MAXIMIZING RETIREMENT RESOURCES: MAKING THE GOLDEN YEARS SHINE

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THE IMPACT OF SOCIAL SECURITY, QUALIFIED ACCOUNTS, ANNUITIES AND OTHER INVESTMENTS ON YOUR CLIENT'S ESTATE PLANNING

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I. Social Security.

Retirement, Survivors' and Disability Insurance (RSDI), commonly referred to as Social Security, is a federally administered program which provides cash benefits to offset the loss of earned income for retired, certified disabled workers and/or the dependents of the retired, disabled or deceased income earner.

a. Retirement Benefits.

Retirement benefits are initially based on quarterly credits earned while working, the number of credits required being based on your year of birth. If born in or after 1929, the number of credits required is 40 (10 years of work). If a person stops working before enough credits are earned, the credits remain on the person's Social Security record. Additional credits can be earned if the person returns to work.

People born in 1951 or earlier are currently eligible to receive full Social Security benefits. If born from 1943 to 1954, the full retirement age is 66. From 1954 through 1960, the full retirement age increases by 2 months per birth year, i.e. in 1955 full retirement age is 66 years and 2 months, in 1950 full retirement age is 66 years and 10 months. For those born in 1960 and later, the full retirement age is 67.

The earliest possible age to collect Social Security retirement benefits is 62. However, the retirement benefit is permanently reduced by 5/10 of 1% for each month. If you take benefits more than 36 months before full retirement age, the benefit is further reduced by 5/12 of 1% per month. For example, at a full retirement age of 66, benefits commenced at age 62 means the reduced benefit will be reduced by a full 25%-- based on 48 months; the reduction for the first 36 months is 20% (5/9 of 1% x 36 months), and for the remaining 12 months is 5% (5/12 of 1% x 12 months).

Those who continue working after full retirement age increase the benefit until payments begin or age 70 is reached. The percentage varies based on the year of birth.

If you continue to work after receiving Social Security retirement benefits but before reaching full retirement age, your benefit will be reduced if annual earnings exceed $17,040. If younger than full retirement age, $1 in benefits will be deducted for every $2 earned above $17,040. In the year full retirement age is reached, $1 in benefits will be deducted for every $3 earned above $43,360.

b. <u>Family Benefits.</u>

Spouses age 62 or older may also get benefits. Spouses who have not worked or have low earnings can receive up to ½ of a retired worker's full benefit. However, if eligible for individual benefits or the spouse's benefit, Social Security will pay the individual benefit first. People born after January 2, 1954 must apply for both benefits, called a "deemed filing," meaning that the person will receive his or her own benefit and ½ of the spouse's benefit. For example, if the wife's benefit is $200, and her spouse's benefit is $400, at full retirement age the wife will receive her own $200 and $200 from her spouse (1/2), for a total of $400.

Benefits are reduced if the spouse retires before full retirement age. For example, at age 62, a spouse can get 37.5% of the worker's unreduced benefit if full retirement age is 65; 35% if full retirement age is 66, and 32.5% if full retirement age is 67.

Spouses younger than 62 are entitled to benefits on the spouse's record if taking care of a child under 16 years old or disabled. Children under 18 years old (or 19 if a full-time student) and disabled children can also take under a parent's record. Benefits for the spouse increase at later ages up to 50% at full retirement age.

c. <u>Survivor Benefits.</u>

A widow or widower may be able to get full benefits at full retirement age (age 66 for people born in 1945 – 1954, gradually increasing to age 67 for people born in 1962 or later); and may receive reduced benefits as early as age 60. A disabled surviving spouse can receive

benefits as early as age 50. A widow or widower taking care of a child younger than 18 (or 19 if full-time student) can also get benefits.

Social Security uses the deceased worker's basic benefit amount to calculate the percentage a survivor receives- dependent on the survivor's age and relationship to the worker. If the deceased worker was receiving reduced benefits, the survivor's benefit is based on that reduced amount. A widow or widower at full retirement age or older generally receives 100% of the worker's basic benefit amount. A widow or widower between age 60 and full retirement age will receive between 71-99% of the worker's basic benefit amount. A widow or widower of any age with a child under 16 years old gets 75% of the worker's benefit amount. A child receives 75% of the worker's benefit amount.

d. <u>Income Tax Consequences.</u>

Social Security may be taxable, depending on modified adjusted gross income (MAGI), also known as "provisional" income. Provisional income is equal to adjusted gross income plus non-taxable interest payments plus ½ of Social Security benefit. As MAGI increases above a certain threshold, more of the Social Security benefit is subject to income tax, up to a maximum of 85%.

