

Using an Annuity to Keep the Spouse of a Medicaid Applicant from Becoming Impoverished

When one spouse qualifies for Medicaid to pay for a nursing home stay, the spouse who is at home is often left without many resources. While Medicaid has rules to prevent community spouses from impoverishment, the protections aren't always enough. There are steps that you can take to increase the community spouse's income, and as a recent case illustrates, an annuity may be a good option.

In order to qualify for Medicaid coverage, the applicant can have no more than \$2,000 in resources (in most states). In general, the community spouse may keep one-half of the couple's total "countable" assets up to a maximum of \$115,920 (in 2013). Called the "community spouse resource allowance," this is the most that a state may allow a community spouse to retain without a hearing or a court order. The least that a state may allow a community spouse to retain is \$23,184 (in 2013).

One way to ensure that the community spouse has enough money to live on is for the community spouse to purchase an annuity. By purchasing an annuity, the spouse turns a countable resource into an income stream, which should not be counted by Medicaid. The annuity must meet certain qualifications in order to not be considered an asset transfer, including be irrevocable and name the state as a remainder beneficiary. (For more information on annuities and Medicaid planning, [click here](#).)

Some states have improperly denied Medicaid benefits to an

applicant whose spouse has purchased an annuity, but a recent decision by a U.S. Court of Appeals makes clear that community spouses can purchase annuities under current federal law.

North Dakota resident John Geston entered a nursing home, and his wife purchased a single-premium annuity for \$400,000, which would give her \$2,735 a month in income over 13 years. The annuity provided that it could not be sold or transferred, and it named the state as a remainder beneficiary. Mr. Geston applied for Medicaid benefits, but the state denied him benefits on the grounds that the annuity was an available asset under state law. Mr. Geston sued in federal court, challenging the state law. In *Geston v. Anderson* (8th Cir., No. 12-2224, Sept. 10, 2013), the 8th Circuit Court of Appeals decided in favor of the Gestons, ruling that the annuity was not a resource and should not be counted in determining Mr. Geston's eligibility for Medicaid. To read the full case, [click here](#).

Before purchasing an annuity or applying for Medicaid, you should consult with your attorney who can tell you the best way to protect your spouse.

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