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TO: **Economic Support Supervisors
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W-2 Agencies
Workforce Development Boards
Job Center Leads and Managers**

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BHCE/BWP OPERATIONS MEMO

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FS MA SC CTS

CC W-2 FSET EA

CF JAL JC RAP

WIA WtW

Other EP ★

PRIORITY: HIGH

SUBJECT: **ANNUITIES IN THE PAYOUT PHASE**

CROSS REFERENCE: Medicaid Handbook 11.7.4 Annuities

EFFECTIVE DATE: March 1, 2004

PURPOSE

This memo communicates information regarding the treatment of annuities in Medicaid (MA) financial eligibility tests. This information affects Family Care non-MA and all MA subprograms with an asset test (i.e. EBD-related MA, MAPP, QMB, SLMB, SLMB + and QWDI) for annuities purchased on or after the effective date of this memo.

BACKGROUND

The Wisconsin MA program has historically treated annuities that can be surrendered as available assets (for example, "deferred" annuities still in the accumulation phase). "Immediate" annuities that are paying out have not been considered available assets because it was assumed that they could not be converted to cash.

The Department of Health and Family Services has learned from the U.S. Centers for Medicare and Medicaid Services (CMS) and other states that there are companies that will purchase

annuities in the pay-out phase “immediate annuities”. (See attached list of web-site addresses for some companies active in the annuities market.)

POLICY

Because annuities paying out can be converted to cash, they are now considered available to meet the financial needs of the individual or couple and therefore are subject to existing policy regarding counting available assets when determining eligibility for all MA sub-programs with an asset test.

All annuities purchased on or after the effective date of this Operations Memo will be treated as available assets, except as described below. Annuities already in the pay-out phase purchased before the effective date of this memorandum are not subject to this policy clarification.

Eligibility categories with asset tests include Family Care non-MA, EBD related MA, MAPP, and the Medicare beneficiary subprograms (QMB, SLMB, SLMB + and QWDI).

CASE PROCESSING

ANNUITIES PURCHASED BEFORE THE EFFECTIVE DATE OF THIS MEMORANDUM

Treat annuities with purchase dates before the effective date of this Operations Memo as policy currently dictates in 11.7.4 of the MA Handbook. (Annuities in the accumulative phase are available assets. Annuities in the pay-out phase are unavailable assets).

ANNUITIES PURCHASED ON OR AFTER EFFECTIVE DATE OF THIS MEMORANDUM

Treat annuities purchased on or after the effective date of this Operations Memo as available assets in accordance with the following:

- **Annuities that can be surrendered.**

If the annuity’s cash value is available for withdrawal (minus any penalty) the annuity can be “surrendered”. To determine the value of annuities that can be surrendered (for example, an annuity in the accumulation phase), use the formula in appendix 11.7.4.1 of the MA Handbook:

1. Total deposits made to the annuity.
Plus
2. Earnings on the deposits not previously paid out.
Minus
3. Withdrawals and surrender costs charged for withdrawal.
Equals
4. Annuity’s value.

Annuities that cannot be surrendered.

If the annuity's cash value is not available for withdrawal, it cannot be "surrendered". Determine the value of annuities that cannot be surrendered, immediate annuities in the pay-out phase, as follows:

1. Total deposits made to the annuity.
Plus
2. Earnings on the deposits not previously paid out.
Minus
3. Payouts.
Equals
4. Annuity's value.

Applicants/recipients who own annuities that **cannot be surrendered** will be provided an opportunity to prove that the annuity is unavailable. (**Note:** The opportunity to prove an annuity is unavailable does not apply to annuities that can be surrendered.) The annuity will be considered to be an unavailable asset **only** if documentation is provided from at least three companies active in the market stating their unwillingness to purchase the annuity. Payments from an annuity that is considered to be unavailable must be counted as income. Annuities that are considered to be unavailable must also be evaluated for possible divestment, in accordance with current policy as stated at 14.11.0 of the MA Handbook.

