

## TO BE RESCINDED

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

(A) This rule describes the treatment of annuities for the purpose of determining eligibility for medical assistance.

(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) Eligibility criteria.

- (1) For any annuity purchased or annuity transaction completed on or after February 8, 2006, the purchase or transaction 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:
  - (a) 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
  - (b) 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.
- (2) The following annuity purchases are not considered a disposal of an asset for less than fair market value for any annuity purchased on or after February 8, 2006:
  - (a) An annuity described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986 (as in effect on February 1, 2014); or
  - (b) An annuity purchased with proceeds from:
    - (i) An account or trust described in subsection (a), (c), or (p) of section 408 of such code, or
    - (ii) A simplified employee pension (within the meaning of section 408(k) of such code); or
    - (iii) A Roth IRA described in section 408A of such code.

- (3) For any annuity purchased on or after February 8, 2006, the purchased annuity shall be irrevocable, non-assignable, and 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, subpart E (as in effect on July 1, 2015), and provides for payments in equal amounts during the term of the annuity with no deferral and no balloon payments made.
- (a) 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.
  - (b) The purchased annuity shall not have a balloon payment provision unless the balloon payment designation is for the community spouse.
  - (c) Any annuity not providing fixed, monthly payments shall be treated as a countable resource. Once annuitized, the annuity will be considered an exempt resource.
  - (d) Any fixed, monthly payment received from the annuity shall be considered as unearned income to the named annuitant.
- (4) Treatment of annuities purchased prior to February 8, 2006.
- (a) At any time, any person may use assets of an individual to purchase an annuity that names the individual as the owner and annuitant under the following conditions.
    - (i) The annuity shall be purchased from a bank, insurance company, or other person engaged in the business of the sale of commercial annuities to the public.
    - (ii) The annuity may not make payments to other persons during the individual's life.
    - (iii) The annuity shall provide for all payments to be made during the life of the annuitant.
      - (a) To make this determination, the administrative agency shall use 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, subpart E (as in effect on July 1, 2015).

- (b) If the table indicates that the annuitant will not live as long as the guaranteed period of the annuity, there is an improper transfer.
  - (c) The amount improperly transferred is the sum of all payments that can be made after the expected end of the life of the annuitant.
  - (d) The administrative agency shall determine the penalty in accordance with the rules governing improper transfers unless one of the exceptions in rule 5160:1-3-07.2 of the Administrative Code is met.
  - (e) The individual may also rebut a finding of an improper transfer by establishing that the annuity provides the spouse is the remainder beneficiary, and all remaining payments will occur during the spouse's life 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, subpart E (as in effect on July 1, 2015).
- (b) Any annuity provided for under paragraph (C)(4)(a) of this rule that has not been annuitized shall be considered an available resource when completing a resource assessment.
- (i) An annuity that is making payments in accordance with the provisions in paragraph (C)(4)(a) of this rule, at the time of application for medicaid, shall not be considered an available resource. However, any payments shall be considered unearned income to the annuitant.
  - (ii) An annuity that is not making payments in accordance with the provisions in paragraph (C)(4)(a) of this rule, is considered an available resource if the terms of periodic payments can be changed to conform with the provisions in paragraph (C)(4)(a) of this rule.
- (c) If an annuity contains a balloon payment provision, 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, subpart E (as in effect on July 1, 2015) may not be used. The value of the balloon payment is considered an improper transfer unless rebutted by the individual. To rebut the presumption, the individual shall produce clear and convincing medical evidence that the annuitant is expected to actually live past the date of the balloon payment.

- (d) Private annuity agreements are those not purchased from a bank, insurance company, or other person or entity engaged in the business of the sale of commercial annuities to the public. Assets or resources transferred, used, or otherwise exchanged for a private annuity agreement are considered an improper transfer. However, this is a rebuttable presumption subject to the rules governing improper transfers as delineated in rule 5160:1-3-07.2 of the Administrative Code.
- (e) For the purposes of this rule, any improper transfer shall be considered to have occurred on the date of the purchase of the annuity, or on the date after which the terms of periodic payments can no longer be changed to conform with the provisions in paragraph (C)(4)(a) of this rule, whichever is later.
- (f) If the individual or the community spouse is the annuitant of an annuity in which neither individual, at any time, held an ownership interest in the funds used to establish the annuity, an improper transfer shall not result if the owner of the annuity fails to make the payments available.

(D) 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.

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

- (1) Request from the individual 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.

Effective:

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Certification

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Date

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