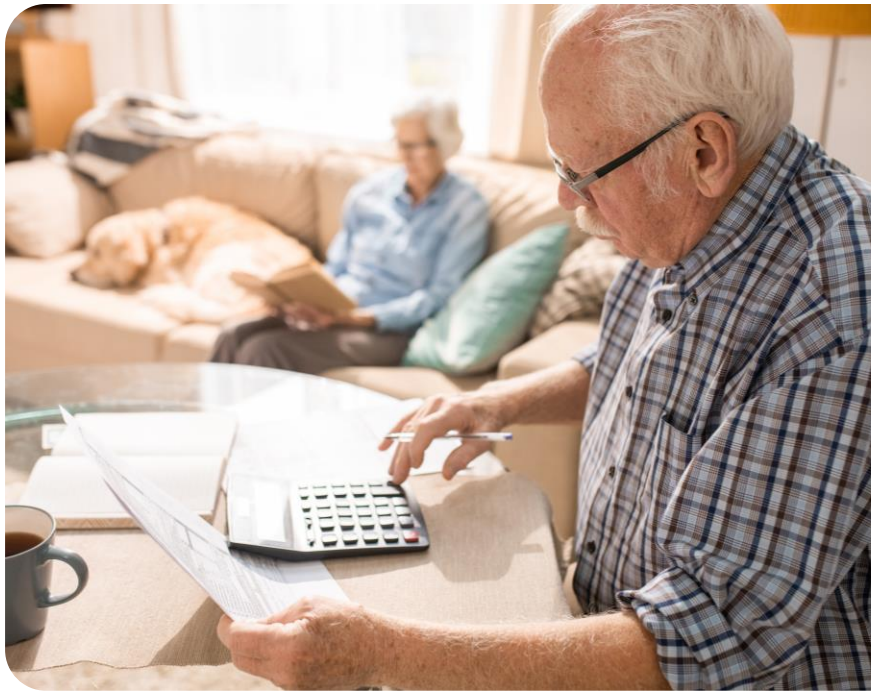
Single Client – Non-Qualified Funds

- The client gifts approximately half of her countable resources and creates a penalty period.
- The client uses her remaining assets (after the gift) to purchase a MCA structured over the length of the penalty period that provides enhanced income.
- Using their original income and the MCA payments, the individual privately pays for her care during the penalty period.
- After the penalty period and MCA term end, the client becomes eligible for Medicaid benefits.

USING MCAS IN CRISIS PLANNING

Married Client – Non-Qualified Funds

- The community spouse purchases an MCA in his or her name to eliminate the excess countable resources and accelerate the institutionalized spouse's Medicaid eligibility.
- The term of the annuity can be structured to meet the community spouse's needs and anticipated longevity.



USING MCAS IN CRISIS PLANNING

Qualified or Retirement Funds

- An MCA can be purchased with retirement funds to avoid immediate income tax consequences that would come from liquidation.
- Funds are taxed as income when payments from the IRA-MCA are made.
- The MCA has all the required elements to avoid a gifting penalty period, or to be considered a resource/asset.





Case Studies

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Case Study 1

Jane Doe



Meet Jane Doe

- Single Individual
- Gift and Annuity Plan

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Case Study 1

Jane Doe

Case Facts

Jane's Age

86

Nursing Home Private Pay Rate

$8,000/mo

Jane's Countable Assets

$302,000

Savings Account ($102k) and IRA ($200k)

Jane's Income

$2,000/mo

Social Security and Pension

Case Study 1

Jane Doe



Possible Solution - "Gift and Annuity":

- Assume Jane lives in a state with a **Penalty Divisor of $10,000**.

Saving Account:

- Jane can gift $101,000 from savings leaving her with $1,000 and creating a penalty period of 10.1 months.
- Jane uses the IRA to purchase an IRA-MCA that will pay her **$5,800 per month for 10 months** (her total monthly income is now $7,800 ($2,000 + $5,800 = $7,800).

Case Study 1

Jane Doe

IRA:

- Jane's IRA now has a balance of $142,000 ($200,000 - $58,000 = $142,000).
- Jane cashes out her IRA paying 21% in combined federal and state taxes: $29,820. **Total liquid funds are now $112,180.**
- She gifts $71,000 of the remaining funds which creates a 7.1 month penalty period.
- She purchases an MCA with the remaining $41,180 which pays her $5,883 for 7 months (her total monthly income is now $7,883 ($2,000 + $5,883).
- If she is still living in the nursing home after the 7 month term of the MCA, she should be eligible for Medicaid benefits.

