2339 – ANNUITIES

POLICY STATEMENT

Annuities are considered trust property. Trust, for purposes of asset transfers and the look-back period, includes annuities purchased by or on behalf of an individual who has applied for Medicaid covered nursing facility or other long term care services (LA-D COAs). An annuity, purchased prior to 2/8/06, that **is** *actuarially sound* is treated as a retirement fund. An annuity, purchased prior to 2/8/06, that **is not** *actuarially sound* is subject to the appropriate trust provisions. Any annuity purchased on or after 2/8/06 is subject to the changes outlined in the Deficit Reduction Act (DRA) of 2005

BASIC CONSIDERATIONS

An annuity is a financial entity that provides to the purchaser the right to receive periodic payments, either for life or for a specified period of time.

An annuity should be purchased as part of a retirement plan. Treatment of annuities is determined by whether or not the individual purchased the annuity as part of a legitimate retirement plan, or as an attempt to shelter resources for purposes of receiving Medicaid. A legitimate retirement plan is usually one that is established in anticipation of retirement or close to the date of retirement.

The annuity must be amortized. This means that the regular payments are equal so that the last payment is the same as the previous payment. For Medicaid purposes, payments must be monthly only.

The Deficit Reduction Act of 2005 (DRA)

The DRA of 2005, enacted 2/8/06, has changed the way some annuities are to be treated. These policy changes will be implemented beginning 2/1/07 for all applications (pending or new, including three months prior) and all new and pending reviews/specials.

State as Remainder Beneficiary (DRA)

Effective with annuities **purchased** on or after 2/8/06, for A/Rs applying for or already receiving LA-D Medicaid, the State of Georgia must be named as the remainder beneficiary of the annuity in the **first position** for the total amount of medical assistance paid on behalf of the individual receiving LA-D Medicaid.

EXCEPTION: If there is a community spouse and/or minor or disabled child(ren), the State may be named in the next position after those individuals. If that is the case and any of those

BASIC CONSIDERATIONS

State as Remainder Beneficiary (DRA) (cont.)

individuals or their representatives dispose of any of the remainder of the annuity for less than the FMV, the State must then be named in the first position.

The MES is required to notify the issuer of the annuity(s) of the State's rights as a preferred remainder beneficiary. The A/R, spouse or representative must notify DFCS of any changes in disbursement of income or principal from the annuity. The issuer of the annuity may disclose information about the State's position as remainder beneficiary to others who have a remainder interest in the annuity. Failure to name the State as the remainder beneficiary will result in a transfer of asset penalty. See Section 2342. This policy applies to annuities purchased by a spouse or to transactions made by the A/R or spouse, as well as annuities purchased by or on behalf of the A/R.

Full Disclosure (DRA)

The DRA requires a full disclosure and description of any interest the applicant or the community spouse may have in any and all annuities owned by the A/R and/or spouse. This disclosure is a condition for Medicaid eligibility for LA-D COAs:

- Nursing facility services (NH and institutional hospice);
- A level of care in any institution equivalent to that of nursing services (ex. Mental health/retardation hospitals); and
- Home and community based services furnished under a waiver COA (Katie Beckett, MRWP, CHSS, CCSP, ICWP, hospice).

If the A/R, spouse or representative refuses to disclose sufficient information to determine eligibility, computation of resources, income, or PL/CS the Medicaid case will be denied or terminated. If an unreported annuity is discovered after eligibility has been favorably established and after payment for long term care services has been made, the MES will take appropriate steps to terminate the Medicaid case as discussed above, including appropriate notice to the A/R of adverse action.
The MES will also refer the case to DCH to consider whether other steps should be taken, including, if appropriate, possible civil and criminal charges, liens, and potential recovery of benefits which were incorrectly paid.

BASIC CONSIDERATIONS (cont.)

