ANNUITIES

The Division of Medicaid is required to verify all annuities owned by you (the applicant) and your spouse. Annuities may be employment-related (part of a retirement plan), or bought to purchase a source of income or otherwise shelter assets.

If you or your spouse own an annuity or annuities, you must provide us (the Division of Medicaid) with a current copy of each annuity for review. For each annuity, we must verify:

- The purchase date and the amount used to purchase the annuity.
- Any additions, withdrawals or other change to the annuity since it was purchased.
- Whose funds were used to purchase the annuity.
- Who is the owner and who is the annuitant.
- If fixed payments are currently being made on all or a portion of the annuity.

Each annuity purchased with funds owned by you or your spouse that names you or your spouse as the annuitant requires that we handle as follows:

1. If an annuity is ***revocable***, meaning it can be cashed in or canceled, it is counted as a resource available to you or your spouse. The amount we will count is the cancelation value, which is the verified current value of the annuity plus interest less any penalties and taxes that must be paid. Income produced by the annuity counts as income to the annuitant.
    - If an annuity is not paying fixed payments, it is considered revocable and counted as a resource based on the cancelation value.
    - If an annuity is paying fixed payments on only a portion of the annuity, the non-annuitized portion is considered revocable and counted as a resource based on the cancelation value.

2. If an annuity is ***irrevocable*** (it cannot be cashed in or canceled) but it is ***assignable***, meaning it can be assigned to a new owner or the payments transferred to someone else, the annuity is counted as a resource available to you or your spouse. The amount we will count is the amount it can be sold for on the secondary market. Quotes from companies that purchase annuities will be used to determine the secondary market value. Income produced by the annuity counts as income to the annuitant.

3. If the annuity is both ***irrevocable and non-assignable***, meaning it cannot be cashed in or transferred or payments cannot be transferred, the annuity will not be counted as a resource to you or your spouse. Income produced by the annuity counts as income to the annuitant.

IF YOU ARE IN A NURSING FACILITY OR ENTER A NURSING FACILITY OR APPLY FOR ENROLLMENT IN A HOME & COMMUNITY BASED WAIVER PROGRAM (meaning you are requesting Medicaid to pay for long term care services), each annuity determined to be ***irrevocable and non-assignable*** requires further review under the Transfer of Assets provision.

During and after the 5-year period before you first applied for long term care services, we must determine if you or your spouse:

- purchased an annuity, or
- if an existing annuity had funds added, withdrawn or the distribution was changed or the annuity started drawing fixed payments.

Any annuities purchased and/or changed during or after the 5-year look back period must meet the following criteria to avoid a transfer of assets penalty:

1. **The Division of Medicaid must be named beneficiary of the annuity in the correct position.**
    - If you are the annuitant, the Division of Medicaid must be named as the preferred remainder beneficiary.
    - If you are the annuitant and you have a spouse (who is not in a nursing facility or applying for long term care services), the Division of Medicaid must be named as beneficiary after your spouse.
    - If you are the annuitant and you have a spouse and/or a minor or disabled adult child (none in a nursing facility or applying for long term care services), the Division of Medicaid must be named as beneficiary after these allowable individuals.
    - If your spouse is the annuitant, the annuity must name the Division of Medicaid as the preferred remainder beneficiary.
    - If your spouse is the annuitant and you have a minor or disabled adult child, the Division of Medicaid must be named as beneficiary after the minor/disabled child.

    A copy of the amended annuity naming the Division of Medicaid as beneficiary in the correct position must be provided to us for our records.

2. **If you are the annuitant, we will review and treat the annuity as follows:**

    For employment-related annuities – these types of annuities must be:

    - an annuity within an IRA (Individual Retirement Account), or
    - an IRA under a qualified employer plan as allowed under section 408 of the Internal Revenue Code, or
    - an annuity purchased with the proceeds of an allowable section 408 annuity

After naming the Division of Medicaid beneficiary in the correct position, we will treat an employment-related annuity as a retirement fund. Periodic payments will be required. **For non-employment related annuities** – these types of annuities must meet (or be changed to meet) all of the following requirements.

