

## ***Koenig v. Dungey: Using Annuities to Establish Medicaid Eligibility***

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Although many people are aware of Medicaid's five-year look-back period, most people are unaware of the various tools utilized by elder law attorneys to establish Medicaid eligibility. For instance, provided you have the legal authority to do so, a transfer to a spouse does not result in a penalty period. Elder law attorneys often assist married persons in establishing Medicaid eligibility by transferring one spouse's assets to the other spouse and spending down assets. Such spend down often involves converting countable assets to non-countable assets or an income stream. One particular strategy used by elder law attorneys involves gifting assets to one spouse and then purchasing an annuity with funds in excess of the community spouse resource allowance.

Recently, an appellate court in Ohio, affirmed the use of this common strategy. In making its decision, the court was presented with the issue of whether a transfer of resources to purchase an annuity after a spouse's institutionalization, but pre-eligibility, constituted an improper transfer of resources. Relying on *Hughes v. McCarthy*, the court determined that a spouse, pursuant to federal law, may, prior to the establishment of Medicaid eligibility, transfer unlimited resources for the benefit of another spouse and resources may be used to purchase an annuity for that spouse, provided specific conditions are met, to establish the annuity, if for the sole benefit of that spouse.

Despite the ability to make various types of gifts without incurring a transfer penalty, it is still important to understand what the specifics are with regard to those gifts. As a result, it is not recommended that you make transfers and irrevocable purchases to establish Medicaid eligibility without the assistance of an experienced elder law attorney. Specifically, working with an elder law attorney will allow you to calculate your community spouse resource allowance, analyze what is required for a Medicaid-qualifying annuity, discuss tax consequences associated with transfers, and compare a number of long-term care strategies.



## Wild Horses Out West

**Hook Law Center:** Kit Kat, can you tell us about wild horses in the western states?

**Kit Kat:** Yes, I'd love to tell you about an article I just read about them. Apparently, many wild horses out west live on land controlled by the Bureau of Land Management (BLM). In the past, the horses were able to manage fairly well on their own. In the last few years, however, their numbers have increased, at the same time, weather conditions have changed resulting in a shortage of rainfall which has impacted the horses' water consumption. This is a serious matter for horses who cannot go for more than 3 or 4 days without water. Their kidneys literally shut down without regular water consumption. The BLM has trucked in water to places like the Cedar Mountains in Utah and the Sand Wash Basin in Colorado. However, the size of herds are becoming so large, that even that is not a solution.

What can be done? Past solutions have involved removing as many as 500 horses and moving them to other locations to be sold. However, the number of horses being bought from these sites has reached a plateau. Also, the BLM officials has seen the distress in the horses' faces when herds are dispersed. Other areas have experimented with a female contraceptive called PZP, which has been successful on Assateague Island, MD, in managing herd size. Assateague is a small island, and it was not problematic to administer the PZP twice the first year, as required. However, in the large lands out west, officials have hesitated in using it. Now, a newer version--PZP-22--is available. It has a time release feature, which lasts for 2 years and does not require a 2nd administration in the first year. The BLM started trials of PZP-22 in 2008. Stay tuned for the results. The BLM is aiming is for an annual population growth of 10%. Ideally, the goal is to develop a contraceptive that would be effective for 5 years. The BLM is investing nearly \$3 million toward that goal. The BLM manages 179 distinct areas, so one can see the size of the problem. The bureau is to be praised for these tremendous efforts!

(Karen E. Lange, "Rethinking the Roundups," All Animals, November/December 2014, p. 24-31)

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**Upcoming Events**

- **November 19, 2014** - Andrew Hook will speak to the Central Virginia Estate Planning Council in Charlottesville, Virginia regarding Elder Health Care-What Will It Look Like Tomorrow and How Much Will It Cost?
- **December 2, 2014** - Hook Law Center is sponsoring Senior Advocate's Active Aging Series at Westminster Canterbury, 3100 Shore Drive, Virginia Beach VA 23451. HLC Attorney Shannon Laymon-Pecoraro will provide an overview of Hook Law Center's Practice Areas at the meeting which begins at 10:00 a.m. To RSVP, please call Senior Advocate at 757-645-6364. *RSVP responses will be taken on a first-come, first-served basis.* Each session includes a complimentary lunch. We look forward to seeing you there!
- **January 22, 2015** – Andrew Hook will be speaking to the Portsmouth Community Criminal Justice Board regarding how the aging population may affect the court system.
- **January 29 – 31, 2015** - Andrew Hook will attend the NAELA Summit in Newport Beach, California.
- **February 3, 2015** – Andrew Hook will be speaking at King's Grant House regarding Long-term Care Insurance.
- **February 7, 2015** – Shannon Laymon-Pecoraro will be speaking to the Down Syndrome Association of Hampton Roads' Baby Play Group.
- **February 20-21, 2015** – Andrew Hook will be speaking on Managing a Small Law Firm at the 2015 VAELA UnProgram in Charlottesville, VA.



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