



Advanced Medicaid Compliant Annuity Case Studies



Presented by:
Jim Wolverton, J.D.
Director of Legal Education

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**30+**

Years of Experience

**40+**

Professionals on Staff

**400+**

MCA Cases Monthly

About Krause

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Our Mission:



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

Today's Goals

DEFINE

the Medicaid Compliant Annuity and common strategies using the annuity.

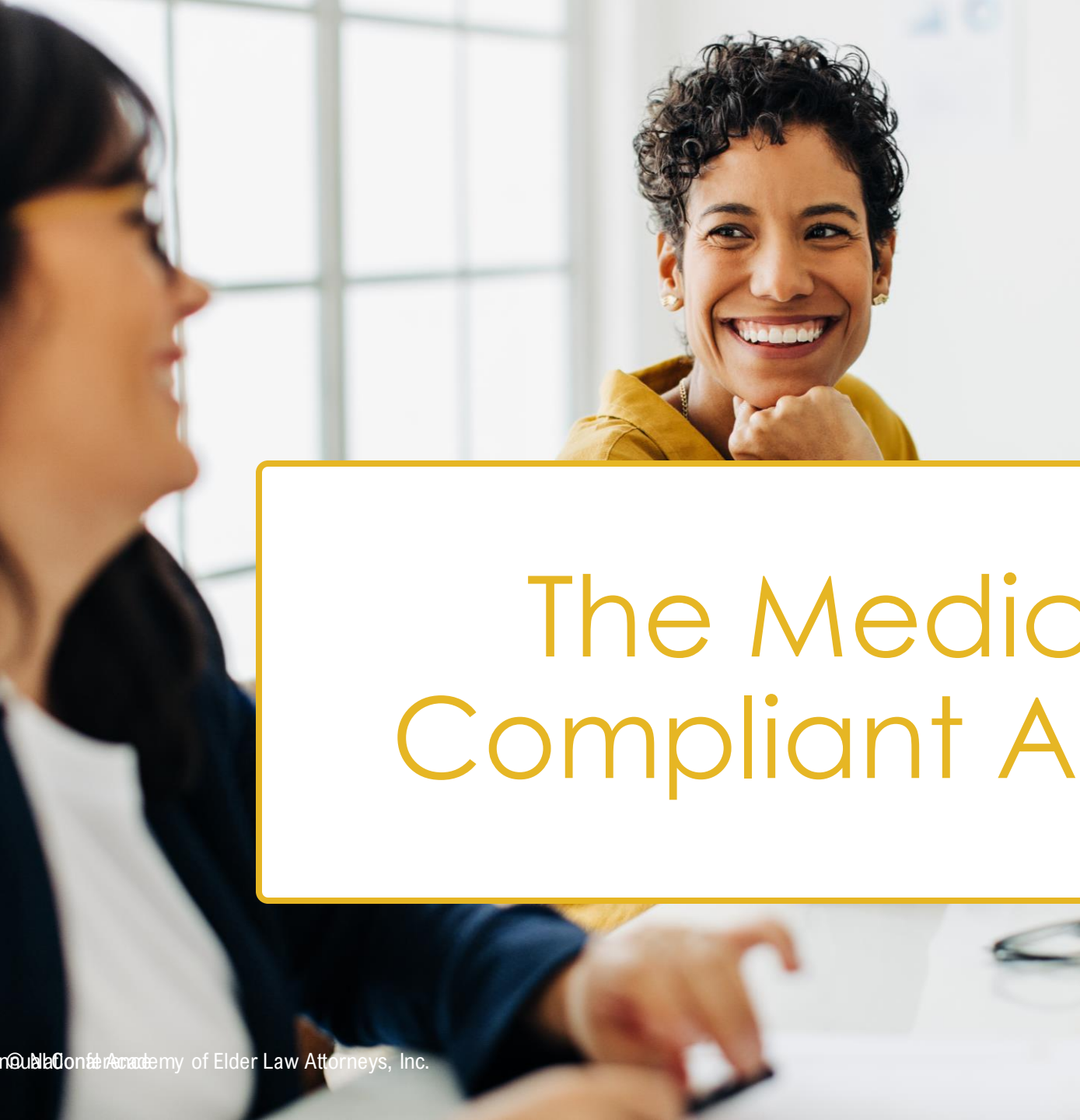
IDENTIFY

unique case facts that warrant a different approach to MCA planning.