- It must name the Division of Medicaid as beneficiary as specified in #1 above,
- It must be actuarially sound, meaning it must return the full investment within your life expectancy.
- It must provide for payments in equal monthly amounts during the term of the annuity with no deferred or balloon payments, and
- It must be issued by a business licensed and approved to issue commercial annuities in the state of purchase.

After an annuity is determined to meet the requirements specified above and the purchase is not treated as a transfer of assets, you are not allowed to transfer the annuity or payments from the annuity to anyone other than your spouse or minor or disabled adult child.

Additional information that you need to know about annuities includes the following:

- A transfer of assets penalty will be charged if an annuity is purchased by you or your spouse during or after the 5-year look back period with funds belonging to you or your spouse for someone other than you, your spouse or your minor or disabled adult child.

- A transfer of assets will be charged if an annuity is purchased by you or your spouse during or after the 5-year look back period with funds belonging to you or your spouse and the annuity is transferred to a new owner or payments are assigned to someone other than you, your spouse or your minor or disabled adult child.

An annuity that does not meet the requirements outlined above or an annuity that is not changed to meet the requirements outlined above will result in the annuity being treated as a transfer of assets using the full purchase price as the amount transferred. Medicaid will not pay for long term care services provided in a nursing facility, ICF/IID or swing bed during a transfer of assets penalty period. The penalty period is based on the value of the annuity (the full purchase price) divided by the average monthly cost to a private pay patient in Mississippi for nursing facility services. You can qualify for payment of all other Medicaid services if you are found to be otherwise eligible during the penalty period. The penalty period includes full and partial months, depending on the value of the annuity. The 1st month of the penalty is the month you are in a facility **and** other wise eligible for Medicaid except for the imposition of the transfer penalty.

Transfer of Assets and 5-Year Look-back Period

MISSISSIPPI DIVISION OF MEDICAID

The Division of Medicaid is required by Federal Law to verify and review assets (income and resources) that belong to ***you*** (the applicant) and ***your spouse***. These assets may be owned, either individually or jointly, at the present time or during the 5 year period before applying for Medicaid to pay for long term care services. Long term care can be:

- Nursing Facility (including an ICF/IID facility), or
- Home & Community Based (HCBS) waiver program.

The purpose of the 5-year look-back is to determine if any assets (income & resources) were transferred out of your name with the intent to qualify for Medicaid.

Transfers happen when you, your spouse, or someone acting on your behalf:

- Give away income or resources or the right of ownership to income/resources, or
- Sell assets for less than current market value, or
- Shelter assets in a non-allowable way, such as setting up certain trusts or annuities.

Assets include any real or personal property that you and/or your spouse own, or any interest in a resource that you/your spouse own with someone else. Assets also include income that is given to another individual by you or your spouse. As discussed below, certain transfers of assets do not count.

5-Year Lookback Period

The 5-year look-back period begins on the 1st date that you apply for Medicaid and are in a nursing facility (includes a swing bed in a hospital) or apply for HCBS waiver placement. If you apply for Medicaid for long term care multiple times or go in and out of long term care placements, the 5-year look-back begins with the 1st application filed for long term care services unless that application was withdrawn. ***The full 5 years prior to the 1st application must have expired to be out of the look-back period.***

Transfer Penalty

The penalty for transferring assets, during the 5-year look-back period or any time ***after*** the 5-year period expires is as follows:

- For individuals applying for Medicaid in a nursing facility: Medicaid will not pay for long term care services provided in a nursing facility, ICF/IID or swing bed during the penalty

period. You can qualify for payment of all other Medicaid services during the penalty period if you are found to be otherwise eligible.

- For individuals applying for or participating in a HCBS waiver program, you are not eligible for Medicaid in a HCBS waiver during the penalty period. We will review your case to see if you can qualify for "at-home" coverage during the penalty period, but you will not receive HCBS services.
- The penalty period is based on the value of the asset(s) transferred divided by the average monthly cost to a private pay patient in Mississippi for nursing facility services.
- The penalty period includes full and partial months, depending on the value of asset(s) transferred.
- The 1st month of the penalty is the later of the 2 dates below:
    - The 1st month of the transfer, or
    - The 1st month of eligibility for long term care or HCBS.

