TO BE RESCINDED

5160:1-3-05.3 **Medicaid: the disclosure and treatment of annuities for medical assistance programs.**

(A) This rule describes the treatment of annuities for the purpose of determining eligibility for medical assistance and long term care services.

(B) Definitions.

(1) "Actuarially sound annuity" means a product designed to pay off the entire asset value over the actual or expected annuitant's lifetime.

(2) "Annuitant" means the individual who is entitled to receive payment from an annuity.

(3) "Annuitized" means an annuity providing payments to the individual or other entity.

(4) An "annuity" provides fixed, periodic payments, either for life or a term of years. When an individual purchases an annuity, he or she generally pays to the entity issuing the annuity a lump sum of money, in return for which he or she is promised regular payments of income for certain amounts. These payments may continue for a fixed period of time or for as long as the individual (or another designated beneficiary) lives. The annuity typically contains a remainder clause under which, if the annuitant dies, the contracting entity converts whatever is remaining in the annuity into a lump sum and pays it to a designated beneficiary.

(5) "Asset" means all income and resources of the individual and of the individual's spouse, including any income or resources that the individual or such individual's spouse is entitled to but does not receive.

(6) "Balloon payment" means a lump sum equal to the initial premium minus any distribution paid out prior to the end of the annuity period.

(7) "Community spouse" is defined in rule 5160:1-1-01 of the Administrative Code.

(8) "Institutionalized" is defined in rule 5160:1-1-01 of the Administrative Code.

(9) "Remainder beneficiary" means the individual or entity who will receive the lump sum upon the death of the annuitant or the term of the annuity has expired.

(10) "Spouse" means a person who is legally married to another person under Ohio law.

(11) "Transaction" means any action taken by the individual or community spouse that changes the treatment of the income or principal of the annuity.

(C) Treatment of annunities for eligibility for medical assistance.

(1) Any annuity not providing fixed, monthly payments shall be treated as a countable resource. Once annuitized, the annuity shall be considered an excluded resource.

(2) Once the annuity is annuitized, any fixed, monthly payment received from the annuity shall be considered as unearned income to the named annuitant.

(D) Treatment of annunities for long term care services.

(1) Treatment of annuities purchased or transactions on or after February 8, 2006.

(a) Any purchase or annuity transaction, including annuities purchased by a spouse, shall be treated as the disposal of an asset for less than fair market value as outlined in rule 5160:1-3-07.2 of the Administrative Code unless:

(i) The state of Ohio is named as the remainder beneficiary in the first position for the total amount of medical assistance furnished to the individual; or

(ii) The state of Ohio is named as such a beneficiary in the second position for the total amount of medical assistance furnished to the individual after the community spouse or minor or disabled child, and is named in the first position for the total amount of medical assistance furnished to the individual if such spouse or a representative of such child disposes of any such remainder for less than fair market value; except that

(b) If the annuity is purchased by or on behalf of an annuitant who has applied for medical assistance, the purchase of the annuity will be deemed an improper transfer even if the beneficiary naming requirements in paragraph (D)(1) of this rule are met, unless:

(i) The annuity is an annuity described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986 (as in effect on February 1, 2016); or

(ii) The annuity was purchased with proceeds from:

(a) An account or trust described in subsection (a), (c), or (p) of section 408 of such code; or

(b) A simplified employee pension (within the meaning of section 408(k) of such code); or

(c) A Roth IRA described in section 408A of such code; or

(iii) The annuity meets the following requirements:

(a) Irrevocable and non-assignable; and

(b) Actuarially sound as determined by the life expectancy tables published by the office of the actuary of the social security administration in accordance with 26 C.F.R. 20.2031-7 (as in effect on February 1, 2016). For an annuity to be considered actuarially sound, the total amount of proceeds shall be designed to be dispersed in equal monthly payments with no anticipated lump sum payment. The only allowable lump sum payment is the refund provided when the annuitant dies prior to the end of the guaranteed period and paid to the remainder beneficiary; and

(c) Provides for payments in equal amounts during the term of the annuity with no deferral and no balloon payments made. The purchased annuity shall not have a balloon payment provision unless the balloon payment designation is for the community spouse.

(c) Transactions which occur on or after February 8, 2006, with respect to an annuity purchased prior to February 8, 2006, may subject the annuity to the requirements in paragraph (D)(1) of this rule.

(i) Such transactions include any action taken by the individual that changes the course of payments to be made by the annuity or the treatment of income or principal of the annuity. The actions include additions of principal, elective withdrawals, requests to change the distribution of the annuity, elections to annuitize the contract and similar actions taken by the individual after February 8, 2006.

(ii) Routine changes and automatic events that do not require any action or decision after the effective date of enactment are not considered transactions that would subject the annuity to the requirements in paragraph (D)(1) of this rule. Routine changes could be notification of an address change, death, divorce of a remainder beneficiary, or other similar transactions.

(2) Treatment of annuities purchased prior to February 8, 2006. Any annuity that has not been annuitized shall be considered an available resource when completing a resource assessment.

(a) An annuity that is making payments at the time of application for medical assistance, shall not be considered an available resource. However, any payments shall be considered unearned income to the annuitant.

(b) An annuity that is not making payments is considered an available resource if the terms of periodic payments can be changed.

(E) Individual responsibilities.

(1) The individual applying for or receiving long term care services in a long term care facility, under a HCBS waiver program, or under PACE shall disclose any annuity owned by either the institutionalized individual or community spouse.

(2) The individual applying for or receiving long term care services in a long term care facility, under a HCBS waiver program, or under PACE, or the community spouse shall designate the state of Ohio as the remainder beneficiary for any annuity purchased on or after February 8, 2006, as follows:

(a) The state of Ohio is named as the remainder beneficiary in the first position; or

(b) The state of Ohio is named beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if such spouse or a representative of such a child disposes of any such remainder for less than fair market value.

(c) The individual is required to provide verification of the remainder beneficiary designation. Failure to provide verification will result in termination or denial for medical assistance.

(F) Administrative agency responsibilities. The administrative agency shall:

(1) Request from the individual applying for or receiving long term care services in a long term care facility, under a HCBS waiver program, or under PACE a disclosure of any annuity ownership the individual or community spouse has in an annuity for any annuity purchased on or after February 8, 2006.

(2) Explain as part of the application process or upon discovery, such provisions which require the state of Ohio to become a remainder beneficiary for any annuity purchased on or after February 8, 2006.

(3) Verify the remainder beneficiary designation for any annuity purchased on or after February 8, 2006.

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Certification

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