EXPLORE

in-depth case studies illustrating advanced planning scenarios.



A photograph of two women in a professional setting. One woman, with dark curly hair and a yellow top, is smiling and looking towards the other woman. The second woman, with long dark hair and a dark blazer, is seen in profile, looking at the first woman. They appear to be in a meeting or consultation.

The Medicaid Compliant Annuity

What Is a Medicaid Compliant Annuity?

- A Medicaid Compliant Annuity (MCA) is an **income-only, single premium immediate annuity** designed to work within Medicaid's requirements.
- An MCA **converts excess countable assets into an income stream** with zero cash value.

MCA Product Highlights

- ✓ Available in 49 states plus D.C.
- ✓ Terms as low as two months
- ✓ Minimum investment of \$5,000
- ✓ No maximum issue age



How Does an MCA Work?

- An MCA helps clients obtain **financial assistance for long-term care** while protecting their assets.
- Strategies and best practices for using MCAs vary depending on the case facts.
- In order to be Medicaid compliant, an annuity must meet **five main requirements**.

Requirements of an MCA



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.

Planning for a Married Couple

- In most cases involving a married couple, there is **one spouse in the institution** and **one spouse at home**.
- In these cases, we typically recommend the community spouse **fund the couple's excess countable assets into an MCA**.
- The MCA pays the community spouse **income** over the term of the annuity.
- The institutionalized spouse is **immediately eligible** for benefits.

Planning for a Single Person

- When planning for a single person, we **don't** recommend the same strategy as a married couple.
 - *Why? The MCA payments would go toward their monthly Medicaid co-pay.*
- Instead, we recommend the **Gift/MCA plan**.
- The individual gives away about half of their assets and **uses the other half to purchase an MCA** that will pay through the penalty period.
- They are able to make an **immediate wealth transfer** and become eligible for Medicaid sooner than if they did nothing.

Which Factors Influence These Strategies?

Several factors influence the use of these strategies, including how much the client has to spend down, what type of assets they have, and more.

Certain factors alter the strategy altogether, like:

- **Both Spouses in the Nursing Home:** Traditional community spouse rules don't apply, so elder law attorneys need to take a different approach.
- **Post-Eligibility Cash:** An influx of assets like the receipt of an inheritance requires special consideration.
- **Previous Gifts:** Planning around a significant penalty period can alter the original strategy.

Next, we'll look at case studies that take these unique scenarios into consideration.



“Double Gifting”

Both spouses are institutionalized.

The Strategy

- Like the Gift/MCA plan for a single person, **each spouse divests approximately half of their assets** by way of a gift.
- Each spouse is then subject to a **penalty period** of ineligibility.
- They **each purchase an MCA** to pay for their care costs through their respective penalty period.
- They must purchase two separate MCAs due to **how the penalty period is assessed** in most states.

Why Use this Strategy?

- The biggest challenge in planning for an institutionalized couple is the **difference in asset regulations**.
- The Community Spouse Resource Allowance only applies in situations where a spouse **resides in the community**.
- When both spouses are in a facility, the couple can only keep **\$3,000 in most states**.
- Since both spouses are institutionalized and, therefore, are not protected under Medicaid's spousal impoverishment standards, we treat them as if they are **two single people** and use a variation of the traditional **Gift/MCA plan**.

Divestment Rules

- In most states, when both spouses of a married couple are institutionalized, **any gifts made by one spouse** will result in both spouses incurring a penalty period.
- Therefore, the penalty is **divided** between the two individuals since one spouse cannot serve the penalty period on their own.
- The penalty period is divided/apportioned **equally** no matter which spouse made the gift or which assets were gifted.

Example:

If the Divestment Penalty Divisor is \$8,000, a gift of \$16,000 (from either spouse) would result in a **1-month penalty period** for both spouses.

Divestment Rules

- While both spouses are serving their penalty period, should one spouse pass away, the **other spouse will incur** the remaining penalty period.