For purposes of determining income tax, the base exclusion amount is:

- $25,000 if single, head of household or qualifying widow(er).
- $25,000 if married filing separately and lived apart from spouse for entire calendar year.
- $32,000 if married filing jointly.
- $0 if married filing separately and lived with spouse at any time during the calendar year.

For example, a married couple (both over 65 years old) filed a joint 2017 return, both received Social Security. SSA-1099s reported net benefits of $7,500 and $3,500. One spouse received a pension of $25,800 and interest income of $500 (none of which was tax-exempt).

None of the Social Security benefits are taxable because the base amount is less than $32,000. A tax return must still be filed because the minimum filing requirement is $26,300 for married filing jointly in 2017. IRS Publication 915 (2017) Worksheet A calculates taxability of benefits as follows:

Filled-in Worksheet A. **A Quick Way To Check if Your Benefits May Be Taxable**

Note.
If you plan to file a joint income tax return, include your spouse's amounts, if any, on lines A, C, and D.

A.	Enter the amount from ***box 5*** of all your Forms SSA-1099 and RRB-1099. Include the full amount of any lump-sum benefit payments received in 2017, for 2017 and earlier years. (If you received more than one form, combine the amounts from box 5 and enter the total.)........	A.	$11,000

Note. If the amount on line A is zero or less, stop here; none of your benefits are taxable this year.

B.	Enter one-half of line A	B.	5,500
C.	Enter your total income that is taxable (excluding line A), such as pensions, wages, interest, ordinary dividends, and capital gain distributions. Do not reduce your income by any deductions, exclusions (listed earlier), or exemptions................................	C.	26,300
D.	Enter any tax-exempt interest income such as interest on municipal bonds...............	D.	-0-
E.	Add lines B, C, and D..	E.	$31,800

If part of the Social Security retirement benefits is taxable, how much is taxable depends on the total of Social Security benefits and other income. Generally, up to 50% of Social Security benefits will be taxable. However, up to 85% of Social Security benefits can be taxable if: (1) the total of ½ of benefits and all other income is greater than $34,000 ($44,000 if married filing joint; or (2) the person is married filing separately and lived with a spouse at any time during 2017. For further explanation, see Publication 915, which has multiple examples with varying degrees of taxability.

e. <u>Medicaid Rules.</u>

Social Security retirement payments are considered available income for Medicaid eligibility purposes. No deduction for income tax is allowed.

The Employee Retirement Income Security Act of 1974 ("ERISA") sets the minimum standards applicable to retirement accounts including 401(a) plans, 401(k) plans, defined benefit and defined contribution plan, SEP-IRAs, SIMPLE IRAs and some 403(b) plans. Traditional and Roth IRAs are not covered by ERISA unless associated with a SEP or SIMPLE plan. All try to be tax qualified meaning that a tax deduction is taken for the contribution made (see distinctions for Roth IRAs).

II. Traditional IRAs.

A traditional IRA is created with contributions made by the account owner until he or she reaches the age of 70 ½. Contributions are limited based on income, filing status, and whether the account owner is also covered by an employer plan. In 2018, total contributions to all of your traditional and Roth IRAs cannot be more than $5,500 ($6,500 for ages 50 and older), or an account owner's taxable compensation for the year, if compensation was less than this dollar limit.

Contributions may be limited as follows: The IRS provides the following table https://www.irs.gov/retirement-plans/plan-participant-employee/2018-ira-contribution-and-deduction-limits-effect-of-modified-agi-on-deductible-contributions-if-you-are-covered-by-a-retirement-plan-at-work

If you're covered by a retirement plan at work, use this table to determine if your *modified AGI* affects the amount of your deduction.

