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Nationwide Advisory Income<sup>SM</sup> | Medicaid Planning White Paper

# Using a single-premium immediate annuity in Medicaid planning



Brought to you by the Advanced Consulting Group of Nationwide<sup>®</sup>

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Director, Advanced Consulting Group, Nationwide

Federal and state Medicaid laws are complex and subject to change. Neither Nationwide nor its representatives can provide legal, accounting, regulatory or tax advice. No specific recommendations on how to position assets or how an annuity may be used to qualify for Medicaid can be provided by Nationwide or its representatives. Please consult with an attorney and tax professional who specialize in Medicaid planning for answers to specific questions.

• Not a deposit • Not FDIC or NCUSIF insured • Not guaranteed by the institution • Not insured by any federal government agency • May lose value

# What is Medicaid?

Medicaid, sometimes referred to as Title 19, is a federal and state program that provides medical assistance for those who qualify. The specific requirements vary by state and even by local communities. It is meant to assist those who don't have the financial resources to pay for their medical care. Medicaid is often used for those who need but cannot afford the cost of long-term care, and it may also provide assistance to those with special needs. It is a program that is meant to help the impoverished and needy.

## Medicaid requirements

There are generally 3 factors that have to be considered to determine whether someone qualifies for Medicaid assistance.

- |          |   |  |
|----------|---|--|
| <b>1</b> | <b>Asset limits</b> <ul style="list-style-type: none"><li>• Exempt or noncountable assets</li><li>• Nonexempt or countable assets</li></ul> | Medicaid planning has to consider all 3 of these factors. There are additional planning factors when a community spouse (the noninstitutionalized spouse) is involved, because states have enacted nonimpoverishment laws to allow the community spouse to live at home and not be forced into poverty.<br><br>States, and even communities within a state, may have differing asset and income limitations. |
| <b>2</b> | <b>Income limits</b>  |  |
| <b>3</b> | <b>Gifts</b> <p>A 5-year lookback for any transfers done for less than fair market value</p>  |  |

# How are immediate annuities used in Medicaid planning?

Immediate annuities are used to convert assets into income to help bring the amount of countable assets down within the Medicaid asset limitations. The Deficit Reduction Act (DRA) of 2005 established guidelines defining the characteristics an annuity must have to be considered a noncountable asset and excludable from the 5-year lookback. The annuity must:

- Be irrevocable and nonassignable
- Use life expectancy tables equivalent to the Social Security life expectancy tables used by Medicaid
- Return all premiums to the client by the end of the client's life expectancy
- Have a term no longer than the client's life expectancy
- Have no cash value
- Be actuarially sound:
  - Cannot provide balloon payments
  - Must have equal payments
- Have the beneficiary arrangement set up to comply with the state's Medicaid recovery rules. The contract owner may have to obtain Medicaid's permission before removing the state Medicaid agency as primary beneficiary of the annuity

States may have their own variations on these requirements, especially related to IRAs or money in retirement plans.

# Is Nationwide Advisory Income<sup>SM</sup> Medicaid friendly?

The client's attorney has to determine whether Nationwide Advisory Income is appropriate for the Medicaid planning being done. There are requirements that an annuity has to meet for use in the Medicaid planning process if the intent is to prevent it from being a countable asset and excluded from the 5-year lookback. The attorney will need to confirm that the annuity and the way that it is structured meets the client's objectives and is Medicaid-compliant in the attorney's opinion.

Some facts about Nationwide Advisory Income that may make it an appropriate annuity for Medicaid planning:

- 1 It has a nonassignability election and subsequent endorsement (except in New York) that makes the contract nonassignable. (Nationwide Advisory Income has not been approved in New York with the nonassignability election and therefore cannot meet the Medicaid requirements in New York.)