Example:

If each spouse is serving a 10-month penalty period, and one spouse dies in month 5, the other spouse will have a total penalty period of **15 months.**

Where are These Rules Found?

The topic of handling a penalty period for two institutionalized individuals is **mentioned briefly in 42 USC 1396p(c)(4):**

42 USC § 1396p(c)(4) Liens, adjustments and recoveries, and transfers of assets

“In the case of a transfer by the spouse of an individual which results in a period of ineligibility for medical assistance under a State plan for such individual, a State shall, using a reasonable methodology (as specified by the Secretary), apportion such period of ineligibility (or any portion of such period) among the individual and the individual’s spouse if the spouse otherwise becomes eligible for medical assistance under the State plan.”

Each state addresses the topic slightly differently, but we’ve found most states handle this situation the same way in practice.

State Rule Examples



WI MEH § 17.3.8 Both Spouses Institutionalized

"If the community spouse makes a divestment resulting in a penalty period for the institutionalized person...split the remaining penalty period between the spouses at the time the community spouse...is found otherwise eligible."



GA PAMMS § 2342 Transfer of Assets

"If the community spouse, subsequently goes into LA-D, the penalty may be shared between the spouses...Should one-member die...the remaining eligible spouse will complete the remainder of the penalty period for the now ineligible spouse."



AZ Medical Assistance Eligibility Policy Manual § 905 Transfer Penalty Period

"...when both spouses qualify for ALTCS the penalty period is equally divided between the two spouses..."



Case Study

Meet George and Mary

George (85) has been in a nursing home for a few months, and his wife, Mary (83), is about to move into the facility as well. Their children are concerned about quickly using up the couple's life savings, so they turn to a local elder law attorney for help.

Case Facts



George's Income
\$2,400



Mary's Income
\$2,100



Total Countable Assets
\$295,000



George's Cost of Care
\$9,000



Mary's Cost of Care
\$9,000



Divestment Penalty Divisor
\$8,000

Determine the Spend-Down Amount

- George and Mary can keep \$3,000 as their combined resource allowance.
- To avoid the edge of eligibility, they will keep **\$2,800**.

Total Countable Assets:	Combined Allowance:	Spend-Down Amount:
\$295,000	\$2,800	\$292,200

Calculate the Burn Rate

- This means that for each month of the plan, the couple will “burn” through \$29,500.
 - *Approximately \$16,000 will be consumed by way of the gift.*
 - *Approximately \$13,500 will be consumed by way of the MCAs.*

Combined Cost of Care: \$18,000	-	Combined Income: \$4,500	=	Income Shortfall: \$13,500
Income Shortfall: \$13,500	+	Combined Divestment Penalty Divisor: \$16,000	=	Burn Rate: \$29,500

Why Use “Double” Figures?

- Remember, any divestment and resulting penalty period will be **split between the two spouses**.
- Even though the Divestment Penalty Divisor is \$8,000, **the couple must divest double that amount** in order for each to incur a full month of penalty.
- Additionally, since **each spouse is responsible for paying their own cost of care** each month, their cost and income figures must be combined as well.

Determine the Length of the Plan

- The purpose of the Burn Rate is to determine how long the penalty period and MCA term will be.
- To calculate this, divide the spend-down amount by the Burn Rate.

$$\begin{array}{|c|} \hline \text{Spend-Down} \\ \text{Amount:} \\ \hline \$292,200 \\ \hline \end{array} \div \begin{array}{|c|} \hline \text{Burn Rate:} \\ \hline \$29,500 \\ \hline \end{array} = \begin{array}{|c|} \hline \text{Length of} \\ \text{the Plan:} \\ \hline \text{9.9 Months} \\ \text{Rounded Up To 10} \\ \text{Months} \\ \hline \end{array}$$

Calculate the Gift Amount

The gift amount of \$160,000 will result in both George and Mary being ineligible for Medicaid for **10 months**.

