

COMMONWEALTH OF PENNSYLVANIA
Department of Public Welfare

OPERATIONS MEMORANDUM

Medicaid

SUBJECT: Annuities

TO: Executive Directors

FROM: Joanne Glover
Director, Bureau of Operations

PURPOSE

To provide policy and procedure changes that must be used for applicants, recipients and spouses of applicants and recipients applying for or receiving Medicaid/Long Term Care (LTC) services. The Deficit Reduction Act of 2005 (DRA) requires the Department of Public Welfare (DPW) to implement new policies and procedures regarding the treatment of annuities.

The information provided in this Operations Memorandum takes precedence over any previous Policy Clarifications that have been issued or the policies and procedures that may be currently listed in the LTC Handbook. To ensure all CAOs receive and apply the same policy and procedures on these topics, this information is issued by an Operations Memorandum versus a Policy Clarification.

BACKGROUND

An annuity is a financial instrument providing for a return of principal and interest on an individual's investment. There are two types of annuities: a qualified annuity (part of, or in conjunction with, certain employer-established accounts or individual retirement plans, such as an Individual Retirement Annuity or Account (IRA), Roth IRA, or Keogh fund); and a non-qualified annuity (one that is purchased outright by an individual and not part of a retirement plan). A qualified annuity owned by a community spouse (CS) is not considered an available resource. A qualified annuity belonging to an applicant/recipient or a non-qualified annuity owned by an applicant/recipient or the spouse of an applicant/recipient must be evaluated for Medicaid/LTC eligibility.

On February 8, 2006, the DRA became law and addressed how the purchase of an annuity should be evaluated in order to determine whether there has been a transfer of assets for less than Fair Market Value (FMV). The intent of these legislative changes was to discourage individuals from purchasing non-qualified annuities for the purposes of sheltering or transferring assets to avoid paying for LTC services.

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DISCUSSION

An applicant, recipient and the spouse of an applicant or recipient, is required to disclose any interest that he/she has in an annuity. As a condition of eligibility for payment of LTC services, DPW must be named as the beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the applicant/recipient unless the applicant/recipient has a CS, a minor child, or a disabled child. In that case, DPW must be named as the beneficiary in the second position after the CS, the minor child, or the disabled child.

Any provision in an annuity or similar contract for the payment of money owed by an applicant, recipient or spouse of an applicant or recipient, limiting the right to sell, transfer or assign the right to receive payments or restricting the right to change the beneficiary will not be recognized by DPW. It will be presumed that any annuity or similar contract to receive money is marketable.

This policy is effective March 5, 2007 and applies to applicants, recipients and spouses of applicants or recipients who made a transaction involving an annuity, including the purchase of an annuity, on or after February 8, 2006 **and** whose date of application is on or after March 5, 2007. An annuity purchased prior to February 8, 2006 will be treated in accordance with policy and procedures in place prior to this Operations Memorandum.

NOTE: For the purposes of this Operations Memorandum, a transaction is any action taken by the individual affecting the payment from the annuity or a change affecting the payment of the income or principal of the annuity. Examples of transactions are purchases, additions to principal, elective withdrawals, requests to change distribution of the annuity, elections to annuitize the contract and similar actions.

Any annuity that fails to meet certain requirements listed below shall be treated as a transfer of assets for less than FMV.

NOTE: Even if an annuity is not subject to penalty under the transfer of assets provisions of the DRA, such an annuity may still be considered as a resource or as income.

NOTE: If the applicant/recipient has a community spouse, a minor child, or a disabled child, DPW must be named as the beneficiary in the second position after the CS, the minor child, or the disabled child. Should any of those individuals or their representatives dispose of

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any such remainder of the annuity for less than FMV, DPW must then be named as the beneficiary in the first position.

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The CAO will allow an individual the opportunity to amend an annuity in order to comply with the requirements as set forth in this Operations Memorandum.

