**THE IMPACT OF ANNUITIES AND**

**RETIREMENT FUNDS ON**

**MEDICAID ELIGIBILITY**

**AND**

**LONG TERM CARE PLANNING**

**By: Anthony J. Enea, Esq.**

**Enea, Scanlan & Sirignano, LLP**

**(914) 948-1500**

**Offices Located at:**

**245 Main Street**

**White Plains, New York 10601**

**and**

**Somers, New York**

Table of Contents Page

I. Anthony J. Enea Biography…………………………………………. 2

II. Treatment of Non Qualified Annuities for Medicaid Eligibility …….. 4

III. Treatment of Qualified Annuities and IRA’s for Medicaid Eligibility…5

IV. Treatment of Roth IRA’s for Medicaid Eligibility …………………….. 6

V. Beneficiary Designation Issues and Their Impact Upon Potential Estate Recovery………………………………………………………………… 6

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Anthony J. Enea, Esq. is a member of the firm of Enea, Scanlan & Sirignano, LLP of White Plains, New York. His office is centrally located in White Plains and he has a home office in Somers, New York.

Mr. Enea is Certified as an Elder Law Attorney by the National Elder Law Foundation as accredited by the American Bar Association.\*

Mr. Enea is the Past Chair of the Elder Law Section of the New York State Bar Association.

Mr. Enea is a Past President and a Founding Member of the New York Chapter of the National Academy of Elder Law Attorneys (NAELA). He is also a member of the Council of Advanced Practitioners of NAELA.

Mr. Enea is a Past President of the Westchester County Bar Association.

Mr. Enea is the President of the Westchester County Bar Foundation.

Mr. Enea is a Vice President of the Columbian Lawyers Association of Westchester County.

Mr. Enea is the recipient of the “Above the Bar Award” as the leading Eldercare attorney in Westchester County. This award is presented by the Westchester County Bar Association, Pace Law School, the Westchester Women’s Bar Association, the Westchester County Business Journal and the firm Citrin Cooperman.

Mr. Enea has been selected as a Super Lawyer for the seventh consecutive year and for the 2009, 2010, 2013 and 2014 was selected as a Top 25 Super Lawyer in Westchester County.

Mr. Enea is also the recipient of the Lawyer of the Year Award in Trusts and Estates for White Plains by Best Lawyers 2014.

Mr. Enea for the third consecutive year has also been selected for the “Best Lawyers in America” as an Elder Law Attorney.

Mr. Enea is an “AV” Rated Preeminent Attorney as rated by Martindale-Hubbell.

Mr. Enea has practiced law for more than twenty eight years. He concentrates his practice in Elder Law, Asset Preservation Planning, Guardianships, Trust and Estate Planning, Estate Administration and Trusts and Estates Litigation. In his practice he has represented numerous families that have loved ones suffering with disabilities and the special planning needs attendant thereto.

Mr. Enea is a frequent lecturer in Elder Law, Estate Planning and Guardianships. He has spoken for and chaired numerous continuous legal education programs for the New York State Bar Association (Trusts and Estates and Elder Law Sections) and Westchester County Bar Association.

Mr. Enea is the former Vice President and former member of the Board of Directors of the Association for Mentally Ill Children of Westchester, Inc., sponsor of the Clearview School in Briarcliff Manor, New York.

Mr. Enea is a Magna Cum Laude graduate of Manhattan College, Riverdale, New York with a B.A. in Political Science. He received his Juris Doctorate from Pace University School of Law, where he received the award as a Ranking Scholar.

Mr. Enea is also fluent in Italian.

\*The National Elder Law Foundation is not affiliated with any Governmental authority. Certification is not a requirement for the practice of Law in the State of New York and does not necessarily indicate greater competence than other attorneys experienced in this field of law.

II. What are Considered Available Resources for Medicaid Eligibility

Resources are defined as property of all kinds (personal, real, tangible or intangible). Medicaid considers for purposes of eligibility all income and resources of the individual applicant and the applicant’s spouse. This includes any resource the individual is entitled to, but, does not receive because of any action or inaction on their part.

Available resources are for example: bank accounts, brokerage accounts, cash, cash value of life insurance, non qualified annuities, IRA’s (not in payout status).

Available income: income from all sources including social security, pensions, rent. Excluded from income is German/Austrian Reparations, Nazi Persecution Funds, State Crime Victims Assistance Funds as long as separated from other funds.

Exempt Resources for Medicaid Eligibility Purposes

(a) Homestead- Primary residence with a home equity limit of $828,000.00 for 2015

-As long as occupied by applicant, applicant’s spouse and or a blind or disabled child.

(b) Automobile- For SSI related Medicaid applicant/recipient an auto of any value is exempt as long as applicant or member of household using it.

