

Department of Social and Health Services
Olympia, Washington

ELIGIBILITY EA-Z MANUAL REVISION

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Medical-How Annuities Affect Eligibility for Medical Programs

- **WAC 388-561-0200 Annuities established prior to April 1, 2009**
- **WAC 388-561-0201 Annuities established on or after April 1, 2009**

These WACs are effective 4/1/2009

http://www.dshs.wa.gov/manuals/eaz/sections/medicaltrust/Tales_C_annuities.shtml

What has changed with annuities established on or after April 1, 2009?

- Unless specifically unavailable, most annuities will be counted as available resources
- Most annuities are saleable therefore transfer penalties will be rare
- Some types of retirement annuities or annuities created from retirement accounts or trusts are unavailable (section 408 and 408A Internal Revenue Code)
- Tightens pay out periods to a minimum of 5 years up to the actuarial life expectancy OR the actual life expectancy if less than 5 years
- To be unavailable requires specific beneficiary designations so Washington State can recover from the annuity. This includes the community spouse.

For more information Clarifying Information has been updated for Annuities established on or after 4/1/2009. EAZ clarifying information has been updated regarding annuities including tips on coding annuities in ACES.

http://www.dshs.wa.gov/manuals/eaz/sections/MedicalTrust/TALES_April2009_Annuitiesclarifying.shtml

A copy of the WAC changes to WAC 388-561-0200 and WAC 388-561-0201 is attached.

AMENDATORY SECTION (Amending WSR 08-20-117 and 08-21-083, filed 9/30/08 and 10/14/08, effective 4/1/09)

WAC 388-561-0200 Annuities established prior to ((November)) April 1, ((2008.))
2009 (1) The department determines how annuities affect eligibility for medical programs.

(2) A revocable annuity is considered an available resource.

(3) An irrevocable annuity established prior to May 1, 2001 is not an available resource when issued by an individual, insurer, or other body licensed and approved to do business in the jurisdiction in which the annuity is established.

(4) The income from an irrevocable annuity, meeting the requirements of this section, is considered in determining eligibility and the amount of participation in the total cost of care. The annuity itself is not considered a resource or income.

(5) An annuity established on or after May 1, 2001 and before ((November)) April 1, ((2008.)) 2009 will be considered an available resource unless it:

(a) Is irrevocable;

(b) Is paid out in equal monthly amounts within the actuarial life expectancy of the annuitant;

(c) Is issued by an individual, insurer or other body licensed and approved to do business in the jurisdiction in which the annuity is established; and

(d) Names the department as the beneficiary of the remaining funds up to the total of medicaid funds spent on the client during the client's lifetime. This subsection only applies if the annuity is in the client's name.

(6) An irrevocable annuity established on or after May 1, 2001 and before ((November)) April 1, ((2008.)) 2009 that is not scheduled to be paid out in equal monthly amounts, can still be considered an unavailable resource if:

(a) The full pay out is within the actuarial life expectancy of the client; and

(b) The client:

(i) Changes the scheduled pay out into equal monthly payments within the actuarial life expectancy of the annuitant; or

(ii) Requests that the department calculate and budget the payments as equal monthly payments within the actuarial life expectancy of the annuitant. The income from the annuity remains unearned income to the annuitant.

(7) An irrevocable annuity, established prior to May 1, 2001 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource transferred without adequate consideration at the time it was purchased. A penalty period of ineligibility, determined according to WAC 388-513-1365, may be imposed equal to the amount of the annuity to be paid out in excess of the annuitant's actuarial life expectancy.

(8) An irrevocable annuity, established on or after May 1, 2001 and before ((November)) April 1, ((2008.)) 2009 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource transferred without adequate consideration at the time it was purchased. A penalty may be imposed equal to the amount of the annuity to be paid out in excess of the annuitant's actuarial life expectancy. The penalty for a client receiving:

(a) Long-term care benefits will be a period of ineligibility (see WAC 388-513-1365).

(b) Other medical benefits will be ((ineligibility [ineligible])) ineligible¹ in the month of

¹WAC 388-561-0200WSR 01-06-043, filed 3/5/01Should be ineligible

application.

(9) An irrevocable annuity is considered unearned income when the annuitant is:

(a) The client;

(b) The spouse of the client;

(c) The blind or disabled child, as defined in WAC 388-475-0050 (b) and (c), of the client;

(d) A person designated to use the annuity for the sole benefit of the client, client's spouse, or a blind or disabled child, as defined in WAC 388-475-0050 (b) and (c), of the client.

(10) An annuity is not considered an available resource when there is a joint owner, co-annuitant or an irrevocable beneficiary who will not agree to allow the annuity to be cashed, UNLESS the joint owner or irrevocable beneficiary is the community spouse. In the case of a community spouse, the cash surrender value of the annuity is considered an available resource and counts toward the maximum community spouse resource allowance.

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530. 08-20-117 and 08-21-083, § 388-561-0200, filed 9/30/08 and 10/14/08, effective 4/1/09. Statutory Authority: RCW 74.04.050, 74.08.090, and 74.09.500. 01-06-043, § 388-561-0200, filed 3/5/01, effective 5/1/01.]