If Your Filing Status Is...	And Your Modified AGI Is...	Then You Can Take...
single or **head of household**	$63,000 or less	a full deduction up to the amount of your contribution limit.
	more than $63,000 but less than $73,000	a partial deduction.
	$73,000 or more	no deduction.
married filing jointly or **qualifying widow(er)**	$101,000 or less	a full deduction up to the amount of your contribution limit.
	more than $101,000 but less than $121,000	a partial deduction.

If Your Filing Status Is...	And Your Modified AGI Is...	Then You Can Take...
	$121,000 or more	no deduction.
married filing separately	less than $10,000	a partial deduction.
	$10,000 or more	no deduction.
If you file separately and did not live with your spouse at any time during the year, your IRA deduction is determined under the "single" filing status.		

https://www.irs.gov/retirement-plans/plan-participant-employee/2018-ira-contribution-and-deduction-limits-effect-of-modified-agi-on-deductible-contributions-if-you-are-not-covered-by-a-retirement-plan-at-work also provides the following table:

If you're not covered by a retirement plan at work, use this table to determine if your *modified AGI* affects the amount of your deduction.

If Your Filing Status Is...	And Your Modified AGI Is...	Then You Can Take...
single, **head of household**, **or qualifying widow(er)**	any amount	a full deduction up to the amount of your contribution limit.
married filing jointly or **separately** with a spouse who **is not** covered by a plan at work	any amount	a full deduction up to the amount of your contribution limit.

married filing jointly with a spouse who **is** covered by a plan at work	$189,000 or less	a full deduction up to the amount of your contribution limit.
	more than $189,000 but less than $199,000	a partial deduction.
	$199,000 or more	no deduction.
married filing separately with a spouse who **is** covered by a plan at work	less than $10,000	a partial deduction.
	$10,000 or more	no deduction.
If you file separately and did not live with your spouse at any time during the year, your IRA deduction is determined under the "single" filing status.		

Distributions from a traditional IRA must begin at age 70 ½, and are treated as ordinary income (except for non-deductible contributions made by the IRA owner, which were already taxed).

III. **Roth IRAs.**

A Roth IRA is an individual retirement account that offers tax-free growth and tax-free withdrawals because the contributions are made with after-tax dollars (contributions are not deducted). Roth IRA rules dictate that as long as the account has been owned for 5 years and the owner is age 59½ or older, withdrawals can be made without tax consequences. A Roth IRA has no limit to when it may be created or contributions made. The required minimum distribution rules do not apply to Roth IRAs.

The annual contribution limit for Roth IRAs is $5,500 ($6,500 for ages 50 and older). The table at the following link provides further contribution limits:

https://www.irs.gov/retirement-plans/plan-participant-employee/amount-of-roth-ira-contributions-that-you-can-make-for-2018

This table shows whether your contribution to a Roth IRA is affected by the amount of your *modified AGI* as computed for Roth IRA purpose.

If your filing status is...	**And your modified AGI is...**	**Then you can contribute...**
married filing jointly or **qualifying widow(er)**	< $189,000	up to the limit
	≥ $189,000 but < $199,000	a reduced amount
	≥ $199,000	zero
married filing separately and you lived with your spouse at any time during the year	< $10,000	a reduced amount
	≥ $10,000	zero
single, **head of household**, or **married filing separately** and you did not live with your spouse at any time during the year	< $120,000	up to the limit
	≥ $120,000 but < $135,000	a reduced amount
	≥ $135,000	zero

Amount of your reduced Roth IRA contribution

If the amount you can contribute must be reduced, figure your reduced contribution limit as follows.

1. Start with your modified AGI.
2. Subtract from the amount in (1):
   - $189,000 if filing a joint return or qualifying widow(er),
   - $-0- if married filing a separate return, and you lived with your spouse at any time during the year, or
   - $120,000 for all other individuals.
3. Divide the result in (2) by $15,000 ($10,000 if filing a joint return, qualifying widow(er), or married filing a separate return and you lived with your spouse at any time during the year).
4. Multiply the maximum contribution limit (before reduction by this adjustment and before reduction for any contributions to traditional IRAs) by the result in (3).
5. Subtract the result in (4) from the maximum contribution limit before this reduction. The result is your reduced contribution limit.

