

The Use of Annuities in Medicaid Planning: The Past, Present, and Future



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Introduction



- More than 2 years have passed since President Bush signed the DRA into law.
- 8 states have not yet implemented the DRA changes.
 - California, Hawaii, Illinois, Indiana, New Mexico, Oklahoma, West Virginia, Wisconsin, and Wyoming.

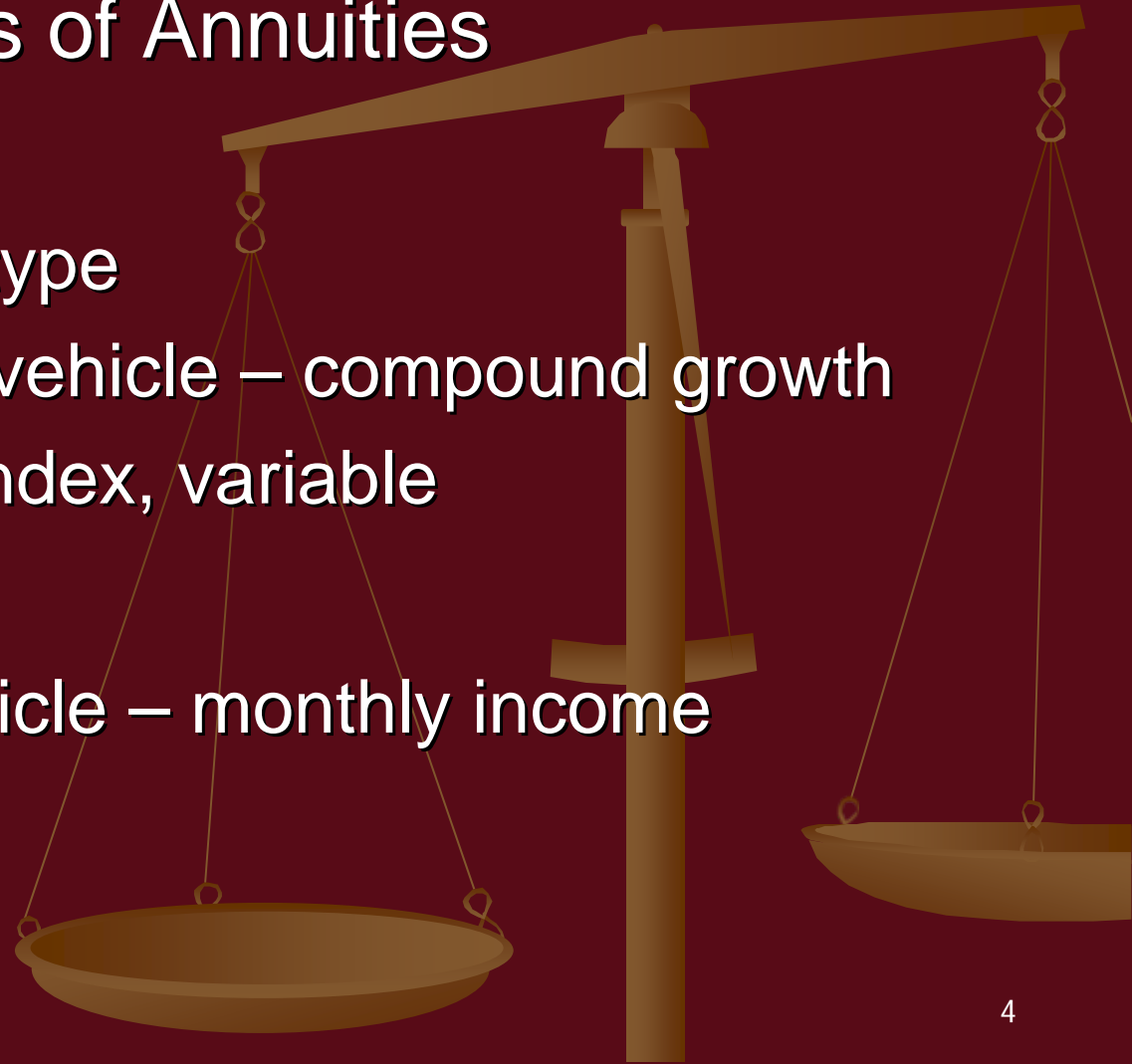
History of Annuities

- Annuities have been around forever.
- 18th Century – Minister
- Garden variety of annuities now available.
- Most clients have one, or more.

