

Annuities 510-05-70-45

General Information 510-05-70-45-05

(Revised 4/1/11 ML #3263)

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1. An annuity is a financial instrument, identified as such, that is established to provide periodic income payments over a defined period of time (see "annuity"). Most annuities are sold by organizations such as insurance companies (see "issuing entity"), though individuals sometimes assume the responsibility to pay annuity contracts. An annuity may be purchased with a single lump sum payment or through periodic payments. Annuities have long been used as a means of creating retirement income, and many established retirement plans involve the use of annuities. Annuities are also used in an attempt to convert countable assets into income so as to avoid consideration of those assets in eligibility determinations.
2. The following annuity sections describe the effect of any annuity on any application for Medicaid benefits. These sections identify annuities that are not countable assets; annuities that are countable assets, how to establish the value of an annuity; and how to determine if the purchase, annuitization, or change to an annuity is a disqualifying transfer, and if so, how to determine the amount of the disqualifying transfer. These sections take into consideration asset considerations ([510-05-70-10](#)), valuation of assets ([510-05-70-60](#)), and federal and state (N.D.C.C. [50-24.1-02.8](#)) annuity provisions, which govern transfers and purchases of annuities. These sections recognize the extent to which annuities may be returned to the issuing entity for a cash settlement, transferred to another individual as payee, or have the payee's rights to income sold to another without the permission, or even the knowledge, of the issuing entity.
3. Annuities may be submitted to the Medicaid Eligibility unit for assistance in determining whether the annuity is countable as an asset or whether a disqualifying transfer occurred. A copy of the entire annuity policy, the date of birth of the annuitant, and verification of the annuity purchase price and, if applicable, date of annuitization must be secured and submitted with the inquiry. A [review cover sheet](#) is available on the DHS County Intranet web site under the "Medicaid-Healthy Steps/Hard Cards/Annuity Information" folder for those wishing to submit an annuity to the Medicaid Eligibility Unit. Annuity checklists are also available in that folder for those workers wishing to make the determinations on their own. There is a separate checklist depending on when the annuity was last purchased or changed.

Definitions for Annuities 510-05-70-45-10

(Revised 1/1/08 ML #3120)

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For purposes of the annuity sections:

1. "Annuitant" means the individual whose life is considered in determining the price and payment schedule of an annuity, and who is usually the payee of the annuity;
2. "Annuitized annuity" means an annuity subject to a contractually established schedule of payments to be made by the issuing entity, other than an immediate lump sum payment of all of the annuity's value;
3. "Annuity" means a policy, certificate, contract, or other arrangement between two or more parties whereby one party pays money or other valuable consideration to the other party in return for the right to receive payments in the future for a fixed period of time;
4. "Employee benefit annuity" means:
 - a. An annuity that was purchased with the proceeds from an individual retirement account (IRA), a Roth IRA, a simplified employee pension, an employer or employee association retirement account, or an employer simple retirement account, as described in section 408 of the Internal Revenue code of 1986 (IRC);
 - b. An individual retirement annuity under Section 408(b) of the IRC (not to be confused with an individual retirement account); or
 - c. An annuity described in any of the following IRC Sections:
 - i. Employer plan under 401(a);
 - ii. Trust under 501(a);
 - iii. Annuity plan under 403(a) or 403 (b); or
 - iv. Deferred compensation plan under 457(b).

(These annuities are considered "qualified" annuities.);

5. "Issuing entity" means the individual or entity that issues and undertakes a promise to make payments provided in an annuity;
6. "Level monthly payments" means substantially equal monthly payments such that the total annual payment in any year varies by five percent or less from the total annual payment of the previous year and does not provide for a balloon or deferred payment of principal or interest;
7. "Life expectancy" means the anticipated lifetimes of individuals of a given age and sex according to the appropriate life expectancy table at [05-100-75](#).
8. "Third party annuity" means an annuity that is purchased and owned by a third party, but in which a Medicaid applicant, recipient, or their spouse, is the annuitant (i.e. an accident settlement annuity).

