

Regrettably, I recently joined many of my fellow baby-boomers in participating in long-term care decisions regarding an aging family member. A stubborn product of the depression era, my grandfather steadfastly refused to consider any estate or gift planning strategies, instead preferring to remain in his home of 50 years and hold on to his assets until failing health forced his (and our) hand. The painful, heart-wrenching decision to admit this once strong and proud man to a nursing home was compounded by the cold, hard reality of how quickly his modest estate would be depleted by the staggering costs of resident nursing care. Although comforted by the Medicaid safety net, which would guaranty the continuation of the same level of care, my family was disheartened to learn that Medicaid look-back rules would prevent any meaningful gifting of assets. We are now left with little to do but care for my grandfather and watch as his life's savings disappear in a matter of months.

Of course, this experience is hardly unique. For one reason or another, millions of Americans fail to practice traditional estate and gift planning, leaving them with few choices when circumstances change. Fortunately, there is one option that may be useful in these situations: the private annuity. Private annuities can be a powerful tool in Medicaid planning because assets properly transferred are excluded from the Medicaid look-back rules. In a private annuity, a parent can purchase an annuity from his or her child. The child receives the parent's money in exchange for a written, contractual promise to pay a stated monthly benefit. When the owner/annuitant dies, the money rests with the contract issuer (usually the child) – which is exactly what the parent wanted.

Extreme care should be exercised when structuring private annuities to make individuals Medicaid-eligible. To avoid having the annuity balance count as an available asset for Medicaid purposes, they have to meet state law requirements, such as:

- The annuity must be actuarially sound and cannot guarantee payments for more than the annuitant's life.
- The annuity must be in force before a Medicaid application is made.
- The annuity must be irrevocable; once the contract is purchased, the owner cannot get his or her money back.
- The annuity must state that it cannot be transferred to another party.

Beyond the legal considerations, it is important to consider the ramifications of becoming a Medicaid recipient. Medicaid was designed as a safety net for people with limited income and assets who are unable to pay for medical care. Although federal regulations require that private-pay and Medicaid residents in nursing homes receive the same "level of care," differences exist – for example, private room vs. a semi-private room for Medicaid recipients.

Medicaid is a complex government program. What works for one family may not necessarily work for others; however, in many cases private annuities are an excellent vehicle to transfer assets to family members and not run afoul of the Medicaid eligibility rules. Please contact us if we can be of assistance in helping you navigate these often troubled waters.

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