



*The Medicaid
Survival Manual:*

**STRATEGIES
TO AVOID
NURSING
HOME
POVERTY**

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PREFACE

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**THE MEDICAID SURVIVAL MANUAL:
STRATEGIES TO AVOID
NURSING HOME POVERTY**

INTRODUCTION

I have delivered this booklet's message hundreds of times over the past fourteen years to couples and individuals in need, seminar groups, other attorneys, and audiences of every kind and description.

Knowing that it is impossible to bring this message of hope to everyone, it still pains me to meet with elderly citizens after they have needlessly spent themselves into poverty, even losing their homes, because of incorrect information or the failure to act upon correct information available. If the information contained in this booklet prevents one person from falling into this trap, my effort will have been worthwhile.

Insofar as is humanly possible for any attorney, I will attempt to keep the language free from all legal and government bureaucratic mumbo -jumbo. I hope to provide you with a brief overview of how the Medicaid system works at the nursing home level, two typical case studies to illustrate real life applications of Medicaid rules, and a list of strategies available in most States. This is not an in-depth, detailed discussion of nursing home Medicaid regulations and strategies. But, if you can grasp and understand what follows, then with competent professional help, you should be able to avoid financial disaster if you are ever faced with a nursing home crisis.

Some people believe that Medicaid planning is "immoral" or at the very least "unpatriotic," while the majority still believes that everyone has a moral right to protect what they earned with sweat, toil and sacrifice for themselves, their spouses and heirs.

Wealthy people can afford to carry high -premium nursing care insurance or to pay the nursing home fees from current income. The nation's poor have no problem qualifying for Medicaid and are usually well versed in the application process. That leaves the middle income class, the hard working taxpayers, to pay their own nursing home fees until they are broke and then turn to Medicaid, or to find another solution to their problem. "Other solutions" is what this booklet is about! Let's talk about them!

Long term nursing home care affects two main categories of people—the single or widowed person in a nursing home or the married couple with one spouse in a nursing home and the other spouse at home. Since the rules for Medicaid assistance are different for each of these categories, we will begin with two typical case studies to which we will refer as we travel together during the following discussions.

Case Study #1:

Jane is a widow; age 78; two adult children & grandchildren; who recently suffered a stroke and was transferred from the hospital to a nursing home. She has medigap insurance and has the possibility of 100 days maximum coverage under Medicare. Her income and assets are as follows:

Income:	\$1400 Social Security
	\$ 700 Pension
	<hr/>
	\$2100 Total
Assets:	Manufactured Home (Lot Lease)
	Unimproved Lots (2)
	Household Goods Wedding Rings (2)
	Automobile (1)
	\$3,000 Prepaid Burial Contract
	Burial Plot
	\$40,000 in Bank CD's
	\$10,000 in Bank Savings
	\$40,000 in Investment Account
	\$ 2,000 in Bank Checking
	\$ 2,500 Cash Value in Whole Life Policy

Case Study #2 :

John (age 82) and Mary (age 78) are married; together they have two adult children & grandchildren; John has Alzheimer's and needs long term nursing home care. John is not eligible for any coverage under Medicare because he has Alzheimer's and cannot progress on therapy, and is, therefore, on private pay and spend-down from day one. John and Mary's income and assets are as follows:

Income:	\$1400 Social Security (John) \$ 400 Social Security (Mary)
	\$ 700 Pension
	<hr/>
	\$2100 Total
Assets:	Single Family Residence & Lot
	Household Goods
	Wedding Rings (2-Mary)
	Automobile
	\$6,000 Prepaid Burial Contract (2)
	Vacation Home in northern State (\$50,000)
	Note Receivable & Mortgage (\$68,000 Balance)
	IRA (\$35,000) - (Mary)
	IRA (\$35,000) - (John)
	Investment Account(\$158,000)-(joint)
	Savings & Checking (\$53,560) - (Joint)

MEDICARE v. MEDICAID

Medicare and Medicaid, although they sound similar are as different as night and day.

Medicare is...

1. Entirely a federal program.
2. Your government-run health insurance plan, age 65 and above.
3. Coverage for short-term (max. 100 days) “skilled” nursing home care with limitations.
4. A program which expects you to pay a deductible amount (Usually covered by medigap policies).

Medicaid is...

1. A joint federal and state program with similar guidelines but with specific variations in each state.
2. Coverage for long-term (skilled or custodial) care in most nursing homes.
3. Nursing home coverage for those, age 65 or disabled, and impoverished (as defined by Medicaid’s unique rules).
4. A program in which applicant usually pays all or a portion of income to nursing home as co-pay.