New Policy

If	Then
<p>An applicant or recipient of Medicaid/LTC owns an annuity that <u>does not</u> meet all of the following requirements:</p> <ul style="list-style-type: none"> • Is irrevocable and non-assignable; • Is actuarially sound; • Provides for payments in equal amounts, with no deferral and no balloon payments made; and • Names DPW as beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the applicant/recipient or names DPW as beneficiary in the second position after the CS, the minor child, or the disabled child, for at least the total amount of medical expenses paid by DPW, 	<p>The CAO will treat the purchase of the annuity as a transfer of assets for less than FMV and determine the period of ineligibility for payment of LTC services.</p>

If	Then
<p>An applicant or recipient of Medicaid/LTC owns an annuity that <u>does</u> meet all of the requirements listed above,</p>	<p>The CAO will treat the purchase of the annuity as a transfer of assets for FMV and include the income from the annuity in the calculation of the applicant's/recipient's payment towards cost of care of LTC services.</p>

New Policy

The value of the annuity as an available resource will be calculated by the CAO. Should the value of the annuity calculated by the CAO be challenged by the applicant/recipient or spouse of the applicant/recipient, the applicant/recipient or spouse of the applicant/recipient must provide documentation regarding that value.

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A non-qualified annuity that meets the requirements above and provides the CS with monthly income that, when combined with all other available income to the CS, is equal to or less than the Community Spouse Monthly Maintenance Needs Allowance (CSMMNA), shall be treated as income.

New Policy

If	Then
The CS has a non-qualified annuity that meets the requirements above and provides the CS with monthly income that, when combined with all other income available to the CS, exceeds the CSMMNA,	The CAO will treat the purchase of the annuity as a transfer of assets for FMV and will treat the annuity as an available resource.
The CS has a non-qualified annuity that meets the requirements above and provides the CS with monthly income that, when combined with all other income available to the CS, is less than or equal to the CSMMNA,	The CAO will treat the purchase of the annuity as a transfer of assets for FMV and will treat the annuity payments as income.

New Policy Guidelines

- This policy applies to applicants, recipients and spouses of applicants and recipients who purchase a non-qualified annuity or make a transaction involving a non-qualified annuity on or after February 8, 2006 **and** apply for Medicaid/LTC on or after March 5, 2007.

This policy also applies to a qualified annuity of an applicant or recipient. A qualified annuity includes an IRA or an annuity purchased with the proceeds from a traditional IRA, a simplified retirement account, an employee pension, or Roth IRA, and will continue to be reviewed for availability as a resource. It is the responsibility of the applicant/recipient or spouse of the applicant/recipient to provide documentation from the financial institution or employer association that the annuity meets Section 408 (a), (b), (c), (k), (p), or (q) or Section 408A of the Internal Revenue Code in order for DPW to make a determination that the annuity is a qualified annuity. The documentation provided to the CAO should indicate the annuity meets one of these subsections of the Internal Revenue Code.

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NOTE: If the CAO requests this documentation and it is not provided, the application for Medicaid will be denied for failure to provide information.

- A qualified annuity belonging to an applicant/recipient that names DPW as the beneficiary in the first position will be counted as income to the applicant/recipient.
- A qualified annuity owned by the CS is exempt as a resource and is not required to meet the specific requirements defined in this Operations Memorandum.
- The CAO will treat the purchase of an annuity (qualified or non-qualified) or a transaction involving an annuity (qualified or non-qualified) made prior to February 8, 2006 under guidelines in use prior to this Operations Memorandum.
- The CAO will treat the purchase of an annuity (qualified or non-qualified) or a transaction involving an annuity (qualified or non-qualified) reported on an application for Medicaid/LTC made before March 5, 2007 under guidelines in use prior to this Operations Memorandum.
- The CAO will review the annuity of an applicant/recipient and the non-qualified annuity owned by the CS to determine if the following requirements have been met:
 - The annuity is irrevocable and non-assignable;
 - The annuity is actuarially sound;
 - The annuity provides for payments in equal amounts, with no deferral and no balloon payments made; and
 - The annuity names DPW as the beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the applicant/recipient or the annuity names DPW as the beneficiary in the second position after the CS, minor child or disabled child, for at least the total amount of medical assistance paid on behalf of the applicant/recipient.
- A non-qualified annuity owned by a CS, who does not have a minor child or a disabled child, must name DPW as the beneficiary in the first position.

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- A non-qualified annuity owned by a CS, who has a minor child or a disabled child, must name DPW as the beneficiary in the second position, after the minor child or the disabled child.