The applicant/recipient may prove that the annuity has a fair market value lower than the initial value determined by the worker. The applicant/recipient must provide documented offers from at least three companies active in the market and do so within the regular processing timeframe. This policy does not require applicants / recipients to sell their annuities. The fair market value of the annuity will be established as the highest of the documented offers. An offer from someone not active in the market, will be considered legitimate only if it meets or exceeds all offers from companies active in the market, of which there must be at least three.

To provide proof that the annuity is unavailable or has a fair market value lower than the initial value determined by the worker, the applicant must demonstrate that (s)he has made reasonable attempts to obtain a fair market price for the annuity contract or annuitized payments. The actual fair market value would be established by offering the annuity for sale in an "arms-length transaction" to at least three companies active in the annuities market. An "arms-length transaction" is one in which the buyers and sellers of a product act independently of each other and have no personal relationship. Provide the applicant with the list of website addresses and phone numbers included in this memo if the applicant requests the information.

CARES CHANGES

The code "MQ" was previously used in CARES and was described as 'Medicaid Qualifying Trust'. Medicaid Qualifying Trusts have not been applicable since 1993 and this code should no longer be used for trusts. System changes have been made in CARES so that the asset code MQ will count for only 'EBD Medicaid Annuity'. It will not count for any other programs of assistance in CARES. This code should be used for entry of all available annuity assets for MA.

The code AN for annuity on the life insurance asset screen (ANLI) should not be used for MA annuities.

Example 1

Clifford is 73 years old and applying for MA. He owns an annuity purchased **prior to the effective date** of this memo. The **annuity is paying out** and cannot be surrendered. The annuity is treated as an unavailable asset as described in 11.7.4.2 of the MA Handbook.

Enter the annuity on the liquid asset screen AALA as type MQ and mark it as unavailable. The asset will not count for EBD MA since it is unavailable. Enter the income from the annuity on AFUI as unearned income type AN.

Example 2

James is 68 years old and applying for MA. He owns an annuity purchased **prior to the effective date** of this memo. James is still **paying into the annuity** and can surrender it at anytime for cash. The annuity is treated as an available asset; the value is calculated as described in 11.7.4.1 of the MA Handbook.

Enter the annuity on the liquid asset screen AALA as type MQ and mark it as available. The asset will count for MA subprograms with an asset test only.

Example 3

Sally is 65 years old and applying for MA. She owns an annuity purchased **after the effective date** of this memo. Sally is still **paying into the annuity** and can surrender it at anytime for cash. The annuity is treated as an available asset; the value is calculated as described in 11.7.4.1 of the MA Handbook.

Enter the annuity on the liquid asset screen AALA as type MQ and mark it as available. The asset will count only for EBD MA subprograms with an asset test.

Example 4

Cynthia is 83 years old and applying for MA. She owns an annuity purchased **after the effective date** of this memo. The **annuity is paying out** and cannot be surrendered. It is irrevocable and non-transferable. Still, the **annuity will be treated as an available asset, unless Cynthia shows that it cannot be sold** on the open market (i.e., has no fair market value). The worker determines an initial value for the annuity by applying the following formula:

1. Total deposits made to the annuity.
Plus
2. Earnings on the deposits not previously paid out.
Minus
3. Payouts.
Equals
4. Annuity's value.

Rather than use this value to determine her MA eligibility, Cynthia prefers to establish a fair market value. She does so by offering her annuity for sale to three companies active in the annuities market. She obtains three written offers and provides this documentation to her worker. Her worker establishes the fair market value of the annuity as the highest of the three

offers. The fair market value of the annuity is used to determine Cynthia's MA eligibility. Enter the value on AALA with the MQ code.

Initial Processing

When Cynthia originally applies, calculate the value of the annuity using the formula described above. Enter the amount on the liquid asset screen AALA as type MQ and mark it as available. The asset will count for EBD MA subprograms only.

Market Value Pursued

When Cynthia returns with the three written offers, tran to AALA for the previously entered MQ asset and change the amount to the highest of the three offers.

