

Annuity Related provisions of 42 U.S.C. '1396p (as Amended by the Deficit Reduction Act of 2005 and the Tax Relief and Health Care Act of 2006)

(c) Taking into account certain transfers of assets

(1)

(F) For purposes of this paragraph, the purchase of an annuity shall be treated as the disposal of an asset for less than fair market value unless

- (i) the State is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the ~~annuitant~~ INSTITUTIONALIZED INDIVIDUAL¹ under this title; or
- (ii) is named as such a beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if such spouse or a representative of such child disposes of any such remainder for less than fair market value.²

(G) For purposes of this paragraph with respect to a transfer of assets, the term 'assets' includes an annuity purchased by or on behalf of an annuitant who has applied for medical assistance with respect to nursing facility services or other long-term care services under this title unless--

- (i) the annuity is--
 - (I) an annuity described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986; or
 - (II) purchased with proceeds from--
 - (aa) an account or trust described in subsection (a), (c), (p) of section 408 of such Code;
 - (bb) a simplified employee pension (within the meaning of section 408(k) of such Code); or
 - (cc) a Roth IRA described in section 408A of such Code; or
- (ii) the annuity--
 - (I) is irrevocable and nonassignable;
 - (II) is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration); and
 - (III) provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made.³

¹ Tax Relief and Health Care Act of 2006, Division B, Title IV, Section 405.

² DRA § 6012(b). Applies to transactions occurring on or after the date of enactment. See § 6012(d).

³ DRA § 6012(c). Applies to transactions occurring on or after the date of enactment. See § 6012(d).

(e)

(1) In order to meet the requirements of this section for purposes of section 1902(a)(18),⁴ a State shall require, as a condition for the provision of medical assistance for services described in subsection (c)(1)(C)(i) (relating to long-term care services) for an individual, the application of the individual for such assistance (including any recertification of eligibility for such assistance) shall disclose a description of any interest the individual or community spouse has in an annuity (or similar financial instrument, as may be specified by the Secretary), regardless of whether the annuity is irrevocable or is treated as an asset. Such application or recertification form shall include a statement that under paragraph (2) the State becomes the remainder beneficiary under such annuity or similar financial instrument by virtue of the provision of such medical assistance.⁵

(2)

(A) In the case of disclosure concerning an annuity under subsection (c)(1)(F), the State shall notify the issuer of the annuity of the right of the State under such subsection as a preferred remainder beneficiary in the annuity for medical assistance furnished to the individual. Nothing in this paragraph shall be construed as preventing such issuer from notifying persons with any other remainder interest of the State's remainder interest under such subsection.

(B) In the case of such an issuer receiving notice under subparagraph (A), the State may require the issuer to notify the State when there is a change in the amount of income or principal being withdrawn from the amount that was being withdrawn at the time of the most recent disclosure described in paragraph (1). A State shall take such information into account in determining the amount of the State's obligations for medical assistance or in the individual's eligibility for such assistance.

(3) The Secretary may provide guidance to States on categories of transactions that may [be] treated as a transfer of asset for fair market value.

(4) Nothing in this subsection shall be construed as preventing a State from denying eligibility for medical assistance for an individual based on the income or resources derived from an annuity described in paragraph (1).

(h) Definitions

In this section, the following definitions shall apply:

(1) The term "assets", with respect to an individual, includes all income and resources of the individual and of the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of

⁴ [Social Security Act Section 1902(a)(18) requires that state plans for Medical Assistance must "comply with the provisions of section 1917 with respect to liens, adjustments and recoveries of medical assistance correctly paid, transfers of assets, and treatment of certain trusts"].

⁵ DRA § 6012(a).

action—

(A) by the individual or such individual's spouse,

(B) by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse, or

(C) by any person, including any court or administrative body, acting at the direction or upon the request of the individual or such individual's spouse.