

Administrative Notice DMMA-08-2007

TO: All DMMA Staff

DATE: June 13, 2007

SUBJECT: Annuities

BACKGROUND

On February 8, 2006, the Deficit Reduction Act of 2005 (DRA) was signed into law. The DRA made changes to certain Medicaid eligibility provisions in section 1917(c)(1)(B)(i) of the Social Security Act affecting Long Term Care services and supports.

DISCUSSION

The DRA adds new requirements to the Medicaid statute with respect to the treatment of annuities purchased on or after February 8, 2006 as well as certain other transactions involving annuities that take place on or after the date of enactment. These new requirements include:

- The requirement to disclose information regarding any interest an applicant or community spouse may have in an annuity;
- The requirement to name the State as a remainder beneficiary in annuities in which the applicant or spouse is the annuitant; and
- Provisions for treatment of the purchase of certain annuities as a transfer of assets for less than fair market value.

Certain transactions that occur on or after the date of enactment, February 8, 2006, will make the annuity, including those purchased prior to February 8, 2006, subject to the DRA requirements. Transactions would include any action taken by the individual that changes the course of payments, or the treatment of the income or principal of the annuity. This would include additions to the principal, elective withdrawals, requests to change the distribution of the annuity, elections to annuitize the contract and similar actions taken by the individual on or after February 8, 2006.

For annuities purchased prior to February 8, 2006, routine changes and automatic events that do not require any action or decision after the date of enactment are not considered transactions that would subject the annuity to treatment of these provisions.

Section 6012(a) of the DRA requires that all States alter their application to include a disclosure and description of any interest the applicant or community spouse may have in an annuity. The Long Term Care Medicaid application will capture this information. However the application will not capture all necessary information regarding the annuity. An additional form, ie Additional Information Regarding Annuities, will need to be completed by the applicant/representative if an annuity is disclosed on the application.

Section 6012(b) of the DRA provides that the purchase of an annuity will be treated as a disposal of an asset for less than fair market value unless the State is named as a remainder beneficiary. The annuity must name the State as the remainder beneficiary in the first place unless there is a community spouse and/or minor or disable child. The state may then be named in the next position after those individuals.

Section 6012(c) of the DRA provides that the purchase of an annuity on or after February 8, 2006, by or on behalf of an annuitant who has applied for long term care Medicaid, shall be treated as a transfer

of assets for less than fair market value unless the following criteria is met. Note that these provisions are in addition to the requirements pertaining to the State's position as a remainder beneficiary.

The annuity is considered either:

- An individual retirement annuity (according to Sec. 408 (b) of the Internal Revenue Code of 1986); or
- A deemed Individual Retirement Account under a qualified employer plan (according to Sec. 408 (q) of the Internal Revenue Code of 1986).

OR

1. The annuity is purchased with proceeds from one of the following:

- A traditional IRA (IRC Sec. 408a); or
- Certain accounts or trusts which are treated as traditional IRAs (IRC Sec. 408 §(c)); or
- A simplified retirement account (IRC Sec. 408 §(p)); or
- A simplified employee pension (IRC Sec. 408 §(k)); or
- A Roth IRA (IRC Sec. 408A).

OR

2. The annuity meets all of the following requirements:

- The annuity is irrevocable and non-assignable; and
- The annuity is actuarially sound; and
- The annuity provides payments in approximately equal amounts, with no deferred or balloon payments.

ACTION REQUIRED

- Have applicant/representative complete Additional Information Regarding Annuities form
- Determine if annuity is revocable or irrevocable
- If revocable count the equity value as a resource
- If irrevocable determine purchase date of annuity
- If purchased prior to February 8, 2006:
 - Determine if any transactions have occurred that would result in the DRA provisions being applicable to the annuity
 - If yes, follow guidelines for an annuity purchased on or after February 8, 2006
 - Determine if annuity is actuarially sound
 - If yes, the stream of income from the annuity is countable income
 - If no, was annuity purchased within the lookback period
 - If yes, this is a transfer of assets
 - If no, the stream of income from the annuity is countable income
- Send Notice of Interest in Annuity letter to issuing company
- If purchased on or after February 8, 2006:
 - Determine if the State of Delaware is named as beneficiary in the correct position?
 - If no, the annuity will be considered a transfer of assets
 - Determine if the annuity:
- Is an IRA or deemed IRA under a qualified employer plan

OR

- Was purchased with funds from a traditional IRA, certain accounts or trusts which are treated as traditional IRAs, a simplified retirement account, a simplified employee account, or a Roth IRA

OR

- Is irrevocable and non-assignable, is actuarially sound, and provides payments in approximately equal amounts, with no deferred or balloon payments.
 - If yes to one of the above, the stream of income from the annuity is countable income
 - If no to all of the above the annuity will be considered a transfer for less than fair market value.
- Send Notice of Remainder Beneficiary Interest letter to issuing company
- Review DSSM 20330.4.1 - 20330.4.1.B.4

DIRECT INQUIRIES TO

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Signed - June 19, 2007 _____

HARRY B. HILL, DIRECTOR
DIVISION OF MEDICAID & MEDICAL ASSISTANCE