Length of the Plan: 10 Months	X	Combined Divestment Penalty Divisor: \$16,000	=	Total Gift Amount: \$160,000
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Determine the MCA Premium Amounts

- The spend-down amount of \$292,200 is reduced by the gift amount of \$160,000, leaving the couple with **\$132,200** to fund into the two MCAs.
- **Can we just divide this amount in half?**
 - Since Mary's income of \$2,100 is less than George's income of \$2,400, Mary will require more money in her MCA to ensure she can privately pay during the penalty period.
 - Therefore, the MCA premium amounts for each spouse will be different.

Purchase George's MCA

Single Premium	Annuity Term	Monthly Payout	Total Payout
\$64,600	10 Months	\$6,465	\$64,650

Owner/Payee: George

Primary Beneficiary: The state Medicaid agency to the extent of benefits expended on behalf of George

Contingent Beneficiary: Their children

Purchase Mary's MCA

Single Premium	Annuity Term	Monthly Payout	Total Payout
\$67,600	10 Months	\$6,765	\$67,650

Owner/Payee: Mary

Primary Beneficiary: The state Medicaid agency to the extent of benefits expended on behalf of Mary

Contingent Beneficiary: Their children

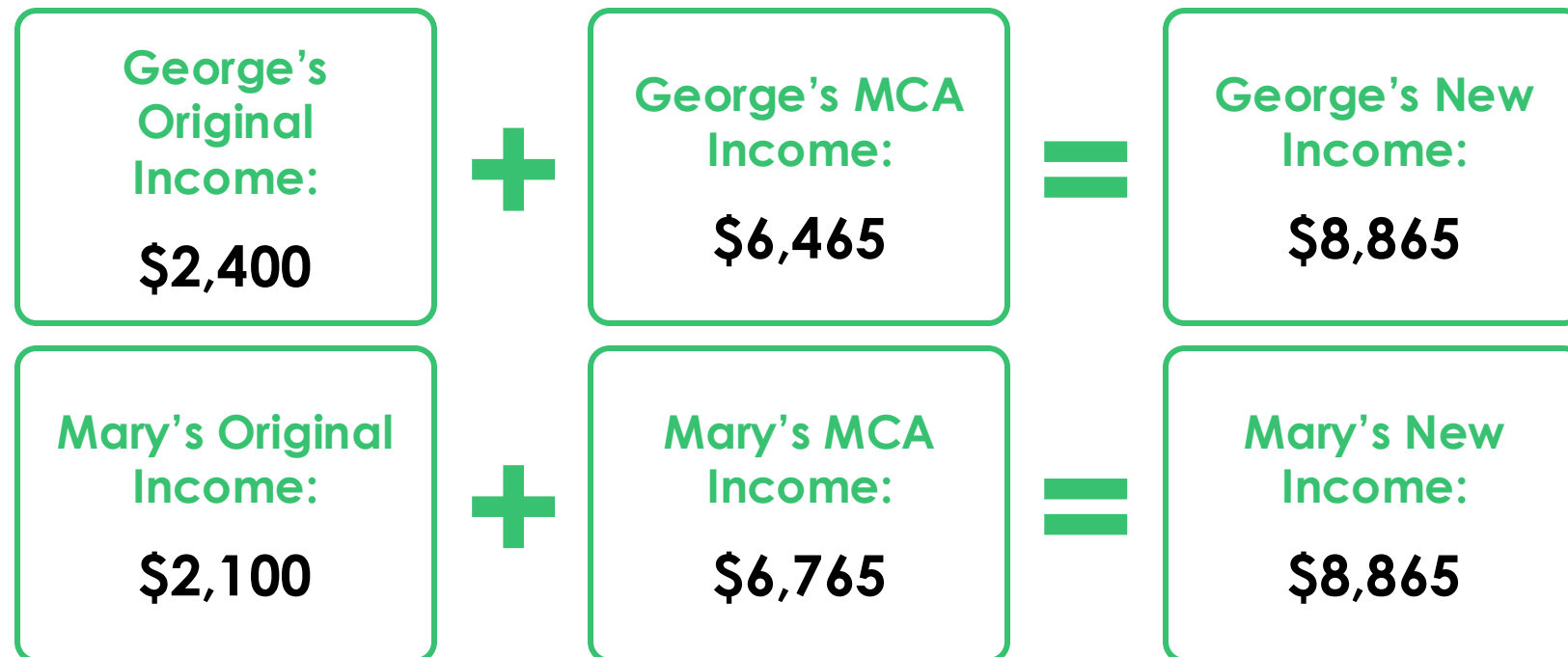


Apply for Medicaid

- After purchasing the MCAs, George and Mary are both **“otherwise eligible”** for benefits.
- They each apply for Medicaid, and their **10-month penalty period** commences.
- During this time, they will use their **original income and their MCA income** to pay the nursing home bill.