**Nationwide**  
Nationwide<sup>®</sup>

**Nationwide Advisory Income<sup>SM</sup>**  
Application for  
**Individual Single Premium Immediate Fixed Annuity**  
Minimum Initial Purchase Payment of \$10,000  
**Nationwide Life Insurance Company**  
PO Box 36750, Louisville, KY 40233 • Phone: 866-667-0561  
Express Mail: 10350 Ormsby Park Place, Louisville, KY 40223

**Please submit all pages of the application.**

The IRS has declared that civil union partners and domestic partners are not considered spouses for purposes of federal tax law. Therefore the tax treatment provided by federal tax law to a surviving spouse is NOT currently available to a surviving civil union partner or surviving domestic partner. For information regarding federal tax laws, please consult a tax advisor.

**1. Parties to the Contract (Please print)**

**1a. Contract Owner**

Name (First, MI, Last): \_\_\_\_\_  
Employer/Trust Name (if applicable): \_\_\_\_\_  
*(Additional forms required. See the New Business Enrollment packet.)*

Birth Date (MM/DD/YYYY): \_\_\_\_\_ Gender:  M  F SSN/Tax ID: \_\_\_\_\_  
Street: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_  
Email: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Nationwide strives to provide excellent customer service to our Members. By providing your telephone number, you authorize the Nationwide Family of Companies to contact you via telephone using automated technology to assist you with your account.

I elect to make this Contract Non-Assignable *(In certain instances this annuity may be purchased for a specific goal which requires restricting specific features of the Contract. Selecting this endorsement will ensure that this Contract is irrevocable, non-transferable and non-assignable, and has no value that can be surrendered, loaned, commuted or withdrawn.)*

**When the nonassignability box on the application is checked, as noted above, a "Nonassignment Endorsement" becomes part of the contract as does the original application. A sample "Nonassignment Endorsement" is on the next page.**

Above is a copy of part of the application. The box titled "I elect to make this Contract Non-Assignable," when checked, makes the contract nonassignable and removes the contract's liquidity feature.

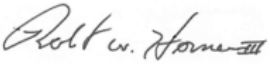
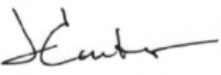
# Nonassignment endorsement for Nationwide Advisory Income

NATIONWIDE LIFE INSURANCE COMPANY  
ONE NATIONWIDE PLAZA  
COLUMBUS, OHIO 43215

**NON-ASSIGNMENT ENDORSEMENT**  
to Individual Single Premium Immediate Fixed Annuity

<p><b>General Information Regarding this Endorsement</b></p> <p>This endorsement revises the terms and conditions of the Contract to which it is attached. To the extent the terms of the Contract and this endorsement are inconsistent, the terms of the endorsement shall control. Non-defined terms shall have the meaning given to them in the Contract.</p> <p><b>Effective Date</b></p> <p>This endorsement must be elected at the time of application for the Contract and will be effective on the Date of Issue stated on the Contract Specifications Page of the Contract to which it is attached. Once issued this endorsement cannot be removed or revoked.</p> <p><b>Purpose</b></p> <p>The purpose of this endorsement is to allow the Contract Owner to meet the requirements of federal law for certain government benefits that require certain assets to be restricted from free alienation.</p>	<p><b>Assignment</b></p> <p>This endorsement deletes the Assignment provision of the Contract to which it is attached in its entirety and replaces it with the following:</p> <p>This Contract may not be transferred, assigned, sold, mortgaged, encumbered, surrendered or commuted. This Contract has no cash surrender value and is totally and permanently irrevocable after the Right to Examine and Cancel Period has expired. The Contract may not be pledged as collateral for a loan or as security for the performance of any obligation.</p>
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Executed for Nationwide by:

 Secretary	 President
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- 2 The Nationwide Advisory Income contract is irrevocable by its standard terms. Sample language from Page 6 of the Nationwide Advisory Income contract:



This contract has no cash surrender value and after the Right to Examine and Cancel Period has expired is irrevocable and can not be surrendered.