It is clear from the descriptions above that Medicare will not cover long -term care in a nursing home. There are only two sources of payments to nursing homes:

- (1) the patient and his/her family, and/or
- (2) Medicaid.

That leaves a huge segment of the population, the hard-working taxpayers, to pay their own nursing home fees until they are “broke” and then turn to Medicaid, or to find another solution to the problem.

THE MEDICAID SOLUTION:

The other solution involves an understanding of the word “impoverishment” as defined by the Medicaid system and a working knowledge of estate planning techniques which we usually refer to as financial estate planning.

Nursing home Medicaid eligibility is determined by using two financial tests: **Income** and **Assets**.

Income Test:

Before the 1993 Federal tax laws, applicants for Medicaid could be permanently disqualified if their gross monthly income was in excess of a certain published amount (presently \$2,022). Certain trust provisions of the 1993 tax laws, if now properly utilized, have now eliminated all income levels as disqualification factors. At present, the only way that an applicant will be denied benefits because of income would be if that person's monthly income clearly exceeded the local cost of nursing home care. The emergence and use of a document known as the Qualified Income Cap Trust has now solved this potential problem for everyone. In Case Studies #1 & #2 the income of each applicant is in excess of the present income cap, but both become income eligible with the use of the Qualified Income Cap Trust.

While there is ongoing scrutiny of the applicant's monthly income, the at-home spouse is free to receive unlimited monthly income. And, if the at-home spouse's income should fall below certain published levels, he/she is entitled to retain an amount from the nursing home spouse's income to maintain that published level.

Assets Test:

In determining net worth, assets include: cash, the cash surrender values of whole life insurance policies, stocks, bonds, CDs, deferred annuities, pensions not in pay status, real estate, notes, accounts receivable, cash value of businesses, household goods, automobiles, and boats. From the total of these we deduct liabilities and arrive at our net worth. Medicaid complicates asset counting by dividing assets into three different categories: **Countable**, **Non-countable**, and **Inaccessible**.

- **Countable Assets**

Countable (vulnerable) assets are things that Medicaid wants you to spend-down (give to the nursing home) before financial assistance is available to you. They include: cash, stocks, bonds, CDs, IRAs, Keoghs, deferred annuities, investment property, cash value from whole life insurance, vacation homes, second vehicles less than seven years old, boats, and every other asset not specifically listed as non-countable.

- **Non-countable Assets**

Non-countable (exempt or "protected") assets are not in jeopardy when applying for Medicaid. These assets can be worth hundreds of thousands of dollars, but Medicaid has chosen not to count them in determining eligibility. Non-countable assets include: your residence, up to a value of \$500,000, (includes mobile homes) if an intent to return is expressed, cash value of whole life insurance if the total face value of all policies do not exceed \$2500, all term life policies, burial plots, prepaid "irrevocable" burial contracts of unlimited amount, additional burial fund up to \$2500, ordinary household goods and personal effects, wedding ring jewelry and cash or countable assets of \$2,000 for the applicant and an additional \$109,560 for any spouse.

- **Inaccessible Assets**

Inaccessible assets are those assets that you are unable to liquidate (turn into cash within a reasonable period of time). They are not counted by Medicaid because at least at the time of application, they are not available to you in the form of cash.

Examples of these assets are: real estate (other than residence) that is on the market for sale but not sold, joint ownership interest in any property (real or personal), viatical investments, mortgage notes receivable (balances), interests in family limited partnerships, commercial immediate annuities, percentage interest in income producing property, IRA's under regular periodic payments "RMD," and any other such asset which is not readily convertible to cash but which can otherwise be offered for sale on the open market.

Now, after you have separated your assets into the above three columns, total the value of your **countable assets**.

If you are single, Medicaid will tell you that you will have to spend-down all of your **countable assets** until you have only \$2,000 remaining. You will then be eligible for Medicaid assistance. If you are married, Medicaid will tell you that you can, as the spouse at home, keep \$109,560 in **countable assets** (with an additional \$2,000 for the spouse in the nursing home). You will, therefore, need to spend-down all of your **countable assets** until you reach the total of \$111,560. You will then be eligible for Medicaid assistance. Again this is the Florida rule. You need to check with a professional in your State regarding other State formulas.

The Medicaid asset determination is made on a one-time calendar month basis. This is sometimes called a "snapshot" photo of the assets on any day during the calendar month of application. There are NO transfer penalties between spouses; and, in fact, all assets in excess of \$2,000 must be transferred to the at-home spouse either at or shortly after the month of application. After the month of eligibility determination, the at-home spouse is free to dispose of by sale, gift, will or trust all of the **countable, non-countable** and **inaccessible assets** without any penalty. A single applicant cannot make such subsequent transfers without incurring penalty periods.