Income During the Penalty Period

Both George and Mary have monthly care costs of \$9,000, so they have a small shortfall to pay to the nursing home each month, which they can cover using their resource allowance or some help from their kids.



Economic Results

- After the 10-month penalty period, George and Mary's monthly income reverts to \$2,400 and \$2,100, respectively.
- After accounting for their \$50 Personal Needs Allowances, George has a monthly Medicaid co-pay of \$2,350 and Mary has a co-pay of \$2,050. That means they are saving **\$13,600 total each month** compared to their original cost of care.
- George and Mary were able to make **an immediate wealth transfer of \$160,000** to their children, which is over 50% of their spend-down amount.

Additional Considerations

- If one spouse were to predecease the 10-month plan, their remaining penalty period would be attributed to the surviving spouse.
- If both spouses predecease the plan, they would not have gained or lost any economic benefit, since they would have been privately paying for their care during this time.
- If their care costs increase or they have unexpected medical expenses, their children may have to use some of the gifted funds to help pay for their care.

Receiving a Lump Sum Inheritance or Settlement

Your client is already on Medicaid and at risk
of losing benefits.

The Strategy

- It is not uncommon for a client who has already been receiving Medicaid benefits **receives a lump sum of money**, usually through an inheritance, settlement, or proceeds from the sale of their home.
- These funds will cause the Medicaid recipient to **lose eligibility**, as their assets will exceed \$2,000.
- In this case, we recommend using a Gift/MCA plan to protect a portion of the cash. The other portion is then used to pay for care during the penalty period.
- **Timing is critical:** After receipt of the lump sum is reported to the state, the gift and purchase of the MCA should immediately follow the written **Notice of Adverse Action** and align with the date of the termination of Medicaid benefits.

Why Use this Strategy?

- **For Single Clients:**

- Like traditional Gift/MCA planning, saving half their assets is a much better result than losing it all to the facility.

- **For Married Clients:**

- If the institutionalized spouse is the sole recipient of the cash, they cannot transfer assets to the community spouse above and beyond the community spouse resource allowance.
- The institutionalized spouse may only make unlimited transfers to a community spouse **before** initial eligibility is achieved.

For Both:

- The refusal of an inheritance is usually considered a divestment, so the client cannot refuse or avoid the funds.

Transfers Between Spouses: *Fagan v. Bremby*

Case Facts:

- Martin Fagan was severely injured in a motorcycle accident in 2011 and subsequently entered a skilled nursing facility.
- He began receiving Medicaid benefits in 2012.
- In 2015, he received a personal injury settlement. After the payment of several outstanding liabilities, he was deemed to be over the asset limit by nearly \$1M and lost coverage.
- He transferred \$879,453.32 over several months to his wife. A portion of this was used to buy a house and a portion was used to buy an MCA in order to reduce her assets to be within her Community Spouse Resource Allowance.
- The State of Connecticut DSS considered the transfer of assets to Mrs. Fagan improper and applied a penalty period to Mr. Fagan of approximately seven years.

“Initial Determination of Eligibility”

- The key issue in this case is the “initial determination of eligibility.”
- The Fagans argued that Mr. Fagan, as the institutionalized spouse, could transfer unlimited assets to Mrs. Fagan because he was not receiving Medicaid benefits at that time; therefore, the transfers occurred pre-eligibility.
- However, the state maintained that since Mr. Fagan had been continuously institutionalized since 2012, his 2015 ineligibility did not trigger a new eligibility determination.
- Therefore, Mr. Fagan’s transfers to Mrs. Fagan exceeding the CSRA were considered improper in accordance with 42 USC § 1396r-5(f)(1).