AMENDATORY SECTION (Amending WSR 08-20-117 and 08-21-083, filed 9/30/08 and 10/14/08, effective 4/1/09)

WAC 388-561-0201 Annuities established on or after ~~((November))~~ April 1, ((2008)) 2009. (1) The department determines how annuities affect eligibility for medical programs. Applicants and recipients of medicaid must disclose to the state any interest the applicant or spouse has in an annuity.

(2) A revocable annuity is considered an available resource.

(3) The following annuities are not considered ~~((available resources))~~ an available resource or a transfer of a resource as described in WAC 388-513-1363, if the annuity meets the requirements described in (4)(d), (e) and (f) of this subsection:

(a) An annuity described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986;

(b) Purchased with proceeds from an account or trust described in subsection (a), (c), or (p) of section 408 of the Internal Revenue Code of 1986;

(c) Purchased with proceeds from a simplified employee pension (within the meaning of section 408 of the Internal Revenue Code of 1986); or

(d) Purchased with proceeds from a Roth IRA described in section 408A of the Internal Revenue Code of 1986.

(4) The purchase of an annuity not described in subsection (3) established on or after ~~((November))~~ April 1, ((2008)) 2009, will be considered as an available resource unless it:

(a) Is immediate, irrevocable, nonassignable; and

(b) Is paid out in equal monthly amounts with no deferral and no balloon payments:

(i) Over a term equal to the actuarial life expectancy of the annuitant; or

(ii) Over a term that is not less than five years if the actuarial life expectancy of the annuitant is at least five years; or

(iii) Over a term not less than the actuarial life expectancy of the annuitant, if the actuarial life expectancy of the annuitant is less than five years.

(iv) Actuarial life expectancy shall be determined by tables that are published by the office of the chief actuary of the social security administration (<http://www.ssa.gov/OACT/STATS/table4c6.html>).

(c) Is issued by an individual, insurer or other body licensed and approved to do business in the jurisdiction in which the annuity is established;

(d) Names the state as the remainder beneficiary when the (~~applicant~~) purchaser of the annuity is the annuitant and is an applicant for or recipient of medicaid, or a community spouse of an applicant for or recipient of long-term care or waiver services:

(i) In the first position for the total amount of medical assistance paid for the individual, including both long-term care services and waiver services; or

(ii) In the second position for the total amount of medical assistance paid for the individual, including both long-term care services and waiver services, if there is a community spouse, or a minor or disabled child as defined in WAC 388-475-0050 (b) and (c) who is named as the beneficiary in the first position.

(e) Names the state as the beneficiary upon the death of the community spouse for the total amount of medical assistance paid on behalf of the individual at any time of any payment from the annuity if a community spouse is the annuitant;

(f) Names the state as the beneficiary in the first position for the total amount of medical assistance paid on behalf of the individual at the time of any payment from the annuity, including both long-term care services and waiver services, unless the annuitant has a community spouse or minor or disabled child, as defined in WAC 388-475-0050 (b) and (c). If the annuitant has a community spouse or minor or disabled child, such spouse or child may be named as beneficiary in the first position, and the state shall be named as beneficiary in the second position:

(i) If the community spouse, minor or disabled child, or representative for a child named as beneficiary is in the first position as described in (f) and transfers his or her right to receive payments from the annuity for less than fair market value, then the state shall become the beneficiary in the first position.

(5) If the annuity is not considered a resource, the stream of income produced by the annuity is considered available income.

(6) An irrevocable annuity established on or after (~~November~~) April 1, (~~(2008)~~) 2009 that meets all of the requirements of subsection (4) except that it is not immediate or scheduled to be paid out in equal monthly amounts will not be treated as a resource if:

(a) The full pay out is within the actuarial life expectancy of the annuitant; and

(b) The annuitant:

(i) Changes the scheduled pay out into equal monthly payments within the actuarial life expectancy of the annuitant; or

(ii) Requests that the department calculate and budget the payments as equal monthly payments within the actuarial life expectancy of the annuitant beginning with the month of eligibility. The income from the annuity remains unearned income to the annuitant.

(7) An irrevocable annuity, established on or after (~~November~~) April 1, (~~(2008)~~) 2009 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource.

(8) An irrevocable annuity established on or after (~~November~~) April 1, (~~2008~~) 2009 that meets all of the requirements of subsection (4) or (5) is considered unearned income when the annuitant is:

- (a) The client;
- (b) The spouse of the client;
- (c) The blind or disabled child, as defined in WAC 388-475-0050 (b) and (c), of the client; or
- (d) A person designated to use the annuity for the sole benefit of the client, client's spouse, or a blind or disabled child of the client.

(9) An annuity is not considered an available resource when there is a joint owner, co-annuitant or an irrevocable beneficiary who will not agree to allow the annuity to be cashed, unless the joint owner or irrevocable beneficiary is the community spouse. In the case of a community spouse, the cash surrender value of the annuity is considered an available resource and counts toward the maximum community spouse resource allowance.

(10) Nothing in this section shall be construed as preventing the department from denying eligibility for medical assistance for an individual based on the income or resources derived from an annuity other than an annuity described in subsections (3), (4), and (5).

[Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530. 08-20-117 and 08-21-083, § 388-561-0201, filed 9/30/08 and 10/14/08, effective 4/1/09.]