

The Estate Planning Advisor

Asset Protection with Savings Bonds

By Richard J. Shapiro, J.D.

In my last article I discussed using gifts in conjunction with a loan when faced with a Medicaid “crisis planning” situation. This “Promissory Note” structure typically allows for asset savings of at least fifty percent. In certain cases – especially when a single person’s assets are \$60,000 or less – purchasing U.S. Savings Bonds may permit a would-be Medicaid applicant to preserve virtually all of their assets, even if they are about to enter a nursing home.

Under guidelines of the U.S. Treasury Department, Series I and Series EE savings bonds are non-negotiable or transferable, and can only be paid to the owner of the bonds. These bonds also require a minimum holding period of at twelve months from purchase, and the bonds cannot be redeemed during that holding period. Individuals are permitted to purchase up to \$30,000 of each of these Series bonds in any calendar year.

These bonds may be used in an asset protection case as follows: the Medicaid applicant would purchase up to \$30,000 of both Series I and Series EE bonds (or a total not to exceed \$60,000) prior to filing a Medicaid application. Under the New York State Department of Health’s *Medicaid Reference Guide*, the bonds are not considered an “available resource” for Medicaid budgeting purposes. If the applicant otherwise meets the eligibility criteria (that is, they retain no more than \$4,200 of non-exempt resources in their own name), he or she should be deemed immediately eligible for nursing home Medicaid coverage.

If the Medicaid recipient is still living twelve months after the initial purchase of the bonds, then those bonds would be deemed an available resource in the thirteenth month. However, the Medicaid recipient should be able to retain eligibility by redeeming the savings bonds to pay the nursing home cost in the thirteenth month, and then immediately purchasing new bonds with the remaining proceeds. As a result of the new bond purchase, an additional twelve month period is created during which the bonds are considered an unavailable resource.

To further protect the applicant’s assets, he or she should designate a “pay on death” beneficiary for each of the bonds. Upon the applicant’s death, the bonds would not be part of a probate estate, and would thus not be subject to an “estate recovery” action by the County Department of Social Services under current New York law.

Certainly, if the savings bond owner lives a number of years, this strategy will be less effective, as every thirteen months a portion of the savings bond principal would need to be “spent down” on nursing home care. Given that the average nursing home stay is less than a year, however, there is a realistic likelihood that most, if not all, of the applicant’s remaining assets can be preserved using this planning tool.

One important caveat: there is some indication that the New York Department of Health may be formulating a policy to invalidate the savings bond strategy outlined in this article. However, until and unless such a policy change is enacted, using U.S. savings bonds to help protect assets should be considered in many crises planning cases.

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