Types of Information You Will be Asked to Provide

In order for us to make a decision on whether or not assets have been transferred with intent to qualify for Medicaid, we will ask you to provide the following:

- Bank statements for all bank or credit union accounts on which your name, or the name of your spouse, appears currently and within the 5-year look-back period. We will attempt to verify your bank accounts electronically by matching you and your spouse's Social Security Number with financial institutions both within and outside Mississippi for current balances as well as balances during the 5-year lookback period. However, if the use of electronic verification is not possible, we will require that you provide needed verifications.

    - We will start with current and anniversary bank statements for all accounts during the look-back period to determine if there is a need for additional documentation.
    - If bank statements for all accounts are not available, federal tax returns with all attachments for the year(s) bank statements are not available will be needed.
    - In reviewing bank account activity, we will look for normal patterns of spending in the process of spending your cash assets.
    - Spending that is out of the ordinary and not for your benefit will need explanation.

- All deeds and property agreements are needed for real property on which your name or your spouse's name appears currently and during the 5-year look-back period.

    - Your equity value in any property ownership transferred during this time will count if a countable transfer has occurred.

- Official documentation of ownership of any other types of assets will require verification during the 5-year look-back period, including but not limited to, proof of ownership and the value of retirement funds, annuities, trust funds, stocks, bonds, loans, vehicles, life insurance, and any other similar investments that may have been sold or given away.

Transfers that Do Not Count

Certain transfers do not result in a transfer penalty. These include:

- A transfer of assets to your spouse, child under age 21, or a disabled or blind adult child. Disability for an adult child must be verified using Social Security criteria.

- The transfer of home property to a sibling who is part owner of the home who lived in the home for 1 year prior to you entering a nursing facility.

- The transfer of home property to your child who lived in the home for a minimum of 2 years before you entered a nursing facility and provided care to you so that you could remain at home.

- The transfer of assets to a Special Needs Trust established in accordance with Medicaid policy if you are disabled and under age 65.

Undue Hardship

Certain transfers that have happened may not have been authorized by you. In addition, you may not be able to recover your transferred assets on your own.

We will apply "undue hardship" that will allow us to waive a transfer penalty under certain conditions if you are unable to recover your assets after taking reasonable attempts through verifiable action:

- Legal or civil action, or involvement by the Attorney General's office to attempt recovery through the Vulnerable Adult program,
- Police or other official investigation into the transfer or financial exploitation that has occurred.

SPOUSAL RESOURCE and INCOME RULES

MISSISSIPPI DIVISION OF MEDICAID

The following Medicaid rules apply to a legally married couple when:

- One spouse enters a nursing facility or hospital for 31 days or longer or enrolls in a Home & Community Based Waiver (referred to as the ***Institutional Spouse*** or **IS**), and

- The other spouse remains in the community and lives at home or with others or in a retirement community (referred to as the ***Community Spouse*** or **CS**).

For these rules to apply, an application for Medicaid must be filed and:

- The IS must have entered a nursing facility or hospital, *or*
- The IS and CS must live together in the same household if the IS applies for a Home & Community Based Waiver program.

Resource Rules

The value of all ***countable*** resources belonging to the IS and the CS must be determined.

This includes countable resources owned jointly or individually by the couple or their fair share of any resources owned with other persons. The equity value of a resource counts, i.e., the current market value of a resource less any legal debts owed.

Once the equity value of each countable resource is verified, the total value of spousal resources is determined and compared to the following limits:

- The IS resource limit is $4,000, and
- The CS resource limit is $130,380 for calendar year 2021.

Any amount over the combined total of these 2 limits is considered to be available to the IS, meaning the IS cannot be eligible until excess resources are spent.