IV. **Retirement Accounts and Medicaid.**

A retirement fund owned by an SSI-related individual is a countable resource if the SSI-related individual is not entitled to periodic payments, but is allowed to withdraw any of the funds. For Medicaid eligibility purposes, retirement funds include, but are not limited to, pensions, Individual Retirement Accounts (IRAs), 401(k) plans, and Keogh plans. The value of the resource is the amount of money that applicant/recipient may currently withdraw. If there is a penalty for early withdrawal, the value of the resource is the amount available after the penalty deduction. Any ordinary income taxes due are not deductible in determining the value of the resources.

Retirement funds include funds from private plans and from government plans. The provisions in federal law that preempt state law that relate to retirement plans for federal employees do not affect a state's ability to include an applicant's benefits in countable resources. The provisions in the Employee Income Security Act of 1974, as amended ("ERISA"), also do not affect a state's ability to include an applicant's benefits in countable resources.

A retirement fund is not a countable resource if an individual must terminate employment in order to obtain any payment. If the SSI-related individual is in receipt of or has elected to receive periodic payments, the retirement fund is not a countable resource. Effective October 1, 2011, retirement funds of a participating Medicaid Buy-In for Working People with Disabilities applicant/recipient and his or her spouse are disregarded.

Effective January 1, 2006, if a community spouse is NOT receiving periodic payments from his or her available retirement fund, but can choose to receive the payments without terminating employment, the fund is considered a countable resource for purposes of determining the community spouse resource allowance (CSRA) and the institutionalized spouse's Medicaid eligibility. This includes situations where the retirement fund of the community spouse exceeds the CSRA. Medicaid applicants/recipients who are eligible for periodic retirement benefits must apply for such maximized benefits as a condition of eligibility. If an individual does not choose to apply for available periodic benefits, the local Department of Social Services may deny or discontinue Medicaid based on the failure to pursue potential income that may be available.

a. Retirement Periodic Payments versus Other Payments.

Periodic payments received by an SSI-related applicant/recipient from an annuity and/or IRA continue to be treated as countable unearned income. Capital gains distributions, whether paid as cash or reinvested, are to be treated as unearned income.

Periodic retirement benefits are payments made to an individual at some regular interval (e.g., monthly, quarterly, annually), which result from entitlement under a retirement fund. An individual commonly selects a payment plan, and, generally, only an initial filing for benefits is needed. An individual is eligible for periodic payments if he or she is authorized to receive distributions on a regularly scheduled basis without having a penalty assessed. An individual is not entitled to periodic payments if he or she is not permitted to take regularly scheduled withdrawals penalty free. Ordinary taxes are not considered a penalty. If there is a penalty for early withdrawal, the value of the resource is the amount available after the penalty deduction. Once periodic payments are received, the periodic payments are unearned income, but the fund itself is not a countable resource.

For the payments to be classified as income (and not as a resource), if the individual has a choice between periodic payments and a lump sum, the individual must choose the periodic payments. The individual must apply for the maximum payment amount that could be made available over the individual's lifetime. By federal law, if the Medicaid applicant/recipient has a living spouse, the maximum income payment option that is available will usually be less than the

maximum income payment option available to a single individual. This provision applies to all Medicaid applicant/recipients.

Non-periodic distributions from a retirement account in pay-out status are considered a conversion of an exempt resource and not countable as income. Care should be given as irregular withdrawals from the retirement account could result in the account being treated as an available resource for Medicaid eligibility purposes. Once the application has been submitted, only periodic distributions should be made to avoid a potential conversion from exempt to available resource. It should also be noted that periodic distributions must be made from all retirement accounts. While it may be permissible for federal income tax purposes to take the total required minimum distribution unequally from various accounts, for Medicaid eligibility purposes, the specific required minimum distribution must be taken from each account.

b. Exceptions to Requirements.

A community spouse with less than the allowed monthly income is entitled to a portion of the institutionalized spouse's income to bring the community spouse up to the income allowance level. The community spouse would receive this additional income even if it exhausted all of the institutionalized spouse's income. The only exception is the $50 per month for the institutionalized spouse's incidental allowance. This additional amount is referred to as the community spouse's minimum monthly maintenance needs allowance (MMMNA).

