Using Annuities in MassHealth Planning for Nursing Home Residents

By Harry S. Margolis

Immediate annuities have long been used in long-term care planning as a means of converting assets that are countable against the limits for MassHealth eligibility into an income stream that does affect eligibility. This approach primarily benefits spouses of nursing home residents, but can be used for single nursing home residents as a form of "arbitrage," in effect to pay the MassHealth rates rather than the private-pay rates charged by nursing homes.

The rules governing the use of annuities in long-term care planning are complex.

The Basic Rules

MassHealth is available to cover the cost of nursing home care for those nursing home residents who meet the arcane MassHealth definition of impoverishment. The nursing home resident is limited to $2,000 in "countable" assets and, if married, his spouse is limited to $123,600 (in 2018). Countable assets include virtually all investments, savings and real estate owned by the nursing home resident and his spouse, except for the home.

Immediate annuities have been used by both single and married individuals in nursing homes, but more often by married nursing home residents. Some examples will show how this works.

Married Nursing Home Residents

Let's assume that Mr. Blue has moved to a nursing home and that he and his wife together have $300,000 in countable assets. He will become eligible for MassHealth coverage when their combined assets have been reduced to approximately $125,000. Mrs. Blue can make Mr. Blue immediately eligible for MassHealth coverage (saving them as much as $10,000 a month) by purchasing a $175,000 "actuarially sound" immediate annuity that will provide her with income for the rest of her life, or more likely for a term of years. If Mrs. Blue bought an annuity that paid her back the money over five years, she would receive payments of about $3,000 a month. Since the limit on her assets disappears as soon as Mr. Blue is approved for MassHealth coverage, Mrs. Blue can accumulate the annuity payments so that at the end of five years she's back to $300,000 in savings.

There are, of course, a few drawbacks to the use of annuities in this circumstance, including: (1) If under the spousal impoverishment income rules Mrs. Blue would receive a share of Mr. Blue's income, she will forego this and Mr. Blue will pay all of his income to the nursing home. (2) Annuities provide a very low rate of return. (3) If Mrs. Blue has to move to a nursing home herself, the annuity payments will go to the facility, and in that case any payments still due after her death would be payable to the Commonwealth should Mrs. Blue also receive MassHealth coverage.

Despite these potential drawbacks, many spouses of nursing home residents do take advantage of the immediate annuity option because the benefit greatly outweighs the cost. But they should always make this decision understanding the other planning options that may be available to them.

Unmarried Nursing Home Residents

Immediate annuities can also be used by single nursing home residents, but with a less certain benefit than in the case of married couples. For these purposes, let's assume that a single nursing home resident named Mr. Green has $100,000 in savings. He can take his $100,000 and purchase an immediate annuity which eliminates this asset that has been making him ineligible for MassHealth benefits. As long as the annuity is "actuarially sound" (which is explained below) its purchase will not be considered a transfer of assets under the MassHealth rules.

While Mr. Green continues to live in the nursing home, he must contribute his new annuity income to his cost of care. In addition, if the annuity has a term certain – a guaranteed period of payment -- and Mr. Green dies before it expires, the balance of payments under the law must be paid to the Commonwealth up to the amount MassHealth has paid for Mr. Green's care. For instance, if Mr. Green purchases an annuity with a five-year term certain and passes away three years later, the final two years of annuity payments would go to the Commonwealth of Massachusetts.

While the income payment and reimbursement requirements would seem to eliminate the advantage of immediate annuities for unmarried nursing home residents, they may still make sense in some instances, especially for higher-income nursing home residents. For instance, let's assume that Mr. Green has a monthly income from Social Security and his pension of $6,000 and that the private-pay cost of his nursing home care is $12,000 a month. With no planning, he will spend down his savings of $100,000 in approximately 17 months.

If, instead, Mr. Green purchased an annuity with a five-year term certain, he could immediately qualify for MassHealth coverage. He would still have to pay his income, including his new annuity income, to the nursing home as his share of his cost of care. MassHealth would pay the balance of his cost of care and would have a right to reimbursement from the annuity upon Mr. Green's death (assuming he does not outlive the guaranteed term certain). Assuming that the annuity pays Mr. Green $1,750 a month, his monthly contribution would be $7,750 a month (less a small personal needs allowance he is permitted to keep).

Significantly, MassHealth does not pay the full private pay rate for Mr. Green's care, instead paying the MassHealth rate. If that is $8,000 a month, then the state's cost in this example will be only $250 a month, or $3,000 a year. If Mr. Green died after three years in the nursing home, the state reimbursement would be only $9,000. Approximately $30,000 would be paid to his children during the final two years of the annuity's term certain. (The reader should be aware that the MassHealth rate can be difficult to ascertain ahead of time because it varies depending on the institution and the care needs of the individual patient. MassHealth won't provide it and the nursing home may or may not cooperate in providing it.)

The calculation of the benefit of single-person immediate annuities is a bit morbid. If the senior does not live very long, she won't save much since the savings may only be a few thousand dollars a month. And if she lives a long time, she also will save little or nothing because even though she, in effect, is paying the MassHealth rate, even at this lower rate she'll eventually run through her savings. Going back to Mr. Green, the optimum length of time for him to be in the nursing home is about a year and a half. If he passed away then, there would still be three and a half years of payments on his annuity saving about $70,000. If he were to live four years, however, the MassHealth reimbursement would eat up most of the remaining annuity payments.

"Actuarially Sound"

For the purchase of an immediate annuity not to be considered to be a transfer of assets by the annuitant, it must be "actuarially sound," which means it must meet two requirements. First, if the annuity has a term certain, it must guarantee payments for a period that is no longer than the annuitant's actuarial life expectancy. Second, the annuity payments anticipated during the annuitant's actuarial life expectancy must at least equal the cost of the annuity.

For instance, if Mrs. Blue's actuarial life expectancy is five years, her annuity's term certain cannot be six years. It must be five years or shorter. In addition, the annuity payments must be at least $36,000 a year ($180,000 ÷ 5 = $36,000). If the payments are only $29,000 a year, that would be considered a $35,000 gift to the insurance company issuing the annuity because she would only get back $145,000 during her five-year life expectancy rather than the $180,000 she paid for the income stream.

State Reimbursement

As is explained above, the state must be named the first remainder beneficiary on the annuity to be reimbursed the amount of MassHealth benefits paid on the nursing home spouse's behalf. Any annuity payments that exceed this reimbursement requirement may be paid to other remaindermen. This means that in the example of Mr. Green above, he must name the state as a beneficiary with respect to benefits paid on his behalf. In the example of Mrs. Blue above, however, she must name the state the first remainderman for MassHealth payments made on her husband's behalf.

Additional Annuity Requirements

MassHealth regulations require that immediate annuities be non-assignable and that payments be in equal amounts with no deferral or balloon payment.

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Conclusion

These rules are somewhat complicated and MassHealth can change its regulations and its interpretation of its statutes and regulations at any time. In addition, the use of annuities is only one of several MassHealth planning options that may be available in any specific situation. We strongly recommend that anyone who has a family member in a nursing home or foreseeing future nursing home placement consult with a qualified elder law attorney.