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305.03 TREATMENT OF ANNUITIES PURCHASED ON OR AFTER 2/8/2006

The DRA added new requirements to the Medicaid statute with respect to the treatment of annuities purchased on or after 02/08/2006, the date of enactment of the DRA, by or on behalf of an annuitant who has applied for Medicaid for nursing facility services or other long term care services, including HCBS. The DRA requirements also apply to certain other transactions involving annuities that take place on or after 02/08/2006 that are described below.

305.03.01 Disclosure Requirement

Effective 2/8/2006, at each application and review for Medicaid, all long term care applicants are required to disclose any interest the applicant or community spouse may have in an annuity or similar financial instrument. Parents of a minor child must report any annuities in which the child may have an interest. This disclosure is a condition for Medicaid eligibility for long-term care services, including nursing facility services and Home and Community Based Waiver Services (HCBS) and applies regardless of whether or not an annuity is irrevocable or is treated as a resource.

Refusal to disclose sufficient information related to any annuity will result in denial or termination of Medicaid entirely, based on the applicant's failure to cooperate in accordance with existing Medicaid policies.

When an unreported annuity is discovered after eligibility has been established and after payment for long-term care services has been made, appropriate steps to terminate payment for long-term care services will be taken, including allowing for rebuttal and advance notice. In addition, an Improper Payment Report may be required to initiate recovery of incorrectly paid benefits.

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305.03.02 Annuity-Related Transactions Other than Purchases Made on or after 2/8/2006

In addition to purchases of annuities, certain related transactions which occur to annuities on or after February 8, 2006, make an annuity, including one purchased before that date, subject to all provisions of the DRA that went into effect on 2/8/2006.

Any action taken on or after February 8, 2006, by the individual that changes the course of payment to be made by the annuity or the treatment of the income or principal of the annuity, including:

- Additions of principal,
- Elective withdrawals,
- Requests to change the distribution of the annuity,
- Elections to annualize the contract and similar actions.

For annuities purchased prior to February 8, 2006, routine changes and automatic events that do not require any action or decision after the effective date are not considered transactions that would subject the annuity to treatment under the DRA provisions. Routine changes could be notification of an address change, or death or divorce of a remainder beneficiary and other similar circumstances. Changes which occur based on the terms of the annuity which existed prior to February 8, 2006, and which do not require a decision, election or action to take effect are also not subject to the DRA.

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305.03.03 Requirement to Name the State as Remainder Beneficiary on Annuities

The purchase of an annuity within the 5-year look-back period will be treated as a transfer of assets unless the Mississippi Division of Medicaid is named as a remainder beneficiary in the correct position as outlined below:

- This requirement applies to annuities purchased by the applicant or recipient, his/her spouse and to certain annuity-related transactions other than purchases made by the applicant/recipient or his/her spouse.
- An annuity must name the Mississippi Division of Medicaid as the remainder beneficiary in the first position for the total amount of Medicaid assistance paid on behalf of the institutionalized individual who is the annuitant unless there is a community spouse and/or a minor or disabled child.
- If there is a community spouse and/or minor or disabled child, the Mississippi Division of Medicaid may be named in the next position after those individuals.
- If the Mississippi Division of Medicaid is named beneficiary after a community spouse and/or minor or disabled child, and any of those individuals or their representatives dispose of any of the remainder of the annuity for less than fair market value, the Mississippi Division of Medicaid may then be named in the first position.

Verification must be provided to show that the Mississippi Division of Medicaid has been named as remainder beneficiary in the correct position on annuities purchased by an applicant/recipient or his/her spouse. If verification is not provided, the purchase of an annuity will be considered a transfer of assets for less than fair market value. The full purchase value of the annuity will be considered the amount transferred.

An annuity purchased prior to the 5-year look-back period is treated as a resource and/or income source, depending on the terms of the annuity as outlined in "Treatment of Annuities – General."

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305.03.04 Information Provided by Agency to Issuer

For any annuity disclosed for the applicant or Community Spouse, DOM must inform the issuer of the annuity of the agency's right to be named as a preferred remainder beneficiary and may require the issuer to notify the agency regarding any changes in amount of income or principal being withdrawn from the annuity. The issuer of the annuity may disclose information about DOM's position as remainder beneficiary to others who have a remainder interest in the annuity.

305.03.05 Treatment of Annuities in Determining Eligibility

In addition to the requirement for the Mississippi Division of Medicaid to be named as a remainder beneficiary, an annuity purchased by or on behalf of an annuitant who has applied for medical assistance with respect to nursing facility or other long term care services will not be treated as a transfer of assets if purchased within the 5-year look-back period or counted as a resource if certain conditions are met which are described below.

1. The annuity meets one of the following conditions:
 - It is an individual retirement annuity according to (b) or (q) of section 408 of the Internal Revenue Code of 1986 (IRC), or,
 - The annuity is purchased with proceeds from an account or trust described in subsection (a), (c) or (p) of section 408 of the IRC, or,
 - The annuity is purchased with proceeds from a simplified employee pension within the meaning of section 408 of the IRC, or,
 - The annuity is purchased with the proceeds from a Roth IRA described in section 408A of the IRC.