An individual who has met the minimum benefit duration requirement of a New York State Partnership for Long-Term Care (NYSPLTC) policy is not required to maximize income from a retirement fund. If, however, the amount of any interest earned since the purchase of the policy, which would have been added to the value of the retirement fund, is available to be withdrawn, a qualified NYSPLTC participant is required to pursue or cooperate in the pursuit of the amount of the interest payments. This requirement applies to a qualified NYSPLTC participant who is subject to chronic care budgeting. It does not apply under community budgeting. Non-applying spouses/parents are not required to apply for periodic payments or to maximize income from a retirement fund.

Individuals who are under 59 ½ or are still working may not be eligible to receive payments from a retirement account without penalty. If the applicant/recipient is not eligible to receive distributions, the account is not considered an available asset for Medicaid eligibility purposes. A retirement fund is not a countable resource if an individual must terminate employment in order to obtain any payment

V. Medicaid: Converting Retirement Plans from Resource to Income.

a. Tax Qualified Plans.

Required minimum distributions from qualified retirement accounts (other than Roth IRAs) must commence by April 1 of the calendar year following the year in which the participant attains the age of 70 ½ (the required beginning date). Once the applicant/recipient has either attained the age of 70 ½ or is classified as disabled, it is permissible to convert a retirement account from an available resource to income for purposes of Medicaid eligibility.

The retirement accounts in pay-out status of a non-applying legally responsible relative (a community spouse) are a disregarded resource of the Medicaid applicant/recipient. 18 NYCRR 360-4.6(b)(2)(iii). However, any distributions received will be considered income, subject to the income limitations discussed above. GIS 06MA/004 amended the regulations effective as of January 12, 2006 to provide, "if a community spouse (CS) is NOT receiving periodic payments from his/her available retirement fund, the fund is considered a countable resource for purposes of determining the community spouse resource allowance (CSRA) and the institutionalized spouse's Medicaid eligibility. This includes situations where the retirement fund of the CS exceeds the CSRA." The GIS further provides, "If the community spouse has elected to receive periodic payments from his/her retirement account, the retirement account is not a countable resource in determining the institutionalized spouse's eligibility. However, the periodic payments are countable income for the community spouse."

b. Pay-out Status- Over 70 ½ Years Old.

Most nursing home residents applying for Medicaid have already attained the age of 70½, and have converted the account from a resource to income simply by taking the required minimum distributions. Complicating factors include payments that exceed the minimum

required distribution and timing. Once a Medicaid application is considered, the payment should be reduced to the minimum required and the pay-out should be made monthly. If payments are made annually, then for Medicaid eligibility purposes, the annual amount received will be divided by 12 with 1/12 of the amount considered as monthly income subject to contribution as part of the Net Available Monthly Income.

Roth IRAs have no required beginning date. However, once a person has applied for Medicaid, the NYS Department of Social Services applies the same logic to Roth IRAs, requiring distribution made on the same analysis as traditional IRAs. The Deficit Reduction Act treats Roth IRAs the same as traditional IRAs or other qualified retirement accounts. As such, a Roth IRA must be put in pay-out status to be considered income for Medicaid eligibility purposes.

c. Pay-out Status- 70 ½ Years Old and Younger.

Distributions to an account owner before age 59 ½ generally trigger a 10% early withdrawal federal tax penalty in addition to the income tax due. The penalty does not apply to a distribution that is "part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the account owner under Internal Revenue Code Section 72(t)(2)(A)(iv)." For Medicaid eligibility purposes, the series of substantially equal periodic payments is calculated in the same manner as a required minimum distribution, with the actuarial life expectancy based on the owner's current age.

To use Section 72(t) substantially equal periodic payments, the applicant/recipient must be disabled. This is defined in Internal Revenue Code Section 72(m) as the inability "to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be a long-continued and indefinite duration. An individual shall not be considered to be disabled unless he or she furnishes proof of the existence thereof in such form and manner as the Secretary of Treasury may require."

VI. Non-Qualified Annuities.

A simple definition of an annuity is a form of insurance designed to pay the policy holder a fixed, set sum of money annually over the policy term. A non-qualified annuity is a type of

annuity that is not affiliated with either an IRA or an employer-sponsored plan (contributions are made after-tax to non-qualified annuities). Non-qualified annuities are treated as countable resources unless in pay-out status and in compliance with the Deficit Reduction Act, discussed in further detail below. The purchase of a non-qualified annuity that does not name the State as a remainder beneficiary in the first position (or in the second position as explained above) will be treated as an uncompensated transfer of assets for SSI-related applicant/recipients. MRG at 453.

