



Medicaid Picture Changing Rapidly

John Zepeda, J.G. Wentworth

If you recall hearing something about the Deficit Reduction Act, you might have cheered, thinking that the government finally got serious about trying to get the federal budget in shape.

But the thing about government belt-tightening, is that ultimately, somebody feels it. And in this case, that somebody may be you, especially if it looks like you or your spouse may need Medicaid benefits. The reason is that the Deficit Reduction Act provides states with the tools to tighten eligibility requirements, especially as these requirements relate to annuities.

Understanding annuities is important because many financial planners and elder law attorneys have counseled seniors that they can qualify for Medicaid and hold onto their assets simply by purchasing annuities. Why? Because historically, annuities could not be bought and sold easily, and as a result, they were not considered available assets. Therefore, when Medicaid eligibility personnel were tallying up an applicant's resources, annuities weren't counted.

That's all changing with the Deficit Reduction Act. Now, in many instances, annuities are considered an "available asset" and are counted as part of an applicant's financial resources. In discussions we're having with Medicaid officials, it appears that in some states this is even true for irrevocable and non assignable annuities. This means for applicants with annuities, states can deny care benefits outright, or seek to become the beneficiary of the annuity which you own.

Buyer Beware

States are going after the annuities of applicants with varying degrees of intensity. In fact, some states are almost strident in their approach. For instance on Connecticut's website in the health and human services section the following items can be found:

"Contrary to what you may have heard in a recent seminar or read in advertisements or articles, in Connecticut there is no such thing as an annuity that will guarantee avoidance of Medicaid spend-down rules! According to the Connecticut Department of Social Services' Medicaid Office, those selling these financial planning tools, often referred to as "Medicaid Annuities" are misleading residents into believing that these annuities will allow individuals to protect (keep) assets and/or income and still be eligible for Medicaid."

In our discussions with Medicaid personnel across the country, what we've found in general are states using new, tighter requirements to preserve increasingly scarcer financial resources for those truly in need. "We are trying to conserve a resource," said one anonymous Medicaid policy planner in a western state. "We need to cover the most people with the least resources. It is just getting less and less and less."

And as Medicaid resources diminish, there's also a sense of disbelief that applicants try to game the system. "The part I don't get is the thinking 'How do I hide the

money so I can become eligible for Medicaid?" the same administrator said. "If you have \$500,000 in the bank, need care and can afford to pay for it, why not pay for it?"

Critics of this point of view often point out the Medicaid is the only government program that seeks to recover funds from those it's designed to aid. Proponents of reform suggest that the orders of magnitude make recovery a necessity. "There is no comparison between \$40 a month in food stamps versus \$5,000 a month for nursing home care. For some people we are paying \$22,000 a month for specialized nursing home services."

Here to Stay

Regardless, Medicaid reform looks like it's here to stay, and this could have an impact on you whether you are married or single. If you are single, your countable assets must be \$2,000 or less in order to qualify for Medicaid benefits. If you are married the figures are different due to Spousal Impoverishment Programs. For a married couple where one party is institutionalized, the non institutionalized party can have assets up to a federally-mandated figure of approximately \$109,000, plus home equity up to certain limits, a pre paid burial plan, and other specialized assets, according to the Centers for Medicare and Medicaid Services' 2009 figures.

The institutionalized spouse can transfer assets to the non institutionalized spouse via an outright gift, or via an annuity, and in this scenario, the annuity would not be considered a countable asset.

But in many other instances, an annuity would be considered a countable asset, and as a result, state Medicaid eligibility might deny benefits which in turn would likely require a spend down of annuity assets before the applicant could qualify for Medicaid. In this scenario, when care is needed on a timely basis, the outright sale of the annuity might make sense.

If You Must Sell

While this is potentially an undesirable outcome, Medicaid applicants who find themselves in this position, will also find that the secondary market that gave rise to the state's position in the first place is indeed functioning and ready to provide liquidity for their annuity.

While the secondary market presents significant potential flexibility and value to annuity owners, getting the best deal still requires some research. What follows are some tips and strategies to help annuity owners make the most of the opportunity to sell their annuity to qualify for Medicaid benefits:

1. Call the insurance company to verify the cash surrender value, if there is one. Medicaid applicants should determine what options, if any, are available to cash out the annuity with the issuing insurance company directly. If it's an immediate annuity, it's important to learn if the annuity has any cash value from the insurance company – in most cases, the insurance company won't provide a lump-sum from an annuity once the periodic payments have started. If it's a deferred annuity, it's important to learn if the annuity has "surrender charges" which lower the current cash value or if the annuity requires that payments be taken over a minimum of five or 10 years to get the full value.
2. Determine if the annuity can be sold in the secondary market. There are plenty of

misconceptions about which types of annuities can be sold in the secondary market, so it's important for an individual to contact a reputable buyer of annuities in this market to verify whether their annuity has any cash value. The language in annuity contracts can be confusing. Specifically, some annuities that appear to have no cash value may in fact be salable in the secondary market for a cash lump-sum. So, while it's important to get information from the issuing insurance company, it's even more important to talk to experts in the secondary market when considering the salability and value of a policy in this marketplace.

The main criteria underlying the entire market is that annuities must have a non-qualified tax status. In other words, annuities with a retirement tax status as defined by the IRS (e.g. 401k/403b/IRA Rollovers) cannot be sold in the secondary market. Beyond that, most other annuities can be sold in this marketplace and it's just a matter of determining how much a given policy is worth.

3. Contact reputable buyers of annuities to determine the value. While determining whether or not an annuity can be sold produces an exact answer, the ultimate value of an annuity may be subject to variance from buyer to buyer. This process should cost nothing and should come with no obligations to sell the annuity. When it comes time to sell the annuity, it's advantageous to work with a company that has a solid track record of providing service and value to annuity owners in this marketplace.

4. For annuities in payout, consider how much of the current payment must be sold in order to qualify for Medicaid benefits. One of the real advantages of the secondary market is how much flexibility it offers annuity owners. They don't have to sell their entire payment or the full term. They can sell just a portion. At the same time, if they wanted to maximize their current cash value to pay for immediate care, they could sell the entire annuity, and that full value could be put to use in maintaining their health.

5. Understand the tax impact. There may be a tax impact as a result of selling your annuity. The advice of a qualified tax or legal advisor should be sought, since the tax impact, if any, may affect Medicaid eligibility.

In addition, counsel should be sought regarding Medicaid guidelines for your state, because it can differ greatly between the states. But regardless of the many differences, once commonality remains: Medicaid reform is here to stay.

John Zepeda is a senior account representative for J.G. Wentworth in Bryn Mawr, PA. For further information call 866-386-3102 or visit www.jgwentworth.com