

## Can an Annuity truly help you with Medicaid?

YES. Although annuities might not always be the best vehicle for a financial investment, this does not mean the United States Congress believes that individuals should not have an annuity and still qualify for Medicaid. More recently, the 3<sup>rd</sup> Circuit Federal Court of Appeals ruled in a landmark Elder law case called *James v. Richman*, 547 F.2d 214 (3d Cir. 2008), that the purchase and use of an annuity for purposes of qualifying for Medicaid is perfectly legal and legitimate. But, you should understand the entire picture before you go out and purchase an annuity, which can be in many instances, the "horse of a different color."

## Can any Annuity qualify you for Medicaid?

NO. **Federal law dictates** specifically under 42 U.S.C. §1396(p), et seq., **that ONLY those annuities that are** (1) non-assignable (2) irrevocable (3) immediate (meaning that the annuity is cashed), (4) based on statistical calculations, the life expectancy tables of the Social Security Administration (SSA), and (5) designates the state government agency administering Medicaid benefits as the primary or contingent beneficiary based on whether the Medicaid applicant is single or married, **will be considered an exempt asset.** (See also 42 U.S.C. §1396(p)(C)(1)(G)(II) (ii) and the *Deficit Reduction Act of 2005*.)

Perhaps, the major risk in using an annuity for Medicaid planning is that the government will be able to recover some or all of the money paid toward the Medicaid recipients health care (dollar-for-dollar from the death benefits of the annuity policy when the annuitant dies). To date, this law has not changed even though government advocates contend that the government is entitled to the entire amount of what is left in your annuity. Guesswork aside, the burden lies with the government to make the argument that it should receive anything more than what it is entitled to by law, either at the time of the initial application for benefits or after a Medicaid customer dies and the recovery of funds begins.

Even so, a well structured annuity that pays out the principal within the Medicaid customer's life expectancy under the Social Security Administration life expectancy tables or earlier, will leave no amount of money for the government to collect as a beneficiary. In light of that, proper planning with an attorney is required because an annuity should be cautioned against if the payments from an annuity will result in an income stream in excess of the income cap for the particular state (which in Arizona is \$2,022 per month) which could require the need for a Miller's Trust (Irrevocable Income-Only Trust).

Deason Law Firm  
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## The Final Word

Despite some minor differences of opinion on the use of annuities in Medicaid planning, I think that the 3<sup>rd</sup> Circuit Federal Court of Appeals said it best... "Congress provided a detailed set of rules governing transactions that it considered suspicious, and the purchase of an annuity is not among them. 42 U.S.C. §1396(c).

If you are interested in scheduling an appointment with attorney Robert M. Way to discuss these issues or other concerns regarding Medicare or Medicaid, then you may call (928) 783-4466. Mr. Way is a 2008-2009 member of the Board of Directors of the Arizona Chapter of the National Academy of Elder Law Attorneys (NAELA).

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