Paying for a Nursing Home: Medicaid (Part 3)
How Much Can a Married Couple Protect?
The Answer May Surprise You.

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Ralph and Alice were high school sweethearts who lived in Erie, Pennsylvania their entire adult lives. Two weeks ago they celebrated their 60th wedding anniversary. Yesterday, Ralph, who has Alzheimer's, wandered away from home. The police found him, hours later, sitting on a street curb and talking incoherently. They took him to a hospital, where he is being treated for dehydration.

Now the family doctor has told Alice that she needs to place Ralph in a nursing home. Ralph and Alice grew up during the Depression. They always tried to save something each month so they would have enough to cover their expenses during their senior years.

Their "countable assets" (that is, excluding their house and car) total $190,000, as follows:

Checking account	$8,000
Savings Account	$35,000
CDs	$55,000
Money Market account	$60,000
Savings Bonds	$25,000
Cash value of Life Insurance	$7,000

Ralph gets a Social Security check for $1,100 each month; Alice's check is $700.

Alices's eyes fill with tears as she says, "At $8,000 to the nursing home every month, our entire life savings will be gone in just two years!" What's more, she's afraid she won't be able to pay her monthly bills, because a neighbor told her that the nursing home will be entitled to all of Ralph's Social Security check.

To apply for Medicaid, she will have to go through the County Assistance Office of the Department of Human Services (DHS). If she does things strictly according to the way DHS tells her, she will only be able to keep half of her countable assets plus a minimum monthly income to pay her expenses. Based on a 3% rate of interest, their entire savings plus their entire Social Security will not generate enough income to bring her up to the current allowable minimum monthly income of $1,991.25.

But there is good news for Alice; the results can actually be much better than the traditional "spend-down" which everyone talks about. With the right advice and assistance, she will get to protect nearly all of their assets with a significantly higher monthly income for herself and still have the state Medicaid program pay for the portion of Ralph's nursing home costs not covered by his income. The process may take a little while, but the end result will be worth it.

This result is possible because the Medicaid law does not intend to impoverish one spouse because the other needs care in a nursing home. But this asset-protection opportunity is only available for Alice in Pennsylvania as the result of several federal court cases brought by Pennsylvania elder law attorneys over the past 14 years against the Pennsylvania Medicaid Agency: the *Mertz* case in 2001; the *James* case in 2007; the *Weatherbee* case in 2009; and, most recently, the *Zahner* case in 2015, all upholding the use of spousal annuities.[1]

What all of these decisions have said is that people like Alice, who have a spouse in a nursing home (or in need of a nursing facility level of care at home), are permitted to use their excess assets – that is, the money that would otherwise have to be spent down to pay for the long-term nursing care of the "institutionalized spouse" – to purchase an immediate annuity to supplement the income of the "community spouse" beyond the monthly minimum while getting the "institutionalized spouse" eligible for Medicaid as soon as the annuity is purchased.[2] If she proceeds properly, <u>Alice will be entitled to keep nearly all of their life savings, there will be very little if any spend-down on Ralph's care, and Medicaid will pay for the portion of Ralph's nursing home cost not covered by his income</u>.

However, to achieve this result, there are a number of strict requirements that such annuities must meet (relating to their irrevocability and assignability provisions, the manner in which the payments can be made, the length of time over which the payments can be made, and the annuity beneficiary designations) in order for them to work in a Medicaid context. And the Pennsylvania Medicaid Agency has shown over the years that it will not hesitate to deny applications involving annuities that do not correspond precisely with each of the strict terms of the statute. So Alice will have to get advice of an experienced elder law attorney to be able to navigate the system successfully. But with proper advice, she'll be able to avoid the spend-down and keep nearly everything she and Ralph worked so hard for over so many years.

[1] At the time of this writing, September 20, 2015, the *Zahner* case has a request for a rehearing filed by DHS pending in the Third Circuit Court of Appeals. More about this case in the December issue of Senior News.

[2] These cases also support the use of short-term annuities for single nursing-home residents to permit them to protect about half of their life savings, even in a crisis situation.

Of course, proper Medicaid planning differs according to the relevant facts and circumstances of each situation as well as the current state law.

* The names used here are fictitious, but the facts are typical of the married clients we see.

Note: *With the restrictions in the Deficit Reduction Act that came into effect in 2006, it is more true than ever that "time works against you" when planning for long-term care. It is important that families who have a spouse, parent or other loved one needing long-term nursing care contact a knowledgeable and experienced elder law attorney for advice as soon as possible. While ideally this should be done when there is at least five years before such care will be needed, families need to realize* that even with the new restrictions in the DRA, there remain opportunities for seniors to protect a significant portion of their life savings when facing an immediate crisis, with no advance planning. *But every day of delay represents a potential $220 of irretrievable loss, so seek advice sooner rather than later.*

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