

The Use of Annuities in Michigan Medicaid Planning

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Deficit Reduction Act of 2005

- Signed into law on February 8, 2006
- Michigan implemented DRA on July 1, 2007
- Six states have not yet implemented DRA
 - California, Hawaii, Illinois, New Jersey, New Mexico, Wyoming
- DRA has impacted the way that annuities are structured
 - The new trends: Shorter terms and reduced wealth transfers to children



History of Annuities

- Been around since the 18th century
- First used for retirement planning
- Became popular as a Medicaid tool in the early 90's
- There are more than 1,400 life insurance companies, but less than 10 that offer Medicaid Compliant Annuities



Two Basic Types of Annuities

- Tax-Deferred Annuity
 - Not a Medicaid planning tool
 - Pile of cash
 - Can be converted to an Immediate Annuity
- Immediate Annuity
 - Medicaid planning tool
 - Future stream of income – monthly payments
 - Cannot be converted to a Tax-Deferred Annuity



Taxation of Annuities

- Tax-Deferred Annuity
 - Deferral of taxes on appreciation
 - Taxes paid upon liquidation or withdrawals
- Immediate Annuity
 - Each payment is comprised of principal and income
 - Taxes paid annually – income portion only



Annuities – Countable Resource?

- Tax-Deferred Annuity
 - Generally “yes”
- Immediate Annuity
 - Generally “no”



Parties to an Annuity

- Issuer/Obligor – Insurance Company
- Owner – Controls contract
- Annuitant – Measuring life
- Payee – Receives payments
- Beneficiary – After death of owner, receives payments – primary - secondary

Practical Point: Owner/Annuitant/Payee



Federal History – Pre DRA

- Annuities first addressed by Omnibus Budget Reconciliation Act of 1993 (“OBRA”)
- Healthcare Financing Administration Transmittal 64 – November of 1994
 - Actuarially sound test
 - Age/Gender life expectancy table



Federal History – Post DRA

- Classification
 - Asset unless: 1) retirement annuity, or 2) irrevocable, non-assignable, actuarially sound, and equal payments
- Disclosure
 - At application and recertification: annuities must be disclosed, including any changes
- Remainder Beneficiary Designation
 - State remainder beneficiary, unless spouse, minor or disabled child



Medicaid Planning-Couple

- George entered nursing home on 4/1/09
- The couple has \$200,000.00 in countable assets
- Betty – home, car, furniture, pre-paid funeral, and \$100,000.00
- George – pre-paid funeral, and \$2,000.00
- Spend-down amount: \$98,000.00
- Betty purchases a Medicaid Compliant Annuity – 79 months: \$1,282.11
- Result: Immediate Medicaid eligibility, co-pay
April 2009: \$0.00, May 2009: \$1,140.00



Co-Pay Calculation April 2009

• MMNA	\$1,750.00
• Less Betty's SS income	\$ 500.00
• Shortfall	\$1,250.00
• Less George's income	\$1,200.00
• Co-pay	\$ 0.00



Co-Pay Calculation May 2009

• MMNA	\$1,750.00
• Less Betty's SS income	\$ 500.00
• Less Betty's annuity income	\$1,282.11
• Shortfall	\$ 0.00
• George's income	\$1,200.00
• Less personal needs	\$ 101.10
• Co-pay	\$1,098.90



Economic Results

- Advantage
 - Immediate Medicaid eligibility
 - Reduced co-pay from \$6,000.00 per month to \$0.00, and \$1,098.90
- Disadvantage
 - If Betty pre-deceases the 79 month term, State obtains recovery
- No Planning
 - Without any planning, the \$98,000.00 would have been exhausted in approximately 16 months



Potential Recoveries

Medicaid Rate: \$4,200.00; Co-Pay: \$1,098.90;
Annuity Total Pay out: \$101,286.69

Month	State Claim	State	Children
12	\$37,213	\$37,213	\$48,688
24	\$74,426	\$70,516	\$0
36	\$111,640	\$55,130	\$0
48	\$148,853	\$39,745	\$0
60	\$186,066	\$24,360	\$0



Re-Insure Annuity

- If a community spouse wants to avoid a potential recovery in the event of an untimely death, they may want to purchase a life insurance policy to re-insure the annuity payout
- In Betty's case, a \$70,000.00 term life insurance policy would be sufficient
- Can we insure the community spouse – age, health?