Annuity as a Countable Asset (DRA)

An annuity is considered in determining eligibility, including spousal income and resources, and in the PL/CS determination. The MES will treat an **irrevocable, non-assignable actuarially sound annuity that provides payments in approximately equal amounts, with no deferred or balloon payments as an asset,** since they are marketable and can be sold. However, annuities that have a qualified tax status according to the Internal Revenue Code (IRC) are **not counted as assets**. These include annuities purchased with proceeds from 401k, pension, 403b or a qualified retirement plan or annuities considered as:

- An IRA according to section 408(b) of the IRC of 1986.
- A deemed IRA under a qualified employer plan according to section 408(q) of the IRC
- Purchased with proceeds from a traditional IRA according to section 408(a) of the IRC
- Purchased with proceeds from certain accounts or trusts which are treated as traditional IRAs according to section 408(c) of the IRC
- Purchased with proceeds from a simplified retirement account according to section 408 (p) of the IRC
- Purchased with proceeds from a simplified employee pension according to section 408(k) of the IRC
- Purchased with proceeds from a Roth IRA according to section 408(a) of the IRC

SSA Life Expectancy Table

Using the Social Security Administration's Life Expectancy Actuarial Tables for the age and sex of the purchaser in this section, determine if the expected return from the annuity is equal to the purchase price.

- If the expected return is equal to or greater than the purchase price, the annuity is actuarially sound. Treat as a retirement fund, if purchased prior to 2/8/06. Refer to Section 2332, Retirement Funds to determine how to treat retirement funds. If purchased on or after this date, treat under DRA'05 policy as outlined in this section.

- If the expected return is less than the purchase price, the annuity is not actuarially sound. The difference between the expected return and the purchase price is a trust. Treat under the appropriate trust provision. Refer to Sections 2336, Trust Property – Medicaid Qualifying; Section 2337, Trust

BASIC CONSIDERATIONS

SSA Life Expectancy Table (cont.)

Property OBRA '93; Section 2338, Trust Property to determine how to treat these trusts. If purchased on or after 2/8/06, treat under DRA '05 policy as outlined in this section.

Annuity-Related Transactions Other than Purchases

Certain transactions which are made to an annuity purchased prior to 2/8/06, may make that annuity subject to the DRA rules. These transactions include **any** action taken by the A/R or spouse that changes the course of payments to be made by the annuity or the treatment of the income or principal of the annuity. Examples of this type of transactions are:

- Additions of principal,
- Elective withdrawals,
- Requests to change the distribution of the annuity,
- Elections to annuitize the contract
- Similar actions taken after 2/8/06.

Routine changes and automatic events that do not require any action or decision after 2/8/06, are not considered transactions that would subject the annuity to treatment under these provisions of the DRA. Routine changes could be notification of an address change or death or divorce of a remainder beneficiary, and other similar circumstances. Changes which occur based on the terms of the annuity which existed prior to 2/8/06, and which do not require a decision, election or action to take effect are not subject to the DRA. Changes which are beyond the control of the individual, such as a change in law, a change in the policies of the issuer, or a change in the terms based on other factors, such as the issuer's economic conditions, are not considered transactions that cause the annuity to be subject to the terms under the DRA.

PROCEDURES

Follow the steps below to determine how to treat an **annuity purchased on or after 2/8/06:**

Step 1 Obtain a copy of the annuity and determine if the A/R, spouse or representative has given a full disclosure of the annuity. Have them complete the Annuity Disclosure form found in Appendix F. If the parties refuse to cooperate in the disclosure process or an unreported annuity is discovered after eligibility has been established and after payment for LA-D services have been made – **Stop-** Deny/terminate the Medicaid case allowing recipients adverse action.

For A/Rs who have not previously disclosed information regarding an annuity, report to Medicaid Fraud.

If there has been a full disclosure regarding the annuity, proceed to Step 2.

Step 2 Verify that the State of Georgia is named as the remainder beneficiary for any annuity owned by the A/R or spouse, or the next beneficiary if there is a spouse, minor/disabled child(ren) in the home. If yes, MES:

- will notify the issuer of the annuity that the State is named as beneficiary in the first position. Use Annuity Issuer Form found in Appendix F.
- inform the A/R or representative to notify the state when there is any change in the amount of the income or principal being withdrawn, and
- Proceed to step 4

Step 3 If the State is not named as the appropriate beneficiary – **Stop** - develop a transfer of assets penalty on the full value remaining on the annuity as follows:

- For NH/IH the penalty will result in no vendor payment made to the facility and an increase in PL for any partial month penalty. Refer to Section 2342.
- For home and community based waiver cases, deny/terminate the case allowing for adverse action. Refer to Section 2342.

For recipients in either situation,, allow the A/R or representative 30 days in which to have the annuity changed to name the State in the proper position. If they fail to comply, close the case or impose the transfer penalty as appropriate.