Example 5

Sam is 66 years old and applying for MA. He owns an annuity purchased **after the effective date** of this memo. The **annuity is paying out** and cannot be surrendered. It is irrevocable and non-transferable. Still, the annuity will be treated as an **available asset, unless Sam shows that it cannot be sold on the open market** (i.e., has no fair market value). The worker determines an initial value of the annuity by applying the following formula:

1. Total deposits made to the annuity.
Plus
2. Earnings on the deposits not previously paid out.
Minus
3. Payouts.
Equals
4. Annuity's Value.

Rather than use this value to determine his MA eligibility, Sam prefers to establish a fair market value for the annuity. He attempts to do so by offering the annuity for sale to three companies active in the annuities market, but none of the companies is willing to purchase the annuity. Sam obtains letters from each of the three companies documenting their unwillingness to purchase the annuity. He provides the letters to his worker and, in doing so, has shown that the annuity cannot be sold. His worker treats the annuity as an unavailable asset in determining his MA eligibility.

Initial Processing

When Sam originally applies, calculate the value of the annuity using the formula described above. Enter the amount on the liquid asset screen AALA as type MQ and mark it as available. The asset will count for EBD MA subprograms only.

Market Value Pursued

When Sam returns with the three letters declining purchase, tran to AALA for the previously entered MQ asset and mark the asset as unavailable. The asset will not count for EBD MA because it is not available. Enter the monthly payment on AFUI as unearned income as type AN.

Example 6

Sherrie is 43, has a disability and is applying for MA. She owns an annuity purchased **after the effective date** of this memo. The **annuity is paying out** and cannot be surrendered. It is irrevocable and non-transferable. Still, the **annuity will be treated as an available asset, unless Sherrie shows that it cannot be sold** on the open market (i.e., has no fair market value). The worker determines an initial value of the annuity by applying the following formula:

1. Total deposits made to the annuity.
Plus
2. Earnings on the deposits not previously paid out.
Minus
3. Payouts.
Equals
4. Annuities Value.

Rather than use this value to determine her MA eligibility, Sherrie prefers to establish a fair market value. She attempts to do so by offering her annuity for sale to two companies active in the annuities market, plus Frank, her nephew. She obtains three written offers (two from companies active in the market and one from Frank) and provides this documentation to her worker. Frank's offer is the highest of the three, however it may not be used to establish a fair market value for the annuity because it has not been compared to three offers from companies active in the market. Sherrie's MA eligibility is determined using the value of the annuity as initially established by the worker using the above formula.

Initial Processing

When Sherrie originally applies, calculate the value of the annuity using the formula described above. Enter that amount on the liquid asset screen AALA as type MQ and mark it as available. The asset will count for EBD MA only.

Market Value Pursued

Since Sherrie can only provide two offers from companies active in the annuities market her MA eligibility is determined using the value of the annuity as initially established. So, the offers are not considered and the same amount calculated previously and entered on AALA is still valid and not changed.

Example 7

Shane is 76 years old, **institutionalized, and applying for MA**. He owns an annuity purchased **after the effective date** of this memo. The **annuity is paying out and cannot be surrendered**. It is irrevocable and non-transferable. Still, the annuity will be **treated as an available asset, unless Shane shows that it cannot be sold on the open market** (i.e., has no fair market value). The worker determines an initial value of the annuity by applying the following formula:

1. Total deposits made to the annuity.
Plus
2. Earnings on the deposits not previously paid out.
Minus
3. Payouts.
Equals
4. Annuities Value.

Rather than use this value to determine his MA eligibility, Shane prefers to establish a fair market value for the annuity. He attempts to do so by offering the annuity for sale to three companies active in the annuities market, but none of the companies is willing to purchase the annuity. Shane obtains letters from each of the three companies documenting their unwillingness to purchase the annuity. He provides the letters to his worker and, in doing so, has shown that the annuity cannot be sold. His worker treats the annuity as an unavailable asset in determining his MA eligibility, and then evaluates the annuity to determine if it represents a divestment in accordance with policy 14.11.0 of the MA Handbook (e.g., payout schedule extending beyond life expectancy, etc.)

Since Shane will receive expected value benefit within his lifetime and will receive the payments in relatively equal amounts on a regular schedule. The worker determines that there is no divestment.

IMPACT ON OTHER PROGRAMS

Food Stamps (FS) and W-2 have not changed policies on how annuities are counted in eligibility determinations.