Now that you have separated your assets according to the above and the countable assets are below the \$111,560 (if married) and \$2,000 (if single) levels, you should be Medicaid eligible. You are now ready to approach your community office of the State of Florida, Department of Children and Families, which is the State of Florida agency responsible for receiving, processing, and determining Medicaid eligibility. Before doing so, please read further in this booklet where I've discussed some very important reasons for seeking professional help before beginning this journey.

If your countable assets exceed the above limitations, are you stuck with having to give the excess to the nursing home by the process called "spend-down?" The answer is a resounding **"NO!"** if you are aware of the strategies explained on the following pages and how you can utilize them in your estate plan with the help of a qualified professional.

STRATEGIES TO AVOID NURSING HOME SPEND-DOWN POVERTY

What follows is a list of estate planning techniques compiled from my study and research, many of which I have successfully used to achieve Medicaid nursing home eligibility. These techniques and strategies **should** be recognized in all States; but, in certain States, they are not. So again, you are strongly advised to consult with a local professional in your State before adopting any of the strategies we will now discuss.

Remember, we only need to focus on the **countable asset** column of your total asset picture. It is the amount of these countable assets that is preventing eligibility, and it is these same excess assets that we want to save, either for the spouse at home or for an inheritance to your children and heirs. We save these **countable** (excess) **assets** by changing them into non-countable (exempt) or inaccessible assets. Much like changing the spots on a leopard, by stretching the spots, the leopard becomes a tiger! We will not go into any great detail on any of these strategies since your professional should be aware of them and be able to help you to formulate a plan that will include any one or a combination of them into a solution for your estate planning problem.

Gifting

First of all, forget everything you ever heard about “gifting” and the figure of \$13,000. It has absolutely nothing whatsoever to do with you or Medicaid eligibility. The \$13,000 figure only relates to gifting under the IRS rules.

Giftting means “transfer” in Medicaid terminology which, in turn, means giving anything of value to another without receiving corresponding equal value in return. Each State has a published figure that is supposed to be the average statewide cost of nursing home care. In Florida this figure now is \$5000 and it is this figure that is used to interpret any transfer (gift) ineligibility penalties. Give away \$5000 in a calendar month and there is a one month penalty. This technique is best utilized when there is a small amount over the \$2,000 or \$111,560 countable asset maximums or while an applicant’s care is being covered by Medicare.

Jane in Case Study #1 could avail herself of some gifting during her Medicare coverage period in order to reduce her level of countable assets. But it is no benefit to John in Case Study #2.

Finally, “transfer” in Medicaid language does **NOT** mean buying or purchasing something with an exchange of equal value or paying off existing or future debt.

Pay Off Debts

Excess **countable assets** can be used to pay off existing debts, reduce mortgage balances, and even prepay anticipated obligations such as taxes, insurances, condo fees, and the estimated monthly amount that will need to go to the nursing home when Medicaid eligibility is approved. This strategy is equally available in both Case Studies as an option.

Make Home Improvements—Repairs

You are allowed to spend excess **countable assets** to make improvements on and repairs to the residence without limitation. Remember, under the Florida Homestead provisions, the residence is 100% non-countable (exempt) and stays exempt even after death as long as the residence passes to your heirs at law. A **countable asset** has now been transformed into a **non-countable asset**! This strategy is available to owners of manufactured (mobile) homes or real estate attached residences. It is equally available in both Case Studies as an option.

Purchase a Residence

Even if you do not have a residence, you can purchase one when faced with long term nursing home care. The applicant needs to be physically present in the residence prior to application in order to “express an intent to return.” The residence purchase can also be a joint and survivor percentage interest in the home of another, usually a son or daughter, as long as there is sufficient equity in the home to support the purchase price. **Countable assets** become **non-countable assets** (Exempt). If the applicant(s) in either Case Study had sold their residence prior to application they could purchase another at a higher value prior to application.

Purchase Vehicle(s)

If you do not have a vehicle (includes any vehicle used to provide transportation), you can purchase one (no limit on value) and even have a second one if it is more than seven years old. Unlike the residence exemption which is restricted for gifting, vehicles can be purchased with **countable assets**, thereafter becoming **non-countable assets** (exempt), and then immediately gifted away with the process thereafter repeated. It is also equally available in both Case Studies as an option. This gifting option does not apply to residences.

Prepay Funeral Costs

Burial plots are **non-countable assets**. Prepaid funeral costs (unlimited) can become **non-countable assets** if the contract is designated “Irrevocable.” “Irrevocable” does not mean the funeral company gets to keep all the funds on deposit. It only means that the owner cannot cash it in while he or she is alive. The heirs can receive the balance of unused funds at death. In addition to the “Irrevocable Contract,” you are permitted to set aside up to an additional \$2500, usually in insurance cash values or a joint savings account, designated as an “Additional Burial Account.” We will so designate the \$2,500 insurance cash value in Case Study #1 which renders this item a **non-countable asset**.