If the CS also plans to apply for Medicaid, the CS resource limit may not apply. The CS must be below the resource limit that applies to the at-home Medicaid coverage group

Electronic Verification of Financial Accounts

When you sign the application for Medicaid, you give the Division of Medicaid consent to verify funds held in a financial institution, such as banks and credit unions, through electronic matching of Social Security Numbers belonging to both the IS and CS. Account balances, including balances during the 5-years prior to applying for Medicaid, are used to determine if any accounts have been given away and are used to determine current eligibility for the IS. There are instances that

require that we ask you or your representative to provide verification of bank account activity, such as:

- When accounts are discovered that you did not declare on your application or interview,
- When accounts are discovered that belong, in part or in full, to the CS (that do not have the name of the IS on the account),
- When account balances result in ineligibility for the IS, and
- When account information is inconsistent with what you declared on the application.

Countable resources do not include:

- ✓ The equity value of the home does not count (unless the equity is more than $603,000);
- ✓ Certain income-producing property does not count if it produces at least 6% of the equity value (this does not include annuities or promissory notes which are evaluated differently);
- ✓ 1 automobile is not counted;
- ✓ Personal property is not counted up to a $5,000 limit;
- ✓ The cash value of whole life insurance policies do not count if the face values of all policies on an insured totals $10,000 or less. Term life insurance does not count;
- ✓ Money set aside for burial up to $6,000 does not count.

90-Day Period to Transfer Resources to the CS

When the IS' resources exceed $4,000, but the total countable resources for the couple are below the combined limits, a 90-day transfer period is allowed to transfer ownership of resources into the CS' name with the following results:

- The IS has ownership of resources under the $4,000 limit and
- The CS has ownership of resources that will total less than the CS limit shown above.

If the IS meets all other Medicaid qualifications, Medicaid eligibility can be approved prior to or during the 90-day period. The 90-days begins with the date the Medicaid Specialist informs the CS in writing of the resource transfers that must take place to arrange resource ownership according to spousal rules. **Exception**: Transfers to the Community Spouse must take place prior to approving a long term hospital admission.

Options to Reduce Excess Resources

If total resources are above the limits allowed for an IS and CS, the CS can spend-down the excess to allow the IS to qualify for Medicaid. Allowable options include:

- Pay for burial expenses (purchase a pre-paid burial arrangement or add money to an existing arrangement if it is not enough to pay for final expenses),

- Pay household bills such as credit card debt or other outstanding loans with a balance owned,
- Purchase items that are needed by the IS or CS,
- Purchase investments that will produce income for the CS,
- Pay for the cost of care in the nursing facility.

The only requirement for spending down excess resources is that the funds are used for the benefit of the Institutional Spouse and/or Community Spouse or a minor or disabled child of the IS or CS.

Income Rules

When an IS qualifies for Medicaid in a nursing facility, income belonging to the IS is available to pay toward the cost of his/her care in the facility. This is referred to as Medicaid Income.

Medicaid Income is not payable for a long term hospital admission or HCBS waiver program or during the time Medicare pays for the cost of the nursing facility room and board.

The CS may qualify for all or a portion of the income of the IS, depending on the actual income of both the IS and CS. Income belonging to the CS is compared to a maximum limit of $3,259.50. If the total income of the CS is less than this maximum, the CS may qualify for a spousal allocation of the CS' income.

For example: the IS has income of $1,000 in Social Security. The CS has income of $500 in Social Security. The CS' income of $500 when compared to the maximum leaves a deficit well over $1,000. This means the CS will qualify to receive all of the income belonging to the IS and there is no Medicaid Income to pay the nursing facility.

NOTE: If the CS is eligible for Medicaid or wants to apply for Medicaid while living in the community, it is possible to adjust the amount of the spousal allocation so the amount received from the IS will not result in the loss of Medicaid for the Community Spouse.

Spousal resource and income rules no longer apply when any of the following occurs:

- The death of the IS or CS,
- The divorce of the IS/CS,
- The IS is discharged from the nursing home, hospital or HCBS waiver program, or
- The CS enters a nursing facility.