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- If the annuity owned by the applicant/recipient or the non-qualified annuity of the CS does not meet all the requirements listed above, the annuity or the transaction involving the annuity shall be treated as a transfer of assets for less than FMV. If the applicant/recipient is otherwise eligible for Medicaid, a period of ineligibility for payment of LTC services shall be imposed.
- If the non-qualified annuity of the CS meets the requirements above and provides the CS with monthly income that, when combined with all other available income to the CS, exceeds the CSMMNA, the annuity shall be treated as an available resource.
- If the non-qualified annuity of the CS meets the requirements above and provides the CS with monthly income that, when combined with all other available income to the CS, is equal to or less than CSMMNA, the annuity shall be treated as income.
- Any provision in an annuity or similar contract for the payment of money owned by the individual or spouse of the individual, limiting the right to sell, transfer or assign the right to receive payments or restricting the right to change the beneficiary will not be recognized by DPW. It will be presumed that any annuity or similar contract to receive money is marketable.
- Forward all annuities covered by this Operations Memorandum that name DPW as the beneficiary to:

Annuity Depository
Division of Third Party Liability
PO Box 8486
Harrisburg, PA 17105

SPECIFIC STEPS

1. Review the application for disclosure of any ownership interest in any annuity.
2. The purchase of an annuity (qualified or non-qualified) or a transaction involving an annuity (qualified or non-qualified) made prior to February 8, 2006 will be reviewed under guidelines in use prior to this Operations Memorandum.
3. If the application is made before March 5, 2007, the purchase of an annuity (qualified or non-qualified) or a transaction involving an annuity (qualified or non-qualified) will be reviewed under guidelines in use prior to this Operations Memorandum.

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4. A qualified annuity of an applicant/recipient that names DPW as the beneficiary in the first position will be counted as income to the applicant/recipient.

5. If the purchase date or the transaction date involving a non-qualified annuity is on or after February 8, 2006 **and** the date of application is on or after March 5, 2007, the CAO will review the annuity owned by the applicant/recipient to verify that it meets all the requirements.

- A non-qualified annuity owned by a CS, who does not have a minor child or a disabled child, must name DPW as the beneficiary in the first position.
- A non-qualified annuity owned by a CS, who has a minor child or a disabled child, must name DPW as the beneficiary in the second position, after the minor child or the disabled child.

6. Any non-qualified annuity that fails to meet all the requirements listed in the New Policy box above shall be regarded as a transfer of assets for less than FMV.

7. The CAO will determine if the applicant/recipient would otherwise be eligible for Medicaid.

8. If the applicant/recipient would otherwise be eligible for Medicaid, the CAO will follow the Specific Steps outlined in the Operations Memorandum on Transfers of Assets for Less Than Fair Market Value.

9. If the applicant is not eligible for Medicaid, deny benefits, provide appropriate notices, and document the transaction regarding the annuity for any future application.

Example 1: Non-qualified Annuity of Applicant Meets DRA Requirements

1. Mr. Jones, an 86-year-old widower, was admitted to a nursing facility and applied for Medicaid/LTC on March 5, 2007. Mr. Jones requested that Medicaid/LTC benefits be effective the day of his admission.
2. Mr. Jones purchased an annuity for \$50,000 on July 15, 2006. The annuity:
 - Is irrevocable and non-assignable;
 - Is actuarially sound;
 - Provides for equal monthly payments with no deferral or balloon payments; and
 - Names DPW as the beneficiary in the first position of any funds remaining due at the death of Mr. Jones not to exceed the amount

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of medical assistance paid by DPW on his behalf.

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3. The CAO determines that the annuity is a transfer of assets for FMV and considers the payments from the annuity as income to Mr. Jones.
4. The CAO will include the gross income generated by the annuity in calculating Mr. Jones' payment towards his cost of care.

Example 2: Non-qualified Annuity of Applicant Does Not Meet DRA Requirements

1. Mr. Dough, an 86-year-old widower, was admitted to a nursing facility and applied for Medicaid/LTC on March 5, 2007. Mr. Dough requested that Medicaid/LTC benefits be effective the day of his admission.
2. Mr. Dough purchased an annuity for \$50,000 on July 15, 2006. The annuity:
 - Is irrevocable and non-assignable;
 - Is not actuarially sound;
 - Provides for equal monthly payments with no deferral or balloon payments over a 20-year period; and
 - Names DPW as the beneficiary in the first position of any funds remaining due at the death of Mr. Dough, not to exceed the amount of medical assistance paid by DPW on his behalf.
3. The life expectancy for an 86-year old male is 4.85 years (see Policy Clarification PMN13293440).
4. The CAO determined that Mr. Dough is otherwise eligible for Medicaid effective March 5, 2007.
5. The payment terms of the annuity provide for payments over a 20-year period. The actuarial life expectancy of an 86 year old male is 4.85 years. The annuity does not meet the requirement to be actuarially sound. The CAO determined that Mr. Dough transferred assets for less than FMV.
6. The CAO determined that the period of ineligibility for the \$50,000 transfer would commence on March 5, 2007.
7. The CAO determined the period of ineligibility for payment of LTC services by dividing the amount transferred by the average daily private rate in effect at the time of the determination. The period of ineligibility is 225 days ($\$50,000 \div \$222.17 = 225$ days) commencing on March 5, 2007.