In both Case Studies #1 & #2, the prepaid funeral contracts need to be designated “Irrevocable” in order to exclude them from the **countable asset** column and then fall into the **non-countable asset** column.

Another and often preferred alternative to the prepaid funeral contract in order to provide for this need is the use of the **Irrevocable Funeral Trust**. The **Irrevocable Funeral Trust** is an insurance contract issued by an A-Rated Company with a maximum face amount of \$15,000. It is guaranteed issued to age 99 and the death benefit grows at 2.00%. The funds placed in a Funeral Trust are exempt from the nursing home or Medicaid. Death benefit funds are first paid to the funeral home providing the services with excess funds payable to a named beneficiary. Use of these Trusts in Medicaid planning provides an excellent source of liquid funds for final arrangement expenses.

Second Homes, Lots, Time Shares For Sale

Additional real estate and time shares are easily transformed from **countable assets** to **inaccessible assets** by listing them for sale or privately offering them for sale at *bona fide* sale prices. For married applicants, these assets will thereafter be free from State recovery programs. This is not so for a single applicant unless the asset is sold and the proceeds placed into another **non-countable asset**.

. In Case Study #1, Jane's two lots need to be listed with a broker, or for sale by private sale or have a statement attached that there is no present market value for the lots as is so often the case with Florida swamp lots. If titles to the lots are not also in some other person's joint name, then the lots are subject to the State recovery program upon the death of the applicant. Use of a "Ladybird" (Life Estate) deed can ensure that title to real estate can pass outside of probate.

In Case Study #2, John quit-claim deeds the vacation home to Mary and Mary lists it for sale or by private sale. If later sold, Mary keeps all of the proceeds free from any recovery by the State. The vacation home is moved from the **countable asset** column to the **inaccessible asset** column. Essentially, once Medicaid eligibility is established in any given month (the snapshot month) Mary is free to do whatever she wishes with all of the couple's assets, **countable**, **non-countable**, and **inaccessible**. Nothing she does can affect the future eligibility of John, with the exception that should she die without executing a new Will, John could find himself the recipient of the couple's assets, making John ineligible for future Medicaid until he is able to again qualify by a new application process. A properly drafted "Elective Share Will" for Mary can prevent this happening.

Immediate Annuity

A deferred annuity is just like a CD with a bank, except that it is with an insurance company. In the standard immediate annuity you deposit a sum of money with an insurance company and the insurance company pays back to you or your spouse equal installments of principal together with an interest amount over a predetermined period of time. At the end of that time period, you or your spouse have received back all of your money plus the precomputed interest. If you or your spouse should die before you receive back all of your investment and interest, the balance is paid to a beneficiary that you have named in the policy. In Florida, all insurance contracts including annuities are insured by the State up to \$300,000 per owner of contract and this is "for real insurance."

First let's apply the annuity strategy to Case Study #2 where it works to save 100% of John and Mary's **countable assets** (CD's, Investment Accounts' Checking & Savings' etc.) Totaling \$211,560 (\$211,560 - \$111,560 = \$100,000). Obviously, they have \$100,000 in excess **countable assets** which they would have to pay to the nursing home (spend-down) before John could be eligible for Medicaid assistance. Now, we take the excess or \$100,000 and put it into a specially designed level-pay or "Interest + 10" Immediate Annuity for Mary, changing a **countable asset** into an **inaccessible asset**.

The annuity in Mary's name produces an income stream and thus is no longer viewed as a **countable asset**. And remember since Mary, the spouse at home, has no limits on the amount of income she can receive monthly, the end result is that John is eligible for Medicaid and John and Mary have preserved all of their assets. Also by using the "interest + 10" version of the immediate annuity when appropriate, the at-home spouse (Mary) could keep some or all of the nursing home spouse's (John's) income. In a crisis situation, with an at-home spouse and using the correct version of an immediate annuity, we are always able to save 100% of the couple's assets and maximize income to the at-home spouse.

Just as the use of immediate annuities works so well in the above case study, it does not in the instance of a single person (Case Study #1) since Florida's adoption of the Federal Deficit Reduction act (DRA) in 2007. Without going into detail, the effect of the DRA was to remove immediate annuities from use in crisis Medicaid planning for a single person. So, in Case Study #1, and Jane's exposed \$90,000 of assets, we would need to fashion an asset preservation plan that would involve a blending of several strategies that have been discussed above.



