

Court Approves Use of Short-Term Annuities for Medicaid Asset Planning

{ Protecting Your Assets and Income From the Cost of Nursing Home Care }



Immediate annuities are among the tools elder law attorneys use to help married nursing home residents qualify for Medicaid coverage while protecting the standard of living (i.e. assets and income) of the healthy spouse and to help preserve assets for the families of unmarried or widowed nursing home residents.

Immediate annuities can help Medicaid applicants in two basic ways. First, many spouses of nursing home residents face a dramatic reduction in income when the nursing home spouse qualifies for Medicaid. Purchasing an immediate annuity can convert assets into an income stream for the healthy spouse while avoiding a penalty for transferring assets. Second, an institutionalized individual can buy an annuity that will provide income to pay the nursing home while waiting out a Medicaid penalty period caused by a gift made within the previous five years. Often, these latter annuities are of short duration – only as long as the penalty period.

But some states, including Pennsylvania, have maintained that short-term annuities – usually two years or less – are still subject to a transfer penalty. This should change now that the Third Circuit Court of Appeals has ruled that Medicaid officials must accept applicants' short-term annuities, and that these types of annuities cannot be counted as resources and be made subject to penalty or to spend down. (*Zahner v. Secretary, Pennsylvania Dept. of Human Services* [3rd Cir., Nos. 14-1328, 14-1406, Sept. 2, 2015])

In reaching its decision, the court combined three separate Pennsylvania cases.

In one, Donna Claypoole and her husband transferred more than \$100,000 to family members. When Ms. Claypoole was admitted to a nursing home and applied for Medicaid, the transfers resulted in a period of Medicaid ineligibility. In part to pay for her nursing home care during the period of Medicaid ineligibility, Ms. Claypoole paid \$84,874 for an immediate annuity that would give her an income of \$6,100 a month for 14 months. She was 86 years old at the time of the purchase, with a life expectancy of over six more years. Another Medicaid applicant, Connie Sanner, also transferred assets and then bought a 12-month annuity to pay for her nursing home care during the period of ineligibility. In both cases, Pennsylvania's Medicaid officials determined that the annuity's term was less than the purchaser's life expectancy and was therefore a "resource" that required a new period of Medicaid ineligibility. (The original plaintiff in the case, Anabel Zahner, is deceased and no longer a party.)

The Medicaid applicants filed a case in federal court, arguing that the annuities met the requirements of federal Medicaid law and should not have been considered asset transfers. The U.S. district court ruled that the short-term annuities are countable assets subject to asset transfer rules, holding that the term of the annuity must "bear a reasonable relatedness" to the beneficiary's life expectancy.

The U.S. Court of Appeals for the Third Circuit has now overturned this decision. The court found nothing in federal Medicaid law to suggest that an annuity cannot be shorter than a person's actuarial life expectancy. The only requirement, the court said, is that the annuity not be *longer* than the beneficiary's life expectancy, to prevent people from purchasing overly long annuities as a way to leave money to heirs. The court further held that an annuitant's motive in purchasing an annuity should not determine whether it is viewed as a resource. Although the Third Circuit is only one of 13 federal appeals courts, the court noted that its opinion is "precedential" federal law for Medicaid-complaint annuities.

WHILE the decision provides more certainty, and allows for serious planning opportunities for individuals, particularly married couples, immediate annuities **must still meet** a number of **stringent requirements** to be accepted as legitimate by Medicaid authorities. Families considering them, and families dealing with nursing home placements and long-term care concerns, must seek the proper advice and counsel from a qualified elder law attorney. Going down this road without an attorney will prove to be costly.

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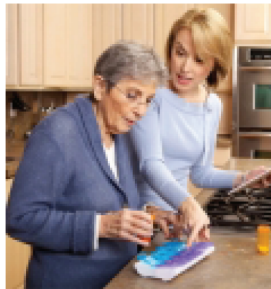
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