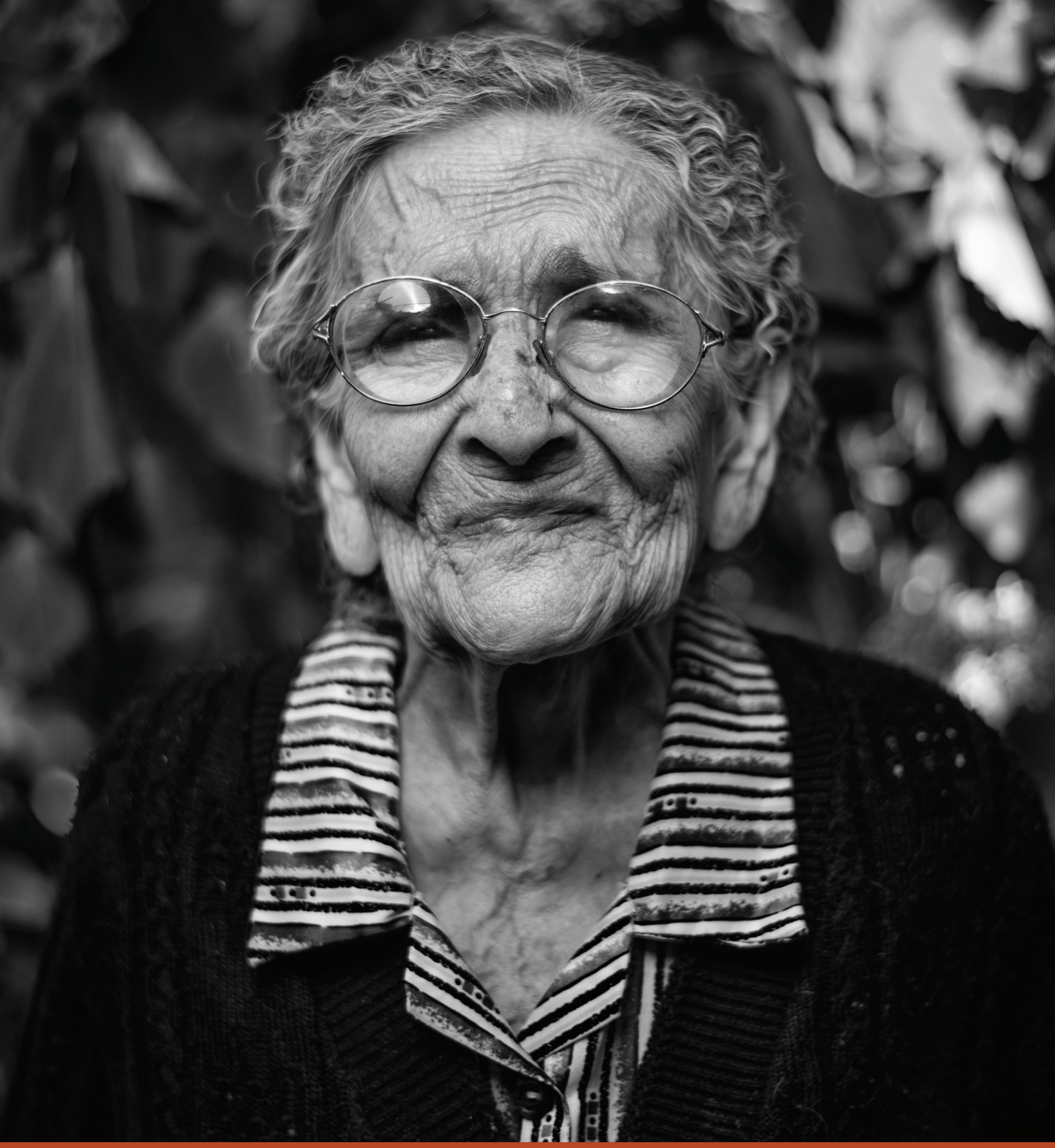

MEDICAID CRISIS PLANNING

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Crisis Planning

It Took a Lifetime to Accumulate Your Wealth

NOW IT'S TIME TO PROTECT IT

YOUR ONE-STOP SHOP

for Your Clients' Long-Term Care Needs

Catering to elder law and estate planning attorneys nationwide, AshBer specializes in helping individuals and families with two unique financial areas:

- Long-Term Care / Asset Protection Planning
- Crisis Medicaid Planning

For 15 years, AshBer has provided attorneys and their clients across the country with specialized insurance products, enabling them to plan for retirement and protect their assets from one of the most costly risks to a client's portfolio nowadays, long-term care. When dealing with a long-term care need now or an anticipated need in the future, an Eldercare Financial Plan may help design a road map for paying for care at home, in assisted living, or a skilled nursing facility in the most tax-efficient, cost-effective way.

As an integral part of this planning, we assess government programs such as Medicaid and to potentially reduce the out-of-pocket expenses for health care. We also explore the use of life insurance and annuity products with Long-Term Care Riders to leverage existing assets to pay for care. An Eldercare Financial Plan addresses the specific cost concerns the clients have for your loved one's care, allowing the family to focus on more important areas — like providing emotional support to their family member when they need it the most.

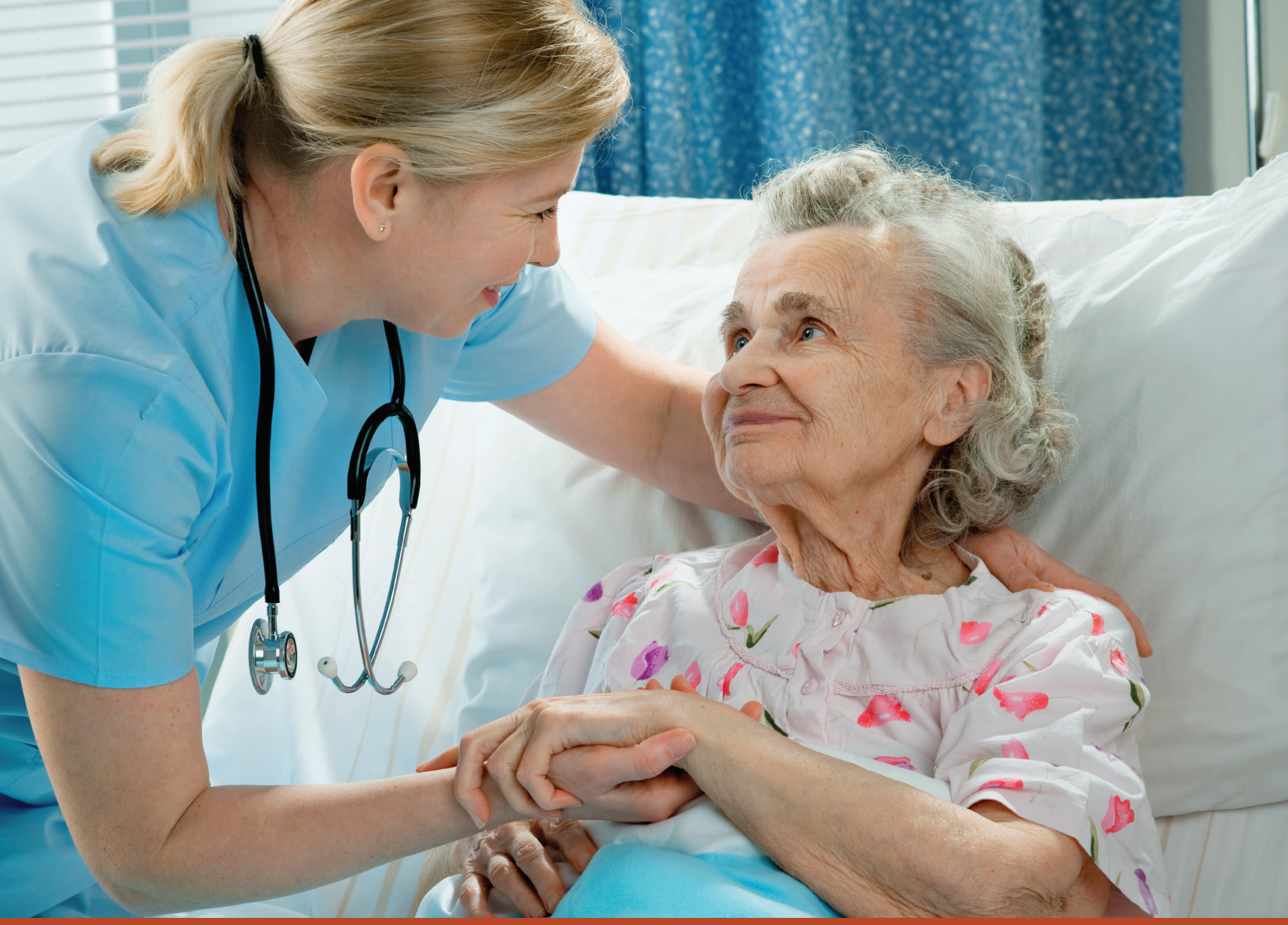
Some of the solutions we can help with are as follows:

PROACTIVE PLANNING

- Asset-Based Long Term Care
- Indemnity and Reimbursement-Style Long Term Care Policies
- Annuities with Enhanced Income Riders
- Life Insurance with Chronic Illness Riders

CRISIS PLANNING

- Medicaid Compliant Annuities (as short as 3 months)
- Prepaid Funeral Policies
- Guaranteed-Issue Whole Life Policies



CASE STUDY

CRISIS MEDICAID PLANNING FOR A

Single Person (no spouse) in a Nursing Home

CASE FACTS

Evelyn recently entered a nursing home charging $6,500 per month for her care. She is 83 years of age, has countable resources of $250,000 and monthly income of $1,000.

OPTION ONE: DO NOTHING

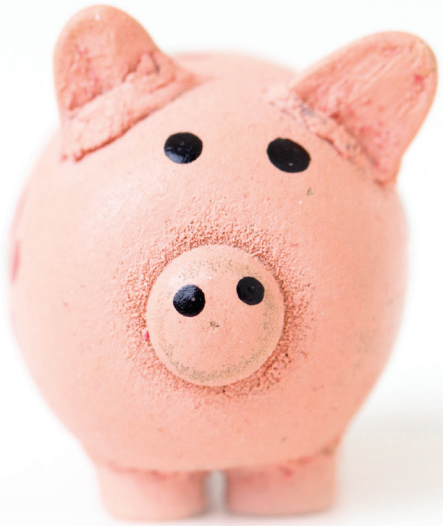
With Evelyn having a monthly income shortfall of $5,500 per month, her countable resources will last **only 45 months.**

OPTION TWO:
IMMEDIATE MEDICAID ELIGIBILITY.

Evelyn resides in state that will allow her to keep $2,000 of resources. As such, in order for Evelyn to be eligible for Medicaid in her state, she would need to spend-down approximately $248,000 of resources. The easiest method to spend-down the $248,000 is to convert the excess resources into a Single Premium Immediate Annuity ("SPIA") that contains Medicaid qualifying language – i.e. irrevocable, non-assignable, equal payments, actuarially sound, State as beneficiary to the extent benefits are paid.

With Evelyn being 83-years of age, her remaining Medicaid life expectancy is 8.04 years / 96.48 months. As such, in order for Evelyn's SPIA to be deemed "actuarially sound", her SPIA may not be structured with a period certain/term longer than 96 months. By placing the $248,000 into a Medicaid SPIA structured over 96 months, the SPIA would pay her approximately $2,640 per month. Immediately following the SPIA purchase, Evelyn files a Medicaid application and is deemed immediately eligible for Medicaid because her excess resources of $248,000 have been converted into an exempt asset.

By adding Evelyn's SPIA income of $2,640 to her social security income of $1,000, her total monthly income equals $3,640. Evelyn resides in a state with a personal needs allowance of $50 which can be deducted from her monthly income before determining her monthly co-pay to the nursing home ($3,640 - $50 = $3,590). As such, her co-pay to the nursing home has been reduced from $6,500 to $3,590. Resulting in monthly savings of $2,910!