Warning:

Annuities in Medicaid planning should never be used without the advice and counsel of an experienced Medicaid attorney. **Don't be misled—not all annuities are "Medicaid Friendly!"**

A REVIEW OF THE CASE STUDIES

Let's take another look at our two case studies after applying the Medicaid rules and some of the strategies that we have just discussed.

Case Study#1:

- Assets: Manufactured Home **(Exempt)**
 - Unimproved Lots (2) **(Listed for sale-Inaccessible)**
 - Household Goods **(Exempt)**
 - Wedding Rings(2) **(Exempt)**
 - Automobile (1) **(Exempt)**
 - \$3,000 Prepaid Burial Contract **(Designated "Irrevocable"-Exempt)**
 - \$40,000 in Bank CD's
 - \$10,000 in Bank Savings
 - \$40,000 in Investment Account
- } **into non-countable or Inaccessible assets***
- \$2,000 in Checking **(Exempt)**
 - \$2,500 Cash Value—Life Policy **(Designated "Additional Burial"—Exempt)**

*** \$90,000 of excess countable assets are changed into inaccessible assets by using one or a combination of strategies outlined above.**

Case Study #2:

- Assets: Single Family Residence & Lot **(Exempt)**
- Household Goods **(Exempt)**
- Wedding Rings (2) **(Exempt)**
- Automobile (1) **(Exempt)**
- \$6,000 Prepaid Burial Contract (2) **(Designated "Irrevocable"—Exempt)**
- Vacation Home (\$50,000) **(Listed for Sale—Inaccessible)**
- Note Receivable & Mtge **(Payable to Mary—Inaccessible)**
- IRA (Mary) (\$35,000) **(Mary keeps—excluded, "RMD" in place)**
- IRA (John) (\$35,000) **(Excluded. "RMD" in place, payable to Mary)**
- Investment Account (\$158,000) { **(Cash In \$100,000 to Immediate Annuity for Mary)****
(Mary keeps \$58,000--part of \$109,560 Exemption)
- (Savings (\$53,560) **(Mary keeps \$109,560 Exemption)**
- (Joint Checking (\$2,000) **(Exempt amount allowed John)**

**** \$100,000 of excess countable assets are changed into inaccessible assets by using a "level pay" or "interest + 10" immediate annuity with all payments payable to Mary.**

PREPLANNING FOR MEDICAID

“How can I plan for a possible future nursing home stay while I am now healthy?” In other words, “how can I plan to avoid a possible future nursing home spend-down?”

This is the most often asked question that I hear from clients and at seminars. The answers are simple: 1) Purchase Long Term Care Insurance; 2) Gifting; 3) Do Nothing; and 4) Adopt A Basic Asset Protector Program. Of these options 95% of the people who read or hear this message will choose 3) “Do Nothing.” Why? Because they know that a nursing home stay is not in their future—maybe for the neighbor next door or down the street—but not for them! However, if you happen to become a member of the 5% group, let’s discuss briefly the other three options.

Long Term Care Insurance

Whenever most middle income retired folks consider this insurance, they are generally faced with a very important decision. After the initial shock of learning the cost, they are faced with a personal budget choice: buy Long Term Care Insurance and forget about ever taking another cruise or vacation trip. However, you will want to read on and learn what an extremely valuable preplanning technique this insurance can provide and how you can “afford” it.

Gifting

Most people have heard about the Medicaid rule called the “Look-Back Rule.” The basic effect of the Rule as it relates to preplanning is that you can give away all of your assets (usually to children) or to an Irrevocable Trust. After 60 months, should you find yourself in a nursing home, you will have the comfort of knowing that you will immediately be eligible for Medicaid assistance.

The Best of Both

However, the wisest of all preplanning strategies is to combine both Long Term Care Insurance and Gifting. Here’s how it works: place all of your exposed cash assets into a flexible deferred annuity with ownership in your child’s name or the joint names of your children and/or an Irrevocable Trust; you are the annuitant and your same children or the Trust are also the beneficiaries upon your death; now you purchase a 5-year benefit long term care policy with a monthly benefit equal to the amount between your monthly fixed income and the monthly cost of nursing home care; then on the yearly anniversary date you drop the benefit period by one year until you zero-out the contract at the end of the 5-year period, at which time, or thereafter, if you are in or near a nursing home stay, you are eligible for Medicaid!

Should you need additional income at any time, during or after installation of this plan, your designated child or Trustee can withdraw annually from the same deferred annuity, a sum of cash up to or equal to 10% of the account balance, penalty free. And again, remember, **annuities are exempt from ALL creditors** in the State of Florida, even your children’s creditors.

