

TO: Local District Commissioners, Medicaid Directors

FROM: Judith Arnold, Director
Division of Coverage and Enrollment

SUBJECT: Treatment of Annuities for New York State Partnership for Long-Term Care Policy/Certificate Holders

EFFECTIVE DATE: Immediately

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The purpose of this GIS message is to inform local districts of the treatment of annuities when determining Medicaid Extended Coverage eligibility for New York State Partnership for Long-Term Care policy/certificate holders.

Administrative Directive 06 OMM/ADM-5 specifies that as a condition of eligibility for nursing facility services the A/R must disclose a description of any interest the individual or the individual's spouse has in an annuity. In addition, for annuities purchased by the applicant or the applicant's spouse on or after February 8, 2006, the State must be named the remainder beneficiary in the first position or the purchase of the annuity will be considered an uncompensated transfer of assets. In cases where there is a community spouse, or minor or disabled child, the State must be named the beneficiary in the second position. If the annuity is purchased by or on behalf of the A/R, the annuity must meet the additional criteria listed in 06 OMM/ADM-5 or the purchase will be considered an uncompensated transfer of assets.

Partnership policy/certificate holders with Total Asset protection have their Medicaid eligibility determined without regard to resources. Since resources are exempt from consideration, the transfer of assets provisions (i.e., look-back period and penalty period) do not apply. Therefore, in determining Medicaid Extended Coverage (MEC) for such policy/certificate holders, any annuity that the policy/certificate holder or the policy/certificate holder's spouse has purchased is exempt from the annuity requirements listed in 06 OMM/ADM-5.

A Dollar for Dollar Partnership policy/certificate holder applying for MEC is entitled to a resource disregard (asset protection) that is equal to the amount of long-term care benefits paid by their Partnership insurance. This disregard is used first to determine the resource eligibility of the Dollar for Dollar Partnership policy/certificate holder. If the policy/certificate holder is applying for nursing facility services and the policy/certificate holder or his/her spouse made a prohibited transfer within the look-back period, any remaining dollar-for-dollar disregard not used to establish resource eligibility may be used to offset the transferred resources.

If an annuity is a countable resource at the time of application for MEC (e.g., a deferred annuity), the Dollar for Dollar Partnership policy/certificate holder may use the asset protection earned by the Partnership insurance to establish resource eligibility. If the Dollar for Dollar asset protection is not sufficient to disregard the entire value of the annuity, any portion of the annuity value not disregarded is a countable resource for purposes of determining eligibility for Medicaid Extended Coverage. Regardless of whether the Dollar for Dollar asset protection is sufficient to disregard the entire value of the annuity, the Dollar for Dollar Partnership policy/certificate holder or his/her spouse would not be required to name the State as a remainder beneficiary of the annuity.

In cases where an annuity is not a countable resource (e.g., a qualified annuity in payment status) and the Dollar for Dollar Partnership policy/certificate holder is applying for Medicaid coverage of nursing facility services, the policy/certificate holder and his/her spouse will be required to name the State as remainder beneficiary or else the purchase of the annuity may be treated as an uncompensated transfer. If the policy/certificate holder or his/her spouse does not elect to name the State as remainder beneficiary, any dollar-for-dollar disregard not used to establish resource eligibility may be used to offset the amount of the transfer (the purchase price of the annuity less any monies actually received from the annuity). A note should be kept in the case record of any dollar-for-dollar disregard used to offset a transferred resource, as this amount cannot be used again.

Note: The transfer provisions apply to annuities purchased on or after August 8, 2006, and within the transfer look-back period for Medicaid coverage of nursing facility services.