VOL. 09-3
DATE: March 16, 2009
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SENIOR BULLETIN: MEDICAID

New requirements for spousal annuities

A married couple can use certain kinds of annuities to enable one spouse to qualify for Medicaid long-term care coverage. For annuities acquired on or after April 1, 2009, some additional requirements will be imposed. This bulletin will explain the use of annuities for Medicaid eligibility and the new requirements.

The use of annuities to achieve Medicaid eligibility for married applicants

To qualify one spouse for COPES or Medicaid nursing home coverage, most married couples can have no more than $47,104 of non-exempt resources. (This standard can be increased up to $111,560 for some spouses in nursing homes.[2]) If a couple has more than the resource standard allows, the excess can be placed in an annuity for the spouse not seeking Medicaid, if the annuity meets various requirements.

For example, if a couple owns a home, a car and has bank assets worth $147,104, the couple's assets exceed the Medicaid resource standard by $100,000. If the husband needs long-term care, the wife may put the $100,000 of excess resources into an annuity for herself and qualify the husband for Medicaid the month after she purchases the annuity. The wife would then receive back the entire $100,000 over the term of the annuity, and this would not adversely affect the husband's continued eligibility for Medicaid as long as he continues to need long-term care. Using this kind of annuity preserves the couple's assets for the spouse who doesn't need long-term care.

Annuities are financial products sold by insurance companies. There are many different kinds of annuities and most annuities **are** counted as a resource by Medicaid. But an annuity that was purchased before April 1, 2009 is not counted as a resource for a married couple if it meets the following requirements, which are set forth in WAC 388-561-0200:

1. The annuity must be irrevocable.

2. The annuity must be paid to the spouse not seeking Medicaid in equal monthly payments over the term of the annuity, or Medicaid must be authorized to calculate and budget the annuity as if it was paid out in equal monthly payments. (The payments to the spouse affect the right of the spouse to be allocated income from the Medicaid recipient.)

3. The term of the annuity cannot exceed the actuarial life expectancy of the spouse not seeking Medicaid, as determined by tables recognized by the Department of Social and Health Services.

4. The annuity must be issued by a licensed insurance company.

The new requirements

A new regulation, WAC 388-561-0201, imposes some additional requirements if an annuity is purchased on or after April 1, 2009. In addition to the requirements set forth above, the annuity must comply with the following:

1. The term of the annuity cannot be shorter than five years unless the actuarial life expectancy of the spouse not seeking Medicaid is less than five years. If the actuarial life expectancy of the spouse not seeking Medicaid is less than five years, the term of the annuity cannot be shorter than the actuarial life expectancy of that spouse.

2. The annuity must provide that if the spouse not receiving Medicaid dies during the term of the annuity, any further payments from the annuity must be paid to the state of Washington up to the amount Medicaid has spent for the care of the spouse on Medicaid.

The new regulation also creates a separate rule for annuities that hold funds from tax-favored retirement accounts, like Individual Retirement Accounts (IRAs), Simple Retirement Plans, and SEP retirement accounts. (The funds in these kinds of accounts were not subject to federal income taxes when transferred to the account, but are subject to income tax at the time of withdrawal.) If such accounts are converted to an annuity, Medicaid will not count the assets in the annuity for eligibility purposes so long as the annuity contains the following provision: if the spouse not receiving Medicaid dies during the terms of the annuity, any further payments from the annuity must be paid to the state up to the amount Medicaid has spent for the care of the spouse on Medicaid. There are no further requirements for disregarding such an annuity, i.e., the retirement account annuity need not pay out in equal monthly payments or have a term shorter than life expectancy.

Endnotes:

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[2] For general discussions of the resources that married couples may have when one spouse applies for COPES or Medicaid for nursing-home care, see the Columbia Legal Services pamphlets "Questions and Answers on the COPES Program" or "Questions and Answers on Medicaid for Nursing Home Care." Both are posted on the WashingtonLawHelp web site. From the home page at www.WashingtonLawHelp.org, select "Aging/Elder Law" and then "Long term care assistance."