Asset Protection Law NewsLetter

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A FREE LEGAL UPDATE FOR ELDERS AND SAME SEX PARTNERS WHO SEEK ASSET PROTECTION ♦ JUNE 1, 2013 EDITION

USING ANNUITIES AS PART OF MEDICAID PLANNING FOR LONG TERM HEALTH CARE

Many financial planners suggest annuities to clients who are looking for guaranteed income. Annuities can offer a guaranteed gain. This makes them an attractive alternative to the fluctuating stocks and the almost zero interest rates offered by a bank. There are also many different types of annuities.

All annuities differ and the terms that govern these products may vary widely. Sometimes, the purchase of annuities in a Medicaid planning context can provide a useful alternative to "spending down" assets to qualify for long term care benefits.

In the alternative, many clients are very pleased that they purchased a fixed annuity in light of the huge losses the stock market created in the past few years, especially in 2008. Then, the most conservative mutual funds sank 40% and more!

Deferred Versus Immediate Annuities

This refers to the time when a given annuity starts to return monthly or other periodic payments. Annuities can be deferred to begin payout at a later date, usually a term of years after the initial purchase date while the asset gains interest over time.

This option may allow a withdrawal of a certain percentage of the cash value on an annual basis. It may allow for change of beneficiary until the date of annuitization.

Immediate annuities begin payout of a stream of guaranteed income shortly after purchase. They may be irrevocable or may not permit a change in ownership after the initial free look period on the contract has elapsed.

Deferred Annuities in a Medicaid Context

To qualify for Medicaid for long term nursing care, there is a 5 year look back period. This means that a gift to a non-spouse or certain purchases of annuities should be done 5 years prior to when you need a nursing home.

Let's consider a couple, Sue and Alan, who are facing the monthly costs of Alan's skilled nursing care. Alan has Alzheimer's disease/ Alan is the owner of a 10 year deferred $300,000 annuity purchased 4 years ago. To qualify for Medicaid, Alan can only own a $2,000.00 in countable assets.

His $250,000 home plus one car are non-countable assets. Annuities, however, are countable assets. Therefore, he must change ownership of his annuity, annuitize it, or liquidate it in order to reduce his countable resources to the amount authorized by the Medicaid program.

If the contract permits, he could transfer ownership to his wife Sue without a period of Medicaid ineligibility assigned to the transfer of the asset. As the community spouse, Sue can receive any gift from Alan and then qualify him for Medicaid by electing spousal refusal.

If he transfers the annuity to Sue, Alan continues to be the annuitant. Sue could receive the income if the annuity is an immediate one.

While this could be very helpful to increase Sue's minimal Social Security income, filing for spousal refusal would forfeit her right to obtain Alan's social security income. Alan's social security income will go 100% to nursing home. This will be if Sue must file for spousal refusal to protect her right to retain the $300,000 annuity that Alan gave her.

She must also change the primary beneficiary of the annuity to the State of Florida. This means after Sue's death, State of Florida is the beneficiary up to extent of monies Medicaid has paid for Alan's care.

If the annuity contract does not permit immediate annuitization, it is likely that the annuity would need to be liquidated in order for an individual or couple to become eligible for Medicaid. Liquidation usually means paying a penalty.

The early liquidation terms are a very important consideration when purchasing an annuity. Some policies will allow a waiver of early liquidation fees if the owner resides in skilled nursing care.

Immediate Annuities in a Medicaid Context

For Medicaid planning purposes, SPIAs may allow additional income for a community spouse. For example, if Sue and Alan have $200,000 in total assets, Sue could keep $130,000 as her resource allowance.

The excess could be used to purchase a Deficit Reduction Act (DRA) compliant single premium annuity (SPIA) for Sue to provide her with additional income. There is no penalty period to delay Sue to buying such an annuity.

If the Medicaid applicant is single, combining the purchase of a short-term DRA compliant SPIA with a transfer of assets can help to protect a significant amount of the applicant's assets that would be otherwise spent on private payment for skilled nursing care.

This technique intentionally creates a penalty period due to the transfer of assets. The purchase of the annuity provides enough income to allow the applicant to pay privately for a period of time equal to the penalty period.

Once the penalty period has passed, the annuity term has paid out in full and the institutionalized individual receives Medicaid to pay for his or her care.

This type of planning requires the careful guidance of an experienced elder law attorney. There are many ways in which State of Florida can attempt to deny Medicaid eligibility due based on their policies.

Annuities can be used to reduce income tax consequences of the Provider under a Personal Services Contract to obtain Medicaid eligibility for an unmarried Medicaid applicant.

Annuities can be used to avoid tax consequences of liquidation of an IRA holder who seeks to reduce his countable assets to below $2,000.

Whenever considering the purchase of an annuity, there are a variety of issues to consider. These include principal investment, length of term, interest rate, payout and other contractual provisions.

Finally, annuities are sold by insurance companies. Insurance companies have a rating that is widely accepted in the insurance industry. Generally, insurance companies with an "A" rating or similar designation are the safest. By seeking the advice of an elder law attorney you can make a better informed decision.

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News You Can Use

2013 FLORIDA MEDICAID LIMITS

Gross Monthly Income Limit for Medicaid Applicant:	**$2,130.00**
Personal Needs Allowance:	**$35.00**
Asset Limit (Individual):	**$2,000.00**
Asset Limit (Couple):	**$3,000.00**
Medicare Part B Premium:	**$104.90**
Community Spouse Resource Allowance**:**	**$115,920.00**
Mimimum Monthly Maintenance Income Allowance:	**$1,891.25**
Maximum Monthly Maintenance Income Allowance:	**$2,898.00**
Monthly Personal Needs Allowance:	**$35.00**
Home Equity Interest Limit:	**$536,000.00**