Valuation of Annuities 510-05-70-45-15

(Revised 12/1/19 ML #3569)


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1. The value of a countable annuity is:
 - a. If the annuity may be surrendered to its issuing entity for a refund or payment of a specified amount or provides an available lump-sum settlement option, an amount equal to the total available proceeds from that refund, surrender, or settlement; and
 - b. For any other annuity, an amount equal to either:
 - i. Its value as a contractual right to receive money payments (value of outstanding payments due); or
 - ii. Following a good faith effort to sell the annuity, an amount equal to the highest amount offered by a buyer ready and able to complete the purchase of the annuity or the right to receive a stream of income consisting of the payments yet to come due under the terms of the annuity.
2. The owner of an annuity may demonstrate a good faith effort to sell the annuity or the right to receive the payments from the annuity by making an offer to sell to the regular market for such property.
 - a. "Receivables" are the legal right to be paid money due under the terms of a contract. The income stream produced by an annuity is such a receivable. Any person may purchase the right to this income stream.
 - b. A "factor" is someone who buys receivables at a discount.
 - c. The "factors' market" is one place that an annuity's income stream may be sold. Companies and individuals nationwide will pay a lump sum in return for the right to receive the remaining annuity payments. This income stream may be sold regardless of whether the annuity is irrevocable or not assignable. Several offers must be sought in order to establish the fair market value of the annuity.
3. A good faith effort to sell must include an honest effort to sell the annuity that is reasonably calculated to induce a willing buyer to believe the annuity or income stream offered for sale is actually for sale. An offer to sell an annuity or its payments includes making an offer to potential purchasers. The offer must include, at a minimum:
 - a. That the annuity owner is willing to take all necessary steps to sell the annuity or relinquish the payments under it in exchange for a lump sum payment including but not limited to providing an irrevocable power of attorney, change of beneficiary, payee, or address;

- b. The amount of payments;
 - c. A description of the term of the payments (how long they will last); and
 - d. The name, address, and telephone number of a person who will answer inquiries and receive offers.
4. An annuity may not be excluded from consideration as an asset on the basis that it is not saleable without working an undue hardship.

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Annuities Purchased or Changed on or After February 8, 2006 510-05-70-45-30

(Revised 12/1/19 ML #3569)


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1. Any payment received from the annuity is income, regardless whether the annuity itself is countable as an asset or is considered a disqualifying transfer.
2. An annuity is considered changed on or after February 8, 2006 if any action is taken on or after that date that changes the course of payments or the treatment of the income or principal of the annuity. These actions include additions of principal to the annuity, elective withdrawals, requests to change the distribution of the annuity, elections to annuitize the contract, or similar actions.
3. The annuity is counted as an available asset in the asset test if the individual has the power to liquidate the annuity, the annuity is revocable, or able to be assigned to another person.
4. The annuity is considered a disqualifying transfer unless:
 - a. The payment option was selected, or the latest change to the annuity was made, prior to the individual's, or the individual's spouse's look back date;
 - b. The annuity is a qualified employee benefit annuity, **and** the Department is named as the remainder beneficiary in the first position for at least the total amount of Medicaid paid on behalf of the annuitant or the annuitant's spouse. The Department may be named as the remainder 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 child disposes of any such remainder for less than fair market value;
 - c. The annuity:
 - i. Provides substantially equal payments, no less frequently than annually, such that the total annual payment is any year varies by five percent or less from the total annual payment of the previous year and does not provide for a balloon or deferred payment of principal or interest;
 - ii. The annuity will return the full principal and interest within the annuitant's life expectancy; **and**
 - iii. The Department is named as the remainder beneficiary in the first position for at least the total amount of Medicaid paid on behalf of the annuitant or the annuitant's spouse. The Department may be named as the remainder 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 child disposes of any such remainder for less than fair market value; or
 - d. The annuity is a third party annuity.