The Medicaid Reference Guide at 452 defines an annuity as a "contract with a life insurance company, designed to provide payments on a regular basis either for life or a term of years." If the annuity does not meet the requirements of the Deficit Reduction Act, discussed in detail below, the purchase of the annuity will be treated as an uncompensated transfer, subject to a penalty period. Annuities within a retirement account are considered investments within the retirement account similar to a mutual fund, stocks and bonds, and are treated overall how the retirement account is treated for resource/transfer of asset purposes.

In GIS 18 MA/08, the NYS Department of Health provided, "The purpose of this General Information System (GIS) message is to provide local departments of social services with the updated life expectancy table issued by the Office of the Chief Actuary of the Social Security Administration (SSA). As advised in Administrative Directive 06 OMM/ADM-5, "Deficit Reduction Act of 2005 – Long-Term Care Medicaid Eligibility," the life expectancy table issued by SSA is required to be used in evaluating whether an annuity purchased by or on behalf of an applicant/recipient on or after February 8, 2006 is actuarially sound. The table is also used in determining whether the repayment term for a promissory note, loan or mortgage is actuarially sound. The life expectancy table that was attached to 06 OMM/ADM-5 as Attachment VIII, is being updated to reflect the current information obtained from the Office of the Chief Actuary of the Social Security Administration. The revised life expectancy table is provided as an attachment to this GIS. Effective with the release of this GIS, districts must use the revised table."

The Medicaid Reference Guide provides, "As a condition of eligibility, all persons applying for Medicaid coverage of nursing facility services, including requests for an increase in coverage for nursing facility services, must disclose a description of any interest he/she, or

his/her spouse, may have in an annuity. The disclosure of interest in an annuity is required regardless of whether the annuity is irrevocable or counted as a resource. Additionally, for annuities purchased by an SSI-related applicant/recipient or the applicant/recipient's spouse on or after February 8, 2006, the State must be named as a remainder beneficiary in the first position for at least the amount of Medicaid paid on behalf of the institutionalized individual. In cases where there is a community spouse or minor or disabled child of any age, the State must be named the remainder beneficiary in the second position or named in the first position if such spouse or representative of such child disposes of any such remainder for less than fair market value."

The purchase of an annuity that does not name the State as a remainder beneficiary in the first position (or in the second position after a surviving spouse) is treated as an uncompensated transfer of assets, subject to a penalty period, unless the annuity is:

- An annuity described in Internal Revenue Code Section 408(b) or (q);
- Purchased with the proceeds from an account or trust, described in Internal Revenue Code Section 408(a), (c), or (p); a simplified employee pension (within the meaning of Section 408(k) of the Internal Revenue Code); or a Roth IRA; or
- The annuity is:
  - Irrevocable and non-assignable;
  - Is actuarially sound; AND
  - Provides for payments in equal amounts during the term of the annuity with no deferral and no balloon payments made.

a. <u>Community Spouse as Designated Beneficiary v. Non-Married Partner.</u>

In cases where there is a community spouse or minor or disabled child of any age, the State must be named the remainder beneficiary in the second position or named in the first position if such spouse or representative of such child disposes of any such remainder for less than fair market value. Non-married partners are not afforded the protection provided to a community spouse. They may not be named as the primary beneficiary.

This requirement does not apply to qualified retirement accounts. It is also important to remember that a community spouse should consider changing the beneficiary of a qualified retirement account to someone other than the spouse resident in a nursing home receiving Medicaid benefits.

b. State as Designated Beneficiary.

The purchase of an annuity that does not name the State as a remainder beneficiary in the first position (or in the second position as explained above) will be treated as an uncompensated transfer of assets for SSI-related applicant/recipients. MRG at 453. This designation requirement does not apply to annuities in qualified retirement accounts.

VII. Tips and Tidbits.

a. Life Expectancy Tables.

