

Medicaid Makes Serious Change to Treatment of Retirement Accounts

An attorney spokesperson for the Texas Health and Human Services Commission (HHSC) announced recently at a continuing legal education conference in Austin that a major policy change would be going into effect soon. The policy was thereafter implemented even though the policy has yet to be published.

Retirement accounts such as Individual Retirement Accounts (IRAs) and 401(k) accounts have enjoyed favorable treatment in the past to the benefit of those participants applying for nursing home Medicaid.

In the past, the applicant or applicant's spouse could purchase a deferred annuity within the retirement account and protect the retirement account for years. The IRA would then be exempt which means that it was no longer counted by Medicaid as a resource affecting eligibility. If the IRA owner was over 70 ½, the Required Minimum Distributions (RMDs) could then be taken in up to four payments during the calendar year and not be counted by Medicaid as regular income, but instead be characterized as irregular income. This was favorable to the applicant because it meant that the RMDs would not affect the monthly copay the Medicaid beneficiary owed the nursing home. Additionally, it would not be counted in the determination of whether a spenddown of excess resources would be required. The RMD income received would then have to effectively be dealt with in the month received so as not to incur further income ineligibility issues for the Medicaid recipient. If the IRA owner was married, the RMD could simply be transferred to the spouse during the same month of receipt. If the IRA owner was single, other options would have to be applied to exhaust the RMD income.

This has all changed. Now if the IRA owner is younger than 70 ½ and therefore not taking RMDs, the IRA can still be exempted out by purchasing a deferred annuity within the IRA. Unfortunately, if the owner is over the age of 70 ½ and now subject to RMDs, the annual RMD amount will be imputed to the recipient based on a monthly distribution. That means that the IRA owner's monthly income from the IRA-RMD could cause him/her to be income ineligible if the RMD income added to other regular income such as Social Security and pension, exceeds the income cap. This will also have the effect of causing the person's applied income required to be paid to the nursing home to be greatly increased in many cases before Medicaid will pay the balance. Worse, Medicaid counts gross income without any deduction for the taxes due.

This change will require exceptional planning in order to help people with large IRAs from spending a lot of money. It doesn't mean you shouldn't still consider Medicaid planning. It means you need the planning even more because you are trying to exercise wisdom in the selection of options that will allow you to obtain Medicaid but still protect assets.

If the family member is already on Medicaid and the person was eligible for Medicaid, at least partially after purchasing a deferred annuity within an IRA, you should seek help immediately before you get to the next recertification date in order to protect your retirement account under the new rules.

If your family member is in a nursing home or one of you is likely to be in a nursing home in the future and own IRA's or 401(k) accounts, you should contact a certified elder law attorney immediately and

find out how this new change will affect you.

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