42 USC § 1396r-5(f)

Permitting transfer of resources to community spouse (1) In general

An institutionalized spouse may, without regard to section 1396p(c)(1) of this title, transfer an amount equal to the community spouse resource allowance (as defined in paragraph (2)), but only to the extent the resources of the institutionalized spouse are transferred to (or for the sole benefit of) the community spouse. The transfer under the preceding sentence shall be made as soon as practicable after the date of the initial determination of eligibility, taking into account such time as may be necessary to obtain a court order under paragraph (3).

Refusing an Inheritance

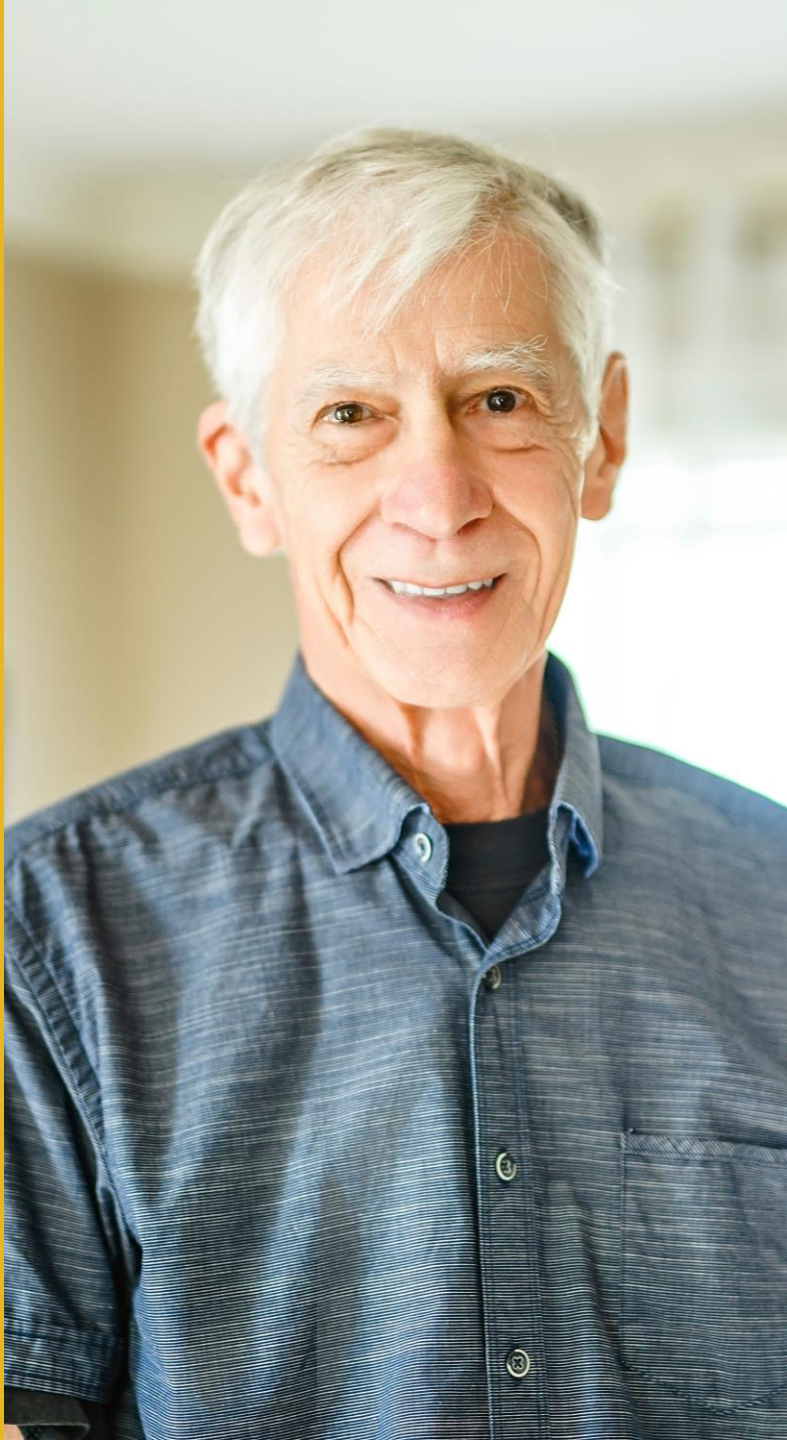
The topic of refusing assets an individual is addressed in **Transmittal 64** as well as most state manuals.

