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MEMORANDUM

TO: EMILY MCCLELLAN
Regulatory Supervisor
Department of Medical Assistance Services

FROM: JENNIFER L. GOBBLE *JLG*
Assistant Attorney General

DATE: January 6, 2017

SUBJECT: Fast-Track Regulations – Treatment of Annuities

I have reviewed the attached fast-track regulations that will implement changes derived from the Deficit Reduction Act of 2005 and guidance from the Centers for Medicare and Medicaid Services concerning Medicaid rules for the treatment of annuities. In 2006, the Department of Medical Assistance Services (“DMAS”) implemented the changes by amending 12 VAC 30-40-300(F), with the exception of one inadvertent omission. This regulatory action remedies the inadvertent omission.

Based on my review, it is my view that the Director, acting on behalf of the Board of Medical Assistance Services, pursuant to Virginia Code § 32.1-324, has the authority to amend these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act, and has not exceeded that authority.

Please be aware that this review is based solely upon whether DMAS has the legal authority to promulgate these regulations, not the appropriateness of whether it should be promulgated pursuant to the fast-track process. In accordance with Virginia Code § 2.2-4012.1, if an objection to the use of the fast-track process is received within the public comment period from 10 or more persons, any member of the applicable standing committee of either House of the General Assembly or of the Joint Commission on Administrative Rules, DMAS shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulations serving as the Notice of Intended Regulatory Action.

If you have any questions, please feel free to call me at 786-2071.

cc: Kim F. Piner, Esquire
Senior Assistant Attorney General/Chief

Action:
2015 Treatment of Annuities
Stage: Fast-Track

12VAC30-40-300. Transfer of resources.

The agency provides for the denial of eligibility by reason of disposal of resources for less than fair market value. This section includes procedures applicable to all transfers of resources.

A. Except as noted below, the criteria for determining the period of ineligibility are the same as criteria specified in § 1613(c) of the Social Security Act (Act): Transfer of resources other than the home of an individual who is an inpatient in a medical institution.

1. The agency uses a procedure ~~which~~ that provides for a total period of ineligibility greater than 24 months for individuals who have transferred resources for less than fair market value when the uncompensated value of disposed of resources exceeds \$12,000. This period bears a reasonable relationship to the uncompensated value of the transfer. The computation of the period and the reasonable relationship of this period to the uncompensated value is described as follows:

This transfer of resources rule includes the transfer of the former residence of an inpatient in a medical institution.

2. The agency has provisions for waiver of denial of eligibility in any instance where the State determines that a denial would work an undue hardship.

B. Other than those procedures specified elsewhere in this section, the procedures for implementing denial of eligibility by reason of disposal of resources for less than fair market value are as follows:

1. If the uncompensated value of the transfer is \$12,000 or less: the individual is ineligible for two years from the date of the transfer.

2. If the uncompensated value of the transfer is more than \$12,000: the individual is ineligible two years, plus an additional two months for every \$1,000 or part thereof of uncompensated value over \$12,000, from the date of transfer.

C. Property Transfer. An applicant for or recipient of Medicaid is ineligible for Medicaid if he transferred or otherwise disposed of his legal equitable interest in real or personal property for less than fair market value. Transfer of property precludes eligibility for two years from the date of the transfer if the uncompensated value of the property was \$12,000 or less. If the uncompensated value was over \$12,000 an additional two months of ineligibility will be added for each \$1,000 of additional uncompensated value (see following Table).

"Uncompensated value" means the current market value of the property, or equity in the property, at the time it was transferred, less the amount of compensation (money, goods, service, ~~et cetera~~ etc.) received for the property.

Exceptions to this provision are:

1. When the transfer was not made with the intent of establishing or retaining eligibility for Medicaid or SSI. Any transfer shall be presumed to have been for the purposes of establishing or retaining eligibility for Medicaid or SSI unless the applicant/recipient furnishes convincing evidence to establish that the transfer was exclusively for some other purpose.

a. The applicant/recipient has the burden of establishing, by objective evidence of facts rather than statement of subjective intent, that the transfer was exclusively for another purpose.

b. Such evidence shall include evidence that adequate resources were available at the time of the transfer for the applicant/recipient's support and medical care including nursing home care, considering his or her age, state of health, and life expectancy.

c. The declaration of another purpose shall not be sufficient to overcome this presumption of intent.

d. The establishment of the fact that the applicant/recipient did not have specific knowledge of Medicaid or SSI eligibility policy is not sufficient to overcome the presumption of intent.