PROCEDURES (cont.)

Step 4 Determine if the annuity is one which is exempt from the transfer of assets penalty as outline by the Internal Revenue Code of 1986. See page 3 of this section.

Determine if the annuity is irrevocable, non-assignable, actuarially sound and provides equal monthly payments. See Step 2 through 9 following this set of Procedures.

- If the annuity meets all these requirements – **Stop** - it is counted as an asset in the resource determination process, unless it is one as outline by the Internal Revenue Code of 1986. See page 3 of this section..
- If it does not meet these criteria, impose the transfer of assets penalty as follows:
    - for NH/institutionalized hospice A/Rs, the penalty will result in no vendor payment made to the facility and an increase in PL for any partial month penalty. (Section 2342)
    - for home and community based waiver cases, deny/terminate the case allowing for adverse action. (Section 2342)
- If the annuity is one exempt under the IRC rules, count the income received from the annuity toward the income eligibility and PL/CS determination.

Step 5 If the AU is approved and the annuity is **NOT** actuarially sound or not amortized, attach a copy of the document to a completed Form DMA-285 and forward to: (signature of A/R or RP not required)

Third Party Liability Unit
P.O. Box 38439
Atlanta, Georgia 30334

PROCEDURES (cont.)

Follow the steps below to determine if an annuity is actuarially sound for **annuities purchased prior to 2/8/06 or Steps 2 – 9 for DRA '05 annuities:**

Step 1 Determine the date on which the annuity was purchased. Use the appropriate trust provisions (based on the date of purchase and whose funds were used) to determine how to treat the annuity. The appropriate trust provisions are found in Section 2336 Trust Property – Medicaid Qualifying; Section 2337, Trust Property OBRA '93; and Section 2338, Trust Property.

Step 2 Determine the age and sex of the purchaser at the time of purchase.

PROCEDURES (cont.)

Step 3 Verify the purchase price of the annuity.

Step 4 Determine if the plan is part of a legitimate retirement plan or done to qualify for Medicaid. The burden of proof is on the A/R or the representative.

If the annuity is not part of a legitimate retirement plan, STOP. Compute a transfer of assets penalty using the amount of money placed in the annuity. See Section 2342, Transfer of Assets. If the annuity is a legitimate part of a retirement plan, proceed to Step 5

Step 5 Determine the amount and the frequency of the payments. If the payment frequency is other than monthly, require that the payments be converted to monthly. If the payments are not converted to monthly, compute a transfer of assets penalty using the amount of money placed in the annuity.

Step 6 Determine the length of time that the individual will receive periodic payments from the annuity.

Step 7 Determine if the annuity is amortized.

- If the annuity is not amortized, consider a transfer of assets penalty on the purchase price of the annuity. Refer to Section 2342. Transfer of Assets. Proceed to Step 11.
- If the annuity is amortized, proceed to Step 8.

PROCEDURES (cont.)

Step 8

Using the Social Security Life Expectancy Actuarial Table, determine the life expectancy of the purchaser from the date of the purchase of the annuity.

Step 9

Based on the individual's life expectancy, the amount, frequency, and duration of the payments, calculate the total dollar amount of the payment the purchaser is expected to receive from the annuity.

If the total dollar amount of the payment from the annuity is expected to equal or exceed the purchase price, the annuity is considered to be actuarially sound. Treat the annuity as retirement funds if purchased prior to 2/8/06. See Section 2332, Retirement Funds, to determine the correct treatment of retirement funds. For DRA '05 annuities, return to page 6 step 4.

Step 10

If the total dollar amount of payment from the annuity is expected to be less than the purchase price, the annuity is not considered to be actuarially sound. For DRA '05 annuities, return to page 6 step 4. For those purchased prior to 2/8/06 proceed to step10.

Calculate the difference between the purchase price and the expected total payment from the annuity.

- The amount of the purchase price that the A/R is expected to receive is considered retirement funds

.

- The amount of the purchase price the A/R is not expected to receive should be counted as a trust under the correct trust provisions..

Step 11

If the AU is approved and the annuity is **NOT** actuarially sound or not amortized, attach a copy of the document to a completed Form DMA-285 and forward to: (signature of A/R or RP not required)

Third Party Liability Unit
P.O. Box 38439
Atlanta, Georgia 30334

Annual Review

At each annual review, for A/R **and** spouse, reverify income received, ask about any changes made to the annuity and that the annuity and/or income from it has not been transferred. In addition, for DRA annuities, reverify that the State is still the remainder beneficiary,.

