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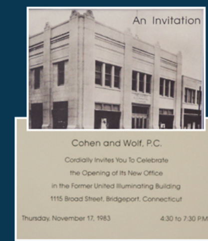

Immediate Annuities; A Tool In Medicaid (Title XIX) Planning

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The Deficit Reduction Act of 2005 (DRA) made dramatic changes to the federal Medicaid rules. Most of the changes have a negative impact on couples and individuals who are facing the high costs of long-term care. However, the DRA also clarified the use of annuities in the context of Medicaid planning. After years of litigation with the State of Connecticut, the use of immediate annuities to protect assets when applying for Medicaid is now a proven strategy for some couples.

By way of background, Medicaid allows the healthy spouse, (community spouse), to keep a certain amount of assets and still qualify the ill spouse (institutional spouse) for long-term care services. Generally, the community spouse is allowed to keep the home of any value and ½ of the assets at the time the institutional spouse is in need of care. The maximum amount the community spouse may keep is $117,240 and the minimum is $23,448 (both adjusted annually). So, for example, if the couple has $100,000 in assets, the community spouse will be allowed to keep only $50,000 before Medicaid will pay for care. If the couple had $300,000, the spouse could only keep the maximum amount of $117,240.

Medicaid also allows the community spouse to keep at least a minimum amount of monthly to cover the community spouse's shelter costs. If the community spouse's income is insufficient to meet the minimum, then she is entitled to income from the institutional spouse to raise her income to the minimum. On the other hand, if the community spouse generates more than the minimum amount from her own sources of income, currently, the community spouse may keep all of the income. The income of the institutional spouse would be required to go to the nursing home.

The immediate annuity basically converts assets over the allowable amount to an income stream for the community spouse. Take the couple who has $300,000. The community spouse is allowed to keep

$117,240. Therefore the overage is almost $180,000. In the past, this overage was "spent down" on the nursing home or home care, and/or on repairs to the home. All of which may still be done. But now, we can also consider the immediate annuity as an additional option. Let's say that after spending $80,000 on the home and the institutional spouse's care, the spouse still has $100,000 too much. If the overage is used to purchase an immediate annuity for a term of five years for example, the community spouse has reduced her assets to the allowable amount of $117,240 AND has enhance her monthly income by an additional $1666. This additional income stream (plus her Social Security and pensions, if any) may replace any income that the institutional spouse may have to contribute to the nursing home. Thus allowing the community spouse to stay in the community and maintain the home.

The annuity must meet the strict requirements as set forth in the DRA and reiterated in the *Lopes* case, in order for the annuity to work for Medicaid purposes. Among the requirements, the annuity must be irrevocable, non-assignable and non-transferrable. One of the main drawbacks to the annuity strategy is that the State of Connecticut must be named as the beneficiary after the spouse, up to the amount of services rendered by the State. A second disadvantage is that the annuity is irrevocable and can't be changed or accessed in excess of the set monthly amount.

This immediate annuity strategy for obtaining Medicaid eligibility is only advisable when the institutional spouse is in need of long-term care. This is not a technique for those planning in advance of a crisis. This is the case, because the community spouse is only entitled to ½ of the assets at time of need. To purchase the annuity before the need would reduce the assets to an even lower level. There are many other factors to consider when determining if the immediate annuity to right for you. Please consult with an experienced elder law attorney for the proper guidance.

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