



## Administrative Code

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Title 23: Medicaid  
Part 103  
Resource

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## **Title 23: Division of Medicaid**

### **Part 103: Resources**

#### Part 103 Chapter 6: Annuities

##### *Rule 6.1: Annuities Defined.*

###### A. Annuities - General.

1. An annuity is defined as a contract or agreement by which one receives fixed, non-variable payments on an investment for a lifetime or a specified number of years.
  - a) When an individual purchases an annuity, he generally pays a lump sum to a bank or insurance company and in return he is promised regular payments of income in certain amounts.
  - b) These payments may continue for a fixed period of time (for example, ten years) or for as long as the individual or another designated beneficiary lives, thus creating an ongoing income stream.
2. The annuity may or may not include 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.
3. Annuities, although usually purchased in order to provide a source of income for retirement, are occasionally used to shelter assets so that individuals purchasing them can be eligible for Medicaid.
4. In order to avoid penalizing annuities validly purchased as part of a retirement plan but to capture those intended to shelter assets, a determination must be made with regard to the ultimate purpose of the annuity, i.e., whether or not it is part of a bona fide retirement plan.
5. The purchase of an annuity by or for an individual using that individual's assets will not be considered under transfer of assets policy.
6. The entire value of the annuity will be considered an available resource unless certain criteria met. This policy applies to annuities purchased with the applicant's own funds by the applicant/recipient, spouse, guardian or legal representative and which name the applicant/recipient or spouse as the annuitant.
7. Transfer of assets policy will be considered when an applicant or recipient's own funds are used to purchase an annuity for someone other than the applicant/recipient or their spouse. Refer below to determine availability of an annuity as a resource.

Source: Social Security Act §1917(d); Omnibus Reconciliation Act of 1993 (OBRA-93) § 13611(Rev. 1993); Deficit Reduction Act of 2005 §6011 and §6016 (Rev. 2006).

*Rule 6.2: Treatment of Annuities Purchased prior to 2/8/2006.*

- A. An annuity purchased before February 8, 2006, by or for an individual using that individual's assets will be considered a transfer unless both of the following are met:
  - 1. The annuity produces a net annual return of at least 6% of its equity value; and
  - 2. Pays out principal and interest in equal monthly installments (no balloon payments) to the individual in sufficient amounts that the principal is paid out within the actuarial life expectancy of the institutionalized individual.
- B. An annuity which does not meet the 6% rule, contains a balloon payment or is otherwise not actuarially sound will be considered a transfer.
- C. An annuity that is subsequently assessed under resources rules and determined to be inaccessible will be treated as a transfer of assets for less than fair market value.

Source: Social Security Act §1917(d); Omnibus Reconciliation Act of 1993 (OBRA-93) § 13611(Rev. 1993).

*Rule 6.3: Treatment of Annuities Purchased on or after 2/8/2006.*

- A. Disclosure Requirement.
  - 1. 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.
    - a) 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.
    - b) 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.
    - c) 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.

B. Requirement to Name the State as Remainder Beneficiary on Annuities.

1. The purchase of an annuity may be treated as a disposal of an asset for less than fair market value unless the Mississippi Division of Medicaid is named as a remainder beneficiary.
  - a) This requirement applies to annuities purchased by the institutional applicant or Community Spouse and to certain annuity-related transactions other than purchases (discussed below) made by the applicant or spouse.
  - b) An annuity must name the 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 unless there is a Community Spouse and/or a minor or disabled child.
  - c) If there is a Community Spouse and/or minor or disabled child, the Division of Medicaid may be named in the next position after those individuals.
  - d) If DOM 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 Division of Medicaid may then be named in the first position.
  - e) If verification is not provided which reflects the Division of Medicaid as remainder beneficiary in the correct position on annuities purchased by the Institutionalized Spouse or Community Spouse, the purchase of the annuity will be considered a transfer for less than fair market value. The full purchase value of the annuity will be considered the amount transferred.

C. Information Provided by Agency to Issuer.

1. For any annuity disclosed for the applicant or Community Spouse, the Division of Medicaid 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.
  - a) The issuer of the annuity may disclose information about the Division of Medicaid's position as remainder beneficiary to others who have a remainder interest in the annuity.

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

1. 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.

- a) 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:
  - 1) Additions of principal,
  - 2) Elective withdrawals,
  - 3) Requests to change the distribution of the annuity, and
  - 4) Elections to annualize the contract and similar actions.
- b) 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.
  - 1) Routine changes could be notification of an address change or death or divorce of a remainder beneficiary and other similar circumstances.
- c) 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.