The 5-year benefit plan will also include “home health care and assisted living facility” payment benefits. Believe it when I tell you that there are thousands of elderly in nursing homes that would rather be and could be at home, or in an assisted living facility, but for the sole reason that they exhausted all assets, and were forced into nursing homes where only Medicaid works for 100% of the unpaid costs.

Here is another tip for you when considering the viability of this preplanning technique: If presented with this plan, would your children and/or heirs be willing to cover the cost of Long Term Care Insurance in exchange for preservation of their inheritance?

And finally, if your assets are substantial, and you adopt the above plan, you will have protected your inheritance to your heirs against long term care cost erosion for mere pennies on the dollar.

This is merely one of the unlimited preplanning variations that are available to you by consulting with a qualified estate planning attorney and a knowledgeable, independent insurance professional.

The Basic Asset Protector Program

The following recommendations comprise my bottom-line 5-Step survival program that every Senior Citizen should have in place **right now!** If you are among the 5% of senior middle income citizens who care enough to do something to begin protecting what they have worked a lifetime for, then read carefully.

1. Durable Power of Attorney: (With Health Care Surrogate Provisions Where Permitted)

This is the most important legal document that you must have! It is more important than a Will or any Living Trust and because it is "Durable" it will continue to be effective should you ever become incapacitated. Without this document you could end up in an expensive and embarrassing guardianship proceeding and lose all of your assets in the process. While the Living Trust will help you to avoid probate, it will not "shelter" one penny of your assets and may even create a "homestead exemption" problem for you if your residence is transferred into the trust. A living trust is generally of neutral value in Medicaid preplanning.

2. Transfers of Residence

In Florida the residence is and remains exempt because of the State's Constitution. You may wish to provide for the future transfer of your residence to child(ren) by use of a life estate deed known as the "Lady-Bird" deed. This form of deed transfer, reserves to yourself full power to sell your residence while you are alive and only transfers the property to your child(ren) upon death without probate and at a "step-up" in value. At death, 100% of ownership is with the child(ren) and no interest in the residence is subject to any State lien or recovery. Similar attention should be given to other real estate assets such as lots, vacation homes and income producing real estate.

3. New Wills

Whenever one spouse enters a nursing home and Medicaid eligibility is established, the spouse at home needs to change his/her Will should the at-home spouse die first. Otherwise, all of the couple's assets would revert to the nursing home spouse causing immediate Medicaid ineligibility. This can properly be accomplished by executing a properly drafted "Elective Share Will."

4. The Deferred Annuity

As we learned earlier, a deferred annuity is just like a CD with a bank except that the annuity contract is with an insurance company. Historically, the interest rates payable on annuities are higher than bank CD rates. Here is where the similarity stops and a whole lot of major differences begin, differences that have a major effect on your pocketbook.

The first major difference between the two is income taxation. The interest that you earn on a bank CD is taxed each year whether or not it is even paid to you and even if you don't need it each month for living purposes. The bank faithfully sends a 1099 to the IRS and you each year for the total amount of that interest. You then need to reach into your pocket to pay the tax due. It has always been a mystery to me why anyone would **voluntarily** pay tax on interest earnings that they did not need for living expenses when they could defer or put off the paying of these taxes to some future date, if ever.

Next, most deferred annuities allow for penalty free annual withdrawals of 10% of the principal while banks charge penalties on any principal withdrawals. There are some deferred annuities that allow for penalty free 100% withdrawals if the owner-annuitant is confined to a hospital or nursing home for 60 or more days. Most importantly, the interest earned on a deferred annuity will **compound tax free** until withdrawn. As a result your money grows faster .

When shopping for a deferred annuity be sure that your annuity has the following features:

- Penalty free principal withdrawal -10% annually;
- Guaranteed return of full account value upon death-no penalty charges;
- 60 day nursing home/12 month terminal illness waiver;
- Option to change owner or payee.



Warning:

**Don't be misled—only a few
deferred annuities are
"Medicaid Friendly!"**

The Equity Index version of a deferred annuity can provide an excellent depository for CD monies when doing Medicaid preplanning. It not only eliminates the painful penalties that banks charge when you must cash in CD's, but also provides for the smooth transition of these countable assets to inaccessible assets when the actual Medicaid application needs to be filed.

Index annuities are designed to provide a return somewhere between stock market vehicles and savings instruments-somewhere between mutual funds and CDs. While you will not participate in all of the gains when the market goes up, you also will not lose principal in a falling market. So, the worst thing that could happen is the stock market drops for years and you still get back your principal plus a guaranteed rate of interest. There is no loss of principal risk. The Index Annuity is as safe as the insurance company issuing the annuity. People purchase Index Annuities because they aren't satisfied with the returns from CDs and fixed rate annuities, but don't have the time or temperament for the stock market. Index Annuities are among the best and safest investment for seniors as long as you select the right one.

