NOT ALL ANNUITIES ARE CREATED EQUAL

Are you confused about annuities? You are not alone. Many people have difficulty understanding them. One source of confusion stems from the fact there are different types of annuities, such as deferred or immediate, fixed or variable, and single or flexible payment. No matter the type, annuities are financial contracts with an insurance company that are designed to be a source of retirement income. Typically, assets accumulate within the annuity while an individual is working, and can be converted into a stream of income for life upon retirement.

The purpose of this article is not to address either the advantages or disadvantages of annuities. The sole focus of this article is to inform you of the negative consequences of purchasing annuities which are not Medicaid compliant if an individual enters a skilled nursing facility and needs to become eligible for Medicaid.

Medicaid, not Medicare, is the government program which pays for the majority of care provided in skilled nursing facilities. In order to qualify for Medicaid, an individual must meet the resource limits established under the program. In addition, there are specific rules pertaining to annuities. The Department of Human Services has numerous regulations which must be followed so the annuity is not considered an asset.

When an individual owns an annuity, the Department of Human Services, which oversees the Medicaid program in Pennsylvania, will view the annuity as a resource unless the individual is receiving an income stream from said annuity. However, even if the individual is receiving an income stream from the annuity, the Department of Human Services will review the terms of the annuity contract to determine whether the annuity is a transfer of assets, which would render the individual ineligible for Medicaid.

In order for an annuity not to be considered a transfer of assets for purposes of qualifying for Medicaid, the annuity must meet the following criteria:

1. It must be irrevocable and non-assignable;
2. It must be an immediate annuity;
3. It must provide for payments in equal monthly amounts, with no balloon payments;
4. The annuity must be actuarially sound, which is based upon the individual's age and life expectancy; and
5. It must name the Department of Human Services as the primary Beneficiary of the annuity, for at least the total amount of money paid by Medicaid on behalf of the individual, or if the individual is married, the Department of Human Services must be named as the contingent Beneficiary and the individual's spouse can be named as the primary Beneficiary of the annuity.

If the before-referenced criteria are not met, then pursuant to Medicaid law the purchase of the annuity shall be treated as the disposal of assets for less than fair market value, thereby triggering a period of ineligibility for Medicaid. When Medicaid determines a period of ineligibility against an individual, this means the individual is not eligible for Medicaid so Medicaid will not pay for the individual's nursing home bill.

As an Elder Law Attorney, I have seen the devastating results when an individual enters a nursing home and owns an annuity that is not Medicaid compliant. Before purchasing an annuity, or to determine whether an existing annuity is Medicaid compliant, you should consult an Elder Law Attorney.

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