2. Retention of the property would have no effect on eligibility unless the property is a residence of an individual in a nursing home for a temporary period.

3. When transfer of the property resulted in compensation (in money, goods, or services) to the applicant/recipient ~~which~~ that approximated the equity value of the property.

4. When the receiver of the property has made payment on the cost of the applicant/recipient's medical care which that approximates the equity value of the property.
5. When the property owner has been a victim of another person's actions, except those of a legal guardian, committee, or power-of-attorney, who obtained or disposed of the property without the applicant/recipient's full understanding of the action.
6. When prior to October 1, 1982, the Medicaid applicant transferred a prepaid burial account (plan) which that was valued at less than \$1,500.00 for the purpose of retaining eligibility for SSI, and was found ineligible for Medicaid solely for that reason. The applicant, after reapplying, may be eligible regardless of the earlier transfer of a prepaid burial account if the applicant currently meets all other eligibility criteria.
7. When the property is transferred into an irrevocable trust designated solely for the burial of the transferor or his spouse. The amount transferred into the irrevocable burial trust, together with the face value of life insurance and any other irrevocable funeral arrangements, shall not exceed \$2,000 prior to July 1, 1988, and shall not exceed \$2,500 after July 1, 1988.

Period Of Ineligibility Due To Transfer Of Property Table		
Uncompensated	Value of Property	Period of Ineligibility
0	\$12,000.00	24 months
12,000.01	\$13,000.00	26 months
13,000.01	\$14,000.00	28 months
14,000.01	\$15,000.00	30 months
15,000.01	\$16,000.00	32 months
For each additional \$1,000.00, add two months of ineligibility.		

D. The preceding policy applies to eligibility determinations on and before June 30, 1988. The following policy applies to eligibility determinations on and after July 1, 1988.

1. The State plan provides for a period of ineligibility for nursing facility services, equivalent services in a medical institution, and home and community-based services in the case of an institutionalized individual (as defined in paragraph (3) of § 1917(c) who, disposed of resources for less than fair market value, at any time during or after the 30-month period immediately before the date the individual becomes an institutionalized individual (if the individual is entitled to medical assistance under the State plan on that date) or, if the individual is not entitled on the date of institutionalization, the date the individual applies for assistance while an institutionalized individual.

a. Thirty months; or

b. The total uncompensated value of the resources so transferred, divided by the average cost, to a private patient at the time of application, of nursing facility services in the State.

2. An individual shall not be ineligible for medical assistance by reason of paragraph 1 to the extent that:

a. The resources transferred were a home and title to the home was transferred to:

(1) The spouse of such individual;

(2) A child of such individual who is under age 21 years, or is blind or disabled as defined in § 1614 of the Social Security Act;

(3) A sibling of such individual who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date the individual becomes an institutionalized individual; or

(4) A son or daughter of such individual (other than a child described in clause subdivision (2) of this subdivision D 2 a) who was residing in such individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual; and who (as determined by the State) provided care to such individual which that permitted such individual to reside at home rather than in such an institution or facility;

b. The resources were transferred to (or to another for sole benefit of) the community spouse as defined in § 1924(h)(2) of the Social Security Act, or to the individual's child who is under age 21, or is blind or disabled as defined in § 1614 of the Social Security Act.

c. A satisfactory showing is made to the State (in accordance with any regulations promulgated by the Secretary of United States Department of Health and Human Services) that:

(1) The individual intended to dispose of the resources either at fair market value, or for other valuable consideration. To show intent to receive adequate compensation, the individual must provide objective evidence that:

(a) For real property, the individual made an initial and continuing effort to sell the property according to the "reasonable effort to sell" provisions of the Virginia Medicaid State Plan;

(b) For real or personal property, the individual made a legally binding contract that provided for receipt of adequate compensation in a specified form (goods, services, money, etc.) in exchange for the transferred property;

(c) An irrevocable burial trust of \$2,500 or less was established on or after July 1, 1988 as compensation for the transferred money;

(d) An irrevocable burial trust over \$2500 was established on or after July 1, 1988, and the individual provides objective evidence to show that all funds in the trust are for identifiable funeral services; or

(2) The resources were transferred exclusively for a purpose other than to qualify for medical assistance; the individual must provide objective evidence that the transfer was exclusively for another purpose and the reason for the transfer did not include possible or future Medicaid eligibility; or

(3) Consistent with 1917(c)(2)(D), an institutionalized spouse who (or whose spouse) transferred resources for less than fair market value shall not be found ineligible for nursing facility service, for a level of care in a medical institution equivalent to that of nursing facility services, or for home and community-based services where the state determines that denial of eligibility would work an undue hardship under the provision of § 1917(c)(2)(D) of the Social Security Act.