Annuity Basics

Two Basics Types of Annuities

- Tax Deferred
 - Most common type
 - Pre-retirement vehicle – compound growth
 - Fixed, bonus, index, variable
- Immediate
 - Retirement vehicle – monthly income
 - Fixed, variable



Parties to an Annuity

- **Issuer**
 - Insurance Company
- **Owner**
 - Controls the annuity
- **Annuitant**
 - Measuring life
- **Payee**
 - Individual who receives distributions
- **Primary Beneficiary**
 - At death of owner, receives residual benefits
- **Secondary Beneficiary**
 - If primary beneficiary fails to survive, receives residual benefits



Practical Point - 1

- A tax-deferred annuity can be converted into an immediate annuity, while an immediate annuity can never be converted into a tax-deferred annuity.
- Immediate annuities can be used for MA planning.
- With most annuities, the owner, annuitant, and payee, will be the same person.

Federal History of MA Annuities – Pre DRA

- First addressed by the Omnibus Budget Reconciliation Act of 1993 (“OBRA”).
- OBRA was enhanced by the Healthcare Financing Administration’s (“HCFA”) Transmittal 64.
 - Life Expectancy Table
 - Actuarially Sound Test

Wisconsin History of MA Annuities – Pre DRA

- Prior to March 1, 2004 – Operations Memo No. 04-03 – Transmittal 64 Annuities were being approved – actuarially sound, with any beneficiary.
- Post March 1, 2004, with the Wisconsin MA Program recognizing that annuities could be sold on the secondary market, the Three Letter Rule becomes a necessity.

Three Letter Rule

- In order to prove that an MA annuity is not a countable resource, the MA applicant must show that three companies are not willing to purchase the annuity for value.
- The companies that generally buy annuities are looking for annuities whereby the owner can be changed. Once the owner is changed, the purchasing company will then change the payee and beneficiaries.

Irrevocable Test

- With the typical immediate annuity, the annuity is irrevocable, but only to the extent of the duration of the payments, and the payment amounts.
- In a MA setting, the irrevocable test must be extended to the parties – owner, annuitant, payee, as well as the beneficiaries.

Non-Assignable Test

- The typical immediate annuity is assignable. This right allows the owner to assign his or her interest in the annuity to a third party for value.
- In a MA setting, in order to avoid having the MA annuity treated as a countable resource, the MA annuity must be non-assignable – no value on the secondary market.

Practical Point - 2

- With most MA annuities, the annuity will be structured with the owner, annuitant, and payee being the same person. The annuity will also be structured with monthly payments that are scheduled over the owner/annuitant/payee's MA lifetime. The annuity will also contain language which makes it irrevocable, and non-assignable. Finally, in support of its non-marketability, the annuity will be supported by three refusal letters.

Federal History of Medicaid Annuities – Post DRA

- Implemented February 8, 2006.
 - State as remainder beneficiary - Medicaid annuities are required to be established so that the respective State Medicaid Program is listed as the primary beneficiary to the extent that medical assistance benefits were/are paid to the annuitant – institutionalized individual.
 - Contractual requirements - Medicaid annuities are now required to have equal payments, be actuarially sound, irrevocable, and non-assignable.
 - Disclosure – Medicaid annuities must be disclosed to the State Medicaid Agency.

Wisconsin History of MA Annuities – Post DRA

- Wisconsin has not yet implemented DRA.
- There is some concern that when Wisconsin finally adopts the DRA legislation the provisions will be made retroactive to February 8, 2006. As a result, this could cause some problems for those MA plans that were structured on Pre-DRA rules, and were implemented post February 8, 2006 – gray area.