Family Medicaid

Refer to Section 2301, FM Overview and to Section 2399, Treatment of Resources by Resource Type Chart.

Use the table below to determine the value of compensation for annuities and contracts. Refer to the formula found at the end of the chart to compute if an annuity or contract is actuarially sound.

LIFE EXPECTANCY TABLE

AGE	Years of Life Remaining Male	Years of Life Remaining Female	AGE	Years of Life Remaining Male	Years of Life Remaining Female
0	74.21	79.49	26	49.72	54.47
1	73.78	78.99	27	48.79	53.49
2	72.82	78.02	28	47.85	52.52
3	71.85	77.05	29	46.91	51.55
4	70.87	76.06	30	45.98	50.58
5	69.88	75.07	31	45.04	49.61
6	68.90	74.08	32	44.10	48.65
7	67.91	73.10	33	43.17	47.68
8	66.92	72.11	34	42.24	46.72
9	65.93	71.11	35	41.31	45.76
10	64.94	70.12	36	40.38	44.80
11	63.95	69.13	37	39.45	43.85
12	62.96	68.14	38	38.53	42.90
13	61.97	67.15	39	37.62	41.95
14	60.98	66.16	40	36.71	41.01
15	60.01	65.18	41	35.80	40.07
16	59.05	64.20	42	34.90	39.14
17	58.10	63.22	43	34.00	38.21
18	57.15	62.25	44	33.12	37.28
19	56.22	61.27	45	32.23	36.36
20	55.28	60.30	46	31.36	35.44
21	54.35	59.33	47	30.49	34.52
22	53.43	58.36	48	29.63	33.61
23	52.50	57.38	49	28.77	32.71
24	51.58	56.41	50	27.92	31.80
25	50.65	55.44	51	27.07	30.90

AGE	Years of Life Remaining Male	Years of Life Remaining Female	AGE	Years of Life Remaining Male	Years of Life Remaining Female
52	26.24	30.01	84	5.58	6.86
53	25.40	29.12	85	5.20	6.40
54	24.58	28.24	86	4.85	5.96
55	23.76	27.36	87	4.51	5.54
56	22.95	26.50	88	4.20	5.14
57	22.15	25.64	89	3.90	4.78
58	21.36	24.78	90	3.63	4.43
59	20.58	23.94	91	3.38	4.11
60	19.81	23.11	92	3.15	3.82
61	19.05	22.28	93	2.93	3.55
62	18.31	21.47	94	2.74	3.30
63	17.57	20.67	95	2.56	3.08
64	16.85	19.88	96	2.41	2.88
65	16.15	19.09	97	2.27	2.70
66	15.45	18.32	98	2.15	2.54
67	14.77	17.56	99	2.04	2.39
68	14.10	16.82	100	1.93	2.25
69	13.45	16.08	101	1.82	2.11
70	12.81	15.36	102	1.72	1.98
71	12.19	14.66	103	1.63	1.86
72	11.59	13.96	104	1.53	1.74
73	11.00	13.29	105	1.44	1.63
74	10.42	12.62	106	1.36	1.52
75	9.86	11.97	107	1.28	1.41
76	9.32	11.33	108	1.20	1.31
77	8.79	10.71	109	1.12	1.22
78	8.29	10.10	110	1.05	1.13
79	7.79	9.51	111	0.98	1.05
80	7.31	8.94	112	0.92	0.97
81	6.85	8.39	113	0.85	0.89
82	6.41	7.86	114	0.79	0.82
83	5.99	7.35	115	0.73	0.75

AGE	Years of Life Remaining Male	Years of Life Remaining Female	AGE	Years of Life Remaining Male	Years of Life Remaining Female
116	0.68	0.68	118	0.57	0.57
117	0.63	0.63	119	0.53	0.53

Formula:

Age at time of purchase + yrs. of life remaining (from chart) = expected age for life.

Then (Expected age for life) **–** (age at time of purchase - 1 yr.) = remaining yrs.;

remaining yrs. X 12 (if payments are monthly) = # of monthly payments;

# of monthly payments X monthly payment amount = Total $ amount received in payment.

If this $ amount is equal to or greater than purchase price, then the annuity is actuarially sound.