E. Treatment of Annuities in Determining Eligibility.

1. 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 for less than fair market value if the annuity meets the following conditions:
  - a) The annuity is considered either:
    - 1) An individual retirement annuity (according to Section 408(b) of the Internal Revenue Code of 1986 (IRC); or
    - 2) A deemed Individual Retirement Account (IRA) under a qualified employer plan (according to Section 408(q) of the IRC);

- b) The annuity is purchased with proceeds from one of the following:
    - 1) A traditional IRA (IRC Sec. 408a); or
    - 2) Certain accounts or trusts which are treated as traditional IRAs (IRC Sec. 408 § (c)); or
    - 3) A simplified retirement account (IRC Sec. 408 § (p)); or
    - 4) A simplified employee pension (IRC Sec. 408 § (k)); or
    - 5) A Roth IRA (IRC Sec. 408A).
  - c) The annuity meets all of the following requirements for every month eligibility is being considered;
  - d) The annuity is irrevocable and non-assignable; and
  - e) The annuity is actuarially sound; and
  - f) The annuity provides payments in approximately equal amounts with no deferred or balloon payments and
  - g) The annuity produces a net annual return of at least 6% of its equity value.
2. 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.

#### F. Documentation of Qualifying IRS Annuities.

- 1. 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.
- 2. The burden of proof is on the institutionalized individual or his representative to produce documentation.
- 3. If documentation is not provided, the purchase of the annuity will be considered a transfer for less than fair market value which is subject to a penalty. The full purchase value of the annuity will be considered the amount transferred.

#### G. Consideration of Income and Resources from an Annuity.

1. Even though an annuity is not penalized as a transfer for less than fair market value, it must still be considered in determining eligibility, including spousal income and resources and in the post eligibility calculation, as appropriate.
2. In other words, even if an annuity is not subject to penalty under the provision of the DRA, this does not mean that it is excluded as income or resource.

#### H. Requirements for the Community Spouse.

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

#### I. Estate Recovery.

1. Annuities purchased on or after February 8, 2006, will be subject to Estate Recovery. The rules for the Institutional Spouse and the Community Spouse are the same for annuities purchased prior to this date.

#### J. Transfers.

1. If an annuity does not meet the DRA requirements set out above or is not changed to meet them, the purchase of the annuity will be considered a transfer for less than fair market value and subject to a penalty.
2. The full purchase value of the annuity will be considered the amount transferred.

Source: Social Security Act §1917(d); Deficit Reduction Act of 2005 §6011 and §6016 (Rev. 2006).



*Rule 6.4: Determining Whether an Annuity is Actuarially Sound.*

A. 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 as follows:

1. 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.
  - a) The life expectancy tables compiled from information published by the Office of the Actuary of the Social Security Administration, applicable to the decision, are used.
2. The average number of years of expected life remaining for the individual must coincide with the life of the annuity.
  - a) 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.
    - 1) 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.
    - 2) 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.
      - (a) Example: A male at age sixty-five (65) purchases a \$10,000.00 annuity to be paid over the course of ten (10) years. His life expectancy according to the table is 16.73 years; thus, the annuity is actuarially sound.
      - (b) Example: A male at age eighty (80) purchases a \$10,000.00 to be paid over the course of ten (10) years. His life expectancy is only 7.62 years; thus, the annuity is not actuarially sound.

Source: Social Security Act §1917(c); Deficit Reduction Act of 2005 §6011 and §6016 (Rev. 2006).

*Rule 6.5: Calculating the Uncompensated Value (UV) of Annuities (Pre-DRA).*

A. The following procedures are used to calculate the uncompensated value of annuities purchased prior to February 8, 2006:

1. Divide the purchase price of the annuity by the number of payout years. This equals the annual rate.

2. Use the life expectancy tables compiled from information published by the Office of the Actuary of the Social Security Administration, applicable to the decision, to determine the number of years the individual is expected to live.
3. Subtract the number of years from the number of payout years.
4. Multiply the difference by the annual rate. This is the uncompensated value.
  - a) Purchase Price divided by Payout years = Annual Rate;
  - b) Payout years minus Life Expectancy = Difference;
  - c) Difference times Annual Rate = Uncompensated Value.
  - d) Example: For a man, age eighty (80), who purchases an annuity for \$10,000.00 prior to February 8, 2006, to be paid over ten (10) years, the uncompensated value is calculated as follows:
    - 1) The purchase price (\$10,000.00) is divided by the number of payout years ten (10) to get the annual rate of \$1,000.00.
    - 2) The number of payout years ten (10) minus the life expectancy years (7.62) equal 2.38.
    - 3)  $2.38 \times \text{annual rate of } \$1,000.00 = \$2,380.00$ , the uncompensated value.
      - (a) If the annuity in the above example had been purchased on or after February 8, 2006, the full purchase value of the annuity \$10,000.00 would be considered the amount transferred.

Source: Social Security Act §1917(c); Omnibus Reconciliation Act of 1993 (OBRA-93) § 13611(Rev. 1993)