MA Annuity Planning For A Married Couple – Case Facts

Meet David and Bonnie Jones, who are both 85 years of age. After a long struggle with Parkinson's disease, David entered a nursing home in June of 2008. He and his wife have a home, standard furniture and personal property, one car, and \$200,000.00 in non-IRA bank accounts. David has monthly income from social security and pension of \$1,200.00, while Bonnie receives only social security of \$500.00. The nursing home bill is expected to average \$6,000.00 per month. Bonnie would like to immediately qualify David for MA Benefits.

MA Analysis of Married Couple Case Facts

- **Step 1:** Determine the value of the countable resources.
- **Step 2:** Determine the community spouse (“CS”) resource allowance.
- **Step 3:** Determine the institutionalized spouse (“IS”) resource allowance.
- **Step 4:** Determine the spend-down amount.
- **Step 5:** Determine the life expectancy of the CS.
- **Step 6:** Invest the spend-down amount into an MA annuity in favor of the CS.

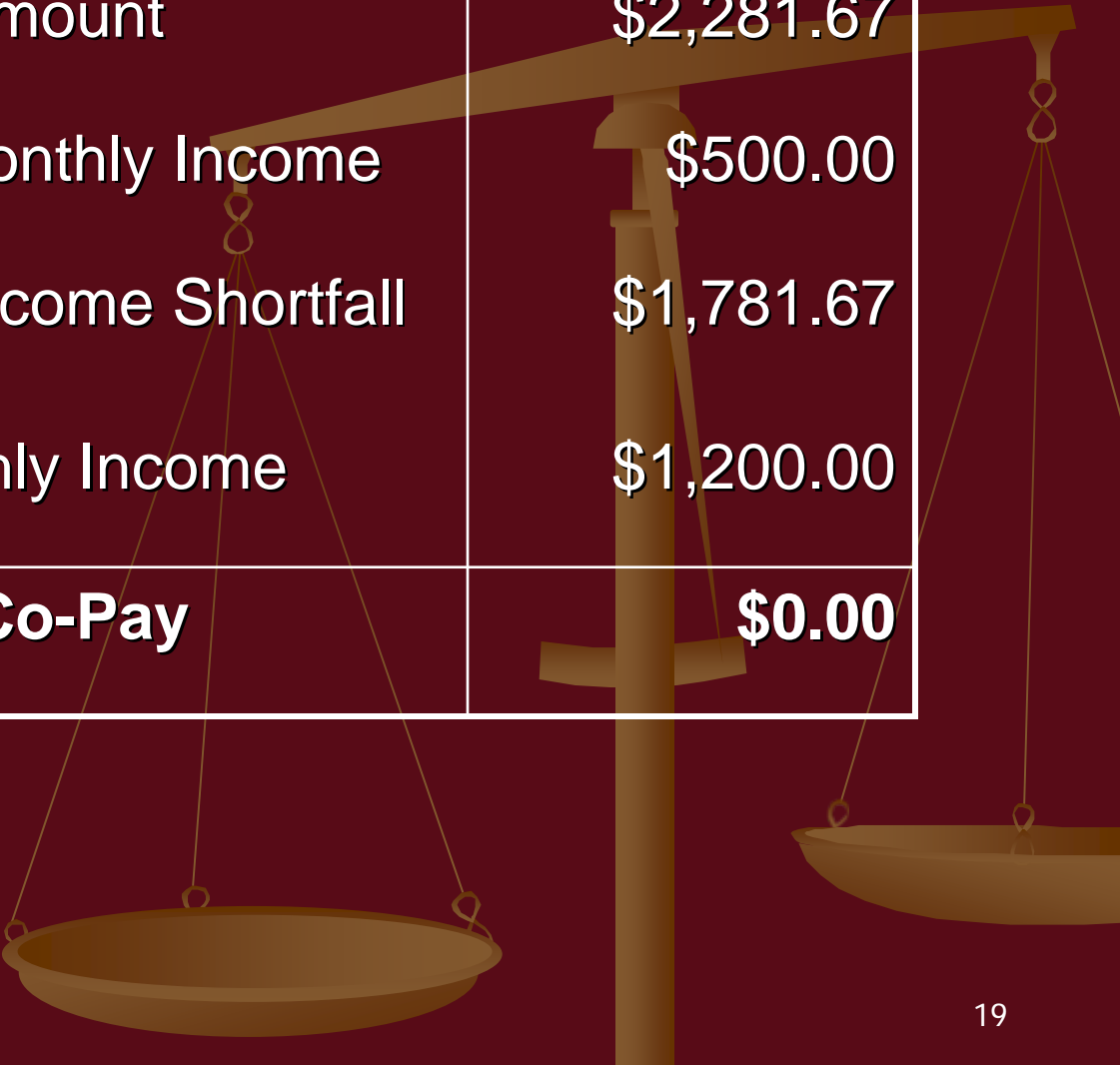