Transmittal 64

3257. Transfers Of Assets And Treatment Of Trusts

“For purposes of this section, the term "assets an individual or spouse is entitled to" includes assets to which the individual is entitled or would be entitled if action had not been taken to avoid receiving the assets. The following are examples of actions which would cause income or resources not to be received:

- Irrevocably waiving pension income;
- Waiving the right to receive an inheritance;
- Not accepting or accessing injury settlements”



Case Study

Meet Robert

Robert (82) has been receiving Medicaid benefits for the last 6 months. His brother, who did not have any children, recently passed away and Robert is the sole beneficiary of his estate. He is set to inherit \$155,000 in May.

Case Facts



Robert's Income
\$2,350



Divestment Penalty Divisor
\$8,450



Inheritance Amount
\$155,000



Robert's Cost of Care
\$9,600

Calculate the Burn Rate

This means that for each month of the plan, **Robert will “burn” through \$15,700.**

- *Approximately \$8,450 will be consumed by way of the gift.*
- *Approximately \$7,250 will be consumed by way of the MCA.*

Cost of Care:	\$9,600
Robert's Income:	– \$2,350
Income Shortfall:	\$7,250
Divestment Penalty Divisor:	+ \$8,450
Burn Rate:	\$15,700

Determine the Length of the Plan

- The purpose of the Burn Rate is to determine how long the penalty period and MCA term will be.
- To calculate this, divide the inheritance amount by the Burn Rate.

$$\begin{array}{|c|} \hline \text{Inheritance} \\ \text{Amount:} \\ \hline \$155,000 \\ \hline \end{array} \div \begin{array}{|c|} \hline \text{Burn Rate:} \\ \hline \$15,700 \\ \hline \end{array} = \begin{array}{|c|} \hline \text{Length of} \\ \text{the Plan:} \\ \hline 9.87 \text{ mo.} \\ \text{Rounded up to 10} \\ \hline \end{array}$$

Calculate the Gift Amount

The gift amount of \$84,500 will result in Robert being **ineligible for Medicaid for 10 months.**

Length of the Plan: 10 mo.	X	Divestment Penalty Divisor: \$8,450	=	Total Gift Amount: \$84,500
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Purchase Robert's MCA

After Robert makes the gift, the inheritance of \$155,000 is reduced by the gift amount of \$84,500, **leaving \$70,500** for him to fund into the MCA.

Single Premium	Annuity Term	Monthly Payout	Total Payout
\$70,500	10 Months	\$7,055	\$70,550

Owner/Payee: Robert

Primary Beneficiary: The state Medicaid agency to the extent of benefits expended on behalf of Robert

Contingent Beneficiary: His children

Reapply for Medicaid

- Robert is now considered “**otherwise eligible**” again except for the gift. He reapplies for Medicaid and his penalty period begins.
- During this time, he will use his Social Security income and his MCA income to pay the nursing home bill.
- Since his cost of care is \$9,600, he will have a **small shortfall** to pay to the nursing home each month.

Robert's Income: \$2,350	+	MCA Income: \$7,055	=	Total Income: \$9,405
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Economic Results

- Robert will be penalized for 10 months. During this time, his **income will increase from \$2,350 to \$9,405** to help pay for his cost of care of \$9,600.
- Robert was able to preserve \$84,500 of the inheritance he received from his brother—this is almost **55% of the original inheritance of \$155,000**.
- Had he done nothing, he would have exhausted the inheritance on care costs in as little as 16 months, and any remaining assets in his name at the time of his death could have been subject to estate recovery.

Additional Considerations

- The notification to the state, the gift, and the annuity purchase must all be done with the correct timing in order for the plan to work properly.
- Unlike most traditional Gift/MCA plans, should Robert predecease the annuity term and penalty period, the state Medicaid agency will be able to recover benefits paid from the annuity since he had already received benefits for some time.