2. The purchase of an annuity not described in one of the 4 bullets above will be considered a transfer of assets unless it meets all of the following requirements for every month in which eligibility is being considered:
 - The annuity is irrevocable and non-assignable; and,
 - The annuity is actuarially sound, meaning it will return the full investment including principal and interest within the annuitant's life expectancy using the Life Expectancy Tables published by the Office of the Actuary of the Social Security Administration (located in the Appendix) and described in "Determining Whether an Annuity is Actuarially Sound" (below), and,

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- The annuity is providing payments in approximately equal amounts of principal and interest with no deferred or balloon payments; and,
- The annuity is issued by a business licensed and approved to issue commercial annuities in the state in which the annuity was purchased.

NOTE: The purchase of a single-premium life insurance policy, endowment policy or similar instrument which has no cash value, and for which the individual receives no valuable consideration, will be considered a transfer of assets if purchased within the 5-year look-back period.

An annuity that does not meet the requirements above, or an annuity that is not changed to meet the necessary requirements and/or documentation that is not provided relating to an annuity will result in the annuity being treated as a transfer of assets if purchased within the 5-year look-back period using the full purchase price as the amount transferred.

NOTE: Even if an annuity is determined to meet the requirements above and the *purchase* is not treated as a transfer, if the annuity or income stream from the annuity is transferred, that transfer may be subject to a penalty with the exception of transfers to a spouse or to another individual for the sole benefit of the spouse, to a minor or disabled child or to a Special Needs Trust.

305.03.06 Consideration of Income from an Annuity

If an annuity is treated as a transfer of assets, the income produced by the annuity counts as income to the individual or spouse, as appropriate, in determining eligibility and post-eligibility cost of care and spousal allocation, as applicable.

The income produced by an annuity that complies with the requirements in this chapter counts as income to the individual or spouse, as appropriate, in determining eligibility and post-eligibility cost of care and spousal allocation, as applicable.

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305.03.07 Determining Whether An Annuity is Actuarially Sound

A determination must be made on whether the purchase of annuities, other than qualifying IRS annuities, is treated as a transfer of assets for less than fair market value. If the expected return on the annuity is commensurate with a reasonable estimate of the life expectancy of the beneficiary, the annuity can be deemed actuarially sound.

To make the determination regarding whether the annuity is actuarially sound, use the life expectancy tables located in the Appendix, compiled from information published by the Office of the Actuary of the Social Security Administration. The average number of years of expected life remaining for the individual must coincide with the life of the annuity.

If the individual is not reasonably expected to live longer than the guarantee period of the annuity, the individual will not receive fair market value of the annuity based on the projected return. In this case, the annuity is not actuarially sound and a transfer of assets for less than fair market value has taken place, subjecting the individual to a penalty.

The penalty is assessed based on a transfer of assets for less than fair market value that is considered to have occurred at the time the annuity was purchased, using the full purchase price as the amount transferred.

Examples

1. A male at age 65 purchases a \$10,000.00 annuity to be paid over the course of 10 years. His life expectancy according to the table in effect at the time is 16.73 years; thus, the annuity is actuarially sound.
2. A male at age 80 purchases a \$10,000.00 to be paid over the course of 10 years. His life expectancy (using the table in effect at the time) is only 7.62 years; thus, the annuity is not actuarially sound.

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305.03.08 Documentation of Qualifying IRS Annuities

To determine that an annuity is established under any of the various provisions of the Internal Revenue Code that are referenced above, rely on verification from the financial institution, employer or employer association that issued the annuity.

The burden of proof is on the institutionalized individual or his representative to produce documentation. If documentation is not provided, which includes producing a copy of the actual annuity contract (not an application for an annuity or a request form for a change to an existing annuity) in order to evaluate the annuity, the purchase of the annuity will be considered a transfer for less than fair market value which is subject to a penalty. Without documentation, the full purchase value of the annuity will be considered the amount transferred.

305.03.09 Requirements for the Community Spouse

Annuities purchased by the Community Spouse on or after February 8, 2006, must name DOM as first beneficiary. The Institutionalized Spouse may not be named as a beneficiary ahead of DOM. However, if there is a minor or disabled child, the child may be named as primary and DOM as secondary.

It does not matter if the Community Spouse's annuity is actuarially sound or provides payments in approximately equal amounts with no deferred or balloon payments. These provisions apply only to annuities purchased by or on behalf of the individual who has applied for medical assistance.

305.03.10 Estate Recovery

Annuities purchased on or after February 8, 2006, will be subject to Estate Recovery. Refer cases with an annuity naming the Division of Medicaid as the primary beneficiary to Estate Recovery upon the death of the recipient. If DOM is named as the secondary beneficiary for an annuity, refer the case to Estate Recovery only if the primary beneficiary is also deceased. For example, if the Community Spouse was the primary beneficiary at the last review but the CS died prior to the IS, this would then make DOM the primary. If there is a surviving beneficiary of an annuity, such as a CS or disabled child named as the primary beneficiary, there is no need to refer the annuity to Estate Recovery at the time of the recipient's death.