Case Study 1

Jane Doe



Financial Results:

- Jane gifted $171,000 ($101,000 + $71,000)
- Jane used $99,180 of IRA funds to privately pay for 17 months.
- Jane paid $29,820 + in federal and state taxes for the IRA liquidation.
- After the penalty period has expired, Jane would pay her income ($2,000) to the nursing home and receive Medicaid benefits to pay for the remaining amount owed.

Case Study 2

Nikola Yokich



Meet Nikola Yokich

- Single Individual
- “Stand Alone” Annuity Plan

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Case Study 2

Nikola Yokich

Case Facts

Nikola's Age

86

Her daughter estimates a 2-year life expectancy

Nursing Home Private Pay Rate

$8,000/mo

Nikola's Countable Assets

$200,000

IRA

Nikola's Income

$2,000/mo

Social Security and RMDs

Case Study 2

Nikola Yokich

Possible Solution ("stand-alone plan"):

- The Medicaid pay rate for the nursing home is $6,000.
- Assume Nicola lives in a state where her life expectancy is calculated using the social security life expectancy tables.
- Her life expectancy as a female of 86 years old is 6.26 years or 75 months.

IRA:

- Jane can purchase an IRA-MCA that will pay out over her full life expectancy of 75 months.
- Jane uses the IRA to purchase an IRA-MCA that will pay her $2,667 per month for 75 months (her total monthly income is now $4,667 ($2,000 + $2,667 = $4,667).

Case Study 2

Nikola Yokich



Medicaid Eligibility:

- She is immediately eligible for Medicaid benefits
- Nicola is paying her income as her share of cost to the nursing home - $4,667
- Medicaid is paying $1,333 in benefits each month on Nicola's behalf ($6,000 - $4,667 = $1,333)

Case Study 2

Nikola Yokich



Financial Results:

- If Nicola passes away after 24 months:
  - She would have received $64,008 in benefits ($2,667 x 24 = $64,008)
  - Medicaid would be paid $31,992 from the IRA-MCA ($1,333 X 24 = $31,992)
  - Her beneficiaries would receive the remaining $104,000 from the IRA-MCA

Case Study 3

Jon and Molly Murray



Meet Jon and Molly Murray

- Married Couple
- Spousal Annuity

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Case Study 3

Jon and Molly Murray

Case Facts

Jon's Age

84

Molly's Age

83

Jon's Life Expectancy

Admitted for severe dementia, Jon is expected to have a longer rather than shorter life expectancy.

Nursing Home Private Pay Rate

$330/day

OR

$9,900/mo

Case Study 3

Jon and Molly Murray

Case Facts

Countable Assets

$400,000

Liquid Assets ($100k), Jon's IRA ($100k), and Molly's IRA ($200k)

Jon's Income

$1,500/mo

Molly's Income

$1,000/mo

Case Study 3

Jon and Molly Murray



Relevant Medicaid Facts and Figures:

- Maximum Resource Amounts:
  - Individual Resource Amount: $2,000
  - Community Spouse Resource Amount: $154,140
- IRAs are countable resources for both spouses
- Jon's life expectancy per the social security tables is **6 years (72 months)**
- Molly's life expectancy per the social security tables is **8 years (96 months)**

Case Study 3

Jon and Molly Murray

Possible Solution ("Spousal IRA-MCA"):

Jon:

- Jon withdraws $25,000 from IRA to pay for funeral expense trusts for himself and Molly as well as attorney's fees.
- With the remaining $75,000 in his IRA, John purchases a **72 month IRA-MCA** increasing his monthly income by $1,042. His total income is now $2,542 which, minus allowed deductions, will be his co-pay.
- **Molly is the primary beneficiary** of the IRA-MCA with the state Medicaid agency as contingent beneficiary up to the amount of benefits paid on behalf of Jon.

Case Study 3

Jon and Molly Murray

Possible Solution ("Spousal IRA-MCA"):

Molly:

- Molly can keep resources valued up to the **CSRA of $154,140**.
- The home is transferred to her by deed (non-countable) prior to application, she keeps $100,000 of liquid assets and leaves $50,000 in her IRA.
- She purchases a **36 month IRA-MCA** with the remaining $150,000 increasing her monthly income by $4,167 ($150,000/36 = 4,167). Her total monthly income is now $5,167.
- The primary beneficiary of the IRA-MCA is the state Medicaid agency to the extent benefits paid on Jon's behalf.
- Her and her attorney decided the 36 month term was reasonable based on her health and living expenses (anything less than her life expectancy complies with Medicaid rules).

Case Study 3

Possible Solution ("Spousal IRA-MCA"):

Tax Consequences:

- Taxes will be due on the IRA-MCA payments as made to Jon and Molly.