- 3 The liquidity feature is declined, so the annuity does not have any cash surrender value and does not provide for balloon payments.
- 4 The Cost of Living Benefit is not purchased, so the payments will be equal through the term of the annuity.
- 5 The term certain used, as directed by the attorney, is compliant with the Medicaid guidelines and doesn't exceed the client's life expectancy requirements.
- 6 The titling and beneficiary arrangements are compliant with the state's Medicaid requirements, as determined by an eldercare attorney.

# A special note on liquidity and irrevocability

All annuity contracts under various state laws must provide the annuity purchaser with a right to examine or cancel, also known as the “free-look provision.” The annuity contract during that time period, which can vary by state, is liquid and revocable until that time period passes. The attorney needs to take that into consideration when doing Medicaid planning to determine the timing for the filing of Medicaid benefits.

A sample “Right to Examine and Cancel” from the first page of Nationwide’s Nationwide Advisory Income specimen contract is below.

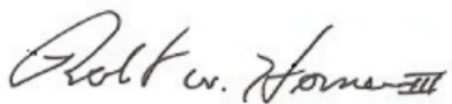
## **RIGHT TO EXAMINE AND CANCEL**

**THE CONTRACT OWNER HAS THE RIGHT TO EXAMINE AND CANCEL THE CONTRACT. THE CONTRACT OWNER MAY RETURN THE CONTRACT WITHIN TEN DAYS OF THE DATE IT IS RECEIVED BY THE CONTRACT OWNER TO THE HOME OFFICE OF NATIONWIDE OR THE AGENT THROUGH WHOM IT WAS PURCHASED. WHEN NATIONWIDE RECEIVES THE CONTRACT, IT WILL CANCEL THE CONTRACT AND REFUND THE PURCHASE PAYMENT, LESS PREMIUM TAX, IN FULL.**

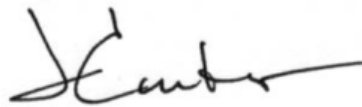
**IF THE CONTRACT IS ISSUED AS A REPLACEMENT CONTRACT, IT MAY BE RETURNED WITHIN THIRTY DAYS FROM THE DATE IT IS RECEIVED BY THE CONTRACT OWNER, OR ANY LONGER PERIOD AS MAY BE REQUIRED BY APPLICABLE LAW, IN THE STATE WHERE THE CONTRACT IS DELIVERED OR ISSUED FOR DELIVERY.**

**THIS IS A LEGAL CONTRACT BETWEEN NATIONWIDE AND THE CONTRACT OWNER, PLEASE READ IT CAREFULLY. IF THE CONTRACT IS NOT RETURNED DURING THE RIGHT TO EXAMINE AND CANCEL PERIOD, THE CONTRACT OWNER WILL BE BOUND BY THE TERMS OF THE CONTRACT.**

Executed for Nationwide by:



Secretary



President

## Guidance must come from the client’s attorney

A qualified, knowledgeable attorney who specializes in Medicaid planning in the client’s community must be involved if a client or client’s family is considering Medicaid. Only that attorney can provide specific legal advice and direction on setting up a Medicaid plan for a client.

# What does the client's attorney need to provide?

The attorney or legal counsel needs to provide specific written directions on how the annuity application has to be completed. A copy of these directions or instructions should be kept in a file. Here is the information that will be needed to complete the application:

## 1 Contract owner: \_\_\_\_\_

\_\_\_\_\_

Date of Birth: \_\_\_\_\_ Sex: M F Social Security #: \_\_\_\_\_

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Email Address: \_\_\_\_\_ Phone Number: ( ) \_\_\_\_\_

## 2 Annuitant: \_\_\_\_\_

Usually the owner and annuitant will be the same person.

Date of Birth: \_\_\_\_\_ Sex: M F Social Security #: \_\_\_\_\_

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Email Address: \_\_\_\_\_ Phone Number: ( ) \_\_\_\_\_

## 3 Primary beneficiary: \_\_\_\_\_

\_\_\_\_\_

**4 Contingent beneficiary:** \_\_\_\_\_

The state providing Medicaid will usually be named as the primary beneficiary for the total amount of medical assistance paid on behalf of the Medicaid recipient. The contract owner may have to obtain Medicaid's permission before removing the state Medicaid agency as primary beneficiary of the annuity. Any amounts remaining after payment to the state would be payable to the contingent beneficiary as named.