3. In this section, the term "institutionalized individual" means an individual who is an inpatient in a nursing facility, or who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility, or who is described in § 1902 (a)(10)(A)(ii)(VI).

4. In this section, the individual's home is defined as the house and lot used as the principal residence and all contiguous property up to \$5,000.

E. Transfers and Trusts After August 10, 1993. The following policy applies to medical assistance provided for services furnished on or after October 1, 1993, with respect to assets disposed of after August 10, 1993, and before February 8, 2006. It also applies to trusts established after August 10, 1993.

1. Definitions.

"Assets" means, with respect to an individual, all income and resources of the individual and of the individual's spouse, including any income or resources which that the individual or the individual's spouse is entitled to but does not receive because of action:

a. By the individual or the individual's spouse;

b. By a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

c. By any person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

"Income" has the meaning given such term in § 1612 of the Social Security Act.

"Institutionalized individual" means an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility or who is described in § 1902(a)(10)(A)(ii)(VI) of the Social Security Act.

"Resources" has the meaning given such term in § 1613 of the Social Security Act, without regard (in the case of an institutionalized individual) to the exclusion described in subsection (a)(1) of such section.

2. Transfer of Assets Rule. An institutionalized individual who disposes of, or whose spouse disposes of, assets for less than fair market value on or after the look-back date specified in subdivision 2 b shall be ineligible for nursing facility services, a level of care in any institution equivalent to that of nursing facility services and for home or community-based services furnished under a waiver granted under subsection (c) of § 1915 of the Social Security Act.

a. Period of Ineligibility. The ineligibility period shall begin on the first day of the first month during or after which assets have been transferred for less than fair market value and ~~which that~~ does not occur in any other period of ineligibility under this section. The ineligibility period shall be equal to but shall not exceed the number of months derived by dividing:

(1) The total, cumulative uncompensated value of all assets transferred as defined in subdivision E 1 of this section on or after the look-back date specified in subdivision E 2 b of this section by

(2) The average monthly cost to a private patient of nursing facility services in the Commonwealth at the time of application for medical assistance.

b. Look-Back Date. The look-back date is a date that is 36 months (or 60 months in the case of payments from a trust or portions of a trust that are treated as assets disposed of by the individual pursuant to this section or ~~Section 3) subdivision 3 of this subsection~~) before the first date as of which the individual both is an institutionalized individual and has applied for medical assistance under the State Plan for Medical Assistance.

c. Exceptions. An individual shall not be ineligible for medical assistance by reason of this section to the extent that:

(1) The assets transferred were a home and title to the home was transferred to:

(a) The spouse of the individual;

(b) A child of the individual who is under age 21, or is blind or disabled as defined in § 1614 of the Social Security Act;

(c) A sibling of the individual who has an equity interest in the home and who was residing in the individual's home for a period of at least one year immediately before the date the individual becomes an institutionalized individual; or

(d) A son or daughter of the individual (other than a child described in clause (b)) who was residing in the individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual, and who provided care to the individual ~~which that~~ permitted the individual to reside at home rather than in an institution or facility.

(2) The assets:

(a) Were transferred to the individual's spouse or to another person for the sole benefit of the individual's spouse;

(b) Were transferred from the individual's spouse to another for the sole benefit of the individual's spouse;

(c) Were transferred to the individual's child who is under age 21 or who is disabled as defined in § 1614 of the Social Security Act or to a trust (including a trust described in subdivision 3 g of this subsection) established solely for the benefit of such child; or

(d) Were transferred to a trust (including a trust described in subdivision 3 g of this subsection) established solely for the benefit of an individual under age 65 years of age who is disabled as defined in § 1614(a)(3) of the Social Security Act.