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8. The CAO would complete the following actions:
 - Authorize Medicaid in the appropriate LTC category;
 - Provide Mr. Dough with a Notice to Applicant (PA 162) indicating eligibility for Medicaid and ineligibility for payment of LTC services, and the availability of an Undue Hardship Waiver request process;
 - Indicate the period of ineligibility for payment of LTC services on the Third Party Liability (TPL) screens.

Example 3: Non-qualified Annuity of Applicant Does Not Meet DRA Requirements

1. Mr. Smith, a 90-year-old widower, was assessed clinically eligible for Home and Community Based Services on April 1, 2007. On April 3, 2007, Mr. Smith completed an application and requested that Medicaid/LTC benefits be approved with an effective date of April 3, 2007.
2. Mr. Smith purchased a \$50,000 annuity on June 1, 2001, at age 85, naming his son as the beneficiary in the first position of the annuity. Under the terms of the annuity, payments would not commence for five years (June 1, 2006). The annuity:
 - Is irrevocable and non-assignable;
 - Is actuarially sound;
 - Provides for equal monthly payments with no deferral or balloon payments over a five-year period; and
 - Names his son as the beneficiary in the first position of any funds remaining due at the death of Mr. Smith.
3. On May 1, 2006, Mr. Smith requested a change to the distribution date of his annuity and asked that his payments commence on June 1, 2007.
4. Mr. Smith's request to change his distribution date is considered to be a transaction involving an annuity. As such, Mr. Smith's annuity must meet the requirements as set forth in this Operations Memorandum.
5. The CAO explains the requirements to Mr. Smith. Mr. Smith refuses to amend the annuity and name DPW as the beneficiary in the first position.
6. Mr. Smith provided information that the value of the annuity as of date of application was \$62,000.

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7. The CAO determined that Mr. Smith is otherwise eligible for Medicaid effective April 3, 2007.
8. The CAO determined that Mr. Smith transferred assets for less than FMV since Mr. Smith refused to name DPW as the beneficiary in the first position.
9. The CAO determined that the period of ineligibility for the \$62,000 transfer would commence on April 3, 2007.
10. The CAO determined the period of ineligibility for payment of LTC services by dividing the amount transferred by the average daily rate in effect at the time of the determination. The period of ineligibility is 279 days ($\$62,000 \div \$222.17 = 279$ days) commencing on April 3, 2007.
11. The CAO would complete the following actions:
 - Authorize Medicaid in the appropriate LTC category;
 - Provide Mr. Smith with a Notice to Applicant (PA 162) indicating eligibility for Medicaid and ineligibility for payment of LTC services, and the availability of an Undue Hardship Waiver request process;
 - Indicate the period of ineligibility for payment of LTC services on the Third Party Liability (TPL) screens.

Example 4: Non-qualified Annuity of a CS – Income Exceeds CSMNA

1. Mr. Stone, a 75-year-old married man, was admitted to a nursing facility on May 1, 2007.
2. On May 15, 2007, Mrs. Stone submitted a Resource Assessment indicating that on the day of admission, the couple had \$20,000 in total countable resources. Total resources were below the minimum Community Spouse Resource Allowance (CSRA), currently \$20,328. Therefore, all of the resources are protected for the CS.
3. On June 15, 2007, Mrs. Stone completed an application for her husband and requested Medicaid/LTC benefits be effective May 1, 2007.
4. The application indicated that on April 15, 2007, Mrs. Stone, age 78, purchased an annuity for \$400,000. The life expectancy of Mrs. Stone is 10.10 years (see Policy Clarification PMN 13293440). The annuity:

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- Is irrevocable and non-assignable;
 - Is for a ten-year term and is therefore actuarially sound ;
 - Provides for equal monthly payments with no deferral or balloon payments over the ten-year period; and
 - Names DPW as the beneficiary in the first position of any funds remaining due at the death of Mrs. Stone not to exceed the amount of medical assistance paid by DPW on behalf of Mr. Stone.
5. Mr. Stone's total gross monthly income is \$893.50 from Social Security. Based on his income, he will be able to retain \$8,000 in resources for himself (\$2,000 resource allowance + \$6,000 resource disregard = \$8,000).
 6. Mrs. Stone receives \$3,700 gross monthly income from the annuity. Mrs. Stone also receives \$793.50 gross monthly income from Social Security and \$25 monthly interest from her CSRA. Mrs. Stone's total gross monthly income is \$4,518.50 (\$3,700 + \$793.50 + \$25 = \$4,518.50).
 7. Mrs. Stone's total gross monthly income of \$4,518.50 exceeds the maximum CSMMNA, currently \$2,541/month.
 8. The CAO will treat the purchase of the annuity as a transfer of assets for FMV. The CAO will treat the annuity as an available resource since Mrs. Stone's total gross monthly income exceeds the CSMMNA.
 9. The CAO will treat the amount of payments remaining on the annuity as an available resource.
 10. The CAO has determined that the annuity is an available resource. The CAO can amend the resource assessment to include the value of the annuity. At the time of admission, Mrs. Stone had not received any payments from the annuity company. The CAO determined the value of the annuity to be \$440,000 (120 monthly payments of \$3,700 = \$440,000). The CAO determined that total resources on the day of admission were \$460,000 (\$440,000 + \$20,000). Under a **new** Resource Assessment, Mrs. Stone would be entitled to the maximum CSRA (currently \$101,640).
 11. The CAO determined Mr. Stone ineligible for Medicaid/LTC based on excess resources.
 12. Mr. Stone will be resource eligible for Medicaid/LTC when the couple's resources are below \$109,640 (\$101,640 CSRA + \$8,000 disregard = \$109,640).

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Example 5: Non-qualified Annuity of CS – Income Less Than or Equal to CSMMNA

1. Mr. Rock, a 75-year-old married man, was admitted to a nursing facility on May, 1, 2007.
2. On May 15, 2007, Mrs. Rock submitted a Resource Assessment indicating that on the day of admission, the couple had \$20,000 in total countable resources. Total resources were below the minimum CSRA, currently \$20,328. Therefore, all of the resources are protected for the CS.
3. On June 15, 2007, Mrs. Rock completed an application for her husband and requested Medicaid/LTC benefits be effective May 1, 2007.
4. The application indicated that on April 15, 2007, Mrs. Rock, age 78, purchased an annuity for \$200,000. The life expectancy of Mrs. Rock is 10.10 years (see Policy Clarification PMN 13293440). The annuity:
 - Is irrevocable and non-assignable;
 - Is for a ten-year term and is therefore actuarially sound ;
 - Provides for equal monthly payments with no deferral or balloon payments over the ten-year period; and
 - Names DPW as the beneficiary in the first position of any funds remaining due at the death of Mrs. Rock, not to exceed the amount of medical assistance paid by DPW on behalf of Mr. Rock.
5. Mr. Rock's total gross monthly income is \$893.50 from Social Security. Based on his income, he will be able to retain \$8,000 in resources for himself (\$2,000 resource allowance + \$6,000 resource disregard = \$8,000).
6. Mrs. Rock receives \$1,800 gross monthly income from the annuity. Mrs. Rock also receives \$293.50 gross monthly income from Social Security and \$25 monthly interest from her CSRA. Mrs. Rock's total gross monthly income is \$2,118.50 (\$1,800 + \$293.50 + \$25 = \$2,118.50).
7. The CAO determined the CSMMNA for Mrs. Rock to be \$2,200 due to a mortgage and excess shelter costs. Mrs. Rock's total gross monthly income of \$2,118.50 is less than her CSMMNA of \$2,200/month.

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8. The CAO will treat the purchase of the annuity as a transfer of assets for FMV and will treat the annuity payments to Mrs. Rock as income.
9. Since we are counting the annuity as income, the CSRA does not have to be amended.
10. Mrs. Rock is entitled to \$81.50 from Mr. Rock's income to bring her income up to her CSMMNA of \$2,200/mo.
11. The CAO determined Mr. Rock eligible for Medicaid/LTC.

NEXT STEPS

1. Review this Operations Memorandum with appropriate staff.
2. Contact your Area Manager if you have questions.
3. This Operations Memorandum will become obsolete upon release of the revised LTC Handbook pages.