In some situations, the spouse, minor children or disabled dependent children may be named primary beneficiaries, with the state named as contingent beneficiary, for the total amount of Medicaid assistance provided. The client's attorney should advise on any state-specific language or requirements when designating a beneficiary.

**5 Payee:** \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Sex: M F Social Security #: \_\_\_\_\_

Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

Email Address: \_\_\_\_\_ Phone Number: ( ) \_\_\_\_\_

**6 Payout option** (the term certain length of the contract): \_\_\_\_\_

When planning for couples, most often the shortest term certain is used. Because the length of the term certain can vary, check with Nationwide to get the most current term certain options and rates. In some situations, the term certain will be for the length of life expectancy, as determined by the Social Security Life Expectancy tables or other life expectancy tables used by the state's Medicaid administrative agency; this will most often happen in situations involving single individuals. The client's attorney will specify the annuity payout length and type.

**7 Premium** (dollar amount to be paid into the annuity): \$ \_\_\_\_\_

**8 Amount of payments:** \$ \_\_\_\_\_

This will usually be left blank because it is not typical to solve for payments in Medicaid situations. In most situations, there is usually a specifically determined amount that needs to be removed from the client's assets and converted to an income stream.

**9 Income start date:** \_\_\_\_\_

**10 Frequency of payments:** Monthly Quarterly Semiannually Annually

# Does an annuity always have to be Medicaid-compliant?

There may be planning situations where an annuity doesn't have to meet the Medicaid requirements, but the attorney will determine whether that is appropriate based on the client's situation. That's why it is imperative that written direction from the client's attorney be provided for how the annuity has to be set up.

## How about taxation and income?

Because there are Medicaid income limitations and because states may differ on how they view income from the purchase of a nonqualified immediate annuity, it is important that the attorney take these into consideration to avoid a denial of a Medicaid claim.

The federal income taxation of nonqualified immediate annuity payments is governed by Internal Revenue Code (IRC) Section 72. A competent tax professional should be consulted to determine what the tax ramifications will be for the client, considering his or her specific financial situation. If qualified pretax dollars are used to purchase an immediate annuity, then generally the entire amount of the payment will be income taxable.

## Planning

Medicaid regulations and requirements have changed and may change in the future, so it is best to have a retirement income plan that is not dependent on Medicaid. Good planning, with proper investing and the appropriate insurance products, allows the client to determine the type of medical care and lifestyle they want.





Visit [nationwideadvisory.com/income](https://nationwideadvisory.com/income) or call our Advisor Support Desk at 866-667-0564 for more information.



This material is not a recommendation to buy or sell a financial product or to adopt an investment strategy. Investors should discuss their specific situation with their financial professional.

**Variable products are sold by prospectus. Consider the investment objectives, risks, charges, and expenses. The product and underlying fund prospectuses contain this and other important information. Investors should read them carefully before investing. To request a copy, go to [nationwideadvisory.com](https://nationwideadvisory.com) or call 1-866-667-0561.**

The summary of product features is not intended to be all-inclusive. Restrictions may apply. The contracts have exclusions and limitations and may not be available in all states or at all times.

When evaluating the purchase of a variable annuity, your clients should be aware that variable annuities are long-term investment vehicles designed for retirement purposes and will fluctuate in value; annuities have limitations; and investing involves market risk, including possible loss of principal. Protections and guarantees are subject to the claims-paying ability of the issuing insurance company and do not apply to the investment performance of the variable accounts, which are subject to investment risk.

Nationwide Advisory Income is a fixed, immediate annuity and is issued by Nationwide Life Insurance Company, Columbus, Ohio.

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