Gift/MCA Plan for a Community Spouse

The Strategy

- In most cases involving a married couple, they opt to utilize the traditional community spouse plan in which the entire spend-down amount is annuitized.
- However, some attorneys opt for a Gift/MCA plan for their married clients.
- In this case, the community spouse can retain their Community Spouse Resource Allowance and then remaining excess assets are divided between the gift and the annuity.

Why Use this Strategy?

- **Community Spouse in Poor Health:**
 - If there's a likelihood the community spouse will pass away or enter a facility in the near future, the Gift/MCA plan would protect a portion of the funds up front instead of risking estate recovery on a traditional annuity plan.
- **Blended Family/Second Marriage:**
 - For clients who were married later in life and keep assets separate, the Gift/MCA plan would allow the institutionalized spouse to create a wealth transfer to a trust or the children rather than purchase an annuity for the benefit of the community spouse.
- **Significant Previous Gifts:**
 - If the clients made significant previous gifts, they will need enough income available to pay through the penalty period without depleting the community spouse's CSRA.

Who Owns The Annuity?

- With this strategy, either spouse can be the owner of the annuity and depends on several factors:
 - **IRA Funds:** If IRA funds are being used as part of the plan, the owner of the IRA needs to be the owner of the annuity.
 - **Income and QIT Considerations:** If you live in an income cap state, consider structuring the annuity in the community spouse's name to avoid the need for a Qualified Income Trust.
 - *When the community spouse owns the annuity, you also have flexibility in how much income the annuity provides.*
 - **Beneficiary Rules:** If the annuity is owned by the institutionalized spouse, the community spouse may be designated as primary beneficiary, which could be beneficial if the institutionalized spouse received benefits in the past.

Example

- Carl (83) and Linda (81) are a married couple. Linda has dementia and has entered a nursing home. Carl remains at home.
- The couple has given money to their adult children over the last few years totaling \$112,000. At this point, the children have spent the money and the gifts are unable to be cured.
- Their attorney opts to use a Gift/MCA plan to help Linda qualify for benefits faster than if they did nothing while also accounting for the previous gifts they made to their children.



Carl's Income
\$2,400



Linda's Income
\$2,100



Total Countable Assets
\$325,000



Linda's Cost of Care
\$7,800



Divestment Penalty Divisor
\$8,000

Penalty and Annuity

Carl, as the community spouse, will retain \$155,000 (to avoid the edge of eligibility), and Linda will retain \$2,000, meaning the couple must spend down \$168,000. After paying some liabilities, making home improvements, and purchasing funeral expense trusts, **Carl is left with \$100,000.**

The previous gifts of \$112,000 mean Linda is ineligible for benefits for **14 months.**

The attorney determines the spend-down amount of \$100,000 will go toward the annuity that will pay out over the length of the penalty period. The annuity will be owned by Carl.

Single Premium	Annuity Term	Monthly Payout	Total Payout
\$100,000	14 Months	\$7,200	\$100,800
Owner/Payee: Carl Primary Beneficiary: The state Medicaid agency to the extent of benefits expended on behalf of Linda Contingent Beneficiary: Their trust			

Economic Results

- Linda will be penalized for **14 months**. During this time, Carl will have income from the annuity, along with Linda's Social Security income, to pay for Linda's cost of care of \$7,800. Carl can retain any leftover income for his own benefit.
- The couple was able to qualify faster than if they did nothing considering the significant previous gifts of \$112,000.
- Carl receives the excess income from the annuity to supplement his lifestyle in the community.

Are There More Ways to Structure an MCA?

Yes!

There are many instances in which a particular case falls outside of the traditional Medicaid Compliant Annuity strategies.

While these strategies work for many clients, it's important to think **outside the box** in order to produce the best result for your clients.

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A photograph of two women in a professional setting. One woman, with dark curly hair and a yellow top, is smiling and looking towards the other woman. The second woman, with long dark hair and a dark blazer, is seen in profile, looking at the first woman. They appear to be in a meeting or discussion.

Questions



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