The Social Security life expectancy table for purposes of determining whether a loan is actuarially sound differs from the Social Security life expectancy table for purposes of maximizing payouts from a qualified retirement account. For purposes of determining whether a loan is actuarially sound (payment completed within the lender's actuarial life expectancy) and for purposes of determining whether an annuity will not be considered a transfer subject to a penalty, the proper table is found as an attachment to GIS 18 MA/08.

When determining whether a qualified retirement account is in pay-out status, it is the applicant's responsibility to compare the Social Security life table (discussed above and attached to GIS 18 MA/08) with the IRS uniform lifetime table (Table III). If the age difference between spouses is more than 10 years, Table II is utilized (link to IRS website for Table II is: http://www.irs.gov/publications/p590b/index.html#en_US_2014_publink1000231236

In comparing the tables, GIS 18 MA/08's attached table will also provide a higher payout than the IRS table. While GIS 18 MA/08 does not specifically apply to retirement account payouts, it is the most current life expectancy table issued by Social Security per the Department of Health. Do not rely on the life table available on the Social Security Administration's website as it is dated 2010, and the GIS 18 MA/08 table was last updated in 2017. Before submitting an

application with your calculations, confirm that you are using the most current tables. Currently GIS 18 MA/08 applies, but the library of official documents at the Department of Health's website should be reviewed to consider an anticipated annual update. The link to the list of official documents is http://www.health.ny.gov/health_care/medicaid/publications/ .

b. Maximization Required by Local DSS.

GIS 98 MA/24 requires, "If there are a variety of payment options, the individual must choose the maximum income payment that could be made available over the individual's life time." Where this routinely becomes an issue is in determining whether an IRA is in pay-out status, as the required minimum distribution for federal income tax purposes, is not necessarily the maximum income payout. However, there is no definition of maximization. Maximization remains a county-by-county issue, with different counties forcing the use of different tables for purposes of determining maximization.

In counties that force maximization, it is advisable to show the calculations using both tables as part of the application.

Individuals who have met the minimum benefit duration requirement of a New York State Partnership for Long Term Care policy are not required to maximize income from a retirement fund. In addition, non-applying or ineligible spouses/parents cannot be required to maximize income from a retirement fund. 98 MA/024.

c. Importance of Beneficiary Designations.

As discussed above, the State must be designated as the beneficiary (second only to the surviving spouse or disabled child) of a non-qualified annuity. This requirement does not apply to qualified retirement accounts. Consideration should be given to the designation of beneficiaries when a spouse has been admitted to the nursing home. If the applicant/recipient spouse remains as the designated beneficiary of an IRA and is living when the community spouse dies, the applicant/recipient will then be the owner of either a rolled over IRA or inherited IRA, with required minimum distributions. By removing the applicant/recipient spouse as the designated beneficiary, in the event that the community spouse does predecease the

applicant/recipient spouse, a portion of the proceeds may be protected from the responsibility for his or her long term care expenses.

EPTL 5-1.1-A provides for the right of election by surviving spouses of decedents dying on or after September 1, 1992. EPTL 5-1.1-A(c)(3) provides that the election is personal to the surviving spouse, but permits the election to be made by a committee/conservator, guardian ad litem or Article 81 guardian. For Medicaid eligibility purposes, the right of election will be required to be exercised; and waiver of the right of election will be deemed a transfer, subject to penalty.

d. <u>Recovery from Recipient's Estate.</u>

Recovery is limited to the probate estate of the Medicaid recipient. It should never be assumed that the recipient's beneficiary designation on retirement accounts is valid and current. If there is no designated beneficiary (the primary beneficiary predeceased the recipient without a named contingent beneficiary, or both the primary and contingent beneficiaries predeceased the recipient, and there are no individual default beneficiaries), then the retirement account will pass by operation of law to the recipient's probate estate. If the estate is entitled to the retirement account or survivor benefit whether by an explicit designation or by lack of beneficiary designation, then the State may recover its outlays from such estate assets. In assisting clients with Medicaid applications, remember to review all beneficiary designations, or update the beneficiary designations. Difficulty may arise when a recipient lacks capacity and does not have a properly prepared power of attorney with statutory gift rider that allows the agent to change beneficiary designations. Depending on the value of the account, a limited guardianship proceeding may be considered.