

SENIOR BULLETIN: MEDICAID

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. This bulletin will explain the use of annuities for Medicaid eligibility and the applicable requirements.

The use of annuities to achieve Medicaid eligibility for married applicants

To qualify one spouse for COPES, Community First Choice, or Medicaid nursing home coverage, most married couples can have no more than \$56,726 of non-exempt resources. (This standard can be increased up to \$121,220 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 \$156,726, the couple's assets exceed the Medicaid resource standard by \$100,000. If one spouse needs long-term care, the other spouse may put the \$100,000 of excess resources into an annuity for his or her benefit and qualify the spouse needing long-term care for Medicaid the month after the annuity was purchased. Purchasing the annuity would not adversely affect continued eligibility for Medicaid of the spouse needing long-term care as long as he or she 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. The requirements an annuity must meet to qualify are described below.

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. However, an annuity owned by the spouse of a Medicaid applicant is not counted if it meets the following requirements, which are set forth in WAC 182-516-0201:

1. The annuity must expressly provide that it is irrevocable, non-transferable and has no cash surrender value.

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.
5. 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.
6. 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 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, CFC, 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" or "Questions and Answers on the Community First Choice Program." They are posted on the WashingtonLawHelp web site. From the home page at www.WashingtonLawHelp.org, select "Seniors" and then "Long term care assistance."