MA Results of Married Couple Case Facts

- **Step 1:** Determine the value of the countable resources.
 - \$200,000.00
- **Step 2:** Determine the community spouse (“CS”) resource allowance.
 - \$100,000.00
- **Step 3:** Determine the institutionalized spouse (“IS”) resource allowance.
 - \$2,000.00
- **Step 4:** Determine the spend-down amount.
 - \$98,000.00
- **Step 5:** Determine the life expectancy of the CS.
 - 106 Months
- **Step 6:** Invest the spend-down amount into an MA annuity in favor of the CS.
 - With \$98,000.00 invested in a 106 month MA annuity, the MA annuity will pay \$966.15 per month – total pay-out of \$102,411.90.

MA Annuity Planning For A Married Couple - Economic Results

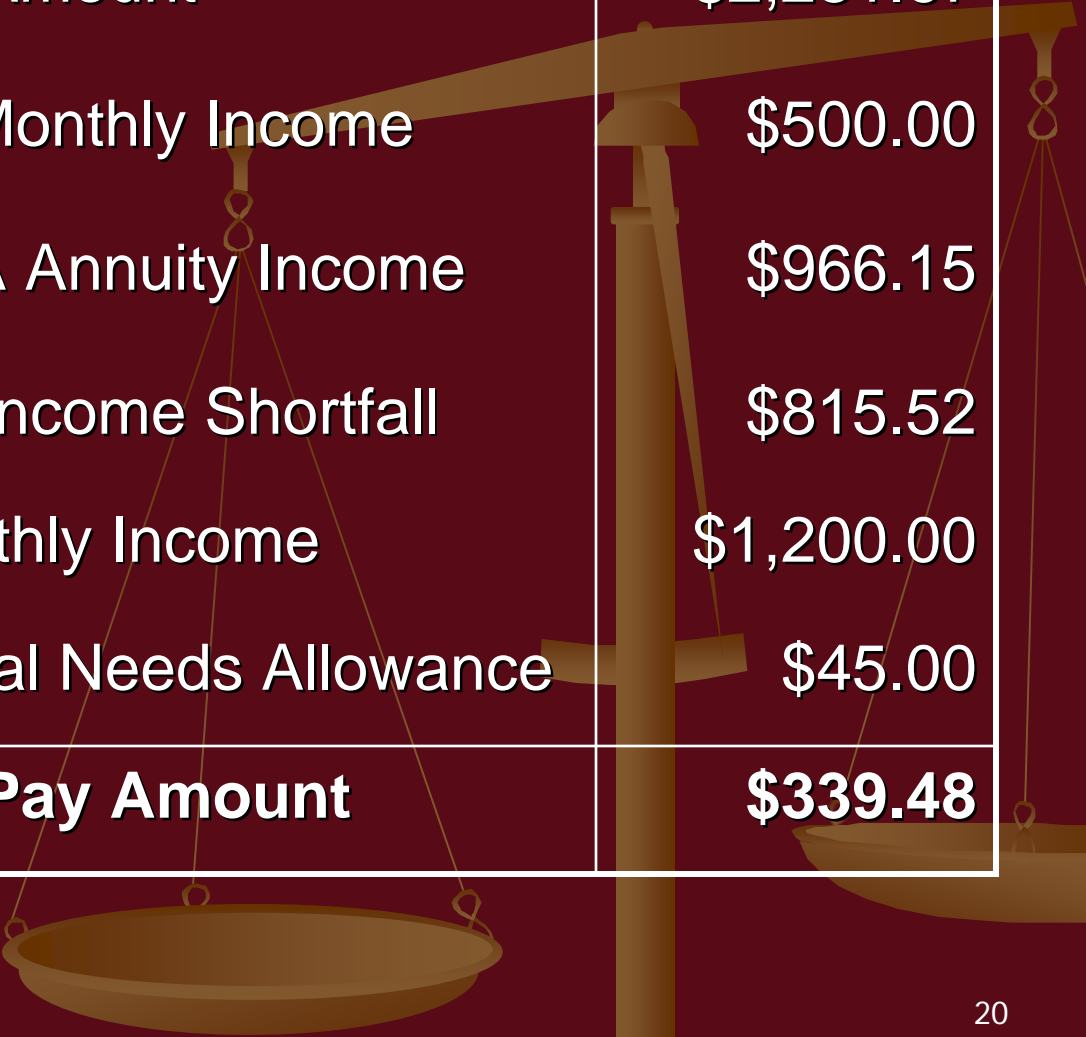
- With David expecting to pay \$6,000.00 per month for his nursing home care, it would have taken approximately 16 months to exhaust the spend-down amount of \$98,000.00.
- Instead, with the MA Annuity Plan, David pays nothing for his care in June of 2008. In July of 2008, and each month thereafter, he pays \$339.48 per month for his care.

