

**WAC 182-516-0201 Annuities established on or after April 1, 2009.** (1) The medicaid agency or the agency's designee determines how an annuity, purchased by or on behalf of an annuitant and established on or after April 1, 2009, affects eligibility for medicaid.

(2) General information.

(a) Clients of noninstitutional medicaid must disclose to the agency or the agency's designee any interest that client, or the financially responsible members of that client's assistance unit, has in an annuity.

(b) Clients of institutional or home and community-based (HCB) waiver services must disclose to the agency or the agency's designee any interest that client, or that client's community spouse, has in an annuity.

(c) Subject to (d) of this subsection, this section applies when the annuitant is:

(i) The client of medicaid;

(ii) That client's spouse, if that spouse is financially responsible for that client; or

(iii) That client's community spouse.

(d) If this section does not apply because of (c) of this subsection, but the client of institutional or HCB waiver services, or that client's community spouse, is the owner of the annuity, then the purchase of the annuity is evaluated as an asset transfer under WAC 182-513-1363.

(e) For the definition of "disabled," see WAC 182-512-0050 (1) (b) and (c).

(f) Actuarial life expectancy in this section is rounded up to the nearest whole year.

(3) Annuities as resources.

(a) Subject to (b) of this subsection, a revocable annuity is an available resource.

(b) The following annuities are not available resources, even if revocable:

(i) An annuity described under 26 U.S.C. Sec. 408 (b) or (q); or

(ii) An annuity purchased with proceeds from:

(A) An account or trust described under 26 U.S.C. Sec. 408 (a), (c), or (p);

(B) A simplified employee pension (within the meaning of 26 U.S.C. Sec. 408(k)); or

(C) A Roth IRA described under 26 U.S.C. Sec. 408A.

(c) An annuity not described under (b) of this subsection is an available resource unless the annuity:

(i) Is issued by an entity licensed and approved to issue annuities in the jurisdiction in which the annuity is established;

(ii) Is immediate, irrevocable, nonassignable; and

(iii) Is paid out, in equal monthly amounts with no deferral and no balloon payments, over a term:

(A) Of at least five years, if the actuarial life expectancy of the annuitant is at least five years; or

(B) Not less than the actuarial life expectancy of the annuitant, if the actuarial life expectancy of the annuitant is less than five years.

(d) If an annuity fails either the immediate requirement under (c)(ii) of this subsection or the monthly payout requirement under (c)(iii) of this subsection, the annuity is not a resource if:

(i) The annuity is fully paid out within the actuarial life expectancy of the annuitant; and

(ii) The annuitant:

(A) Changes the scheduled payout to equal monthly payments; or

(B) Asks the agency or the agency's designee to calculate and budget the periodic payments as equal monthly payments beginning the month of eligibility. Periodic payments made before the month of eligibility are not included in the calculation.

(iii) Nothing under (d) of this subsection affects the deferral or balloon payment requirements under (c)(iii) of this subsection, or the payment term requirements under (c)(iii)(A) or (B) of this subsection.

(4) Annuities as income.

(a) If an annuity is not an available resource under subsection (3) of this section, the payments from the annuity are unearned income to the annuitant.

(b) If an annuity is an available resource under subsection (3) of this section, the payments from the annuity are not income to the annuitant.

(5) An annuity as a transfer of assets.

(a) The purchase of an annuity is an uncompensated asset transfer, unless the annuity designates the state of Washington as remainder beneficiary under subsection (6) of this section.

(b) The purchase of an annuity by the client of institutional or HCB waiver services is an uncompensated asset transfer, unless the annuity is an annuity under subsection (3)(b)(i) or (ii) of this section, or the annuity:

(i) Is issued by an entity licensed and approved to issue annuities in the jurisdiction in which the annuity is established;

(ii) Is immediate, irrevocable, nonassignable; and

(iii) Is paid out, in equal periodic amounts with no deferral and no balloon payments, over a term that is actuarially sound (i.e., a term that is not greater than the actuarial life expectancy of that client).

(6) Beneficiary designation requirements.

(a) Subject to (b) of this subsection, to satisfy subsection (5)(a) of this section, when the client of institutional or HCB waiver services, or that client's community spouse, is the annuitant, the annuity must:

(i) Name the states as the remainder beneficiary, for at least the total amount of services covered under medicaid, paid on behalf of the client of institutional or HCB waiver services; and

(ii) The remainder beneficiary must be listed in the annuity in the:

(A) First position;

(B) Next position, after the community spouse, and any minor or disabled children; or

(C) First position, if either the community spouse, or any minor or disabled children, or a representative for such children, named as beneficiary in the first position under (a)(ii)(B) of this subsection, transfers the right to receive payments from the annuity for less than fair market value.

(b) When the community spouse is the annuitant, the community spouse, or the community spouse's estate, cannot be named as remainder beneficiary under (a)(ii)(A) of this subsection.

(c) If a change of circumstance requires a change in beneficiary designation under (a) of this subsection, the agency or the agency's designee reevaluates the annuity's beneficiary designation.

(7) Actuarial life expectancy is determined by tables that are published by the office of the chief actuary of the Social Security Administration.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 42 U.S.C. 1396p. WSR 18-04-037, § 182-516-0201, filed 1/30/18, effective 3/2/18. WSR 13-01-017, recodified as § 182-516-0201, filed 12/7/12, effective 1/1/13. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530. WSR 09-06-048, § 388-561-0201, filed 2/25/09, effective 4/1/09; WSR 08-20-117 and 08-21-083, § 388-561-0201, filed 9/30/08 and 10/14/08, effective 4/1/09.]