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## **All is Not Lost: Strategies Still Available in the Face of MaineCare Cutbacks**

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*Editor's note: This article picks up where "Transferring assets becomes more perilous" left off (Sun Journal, Senior Living, April 12, 2006). That article outlined new restrictions imposed by the federal Deficit Reduction Act of 2005 on giving assets away in the face of applying for MaineCare for nursing home assistance.*

The most severe of these changes is the extension of the three-year look-back period to five years, and change of the timing of the transfer penalty so that it begins when one needs and applies for assistance rather than in the month in which the transfer was made. There are still safety hatches and exceptions of which anyone facing nursing home care should be aware.

One of the most overlooked of these is the community spouse resource allowance. This applies in the case of a couple in which one is applying for long term care assistance. The non-applicant, referred to as the community spouse, is allowed to keep \$99,450 of the couple's assets, in addition to the \$10,000 that the applicant is allowed to keep.

These assets are above and beyond exempt assets, which include the couple's home, one automobile, prepaid funeral arrangements and a small amount of life insurance with a cash value. In addition, it is unsettled whether or not a community spouse's RA or 401K retirement accounts are exempt, and for people facing the issue, this well may be worth appealing if the Department of Health & Human Services decides unfavorably.

In cases in which the person or couple seeking nursing home assistance has a disabled child, any transfers of assets to a disabled child are exempt from the transfer penalty rules. All the applicant must do to qualify for this exemption is provide proof that the child to whom funds have been transferred is disabled as defined under the Social Security Administration's disability guidelines.

Transfers into trust for anyone who is disabled are also exempt. For anyone other than a child, if a special trust is set up to hold funds for that person, and if that person is disabled as defined under SSA guidelines, transfers to such trusts are exempt. A secondary advantage of establishing such a trust is that if it is established as a supplemental needs trust, the public benefits of the disabled person for whom the trust is established are protected.

Annuities have been a popular planning tool for community spouses, as a means of decreasing excess assets by locking them into an uncountable stream of income for the community spouse. The DRA has placed restrictions on this tactic by mandating that the first beneficiary of such annuities must be the State, to the extent that the annuitant or his spouse has received MaineCare benefits.

Another mechanism involves taking steps to preserve the assets of the community spouse of a nursing home spouse who has already qualified for MaineCare. The community spouse can establish a testamentary trust (a trust that is within his will), that will only go into effect if the community spouse dies before the nursing home spouse.

This can be established as a supplemental needs trust so that the assets going into the trust upon the death of the community spouse will not be considered countable assets to the surviving nursing home spouse. In short, this protects the estate of the community spouse from inadvertently passing back to the nursing home spouse, thereby disqualifying her from MaineCare.