For FS, annuities have been treated and will continue to be treated as unavailable assets. For W-2, only annuities that have a surrender value are treated as available assets.

When the annuity is to be budgeted for FS as income only and for MA as an asset only, then enter the income on AFUI with income type OTFS and the asset value on AALA as type MQ.

Example 8

Robert is 73 years old and **applies for MA and the FS Program**. He owns an annuity purchased **prior to the effective date** of this memo. The **annuity is paying out** and cannot be surrendered. The annuity is treated as an unavailable asset as described in 11.7.4.2 of the MA Handbook.

Enter the annuity on the liquid asset screen AALA as type MQ and mark it as unavailable. The asset will not count for FS because it is exempt. The asset will not count for MA since it is unavailable. Enter the income from the annuity on AFUI as unearned income type AN. The unearned income from the annuity will count for both MA and FS.

Example 9

Sue is 83 years old and **applying for MA and the FS Program**. She owns an annuity purchased **after the effective date** of this memo. The **annuity is paying out** and cannot be surrendered. It is irrevocable and non-transferable. Still, the annuity will be treated as an **available asset for MA, unless Sue shows that it cannot be sold** on the open market (i.e., has no fair market value). For FS, the income from the annuity counts as unearned income only. The worker determines an initial MA value for the annuity by applying the following formula:

1. Total deposits made to the annuity.
Plus
2. Earnings on the deposits not previously paid out.
Minus
3. Payouts.
Equals
4. Annuity's Value.

Rather than use this value to determine her MA eligibility, Sue prefers to establish a fair market value for the annuity. She attempts to do so by offering the annuity for sale to three companies active in the annuities market, but none of the companies is willing to purchase the annuity. Sue obtains letters from each of the three companies documenting their unwillingness to purchase the annuity. She provides the letters to her worker and, in doing so, has shown that the annuity cannot be sold. Her worker treats the annuity as an unavailable asset in determining her MA eligibility. For both FS and MA, the payments from the annuity count as unearned income and not as an available asset.

Initial Processing

When Sue originally applies for MA and FS, calculate the MA value of the annuity using the formula described above. Enter that amount on the liquid asset screen AALA as type MQ and mark it as available. The annuity will count as an asset for MA only and will not count for FS. Enter the payment from the annuity on AFUI as unearned income type 'OTFS – OTHER - FS ONLY'. The annuity will count as unearned income for FS only and will not count as unearned income for MA.

Market Value Pursued

When Sue returns with the three written purchase denials, tran to AALA for the previously entered MQ asset and mark the annuity as unavailable. Tran to AFUI and delete the previously entered unearned income type OTFS. Enter a new AFUI unearned income type 'AN-annuity'. The payment from the annuity will count as unearned income for FS and MA and will not count as an asset for either.

ATTACHMENT 1***Websites of some companies which purchase annuities:***

www.fredcoutts.com/indexsettlement.htm Phone (206) 281-3153

www.buymortgage.com Phone (772)221-0037

www.settlementpurchasers.com/annuity.asp Phone (1-888-959-0006)

www.claimsfunding.com Phone 1-800-386-3464 (1-800-Funding)

http://www.bestnotequote.com/structured_settlement_annuity Phone (1-866-780-2274)

http://jgwfunding.com/products_annuity.asp Phone 1-866-386-3102 (1-866-Fund-102)

CONTACTS

BHCE CARES Information & Problem Resolution Center

Email: carpolcc@dhs.state.wi.us
Telephone: (608) 261-6317 (Option #1)
Fax: (608) 267-2269

Note: Email contacts are preferred. Thank you.

★Program Categories – FS – Food Stamps, MA – Medicaid, SC – Senior Care, CTS – Caretaker Supplement, CC – Child Care, W-2 – Wisconsin Works, FSET – Food Stamp Employment and Training, CF – Children First, EA – Emergency Assistance, JAL – Job Access Loan, JC - Job Center Programs, RAP – Refugee Assistance Program, WtW – Welfare to Work, WIA – Wisconsin Investment Act, Other EP – Other Employment Programs.

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