OPTION THREE: MEDICAID ELIGIBILITY AFTER PENALTY PERIOD ASSOCIATED TO GIFTING ASSETS

Because Evelyn anticipates living for a long period of time and would like to leave an inheritance to her children, instead of Evelyn obtaining immediate Medicaid eligibility, she opts to make a gift and purchase a Medicaid SPIA to provide additional income to pay throughout a penalty period. As you may know, all states (except California) have a 60-month look-back period for purposes of gifting/transferring assets. Therefore, any gifts/transfers Evelyn makes during the 60-months immediately preceding a Medicaid application, will cause a penalty/ineligibility period. During the penalty period, Evelyn will be responsible to cover her own nursing home costs. Following the penalty period, Medicaid will pick up the bill.

In this case, Evelyn makes a gift of $120,000. The gift of $120,000 would create a penalty period of 24 months (total gift of $120,000 divided by state Divisor of $5,000).

In order for the penalty period to start, Evelyn must be deemed "otherwise eligible for Medicaid but for making a gift" meaning she must have income less than her cost of care and have no more than $2,000 of assets. Therefore, Evelyn cannot simply retain the remaining $128,000 of resources. In order to create additional income during the 24-month penalty period, Evelyn purchases a 24-month Medicaid SPIA with the resources ($128,000) that were not gifted/transferred. The 24-month Medicaid SPIA structured with a single premium of $128,000 would produce monthly income of $5,375. When adding the Medicaid SPIA income of $5,375 to Evelyn's social security income of $1,000, she'll have total monthly income of $6,375 during the 24-month penalty period to pay the nursing home bill — i.e. almost sufficient income to pay the total bill of $6,500.

Immediately following the 24-month penalty period, Evelyn will be eligible for Medicaid and will contribute her monthly income of $1,000 less her personal needs allowance of $50 to her cost of care ($950). As such, Evelyn's co-pay to the nursing home has been reduced from $6,500 to $950. Resulting in monthly savings of $5,550!

SUPPLEMENTAL OPTIONS: OPTIONS FOR GIFTED MONEY ($120,000)

While discussing the Gifting/SPIA plan with Evelyn and her family, Evelyn's only daughter (Catherine) whom will be the giftee of the $120,000 asks a valid question of "what should I do with the gifted money?" Whether the funds are gifted outright to Catherine or gifted to an irrevocable trust, it is important that the family realizes that Evelyn will not be eligible for Medicaid until after the 24-month penalty period. With Evelyn having only $2,000 in her name, most attorneys sleep better at night if the gifted funds remain in a secure and predictable account vs. immediately spent by the giftee(s) or invested entirely in the stock market.

The obvious risk of investing all of the money in the market is the potential for downturns/recessions resulting in less money available to help pay for ancillary expenses for Evelyn during the penalty period. To avoid market risk, in many cases, the gifted funds will sit in a checking or savings account earning almost no interest at all.

SUPPLEMENTAL OPTION 1:

PURCHASE DEFERRED ANNUITY WITH ROP

Instead of placing the entire $120,000 in a checking or savings account earning almost no interest or subjecting the funds to market downturns, we typically recommend that a large portion of the gifted funds be placed into a deferred annuity with a guaranteed rate of return and a return of premium clause. The return of premium clause guarantees that the owner will never receive less than the total amount invested into the contract.

At the same time, the policy provides peace of mind with a predictable, guaranteed rate of return which is greater than the return the money would earn if it were sitting in a checking or savings account. These are guarantees (regardless of market fluctuations) that many other investments simply cannot provide.

SUPPLEMENTAL OPTION 2:

PURCHASE ASSET-BASED LTC POLICY WITH ROP

Another option for the gifted funds would be to provide LTC protection for the intended beneficiary/giftee. Revisiting Evelyn's situation, we'll assume that as a result of Catherine having to place her mother in a nursing home and taking care of her for many years prior, Catherine decides she is going to be proactive and pre-plan for LTC. Therefore, she uses a portion of the gifted funds ($100,000) and invests the money into an asset-based LTC policy for Catherine. The single premium of $100,000 would immediately become worth $175,112 as a death benefit and LTC pool. The monthly LTC benefit for Catherine would equal $7,004 per month to pay for long-term care expenses. The policy will cover expenses related to home healthcare, assisted living, and skilled nursing costs.

