Ohio Administrative Code

Rule 5160:1-6-06.1 Medicaid: treatment of annuity purchases and transactions.

Effective: January 1, 2024

(A) This rule describes the treatment of annuity purchases and transactions when an institutionalized individual is requesting medicaid payment for long-term care (LTC) services.

(B) The institutionalized individual, or his or her spouse, must disclose any interest that he or she has in an annuity, regardless of whether the annuity is irrevocable or is treated as an asset to the institutionalized individual or his or her spouse.

(C) Failure to comply with paragraph (B) of this rule will result in a denial or discontinuance of medical assistance for failure to cooperate as required by rule 5160:1-2-10 of the Administrative Code.

(D) Treatment of annuity purchases or transactions on or after February 8, 2006.

(1) Any purchase or annuity transaction, including annuities purchased by a spouse, shall be treated as an improper transfer subject to a restricted medicaid coverage period (RMCP) in accordance with rule 5160:1-6-06.5 of the Administrative Code unless:

(a) The state of Ohio is named as the remainder beneficiary in the first position for the total amount of medical assistance furnished to the institutionalized individual; or

(b) The state of Ohio is named as such a beneficiary in the second position for the total amount of medical assistance furnished to the institutionalized individual after the community spouse or minor or disabled child, or is named in the first position for the total amount of medical assistance furnished to the institutionalized individual when such spouse or a representative of such child disposes of any such remainder for less than fair market value.

(2) In addition to paragraph (D)(1) of this rule, when the annuity is purchased by or on behalf of an annuitant, as defined in rule 5160:1-3-05.3 of the Administrative Code, who has applied for medical

assistance, the purchase of the annuity will be deemed an improper transfer subject to an RMCP even when the beneficiary naming requirements in paragraph (D)(1) of this rule are met, unless the annuity meets the conditions in either paragraph (D)(2)(a) or (D)(2)(b) of this rule:

(a) The annuity:

(i) Is an annuity described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986 (as in effect October 1, 2023); or

(ii) Is an annuity that was purchased with proceeds from:

(A) An account or trust described in subsection (a), (c), or (p) of section 408 of such code; or

(B) A simplified employee pension (within the meaning of section 408(k) of such code); or

(C) A Roth IRA described in section 408A of such code.

(b) The annuity meets all of the following requirements:

(i) The annuity is irrevocable and non-assignable; and

(ii) The annuity is actuarially sound as determined by the life expectancy tables published by the office of the actuary of the social security administration in accordance with 26 C.F.R. 20.2031-7 (as in effect October 1, 2023). For an annuity to be considered actuarially sound, the total amount of proceeds shall be designed to be dispersed in equal monthly payments with no anticipated lump-sum payment. The only allowable lump-sum payment is the refund provided when the annuitant dies prior to the end of the guaranteed period and is paid to the remainder beneficiary; and

(iii) The annuity provides for payments in equal amounts during the term of the annuity with no deferral and no balloon payments made.

(E) Transactions which occur on or after February 8, 2006, with respect to an annuity purchased prior to February 8, 2006, may subject the annuity to the requirements in paragraph (D) of this rule.

(1) Such transactions include any action taken by the institutionalized individual that changes the course of payments to be made by the annuity or the treatment of income or principal of the annuity. The actions include additions of principal, elective withdrawals, requests to change the distribution of the annuity, elections to annuitize the contract and similar actions taken by the institutionalized individual after February 8, 2006.

(2) Routine changes and automatic events that do not require any action or decision after the effective date of enactment are not considered transactions that would subject the annuity to the requirements in paragraph (D) of this rule. Routine changes include notification of an address change, death, divorce of a remainder beneficiary, or other similar transactions.

(F) Annuities purchased prior to February 8, 2006, are not subject to the requirements of this rule unless the requirements in paragraph (E) of this rule are met.

(G) When an annuity purchase or transaction is deemed improper then the full purchase price of the annuity is subject to an RMCP in accordance with rule 5160:1-6-06.5 of the Administrative Code. For an annuity purchase or transaction to be deemed improper the purchase or transaction must have occurred after the look-back date.