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ELDER LAW MINUTE

Since 2006, Georgia Medicaid policy has been more restrictive regarding the treatment of annuities than other states. Georgia took the position that an annuity was either a resource or a transfer unless it was purchased at the time of retirement for reasons independent of Medicaid planning. I pointed out this inconsistency to the policy writers at the Georgia Departments of Community Health and Human Resources following the enactment of the Deficit Reduction Act of 2005. As a result, on November 1, 2008, Georgia amended Section 2339 of the Medicaid Manual removing the requirement that annuities be purchased at retirement. As a result of this change, it is now possible to use immediate annuities as a planning option in certain cases.

<u>Example</u>: Betty and John have been married for 61 years. Betty has Parkinson's Disease and needs nursing home care. John is living in assisted living. Her income is $579 per month. His is $3,500. They have $450,000 in bank accounts and investments.

Under the spousal impoverishment rules, all of their assets count against a resource limit of $106,400. In order to solve the excess resource problem, consider the purchase of an immediate annuity by John. Medicaid requires that the payments to John be made monthly and they must be equal throughout the term of the annuity. The State of Georgia must be named as the beneficiary of the annuity and the annuity must be actuarially sound. The annuity also must be irrevocable and non-assignable.

John, who is 82, chooses a two year term certain annuity. His life expectancy is 6.41 years so it is actuarially sound. John invests $350,000 in this product. Since the contract cannot be cashed in or sold, it is not a resource. Purchasing the annuity immediately reduces the couple's includible resources to $100,000.

John will receive about $14,600 per month return on his investment for two years. John's income which includes the $14,600 per month does not affect Betty's Medicaid eligibility in any way. While their combined assets were assessed in determining her initial resource eligibility, once she applies for Medicaid she is treated as a single person and his resources no longer affect her eligibility.

So, the annuity is a very effective way of converting excess assets into income for a spouse who is not seeking assistance. Because there is no transfer penalty on gifts between spouses, and because the community spouse's income does not affect eligibility, this technique is a safe way to quickly protect assets and qualify for Medicaid assistance.