There is another interesting version of deferred annuities that is worthy of consideration. It offers a 10% bonus added to your principal initial investment going forward together with an attractive guaranteed annual rate of interest for a fixed time period. An excellent prospect for qualified IRA funds prior to the Required Minimum Distribution (RMD) mandate, and

convertible to an immediate annuity when planning needs require. The 10% up-front bonus allows the investor to recover a percentage of losses recently incurred resulting from the falling securities market.

And finally remember, in Florida, all insurance contracts including annuities are insured by the State up to \$300,000 per contract-owner.

5. Changing Spots To Stripes

The final step that you should take in Medicaid preplanning is to re-examine all of your **countable assets** and determine if you can change any of these assets into the **non-countable** or **inaccessible** categories we have discussed above without any drastic change to your current lifestyle.

HOW TO SELECT THE BEST QUALIFIED ATTORNEY

Throughout this report I have repeatedly referred to the "qualified professional." Initially that qualified professional may be a social worker, financial planner, insurance professional, CPA or a personal tax advisor, many of whom, know a great deal about the nursing home Medicaid area.

They will often be your starting point when planning is required, and they will surely need to be called upon during the process. But ultimately, you will need another professional to bring all parts of your plan together, and that professional is a qualified Medicaid attorney.

An Attorney experienced in Medicaid matters can offer invaluable help that can save you many thousands of dollars. A well-qualified attorney will make sure that all of your bases are covered and that you are doing precisely what needs to be done to protect all of your life savings. By taking you through two typical case studies I have shown how the Medicaid rules work together with the use of certain planning strategies. I have purposely kept the planning solutions fairly simple in both cases in order not to confuse you; but it is important to remember that there are numerous combinations of these rules and strategies. They must be intermeshed with a certain precision and fine-tuning in each situation to bring about the best result for each client. There is definitely no "one size fits all" in Medicaid planning.

Once you have made your shortlist of "Medicaid attorneys" through referrals from other attorneys, doctor, pastor, or friends that have previously used a Medicaid attorney, you are ready to begin the selection process. If the initial conference isn't free, move on to the next name. After the initial free conference, determine the following to your satisfaction:

1. What percentage of the attorney's practice is devoted to Medicaid law?
2. Has the attorney written or spoken on the subject of Medicaid?
3. Ask about charges/fees and specifically what work will be performed.
4. Get a current list of references.

When you are confident with an attorney's ability and comfortable with that attorney's demeanor and response to your questions, you will have selected the "best qualified attorney" for you.

DOVETAILING VETERAN BENEFITS WITH MEDICAID

Before we end this discussion on Medicaid Long Term Care benefits, I need to interject some very important information to fellow Veterans who served our Country during certain wartime periods (did not have to serve in combat), meet certain financial and health criteria, and received an honorable discharge. The Veteran does not need to be retired from the military or have a service connected disability. This program is called **Pension**. Under the right circumstances **Pension** could create an additional household income up to \$1056 a month for a single surviving spouse of a Veteran, to \$1644 a month for a single Veteran or up to \$1949 a month for a couple to pay for home health care, assisted living care and even nursing home care.

The National Care Planning Council estimates that up to 33% of all Americans over the age of 65 might be eligible for a **Pension** benefit under the right circumstances. That's how many war Veterans or their surviving spouses there are in this Country.

There is an income and an asset test to qualify for **Pension**. A special provision in the way the **Pension** benefit is calculated can allow households with income up to \$5000 or \$6000 a month to still qualify for this benefit. The difficulty, oftentimes, is qualifying under the asset test. Generally, couples households with assets in excess of \$80,000 will not qualify for **Pension** and assets for a single Veteran or a surviving spouse in excess of \$50,000 may disqualify the single person household. However, there is no specific asset test and amounts less than those listed above may also disqualify the applicant. A personal residence, assets that cannot be easily turned into cash, a car and personal property are exempt from the asset test.

Assets that may disqualify an applicant for **Pension** can be given away or turned into income and there is no penalty for doing this as there would be with Medicaid. Unfortunately, in most cases, **Pension** does not work well for paying the costs of a nursing home. This is because the amount of **Pension** income is rarely enough to cover the difference between the cost of the nursing home and the beneficiary's income. On the other hand, Medicaid will cover this difference in cost and in most cases Medicaid is a better alternative to **Pension**. However, when available, **Pension** works very well to supplement the income needed to fund home health and assisted living care on an ongoing basis without depleting the Veteran's assets and can work together with Medicaid Diversion to cover the entire cost of assisted living care when that need exists..

