

## IRAs, Pensions & Annuities Under Medi-Cal

### Annuitants v. Work Related Pensions

There has been a great deal of confusion regarding the treatment of annuities versus the treatment of IRAs, other work-related pension funds or other periodic payment plans.

The Department of Health Care Services released regulations in 1996 which apply to trusts and annuities established on or after August 11, 1993. It is important to note that the annuities regulations and procedures apply only to annuities, not to IRAs and other work-related pension funds.

### Definition of Annuity

For the purposes of Medi-Cal eligibility an “annuity” is defined as a “contract to make periodic payments of a fixed or variable sum paid to an annuitant which are payable unconditionally.” (§50489(b)(3))

Annuity payments may continue for a fixed period of time or for as long as an annuitant lives.

An annuitant purchases an annuity with his or her property or property rights.

Annuities shall be established to provide the annuitant with payments representing principal and interest which are more than the fair market value of the property used to purchase the annuity.

Annuities purchased prior to August 11, 1993, other periodic payment plans, or annuities that are purchased with property rights belonging to someone other than the Medi-Cal applicant/beneficiary or spouse shall continue to be treated in accordance with Title 22, Section 50402 and Article 10.

### IRAs and Work-Related Pensions

In the applicant’s or beneficiary’s name: The cash surrender value or balance, regardless of value, shall be considered unavailable if the applicant or beneficiary receives periodic payments of interest and principal. (Title 22, §50402(e) or the required IRS minimum distribution. These do not need to meet the Medi-Cal requirements for annuities. The periodic payments will count toward the monthly share of cost. You must take your first required minimum distribution for the year in which you turn **age 72 (70 ½ if you reach 70 ½ before January 1, 2020)**. However, the first payment can be delayed until April 1 of 2020 if you turn 70½ in 2019

In the community spouse’s name: Totally exempt from consideration, regardless of value; nor is the cash surrender value included in the CSRA. (Title 22, §50458) However, any income the spouse receives will be counted in determining the community spouse’s allocation from the nursing home spouse, if he or she receives such an allocation.

### Non Work-Related Annuities

**Annuities purchased prior to 8/11/93:** The cash surrender value or balance of the annuity is considered unavailable if the applicant/beneficiary is receiving periodic payments (of any amount) of interest and principal. (Title 22, §50402(e)) Remember, this is the old law, so annuities purchased before the new federal law will be treated under the old law.

**Annuities purchased between August 11, 1993 and March 1, 1996:** Annuities purchased between 8/11/93 (the date the federal law changed) and 3/1/96 (the date the state regulations went into effect) must meet the new regulations, which can be waived for hardship. Once the individual or spouse takes steps to receive periodic payments of interest and principal, the balance is considered unavailable. However, the payments must be scheduled to exhaust the balance at or before the end of the annuitant's life expectancy.

For example, under the actuarial table used for Medi-Cal, an 85-year old female has a life expectancy of 6.63 years. Thus, the annuity must be structured to pay out the balance of the annuity at or before 6.63 years. If the annuity is scheduled for longer than that, 10 years for example, it will be considered to be a transfer of assets, and a period of ineligibility could be imposed.

**Hardship:** Annuities purchased during this period that cannot be restructured to meet the new requirements will continue to be treated under the old rules and considered unavailable as long as any periodic payments are received (§50402). Written verification that the annuity cannot be restructured must be obtained from the company or agent who issued or sold the annuity.

**Annuities purchased on or after March 1, 1996:** Must meet the new requirements, no annuity hardship provisions apply. The individual or spouse must take steps to receive periodic payments of interest and principal, scheduled to exhaust the balance of the annuity at or before the end of the annuitant's life expectancy. Annuities structured to exceed the life expectancy of the annuitant will result in denial or termination of benefits due to transfer of assets.

**Recovery on Annuities:** For those who die on or after January 1, 2017, any remaining annuity assets will not be subject to recovery as long as the annuity names a beneficiary and the annuity is not subject to probate. If no beneficiary is named, then the annuity becomes part of the estate and, depending on the amount, may be subject to probate, and thus subject to recovery. It is important to make sure a beneficiary is named to any retirement benefit, annuity and/or insurance policy.

## Planning Tips

If you think you would like to buy an annuity because you are worried about losing all of your assets under Medi-Cal, it is probably not a good idea unless you know what assets are exempt in the first place. An IRA, for example, does not have to be liquidated to purchase an annuity, since the IRA is already exempt. For more information on the Medi-Cal eligibility criteria, see CANHR's web site at <http://www.canhr.org> or call the office.

Following are some tips you should follow if you are approached about an annuity:

- Don't buy anything at the initial presentation. Tell the salesperson you want time to think about the investment.
- Don't buy the first annuity you are offered; investigate and compare it to other products
- Consider other options for planning that might be available, particularly if you are looking at Medi-Cal planning
- Always talk to a neutral third party knowledgeable about Medi-Cal estate planning
- Find out about the surrender penalties and terms and how they might affect the principal
- Find out how much commission the sales agent will make
- Remember, you have 30-days to cancel the contract

## Resources

CANHR: <http://www.canhr.org> or call (800) 474-1116

Note: These rights are found in ACWDL 90-01 and, ACWDL 02-51.