Medicaid Eligibility:

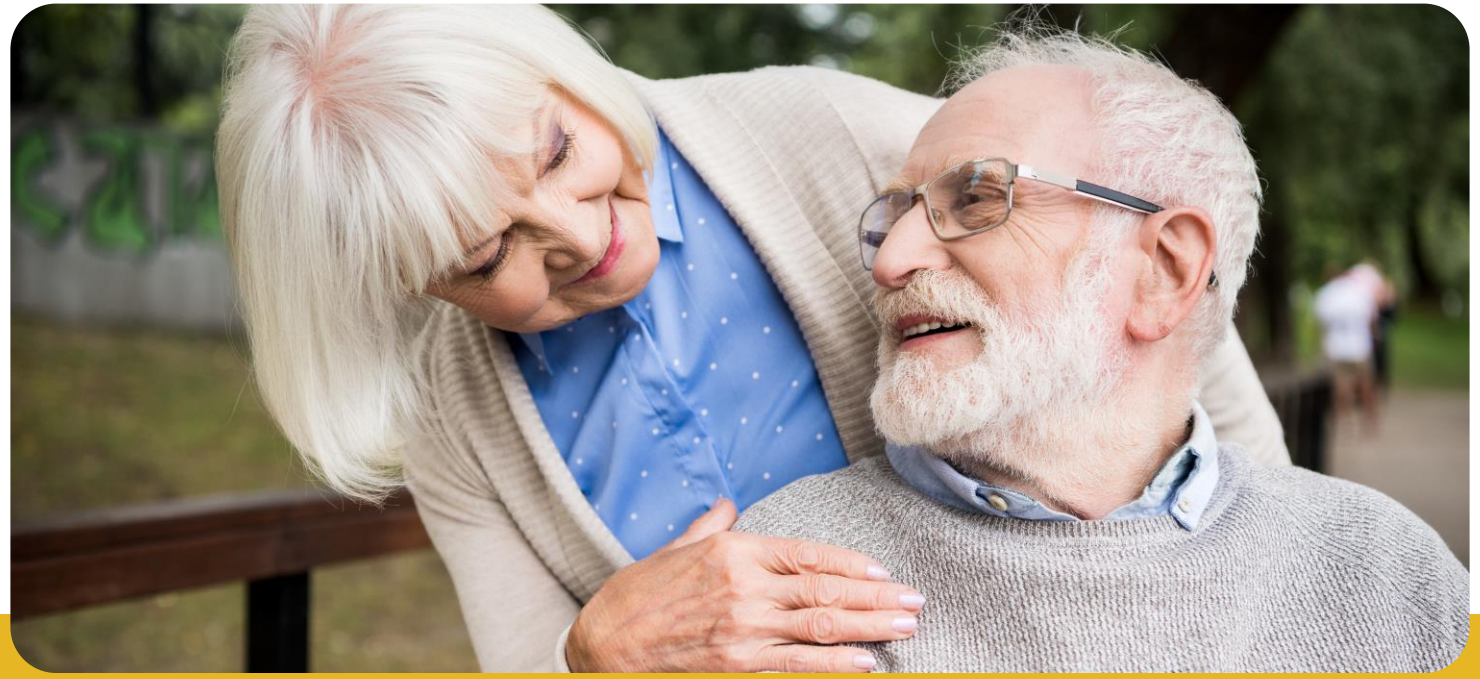
- Jon is immediately eligible for Medicaid benefits with a co-pay of $2,542 minus any allowed deductions. He is **saving $7,358 per month** (originally paying $9,900 per month).
- Molly's income of $5,167 is above the Maximum Monthly Maintenance Needs allowance, so there is not shift of income from Jon to Molly.
- Molly avoids the immediate tax consequences of liquidating her IRA to pay for Jon's care.

Case Study 3

Jon and Molly Murray

Possible Solution ("Name on the Check"):

a twist to save Jon's IRA payments from becoming part of his co-pay.



The "Name on the Check Rule"

The "Name on the Check Rule" strategy is based on a Medicaid guideline used to determine who income belongs to.

42 U.S. Code § 1396r–5(b)(2)(A)(i) states:

"If payment of income is made solely in the name of the institutionalized spouse or the community spouse, the income shall be considered available ***only to that respective spouse****."*

The "Name on the Check Rule"

This strategy may be used when the applicant spouse owns a countable IRA, but the couple wants to **prevent the IRA-MCA income from paying the Medicaid co-pay**.

Since the community spouse is *whose name is on the check*, for Medicaid purposes, the income only belongs to them.

