

Medi-Cal Eligibility: Special Asset Rules

In previous editions of this weekly email newsletter, we have explored the need for long-term care planning as part of a comprehensive estate plan, the ethics of Medi-Cal planning, how to find and pay for the right nursing home, resource limitations which apply to Medi-Cal eligibility, and three particular strategies to qualify for Medi-Cal long term care benefits when an applicant has too much in the way of assets, including asset spenddown, asset conversion, and asset transfers.

Now we examine two types of assets which can be used to special advantage in Medi-Cal planning: irrevocable, single-premium, and immediate annuities, and retirement accounts.

Annuities

An annuity is a life insurance contract in which the owner thereof agrees to give funds to an insurance company in exchange for its promise to pay back the principal received (along with an agreed-upon rate of interest) to the owner over a period of time.

Under Medi-Cal regulations, a fixed annuity is an exempt asset if it satisfies three requirements:

1. The annuity must be irrevocable. In other words, the owner may not demand return of principal any faster than contractually agreed upon with the insurance company.
2. The annuity must make periodic payments of principal and interest to the annuity owner. Distributions may be made monthly, quarterly, or semi-annually.
3. The contract term cannot exceed the Medi-Cal applicant's life expectancy, using Social Security's actuarial tables. For example, if the applicant's actuarial life expectancy (actual life expectancy is immaterial) is ten years, the contract term may not exceed ten years. If it does, the annuity purchase could be considered a gift to the designated beneficiaries thereof, resulting in a period of ineligibility for Medi-Cal long term care benefits (see last week's article for a detailed discussion on transfer penalties and possible criminal sanctions). Please consult an elder law attorney before buying an annuity in order to qualify for Medi-Cal.

Example: Mary, a widow, resides in a skilled nursing facility. Mary's only asset consists of a savings account in the amount of \$26,000. Upon applying for Medi-Cal nursing home benefits, Mary was told by her eligibility worker that she was ineligible due to "excess resources" and was advised to reapply once she had spent down her cash assets to \$2,000. Instead, Mary bought herself an irrevocable, single-premium, immediate annuity for \$24,000 and immediately reapplied for Medi-Cal benefits. This time, she was found to be eligible. By turning her cash assets into a stream of income, Medi-Cal was now able to disregard the value of the annuity. Mary now has a stream of monthly income of \$1,000 for the next 24 months and Medi-Cal pays for the cost of her nursing home care!

While annuities can be a useful tool in achieving Medi-Cal eligibility without spending down valuable cash assets, they are not necessarily the right tool for everybody. Caution should be exercised before buying an annuity in order to qualify for Medi-Cal long term care benefits.

Retirement Accounts

Under Medi-Cal regulations, the value of retirement accounts, including IRAs, 401(k)s, and 403(B)s, are not counted in determining Medi-Cal eligibility as long as the Medi-Cal applicant is receiving some sort of periodic (i.e., regular) distribution from the account. Payments of principal and interest on a monthly, quarterly, semi-annual, or annual basis, over the applicant's life expectancy using Social Security's actuarial tables is a sufficient periodic distribution.

Example: Mary, a widow, has an IRA worth \$26,000. She does not receive periodic distributions from this account. This asset would be treated as a countable resource under Medi-Cal regulations and would serve to disqualify Mary from ever receiving Medi-Cal benefits. If, however, Mary instructs her bank to make small monthly payments of principal and income to her from her IRA, the entire IRA will be considered an exempt asset. Again, like the previous example, it is possible to turn a countable resource into a stream of income and Medi-Cal can now ignore it. Mary now qualifies for nursing home benefits! It's just like magic!

For retirees, home equity and retirement accounts are a significant source of lifetime savings that deserve and need protection. Don't assume that lifetime savings first need to be spent down to nothing before applying for Medi-Cal benefits.

Editor's Note: This article is one in a series of articles dedicated to the need for long-term care planning in a comprehensive estate plan and how to pay for nursing home care without going broke. This information is for general informational purposes only and does not constitute legal advice. Please do not rely on the limited information given here. Medicaid is a highly complex area of the law; it varies from state to state and even within a particular state. *Unfortunate and costly mistakes can be made if you do not know what you are doing.* Before taking any steps to protect assets, you are strongly urged to consult with an elder law attorney who is competent in this area of the law so that you will understand all of the ramifications of your actions, including but not limited to property, estate, gift, and income tax; financial and estate planning considerations; and even possible *criminal sanctions*.

If you need help in planning for long-term care as part of a comprehensive estate plan or finding the right nursing home or paying for it without going broke, please give us a call. We can help!

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