Finally, unlike a traditional LTC insurance policy that is a "use it or lose it" type of policy, the asset-based LTC policy we recommend to Catherine has an enhanced death benefit. Therefore, if Catherine is fortunate enough to never need LTC, her intended beneficiaries would receive the death benefit of $175,112.

CASE STUDY

CRISIS MEDICAID PLANNING FOR A

Married Couple — One spouse in a Nursing Home and One Spouse Remains in the Community

CASE FACTS

Robert recently entered a nursing home charging $7,000 per month for his care. Betty is healthy and able to remain at home. Robert and Betty are 84 and 79 years of age, respectively. Together, they have total countable resources of $325,000. Robert's monthly income is $2,000 while Betty's monthly income is $1,000.

OPTION ONE: DO NOTHING

With Robert having a monthly income shortfall of $5,000 per month, their countable resources will last **only 65 months.**

OPTION TWO: IMMEDIATE MEDICAID ELIGIBILITY/ LONGEST MEDICAID SPIA PERIOD CERTAIN

The couple resides in a state which allows Betty, the community spouse, to retain $126,420 of countable resources while Robert may retain $2,000. As such, the couple is able to retain $128,420 — protected resources. In order to obtain immediate Medicaid eligibility for Robert, Betty may purchase a Single Premium Immediate Annuity ("SPIA") containing Medicaid qualifying language — i.e. irrevocable, non-assignable, equal payments, actuarially sound, State as beneficiary to the extent benefits are paid in order to convert the excess countable resources of $196,580 into an income stream for Betty.

With Betty being 79-years of age, her remaining Medicaid life expectancy is 10.24 years / 122.88 months. As such, in order for Betty's SPIA to be deemed "actuarially sound", her SPIA may not be structured with a period certain/term longer than 122 months. By placing the $196,580 into a Medicaid SPIA structured over 122 months, the SPIA would pay her approximately $1,700 per month.

Immediately following the SPIA purchase, Robert submits a Medicaid application and is deemed immediately eligible for Medicaid because their excess resources of $196,580 has been properly spent-down.

By adding Betty's SPIA income of $1,700 to her social security income of $1,000, her total monthly income equals $2,700. In almost all states, the community spouse — Betty may have unlimited monthly income. However, if the community spouse's income exceeds the Monthly Maintenance Needs Allowance ("MMNA") (ranging between $2,058 and $3,160), the community spouse is not entitled to receive a portion of the institutionalized spouse's monthly income.

In order to protect a community spouse from being impoverished by paying for the institutionalized spouse's monthly care costs, Medicaid allows the community spouse a minimum amount of income – MMNA. If the community spouse does not have sufficient monthly income to meet his/her needs, he/she will be able to keep a portion of the institutionalized spouse's monthly income. With Betty having monthly income of $2,700, and with her MMNA being $3,160, she has a monthly income shortfall of $460. Therefore, this amount will be shifted from Robert's monthly income of $2,000 before determining his monthly co-pay to the nursing home. Robert's monthly co-pay to the nursing home will equal his monthly income of $2,000 less $460 shifted to Betty less his personal needs allowance of $50 equaling $1,490. As such, we were able to reduce Robert's co-pay to the nursing home from $7,000 to $1,490. The couple immediately experiences a monthly savings of $5,510!

OPTION THREE:
SHORTENING THE MEDICAID SPIA TERM

As you may know, in almost all states, transactions/activities initiated by the community spouse after the institutionalized spouse is deemed eligible for Medicaid, no longer effect the institutionalized spouse's Medicaid eligibility. Therefore, immediately following the institutionalized spouse securing Medicaid eligibility, the community spouse could win the lottery, make gifts to his/her intended beneficiaries (may be restrictions in some states), and his/her assets may exceed the $126,420 without effecting the institutionalized spouse's eligibility.

Assuming Betty had a greater income need than the Medicaid SPIA structured over her Medicaid life expectancy of 122 months provided to her, she may choose to shorten the SPIA period certain to a term less than her life expectancy. Or, if Betty was not confident she would outlive the annuity term and wanted to decrease the likelihood that the State would have a right to recover against the SPIA, she may decrease the term to a shorter time-frame. Below are examples of monthly SPIA pay-outs based on the single premium of $196,580.

