

Medicaid planning & SPIAs

APR 23, 2013 | BY RUSSELL E. TOWERS, J.D., CLU, CHFC



Most assets of a married couple are considered to be “countable assets” for purposes of qualifying for Medicaid extended-care benefits. This includes all assets held jointly by the couple as well as any assets held in the sole name of either spouse (including retirement plans like IRAs and non-qualified deferred annuities). Often, these combined assets must be spent down to the Community Spouse Resource Allowance (CSRA) of \$115,920 in 2013 for the healthy spouse before the institutionalized spouse will be eligible to receive Medicaid benefit payments. Also, the equity in the primary residence is generally exempt for the healthy stay-at-home spouse. Given these modest exemptions, is there any planning concept that may be utilized to protect the assets of the couple from being depleted so that their heirs may receive an inheritance?

The answer is yes.

The use of short term “period certain only” single premium immediate annuity (SPIA) remains a viable tool in assisting some of your clients to qualify for **Medicaid benefits** while protecting asset values for their heirs. That’s because a SPIA owned by and payable to the healthy stay-at-home community spouse will generally not be considered a “countable asset” for purposes of qualifying the institutionalized spouse for Medicaid. The SPIA is considered to be the separate income stream of the healthy stay-at-home spouse and not subject to being liquidated to pay extended nursing costs for the institutionalized spouse.

Let's look at a simple case study to illustrate the concept:

Married couple, both age 75

- Husband, the “institutionalized” spouse, has been admitted to a nursing home and wishes to apply for Medicaid benefits.
- Wife is the healthy or “stay-at-home” community spouse.
- The couple owns \$200,000 of excess liquid assets beyond the 2013 **Community Spouse Resource Allowance** (CSRA) of \$115,920.
- There is \$350,000 of net equity in the primary residence.

Goals

- Make the institutionalized spouse eligible for Medicaid now.
- Provide current income for the healthy spouse while providing an option to transfer excess funds via gift to the adult children.
- Plan for potential future Medicaid eligibility of the healthy spouse.

Normally, this couple would have to spend down their excess assets in order to be eligible for Medicaid. Since the enactment the **Deficit Reduction Act of 2005** (effective Feb. 8, 2006), any transfers or gifts are subject to a five-year look-back that starts on the application date for Medicaid benefits.

There is a viable strategy to avoid spending down or being subject to the look-back. The healthy spouse purchases a five-year period certain only SPIA (\$200,000 deposit) and receives about \$3,200 per month (this type of annuity pays for 60 months, then stops). The annuity is set up with an endorsement to the contract to be irrevocable, non-assignable and non-transferable to comply with the Medicaid rules for immediate annuities.

The state must be listed as the remainder beneficiary, after the healthy spouse who is receiving the current income. The state has a claim to the remaining income payments if the healthy spouse does not outlive the SPIA benefit period, in this case, 60 months.

After the SPIA policy is issued, and the free-look period expires, the institutionalized spouse may apply for Medicaid benefits immediately, without being subject to the five-year look-back. The healthy spouse can spend the income, and can gift any excess income to children or grandchildren (\$14,000 annual gift exclusion allowed from spouse to each family member). By purchasing the SPIA and gifting excess income, the couple has accomplished three things:

1. Obtained eligibility for Medicaid benefits for the institutionalized spouse—no five-year look-back on the purchase of the SPIA.
2. Provided current income to the healthy spouse for living expenses; anything spent is not countable for the healthy spouse's future Medicaid eligibility.

3. Optimized future eligibility of the healthy spouse for Medicaid by gifting excess income to family members. Each annual gift will start a five-year look-back toward the healthy spouse's future eligibility for Medicaid (i.e., year one gift is safe by year six, year two gift is safe by year seven, etc.).

In this case, the shorter the term certain of the SPIA, the better, since the excess income, if any, needs to be gifted to family members sooner rather than later. Each gift starts its own five-year look-back, which is an important factor to determine the healthy spouse's future eligibility for Medicaid benefits.

Step-by-step summary of the "Medicaid SPIA" process

For ease of understanding, here is a basic step-by-step summary of the Medicaid SPIA process that is designed to convert countable assets for Medicaid qualification purposes into a non-countable income stream of the healthy spouse:

Step 1: Make an inventory of all liquid and non-liquid assets of the client and spouse and the current value of each asset. This includes all assets in the husband's sole name, all assets in the wife's sole name, and all jointly owned assets. This includes all types of qualified retirement plans (IRAs), all non-qualified annuities, and all cash value of life insurance.

Step 2: Determine the value of the house (exempt asset) plus \$115,920 of any other listed assets to be considered exempt as the Community Spouse Resource Allowance (CSRA).

Step 3: Consider the purchase of a so-called Medicaid compliant short-term SPIA to convert all countable assets above the 2013 \$115,920 CSRA into a non-countable income stream of the healthy community spouse. The short-term SPIA (five years) will be irrevocable and non-assignable by contract endorsement. The state Division of Medicaid Assistance should be named as the primary beneficiary, "as its interest may appear" if the healthy spouse dies before the end of the five-year period certain term.

Step 4: Clients apply for Medicaid benefits for the institutionalized spouse listing only the house and \$115,920 (CSRA) of any other assets. Disclose the short-term period certain SPIA on the application for Medicaid benefits as non-countable income of the healthy spouse.

Step 5: After the healthy spouse receives each annual SPIA payment, make irrevocable annual gifts to the adult children over five years of amounts not needed for current fixed expenses. The gift in year one will be safe from the look-back rule by year six; the gift in year two will be safe from the look-back rule in year seven, etc.

The advice of a qualified **elder planning attorney** is vitally important when Medicaid planning is involved, since rules vary by state. Clients should work with both their law firm and financial advisor to make sure everyone is on the same page and the plan has sound legal standing.