June of 2008 – MA Co-Pay



MMNA Amount	\$2,281.67
Less Bonnie's Monthly Income	\$500.00
Equals Monthly Income Shortfall	\$1,781.67
David's Monthly Income	\$1,200.00
Monthly Co-Pay	\$0.00

July of 2008 – MA Co-Pay



MMNA Amount	\$2,281.67
Less Bonnie's Monthly Income	\$500.00
Less Bonnie's MA Annuity Income	\$966.15
Equals Monthly Income Shortfall	\$815.52
David's Monthly Income	\$1,200.00
Less David's Personal Needs Allowance	\$45.00
Monthly Co-Pay Amount	\$339.48

A Married Couple – MA Annuity Advantages/Disadvantages

■ Advantage:

- Immediate MA Eligibility for David.

■ Disadvantages:

- If Bonnie goes into a nursing home within the 106 month term of her MA annuity, she would lose the monthly income to the nursing home.
- If Bonnie dies prior to the end of the 106 month term of her MA annuity, in a post DRA environment, the Wisconsin MA Program would be entitled to recover any remaining monthly payments of Bonnie's MA annuity for the MA benefits paid on behalf of David.

MA Annuity Planning Trends – Married Couple

- With many community spouses concerned about predeceasing the period certain of their MA annuity, there is a trend to shorten the respective periods certain. Unlike some states, such as New York, Wisconsin does not penalize a community spouse for having income above his or her MMNA amount.
- When shortening the period certain of a MA annuity, make sure that the community spouse's total monthly income is reasonable.

MA Annuity Planning – Individual Short Life Expectancy - Post DRA

If an individual has a very short life expectancy, in light of his or her MA life expectancy, a MA annuity, by itself, will provide the best economic result.

MA Annuity Planning For An Individual – Full Life Expectancy - Case Facts

Meet Joan Brothers (DOB 5/26/23), a widow, who is 85 years of age. After a long struggle with Alzheimer's disease, Joan entered a nursing home in June of 2008. She has limited furniture and personal property, and \$136,900.00 in savings accounts. Joan has monthly income from social security and pension of \$1,100.00. Her nursing home bill is expected to average \$6,000.00 per month. Joan would like to qualify for MA benefits as soon as possible.

