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Medicaid Qualified Annuities and the Costs of Long Term Care

Rodney L. Goodwin 1 | Jul 04, 2016

For the typical married couple, the costs of long-term care (LTC) for just one spouse can easily consume a lifetime of accumulated assets.

Here are four examples of what LTC can cost annually in 2016 for a semi-private room: Arizona, $75,555; Colorado, $83,220; Florida, $89,060; and Washington, $96,725.

With these increasing costs, it's essential to protect your clients. Medicaid qualified annuities (MQAs) are a valuable tool that can be used to protect accumulated assets by ensuring that a client qualifies for LTC under Medicaid.

Medicaid Qualified Annuities

To be eligible for LTC under Medicaid, a couple may have no more than $2,000 in "countable assets." Basically, all money and property and any item that can be valued and turned into cash is considered a countable asset unless it is specifically listed as exempt. Exempt assets include (but aren't limited to): personal possessions (clothing, furniture, jewelry, etc.); one automobile; the principal residence; prepaid funeral plans and some life

insurance. An MQA enables an ill spouse to convert an amount (there appears to be no limit) of liquid investments into an income stream for the well spouse. Accordingly, that amount disappears as an asset, and the ill spouse remains eligible for LTC.

Transmittal No. 64

In 1994, the government issued Transmittal No. 64 , which provides the terms for, among other things, using MQAs to remove funds from being considered "countable assets," making an ill spouse eligible for Medicaid. It, along with several federal statutes, lays out a series of specific rules that an MQA must follow:

1. When determining eligibility or recertification, the applicant must disclose any annuities held by either spouse.

2. On disclosure, the state shall notify the annuity issuer that the state is a remainder beneficiary for any benefits provided to the applicant.

3. The state shall be named as a remainder beneficiary for the amount of benefits provided to the applicant.

4. The state is named as the remainder beneficiary after the community spouse, or minor or disabled child, except that the state shall be named first remainder if a protected individual disposes of the annuity.

5. The annuity is payable monthly (in equal amounts) and may have no balloon or deferral mechanism.

6. The annuity is irrevocable and non-assignable.

7. The annuity is actuarially sound.

The government was concerned about spouses using annuities to avoid a spend-down of the couple's assets, rather than as an income source. As stated in Transmittal No. 64:

> Annuities, although usually purchased in order to provide a source of income for retirement, are occasionally used to shelter assets so that individuals purchasing them can become eligible for Medicaid. In order to avoid penalizing annuities validly purchased as part of a retirement plan but to capture those annuities which abusively shelter assets, a determination must be made with regard to the ultimate purpose of the annuity (i.e., whether the purchase of the annuity constitutes a transfer of assets for less than fair market value). *If the expected return on the annuity is commensurate with a reasonable estimate of the life expectancy of the beneficiary, the annuity can be deemed actuarially sound.* (Emphasis added.)

The tables reflecting the estimated remaining life span for men and women are set forth in Transmittal No. 64.

Example: Assume that Harry and Wanda, a married couple, have $300,000 in cash assets and Wanda needs LTC. Harry has just turned 70. If the couple lived in Florida, the $89,060 annual cost of care would exhaust the $300,000 in a little over three years.

The attorney explains that an MQA would enable Harry to use the $300,000 for his own support and enable Wanda to be eligible for Medicaid LTC benefits.

Applying the Transmittal No. 64 table for men, at age 70, Harry has a remaining life expectancy of 11.92 years. As such, his annuity may be no longer than 11.92 years to be considered "actuarially sound."

If the MQA is set up correctly, the $300,000 will essentially disappear for Medicaid LTC eligibility.

Note that an individual retirement account or other retirement plan may not qualify as an MQA because an annuity consists of property transferred to a qualified insurance company in return for a series of payments. With a retirement account, the transfer would accelerate the income.

This is an abbreviated and adapted version of the author's original article *in the June issue of* Trusts & Estates.

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