It is extremely important that anyone who has given away assets to qualify for **Pension** benefit should also make provisions to avoid or reduce the penalty imposed through early gifting by Medicaid. Claimants for the **Pension** benefit whether for home health care or assisted living care should always seek the advice of a consultant who understands both Medicaid and the VA benefits. Refer to the Preface page of this Manual for directions on how to obtain a free copy of my published *The Veteran Field Manual: VA Long Term Care Benefits* for a more detailed explanation of **Pension**.

ONE LAST URGING

Information when received and understood becomes **Knowledge**. **Knowledge** when exercised becomes **Power**. And **Power** directed becomes **Control**!

All of the information in this booklet will never do you one bit of good unless you act on it and use it to direct control of your life and future. If you fail to do so, someone else will take control, and that someone else will be the government.

Years ago, Florida was proud to have sent a grand old gentleman to the U. S. Congress. His name was Representative Claude M. Pepper. Well, Mr. Pepper, the long-time advocate of senior citizens' rights passed away, and unfortunately no State has ever replaced Mr. Pepper in Washington. We need to be thankful that we have Social Security and Medicare for the seniors, and we need to be vigilant to preserve these programs against constant Congressional attacks.

Many of you remember when Social Security went into law. At that time FDR stated that Social Security benefits would never be taxed as long as he lived. Then he passed away in 1945! Today up to 85% of your Social Security is subject to income tax. In recent years the White House and Congress have attempted to reduce your Social Security benefits through taxation, cheapening the quality of your medical care, and forcing higher medical deductibles on you with Medicare. Their most recent effort has been to attach criminal statutes and penalties to the Medicaid laws in an attempt to discourage senior citizens from availing themselves of its provisions in a concerted effort to "scare" them into nursing-home-induced poverty.

We now have the new breed of politicians in Washington. They represent a different generation of Americans, of which you and I are definitely not part. They are, for the most part, products of the 60's whose personal philosophy seems to revolve around "Looking Out For #1." The only problem is that you and I never become "#1" to them at any time. The dollar rules and determines who gets special tax break legislation, special favors, access to the halls of government, and who knows what else. Senior citizens now find themselves out in the cold in their own Country.

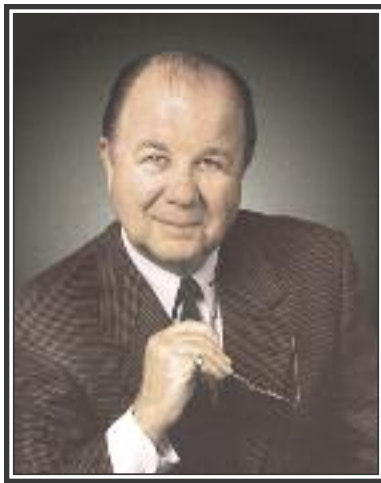
I once represented a gentlemen who went into a nursing home when the infirmities of age aggravated serious wounds that he received in 1942 on a little island in the South Pacific called Guadalcanal. He fought on the Canal as a young Marine platoon sergeant for several months until he received serious head wounds in combat and was evacuated. He and his wife raised a family and had a modest home, car, some life insurance and some cash assets under the \$111,560 marital limit. These were simple country folks-nothing fancy about them by our present-day standards. What a blessing and privilege it was for me to help this hero become Medicaid eligible and save all of the couple's modest assets. At the same time, I couldn't help but think how close this same hero and his wife came to becoming totally bankrupt as the end of his life was approaching. What an outrage that such a tragedy could even be possible in America today!

Now that you have read this booklet, please read it again. Afterward, you can take comfort in knowing that you now know more about nursing home Medicaid law than the vast majority of attorneys in the United States. Share it with your spouse, children, grandchildren and friends.

Finally, take the **Knowledge** that you have received from this booklet and convert it into the **Power** that you need to take **Control** of your life!

Decide to do it Now!

Start Planning Today!



David L. Orosz, Esq.

Resume – Qualifications

Education:

B.S. (Magna cum laude), John Carroll University,
Cleveland, Ohio. 1958

J.D. Case-Western Reserve University School of Law,
Cleveland, Ohio 1961

Work Experience:

Member of the Florida Bar; Legal Officer, U.S. Army; City Prosecutor;
County Prosecutor; Trust Officer; Assistant States Attorney;
Trial Attorney; County Judge; Accredited Attorney by the Department
of Veterans Affairs; Licensed Florida Life & Health Agent;
Guest Lecturer and Author on Subjects of Estate Planning,
Trusts, Nursing Home Financial Assistance, and
VA Long-term Health Care Benefits.

Memberships:

The Florida Bar; Lee County Bar Association; National Academy of
Elder Law Attorneys; Florida Academy of Elder Law Attorneys;
National Care Planning Council, The American Legion