MA Analysis of Individual Case Facts

- **Step 1:** Determine the spend-down amount.
- **Step 2:** Determine the monthly income short-fall (monthly nursing home monthly cost, less social security and pension income).
- **Step 3:** Determine the monthly divestment penalty divisor.
- **Step 4:** Add the monthly income short-fall to the monthly divestment penalty divisor.
- **Step 5:** Divide the result of Step 4 into the spend-down amount.
- **Step 6:** Multiply the result of Step 5 by Step 3, and gift the resulting amount.
- **Step 7:** Subtract the gift amount from the spend-down amount, and purchase an MQA for the difference – the period certain should reflect (5), but should be rounded up to next whole number.
- **Step 8:** Apply for MA benefits.

MA Results of Individual Case Facts

- **Step 1:** Determine the spend-down amount.
 - \$134,900.00 ($\$136,900.00 - \$2,000.00$)
- **Step 2:** Determine the monthly income short-fall (monthly nursing home monthly cost, less social security and pension income).
 - \$4,900.00 ($\$6,000.00 - \$1,100.00$)
- **Step 3:** Determine the monthly divestment penalty divisor.
 - \$5,584.00
- **Step 4:** Add the monthly income short-fall to the monthly divestment penalty divisor.
 - \$10,484.00 ($\$4,900.00 + \$5,584.00$)
- **Step 5:** Divide the result of Step 4 into the spend-down amount.
 - 12.87 months
- **Step 6:** Multiply the result of Step 5 by Step 3, and gift the resulting amount.
 - \$71,866.08 ($12.87 \times \$5,584.00$)
- **Step 7:** Subtract the gift amount from the spend-down amount, and purchase an MA annuity for the difference – the period certain should reflect Step 5, but should be rounded up to next whole number.
 - With \$63,033.92 ($\$134,900.00 - \$71,866.08$) invested in a 13 month MA annuity, the MA annuity will pay \$4,876.97 per month – Total pay-out of \$63,400.61.
- **Step 8:** Apply for MA benefits.

MA Annuity Planning For An Individual - Economic Results

- With Joan expecting to pay \$6,000.00 per month for her nursing home care, it would have taken approximately 27 months to exhaust her spend-down amount of \$134,900.00.
- By opting to proceed with the MA annuity, Joan's intended beneficiary(ies) will receive a wealth transfer of \$71,866.08. This amount is more than 50% of her spend-down amount.

An Individual – MA Annuity Advantages/Disadvantages

■ Advantages:

- With a \$134,900.00 spend-down amount, Joan was able to gift away \$71,866.08. Also, with the divestment penalty period expected to last 12.87 months, and with MA annuity income of \$4,876.97 for 13 months, along with Joan's other income of \$1,100.00, Joan will be able to contribute \$5,976.97 towards her \$6,000.00 monthly nursing home bill. Furthermore, Joan will qualify for MA benefits at the end of the 12.87 divestment penalty period.

■ Disadvantage:

- Joan has to live longer than 12.87 months in order to achieve a nursing home cost savings.

Converting an IRA Account into a MA Annuity

- If an individual already has an existing IRA account, such as a certificate of deposit, mutual fund, or money market account, and wants to transfer the proceeds into an IRA MA annuity, he or she can do so by way of a “plan administrator to plan administrator transfer” or “60 day rollover”.
- The aforementioned MA strategy would only apply to IRA accounts in the institutionalized individual’s name.

Conclusions



- For 2008, and beyond, MA Planning will provide a significant opportunity to those planners who stay abreast of Medicaid changes.
- In light of the delay in DRA being implemented in Wisconsin, the safest course of action for elder law attorneys is to develop MA annuity plans based on the DRA regulations.
- As long as we have seniors in nursing homes, and with nursing home costs continuing to increase, MA planning will always be a necessary option for many families.



The End

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FOR MORE INFORMATION

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