(3) A satisfactory showing is made that:

(a) The individual intended to dispose of the assets either at fair market value, or for other valuable consideration; or

(b) The assets were transferred exclusively for a purpose other than to qualify for medical assistance; or

(c) All assets transferred for less than fair market value have been returned to the individual; or

(d) The Commonwealth determines that the denial of eligibility would work an undue hardship.

d. Assets Held In Common With Another Person. In the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or other arrangement recognized under State

law, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset.

e. Transfers by Both Spouses. In the case of a transfer by the spouse of an individual which ~~which~~ that results in a period of ineligibility for medical assistance, the Commonwealth shall apportion the period of ineligibility (or any portion of the period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State Plan.

3. For Trust(s) Created After August 10, 1993. For purposes of determining an individual's eligibility for, or amount of, medical assistance benefits, subject to subdivision 3 g of this subsection, these rules shall apply.

a. Trust(s) Defined. The term "trust" includes any legal instrument or device that is similar to a trust but includes an annuity only to such extent and in such manner as the United States Secretary of Health and Human Services specifies for purposes of administration of § 1917(c) or (d) of the Social Security Act.

b. Creation of Trust(s) Defined. For purposes of this subsection, an individual shall be considered to have established a trust(s) if assets of the individual were used to form all or part of the corpus of the trust(s) and if any of the following individuals established the trust(s) other than by will:

(1) The individual;

(2) The individual's spouse;

(3) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse;

(4) A person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

c. Proportional Interest In Trust(s). In the case of a trust(s) the corpus of which includes assets of an individual (as determined under subdivision 3 b of this subsection) and assets of any other person or persons, the provision of this section shall apply to the portion of the trust(s) attributable to the assets of the individual.

d. Trust(s) Affected. Subject to subdivision 3 g of this subsection, this section shall apply without regard to:

(1) The purposes for which a trust(s) is established;

(2) Whether the trustee(s) has or exercises any discretion under the trust(s);

(3) Any restrictions on when or whether distributions may be made from the trust(s); or

(4) Any restrictions on the use of distributions from the trust(s).

e. Revocable Trust(s). In the case of a revocable trust(s),

(1) The corpus of the trust(s) shall be considered resources available to the individual;

(2) Payments from the trust(s) to or for the benefit of the individual shall be considered income of the individual; and

(3) Any other payments from the trust(s) shall be considered assets disposed of by the individual for the purposes of subdivision E 2 of this section.

f. Irrevocable Trust(s). In the case of irrevocable trust(s),

(1) If there are any circumstances under which payment from the trust(s) could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual, and payments from that portion of the corpus or income:

(a) To or for the benefit of the individual, shall be considered income of the individual; and

(b) For any other purpose, shall be considered a transfer of assets by the individual subject to E 2 of this section; and

(2) Any portion of the trust(s) from which, or any income on the corpus from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the trust(s) (or, if

later, the date on which payment to the individual was foreclosed) to be assets disposed by the individual for purposes of subdivision E 2 of this section, and the value of the trust(s) shall be determined for purposes of such section by including the amount of any payments made from such portion of the trust(s) after such date.

g. Exceptions. This section shall not apply to any of the following trust(s):

(1) A trust(s) containing the assets of an individual under age 65 years who is disabled (as defined in section 1614(a)(3) of the Social Security Act) and which ~~that~~ is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual or a court if the Commonwealth will receive all amounts remaining in the trust(s) upon the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual under this State Plan.

(2) A trust containing the assets of an individual who is disabled (as defined in section 1614(a)(3) of the Social Security Act) that meets all of the following conditions:

(a) The trust(s) is established and managed by a non-profit association.

(b) A separate account is maintained for each beneficiary of the trust(s), but, for purposes of investment and management of funds, the trust(s) pools these accounts.

(c) Accounts in the trust(s) are established solely for the benefit of individuals who are disabled (as defined in section 1614(a)(3) of the Social Security Act) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.

(d) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust(s), the trust(s) pays to the Commonwealth from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under this State Plan.

F. Transfers made on or after February 8, 2006. The following policy applies to medical assistance provided for services furnished on or after February 8, 2006, with respect to assets disposed of on or after February 8, 2006.