Alternative Annuity Plans

- Reduce the 79 month term to 36 months
 - Increases Medicaid Compliant Annuity monthly payment from \$1,282.11 to \$2,764.20
 - Betty's income increases from \$1,782.11 to \$3,264.20
- Name George as the primary beneficiary if the annuity offers a cash commutation feature to the primary beneficiary



Medicaid Planning Individual - Long Life Expectancy

- Mary, age 85, entered the nursing home on 4/1/09
- Mary has no major assets, pre-paid funeral, and a spend-down amount of \$133,500.00
- Nursing home bill expected to average \$6,000.00
- Monthly SS income of \$1,100.00
- Mary's children believe she will live more than 79 months
- Mary gifts \$75,389.70 to her children – 11.85 month penalty period created
- Mary purchases a Medicaid Compliant Annuity – 12 months: \$4,868.68



How was the \$75,389.70 Gift Amount Determined?

- Nursing home cost/\$6,000.00 less monthly income/\$1,100.00 = \$4,900.00
- \$4,900.00 + monthly divestment penalty divisor/\$6,362.00 = \$11,262.00
- Spend-down amount/\$133,500.00 divided by \$11,262.00 = 11.85
- 11.85 times divisor/\$6,362.00 = \$75,389.70



Economic Results

- Assuming the Medicaid Compliant Annuity makes its first payment with the contract, Mary will have \$5,968.68 of monthly income in which to pay the \$6,000.00 nursing home bill
- On month 13, Mary is economically eligible for Medicaid benefits, her monthly co-pay would be \$1,040.00 (SS less \$60.00)



Important Annuity Fact

- With an 11.85 divestment penalty period, the case requires a 12 month Medicaid Compliant Annuity
- Medicaid Compliant Annuities can only be issued in whole months – 11 months or 12 months, not 11.85



Important Steps

- In order for the Gifting/Short-Term Medicaid Compliant Annuity Plan to be successful, the following must occur at the same time:
 - In nursing home
 - Make the gift
 - Purchase the annuity
 - Apply for Medicaid benefits
- equal's "otherwise eligible," but for the transfer penalty



Medicaid Planning Individual - Short Life Expectancy

- Carol, age 85, entered a nursing home on 4/1/09, is doing poorly, not expected to live more than 12 months
- Carol has no major assets, pre-paid funeral, and a spend-down amount of \$134,900.00
- Carol purchases a Medicaid Compliant Annuity – 79 months: \$1,898.04 - beginning May of 2009
- Medicaid rate is \$4,200.00; private pay rate is \$6,000.00
- Result: Immediate Medicaid eligibility



Co-Pay Calculation April 2009



Co-Pay Calculation May 2009



Primary Beneficiary Pay Back

- If Carol dies in month 12, Medicaid would be looking for a recovery of approximately \$15,743.52
- \$4,200.00 (Medicaid rate) less \$2,888.04 (co-pay) x 12 months



Benefit to Children

- Carol's children will receive \$111,425.16

Total annuity payout:	\$149,945.16
Less 12 payments made:	\$ 22,776.48
Less payment to State:	\$ 15,743.52

Note: Medicaid Compliant Annuities do not normally make a payment in the same month as the Contract. With the first payment in the following month – aforementioned amounts would be adjusted.



Converting an IRA Account into a Medicaid Compliant Annuity

- An existing IRA account can be converted to an IRA Medicaid Compliant Annuity by way of a “trustee to trustee transfer” or “60 day rollover.”
- The 60 day rollover method is preferred - timing



5 Points of Discussion – Point 1

1. If a CS reduces the term of her annuity so that it pays \$3,500.00 per month versus \$1,200.00 per month, when the annuity ends, does the CS get to receive monthly income from the IS? Assume CS has \$500.00 of SS income. Does it matter that the CS has resources in excess of her CSRA?



5 Points of Discussion – Point 2

2. Two states have redefined the term “actuarially sound” – Oregon and Washington.

Does the new definition eliminate Gifting/Short-Term Medicaid Compliant Annuity Plans?

Note: Oregon and Washington do not allow partial cures.



5 Points of Discussion – Point 3

3. Is a Reverse Half-a-Loaf Plan better than a Gifting/Short-Term Medicaid Compliant Annuity Plan?

Why or why not?

Note: Michigan appears to be undecided.



5 Points of Discussion – Point 4

4. In a Gifting/Short-Term Medicaid Compliant Annuity Plan, can the plan include expenses related to maintaining the family home?

Note: Absolutely not – medical expenses only



5 Points of Discussion – Point 5

5. If a husband and wife apply for long-term care insurance, and one of them is not able to be insured, should the other still purchase a policy?

Note: Should the plan be a partnership plan? If not, why not?



Conclusion

- For 2009, and beyond, Medicaid Planning will provide a significant opportunity to those planners who stay abreast of Medicaid changes.



For More Information

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