Bad News For Annuity Owners

The Deficit Reduction Act of 2005 ("DRA") was approved by Congress on February 8, 2006. This law imposed harsh conditions on owners of annuities purchased on or after February 8, 2006. The law requires the State you live in to be named as primary or contingent beneficiary to reimburse the State for any medical assistance for institutional care paid on behalf of the owner of the annuity. Should you fail to properly name the State as a primary or contingent beneficiary, you have made a transfer of assets under the Medicaid rules for the full value of the annuity, potentially making you and your spouse ineligible for certain Medicaid benefits for some period during the next five years.

Just when you think things cannot get worse for annuity owners, it does. The Center for Medicare and Medicaid Services announced guidelines on July 27, 2006, to implement the DRA penalty provisions. The new regulations eliminate most distinctions between an annuity purchased before or after February 8, 2006. The result is that annuity owners must seriously consider finding a new investment for their savings.

Annuities purchased before February 8, 2006, must now have the State named as a primary or contingent beneficiary if the owner of the annuity engages in certain "transactions". These "transactions" include:

1. Taking actions that change the course of payments to be made by the annuity;
2. Adding money to your annuity;
3. Taking money out of your annuity;
4. Annuitizing your annuity; or
5. Other similar "transactions".

Changes to an annuity that are not the result of action taken by the owner or routine changes, such as a change of address, do not trigger the penalty provisions.

What does this mean? Let's say Tom, age 70, has an annuity purchased in 2003 that is now worth $50,000. On May 1, 2006, he adds $100 to the annuity but does not properly name the State as a beneficiary. When he adds the $100, he has made a transfer of $50,100 under the Medicaid rules even though all of the money is still in the annuity. He has made himself, or his spouse, ineligible for Medicaid to pay for his nursing home care for up to 15 months if he or his spouse has to go into a nursing home within the next 5 years.

The rules require you to name the State as the primary beneficiary of your annuity if you do not have a community spouse, disabled child, or minor child. You can name a community spouse, disabled child or minor child as a primary beneficiary but must also name the State as a contingent beneficiary. The State's interest in your annuity is limited to the amount of medical assistance for institutional care paid on behalf of the annuitant or the annuitant's spouse.

You should consult an elder law attorney before you take any action regarding a current annuity. You should not purchase a new annuity without consulting with an elder law attorney. The new law and the new regulations are examples of how to make a really, really, bad law worse. I encourage each of you to copy this article and mail it to your representative and Senator in Washington with a letter requesting an immediate change.

You can review the new guidelines at National Senior Citizens Law Center website at www.nsclc.org.

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September 2006