5. The uncompensated value of an annuity that is considered a disqualifying transfer is an amount equal to the remaining payments due from the annuity (or the applicant or recipient can show the outstanding principal amounts due, if that information can be attained).
6. The date of the disqualifying transfer is the date the payment option was selected on the annuity, or if later, the date the annuity was changed so the annuity could no longer be surrendered.
7. When the Department is entitled to be the remainder beneficiary of an annuity purchased or changed on or after February 8, 2006, the "Notice to Insurer of Annuity" (SFN 1186) ([05-100-96](#)) must be sent to the company that issued the annuity. The notice must be sent and verification received back from the company, prior to approving the Medicaid application, or if an ongoing case, when the annuity is reported.

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Submitting Annuities or IRA's for Review

Attach a copy of the entire ANNUITY/IRA CONTRACT including the application and any amendments or riders. (Check to see that all pages appear to be included.)

Name of Medicaid applicant(s): _____

Date of Medicaid application: _____

Is this individual in the nursing home or in receipt of HCBS? Yes or No
Date of entry: _____

Is this an Annuity or IRA

Owner of Annuity/IRA: _____ DOB: _____

Who provided the funds to purchase the annuity or IRA?

Is the annuity/IRA paying out? Yes or No

If so: How much? How often? Date of first payment?

Is the annuity: Irrevocable Revocable

Is this review for an asset assessment? Yes or No

Is this a spousal impoverishment case? Yes or No

If so, indicate the **name** of spouse, and the **date** he/she entered the nursing home or HCBS:

Does the individual have other income? Yes or No

If yes, please list the source and monthly amounts of income:

Case Number: _____ County: _____

Worker's Name: _____ Phone: _____

Send information to:
Medicaid Eligibility
Economic Assistance Division
State Capital 3rd Floor Judicial Wing OR
600 E Boulevard Ave
Bismarck ND 58505

Email:
hccpolicy@nd.gov



**NOTICE TO ISSUER OF ANNUITY OF STATE'S RIGHT AS A PREFERRED
REMAINDER BENEFICIARY DUE TO MEDICAID BENEFITS PROVIDED**
DEPARTMENT OF HUMAN SERVICES
MEDICAL SERVICES DIVISION
SFN1186 (9-2006)

Pursuant to the Deficit Reduction Act of 2005, (Public Law No. 109-171), Medicaid recipients of nursing care level of benefits must name the state as a preferred remainder beneficiary of any annuity owned by the Medicaid recipient or the recipient's spouse, for an amount up to the cost of Medicaid paid.

By virtue of the provision of Medicaid to the individual described below, the State of North Dakota hereby notifies you that the State has a right as a preferred remainder beneficiary of the annuity described below which was issued by you. You must change the remainder beneficiary of the annuity to the North Dakota Department of Human Services for an amount that is at least equal to the cost of Medicaid paid to the individual described below or his or her spouse. The State must be named as a beneficiary in the second position if the annuitant provides you with verification that he or she has a non-institutionalized spouse or a minor or disabled child. The State must be named as the remainder beneficiary in the first position if the spouse or a representative of a minor or disabled child disposes of any such remainder for less than fair market value.

You must also notify the State of North Dakota of any changes in the amount of income or principal being withdrawn from the amount that was being withdrawn from the annuity at the time the annuity was disclosed to the state (date is noted below) or of any sale, assignment or transfer of the annuity. You may disclose information about the States position as remainder beneficiary to others who have a remainder interest in the annuity. The Medicaid applicant or recipient has been notified of the right of the State as a preferred remainder beneficiary of this annuity.

Please provide verification that the annuity names the North Dakota Department of Human Services as the preferred remainder beneficiary of this annuity. Please send this verification, or any beneficiary payments due to the State to:

North Dakota Department of Human Services
Division of Medical Services
600 E. Boulevard Ave, Dept 325
Bismarck, ND 58505

Annuitant		
Annuitant's City	State	Zip Code
Contract Number		
Issuing Company		
Contract Issue Date		
Date on which the annuity was disclosed to the State		