SINGLE PREMIUM	PERIOD CERTAIN	MONTHLY PAYMENT	TOTAL PAYOUT
$196,580	3	$65,559.39	$196,678.17
	24	$8,216.42	$197,194.08

By reviewing the aforementioned chart you'll notice that as the Medicaid SPIA period certain/term increases, the monthly payment decreases. You may be asking yourself the question:

> **"If a community spouse may have unlimited monthly income, why wouldn't EVERY community spouse choose to purchase a 3-month annuity to obtain their money back ASAP?"**

The answer is two-fold: high processing fees and raising red flags with the local Medicaid office.

The processing fee paid by the community spouse on a single premium of $196,580 would be in excess of $3,400! Additionally, the community spouse would receive three monthly payments of $65,559.39! Do you want to be the attorney going into your local Medicaid office to obtain government benefits for an institutionalized spouse whose community spouse has monthly income in excess of $65,559.39? Probably not.

So, what other options exist to avoid creating very short-term SPIAs while also protecting the community spouse?

SUPPLEMENTAL OPTIONS:
ANNUAL PAYMENTS VS. MONTHLY

All states require that payments from a Medicaid SPIA must be equal; however, only eleven states require that the payments be made on a monthly basis. In states that only require that the annuity payments be equal (and not monthly), an additional planning opportunity exists. The community spouse could structure the annuity with quarterly, semi-annual, or annual payments. The first annuity payment can be made as quickly as 10 or 30 days after purchasing the annuity.

For example, if the annuity was purchased in March of 2019 with a 2-year annual benefit period, the first annual payment of approximately $98,500 could be made as early as April of 2019. The next annual payment would be made one year later in April of 2020. As a result, a 2-year annual pay SPIA with the first payment being 30 days after the annuity is purchased essentially returns the money back to the client within 13-months!

SUPPLEMENTAL OPTION: USING THE MEDICAID SPIA INCOME TO PURCHASE LTC.

Many times, caring for a loved one who is ill and who is forced into a Medicaid spend-down situation is a traumatic experience for family and friends. These types of experiences will trigger the well (community) spouse to initiate a LTC plan for herself. In our example of Robert and Betty, Betty is 79-years of age, active, and healthy. Betty doesn't want to have to rely on Medicaid nor does she want to be forced into a skilled nursing facility. Instead, we would use the Medicaid SPIA payments that are returned to her on a monthly or annual basis to purchase an asset-based LTC policy for Betty. For example, if Betty were to receive the annual SPIA payment of approximately $98,500 shortly after Medicaid qualification was granted for Robert and use the annual payment to purchase a life insurance policy with a LTC rider, we could create a lifetime of LTC coverage for Betty with a monthly benefit of $5,300! Assuming Betty will receive Robert's social security income of $2,000 after he passes, she would have monthly income of approximately $7,300 to pay for long-term care expenses. The policy will cover expenses related to home healthcare, assisted living, and skilled nursing costs. Betty is like most people in that if she needs LTC in her lifetime, she wants to remain at home as long as possible. With $7,300 a month to pay for home care or an assisted living facility, she will be able to remain at home for a very long time.

Finally, unlike a traditional LTC insurance policy that is a "use it or lose it" type of policy, the asset-based LTC policy we recommend to Betty has an enhanced death benefit. Therefore, if Betty is fortunate enough to never need LTC, her intended beneficiaries would receive the death benefit of $132,500.

This brochure is not intended as an invitation to purchase any particular insurance product or fixed annuity, nor is it intended as an endorsement of any particular product or company. It is merely intended to provide you with general information about various insurance products and to assist you in making an informed choice about financial services products currently available to you and what products may be best suited for you.

Please consult a licensed insurance agent regarding your age, financial objectives, short and long term financial goals, liquidity needs, risk tolerance, and overall financial situation to determine what insurance or fixed annuity is right for you. You should thoroughly review all brochures, specimen contracts, buyer's guides and disclosure forms before purchasing any insurance or any other financial services product.

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