The tax liability still falls on the applicant spouse as they are still the owner of the contract.



Favorable Beneficiary Rules

Because the applicant spouse is the owner of the contract, the **community spouse may be named primary beneficiary** ahead of the state Medicaid agency.

Upon Jon's passing, Molly can either continue to receive the annuity payments, or she can elect to receive a lump sum.

Either way, the state Medicaid agency is removed as a beneficiary of the contract.



Considerations When Using the "Name on the Check Rule"

Structure the annuity over the full Medicaid life expectancy of the applicant spouse.

This is the most conservative approach when using this strategy.
Since the community spouse is primary beneficiary, the risk of estate recovery on the annuity is very small.

Request paper checks for the MCA payments.

Forego the electronic payment option offered by many insurance companies and opt for physical checks instead.
Physical, paper checks provide additional evidence to the caseworker as the "name on the actual check".

Case Study 3

Jon and Molly Murray

Possible Solution ("Name on the Check"):

Jon:

- Jon withdraws $25,000 from IRA to pay for funeral expense trusts for himself and Molly as well as attorney's fees.
- With the remaining $75,000 in his IRA, John purchases a **72 month IRA-MCA** that is still owned by him but is made payable to Molly, and she is the primary beneficiary. The state Medicaid agency is the contingent beneficiary to the extent of benefits paid on behalf of Jon.
- Molly's monthly income increased by $1,042.

Case Study 3

Jon and Molly Murray

Possible Solution ("Name on the Check"):

Molly:

- Molly can keep resources valued up to the CSRA of $154,140.
- The home is transferred to her by deed (non-countable) prior to application, she keeps $100,000 of liquid assets and leaves $50,000 in her IRA.
- She purchases a **36 month IRA-MCA** with the remaining $150,000 increasing her monthly income by $4,167 ($150,000/36 = $4,167). The primary beneficiary of the IRA-MCA is the state Medicaid agency to the extent benefits paid on Jon's behalf.
- Her and her attorney decided the 36 month term was reasonable based on her health and living expenses (anything less than her life expectancy complies with Medicaid rules)

Case Study 3

Jon and Molly Murray

Tax Consequences:

- **Taxes will be due on the IRA-MCA payments as made** to Molly. Jon is still responsible for the taxes due for the payments made from his IRA to Molly.

Medicaid Eligibility:

- **Jon is immediately eligible for Medicaid benefits** with a co-pay of $1,500 minus any allowed deductions. He is saving $8,400 per month (originally paying $9,900 per month).
- Jon avoids the IRA-MCA income from becoming part of his Medicaid co-pay.
- Molly's income of $6,229 ($1,000 + 1,062 + $4,167 = $6,229) is above the Maximum Monthly Maintenance Needs allowance, so there is not shift of income from Jon to Molly.
- Her income would decrease to $2,062 after her IRA-MCA term of 36 months, and she may qualify for an income shift from Jon at that time.

Case Study 3

Jon and Molly Murray

Possible Solution ("Qualified Domestic Relation Order ("QDRO"): a twist on Name on the Check rule to save Jon's IRA payments from becoming part of his co-pay.

- In some states the Name on the Check Rule strategy is ***not allowed by the Medicaid agency***, so we look to the courts to order payments from a retirement account owned by the institutionalized spouse to the community spouse.

- Work with a local family law attorney to have an order executed by a state court judge stating that the community spouse is the alternate payee. This can usually be done by agreement between the spouses.

- Present the order to the plan administrator of the retirement account to have payment issued to the community spouse by court order.

Case Study 3

Jon and Molly Murray

Possible Solution ("Qualified Domestic Relation Order ("QDRO"):

- Jon and Molly work with a family law attorney to have an agreement ordered by the local state court that states Molly is the alternative payee of Jon's retirement account.
- Molly's income increases to $6,229 *(same as the Name on the Check result).*
- Jon is immediately eligible for Medicaid benefits with a co-pay of $1,500 minus any allowed deductions. He is saving $8,400 per month (originally paying $9,900 per month).
- Jon's IRA income is not part of his Medicaid co-pay.

Case Study 3

Jon and Molly Murray

Possible Solution ("Qualified Domestic Relation Order ("QDRO"):

- To learn more about this solution please see our 2019 webinar with Stephanie Prestridge – The In Marriage QDRO: https://access.krausefinancial.com/webinar/the-in-marriage-qdro/





Questions

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Next Step

Discovery Call – talk to one of our helpful Relationship Managers about how we can support your Medicaid Crisis Planning practice or specific case facts if you have a client that needs this assistance now.

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Thank You!

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