- Once auto is no longer being used, loses exempt status and current market value is over 13,050.

- Equity value of second auto generally counted.

(c) Pre Needs Irrevocable Funeral Contract- Can pre-pay funeral, Have Irrevocable Pre- Needs Agreement, no dollar amount limit, must be used for funeral/burial

(d) Essential Personal Property- Items such as clothing, appliances, television, and jewelry with sentimental value are exempt. Valuable collections are not exempt

(e) $14,850- Luxury fund in bank account or other investments

(f) Monthly income allowance of $50.00 per month for nursing home Medicaid.

II. Treatment of Non-Qualified Annuities for Medicaid Eligibility

A non-qualified annuity is one which is not affiliated with an IRA or employee sponsored plan.

A non-qualified annuity is a countable resource for Medicaid eligibility purposes unless in payout status (annuitized) and is in compliance with Deficit Reduction Act of 2005 (irrevocable and non assignable repayment term actuarially sound, payment made in equal amounts during annuity term, with no deferral or balloon payments, no cancellation of balance permitted upon death of applicant /recipient). The purchase of annuity that does not name the state as a remainder beneficiary in the 1st position (or second position if there is a surviving spouse) is treated as an uncompensated transfer of assets unless it meets the above conditions.

III. Treatment of Qualified Annuities IRA’s, KEOGH’s, 401k’s for Medicaid Eligibility

A retirement fund (IRA, KEOGH, 401K), owned by a Medicaid applicant is considered an available resource for eligibility purposes if the retirement fund is not in payout status (not receiving required minimum distributions). For Medicaid purposes retirement funds include Ira’s, 401k’s, and Keogh plans. Same Rules Apply to Qualified Annuities

* The value of the resource is the amount of money the applicant/recipient may currently withdraw. If there is a penalty for early withdrawal, the amount after deduction for penalty is the amount deemed an available resource.
* Retirement funds include funds from both private and government plans.
* A retirement fund is not deemed countable if the applicant /recipient must terminate employment to be eligible to receive payments.
* Once the applicant/recipient for Medicaid commences receiving his or her required minimum distribution the retirement fund is no longer considered an available resource, however, the required minimum distribution is considered as available income for eligibility purposes.
* Once a Medicaid application is contemplated and/or made the applicant who was perhaps receiving more than the required distribution (RMD) should then reduce the payout to the RMD amount, and the pay out should be made on a monthly basis. If payments are made on an annual basis, the amount received will be divided by 12 with one twelfth of the amount being counted as monthly income. They need to be periodic benefit payments (monthly, quarterly and or annually).
* For the payment to be classified as income and not as a resource, if the applicant, recipient has a choice between a lump sum or a periodic payment, he or she must choose to receive a periodic payment.
* As per the applicable rules for RMD distribution from a qualified retirement accounts (other than IRA’s), the RMD must commence by April 1 of the calendar year following the year in which the participant attains age 70 ½ (the required beginning date). However, for Medicaid eligibility purposes the payout must be triggered even prior to age 70 ½ in order to convert the retirement fund from a resource to income.
* Can place in payout status if under 70 ½ if disabled. Converted from a resource to income.
* For Medicaid purposes the substantially equal periodic payments are calculated in same manner as RMD, with actuarial life expectancy based on owner’s current age.
* Remember RMD for IRS may not be RMD for Medicaid.
* If the spouse of a Medicaid recipient does not receive the RMD from his or her retirement funds, the funds are considered an available resource. If he or she is receiving the RMD it is counted as income.

IV. Treatment of Roth IRA’s for Medicaid Eligibility

Because the owner of a Roth IRA is not subject to a required minimum distribution for Medicaid eligibility purpose it will be counted as an available resource irrespective of the age of the Medicaid recipient in New York.

The treatment of Roth IRA’s may vary from local Medicaid agencies and from state to state.

As there is no taxable event resulting from a distribution from a Roth IRA or the liquidation of same it can be relatively easy to take advantage of transferring the Roth to the spouse of an applicant/recipient.

VI. Beneficiary Designations for Retirement Funds and Their Impact Upon Estate Recovery.

In New York Medicaid may only recover from the probate estate of a Medicaid recipient. Thus, it is critical that the beneficiary designation on an IRA, Keogh, or other Retirement Fund name both a beneficiary (ies) and alternate beneficiary (ies).

If the estate of a Medicaid recipient is entitled to the retirement account or survivor benefit whether because the estate is the named beneficiary or is the beneficiary because of the lack of a specific designated beneficiary, then in that event the state may recover against said probate assets the amount of the Medicaid benefits it has properly paid.

It is of critical importance to review all beneficiary designations with a client, not only for IRA’s, but also life insurance policies, annuity contracts.