

The Estate Planning Advisor

IRA's and Medicaid Eligibility

By Richard J. Shapiro, J.D.

With the possible exception of a primary residence, IRA's and other retirement assets such as 401(k)'s are often the single largest asset for many seniors. When seeking Medicaid coverage for nursing home costs, many families are unaware of how a Medicaid applicant's retirement accounts may affect the applicant's Medicaid eligibility.

Under present law, a person is ineligible for Medicaid if they have assets in their name in excess of \$13,050. Whether the existence of a retirement account affects a person's Medicaid eligibility will depend upon (i) the age of the applicant, and (ii) whether the applicant is married.

With IRA's and retirement plans, April 1st of the year *after* an IRA account owner turns 70 ½ is a key date. Until that time, the account owner is under no obligation to begin taking their "minimum distributions" under the IRS' Uniform Life Table. In the relatively infrequent case where an applicant for Medicaid is under 70 ½, their retirement accounts will be considered an "available resource." The IRA will be subject to a Medicaid spend down unless the IRA owner has already "annuitized" the IRA and begun taking "periodic payments." For example, if a 68 year-old Medicaid applicant has a \$10,000 bank account and a \$100,000 IRA that has not been annuitized, absent any other planning the applicant will have to liquidate the IRA and spend it on their care until they have no more than the \$13,050 exemption amount.

In contrast, if that same IRA account owner were 71 years old, the \$100,000 IRA would already be in "pay" status. The county Departments of Social Services will no longer consider the IRA as a countable resource, but instead will count the annual IRA distribution as part of the Medicaid applicant's stream of income. The applicant is allowed to retain income in the amount of \$50 per month; any addition income must be contributed towards the applicant's nursing home care.

While the Departments of Social Services acknowledge that an IRA in pay status is no longer a countable resource, there is no clear consensus on the amounts that must in fact be withdrawn annually. For an IRA account owner who has a spouse living in the community, the "fair hearing" decisions have consistently held that the Medicaid applicant cannot be *required* to withdraw more than the minimum distributions under the Uniform Life Table. A married 71 year old with a \$100,000 IRA would have a minimum distribution in that year of \$3,773. The remaining \$96,337 would remain exempt until the next year's minimum distribution must be withdrawn. Again, the distribution will be counted as part of the Medicaid recipient's income stream.

For single Medicaid applicants, the answer is not as clear. Some counties take the position that the IRA must be withdrawn by reference to the Social Security life expectancy tables, which require a larger annual withdrawal than under the Uniform Life Table. Given the varied approaches between the counties, we are likely to see a number of administrative hearings challenging these determinations, unless and until the New York Department of Health issues a uniform policy.

Be aware that Roth IRA's are not subject to the same favorable treatment as traditional IRA's in pay status. Roth's are appealing from an income tax perspective, since there are no required minimum distributions for a Roth; however, the fact that Roth's are never technically in "pay" status leaves Roth's exposed as a countable resource, regardless of the client's age or marital status.

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