1. Definitions.

"Assets" means, with respect to an individual, all income and resources of the individual and of the individual's spouse, including any income or resources that the individual or the individual's spouse is entitled to but does not receive because of action:

a. By the individual or the individual's spouse;

b. By a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

c. By any person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

The term "assets" includes the purchase of a life estate interest in another individual's home unless the purchaser resides in the home for a period of at least one year after the date of the purchase. The term "assets" also includes funds used to purchase a promissory note, loan or mortgage unless such note, loan or mortgage:

a. Has a repayment term that is actuarially sound (determined in accordance with actuarial publications of the Social Security Administration);

b. Provides for payments to be made in equal amounts during the term of the loan with no deferral and no balloon payments made; and

c. Prohibits the cancellation of the balance upon the death of the lender.

In the case of a promissory note, loan or mortgage that does not satisfy the requirements of subdivisions a through c of this definition, the value of such note, loan or mortgage shall be the outstanding balance due as of the date of the individual's application for medical assistance.

"Income" has the meaning given such term in § 1612 of the Social Security Act.

"Institutionalized individual" means an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility or who is described in § 1902(a)(10)(A)(ii)(VI) of the Social Security Act.

"Resources" has the meaning given such term in § 1613 of the Social Security Act, without regard (in the case of an institutionalized individual) to the exclusion described in subsection (a)(1) of such section.

2. Transfer of Assets Rule. An institutionalized individual who disposes of, or whose spouse disposes of, assets for less than fair market value on or after the look-back date specified in subdivision 2 b of this subsection shall be ineligible for nursing facility services, a level of care in any institution equivalent to that of nursing facility services and for home or community-based services furnished under a waiver granted under subsection (c) of § 1915 of the Social Security Act.

a. Period of Ineligibility. The ineligibility period shall begin on the first day of a month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the state plan and would otherwise be receiving Medicaid-covered institutional level care based on an approved application for such care but for the application of the penalty period, whichever is later, and which that does not occur in any other period of ineligibility under this section. The ineligibility period shall be equal to but shall not exceed the number of months, including any fractional portion of a month, derived by dividing:

(1) The total, cumulative uncompensated value of all assets transferred as defined in subdivision 1 of this subsection on or after the look-back date specified in subdivision 2 b of this subsection by:

(2) The average monthly cost to a private patient of nursing facility services in the Commonwealth at the time of application for medical assistance.

b. Look-Back Date. The look-back date is a date that is 60 months before the first date the individual is both an institutionalized individual and has applied for medical assistance under the State Plan for Medical Assistance.

c. Exceptions. An individual shall not be ineligible for medical assistance by reason of this section to the extent that:

(1) The assets transferred were a home and title to the home was transferred to:

(a) The spouse of the individual;

(b) A child of the individual who is under age 21 years, or is blind or disabled as defined in § 1614 of the Social Security Act;

(c) A sibling of the individual who has an equity interest in the home and who was residing in the individual's home for a period of at least one year immediately before the date the individual becomes an institutionalized individual; or

(d) A son or daughter of the individual (other than a child described in clause (b)) who was residing in the individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual, and who provided care to the individual that permitted the individual to reside at home rather than in an institution or facility.

(2) The assets:

(a) Were transferred to the individual's spouse or to another person for the sole benefit of the individual's spouse;

(b) Were transferred from the individual's spouse to another for the sole benefit of the individual's spouse;

(c) Were transferred to the individual's child who is under age 21 years or who is disabled as defined in § 1614 of the Social Security Act, or to a trust (including a trust described in subdivision E 3 g of this section) established solely for the benefit of such child; or

(d) Were transferred to a trust (including a trust described in subdivision E 3 g of this section) established solely for the benefit of an individual under age 65 years ~~of age~~ who is disabled as defined in § 1614(a)(3) of the Social Security Act.

(3) A satisfactory showing is made that:

(a) The individual intended to dispose of the assets either at fair market value, or for other valuable consideration; or

(b) The assets were transferred exclusively for a purpose other than to qualify for medical assistance; or

(c) All assets transferred for less than fair market value have been returned to the individual; or

(d) The Commonwealth determines that the denial of eligibility would work an undue hardship.

d. **Assets Held In Common With Another Person.** In the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or other arrangement recognized under state law, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset.

e. **Transfers by Both Spouses.** In the case of a transfer by the spouse of an individual that results in a period of ineligibility for medical assistance, the Commonwealth shall apportion the period of ineligibility (or any portion of the period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State Plan.

3. **Annuities:** The following shall govern annuities:

a. For purposes of this section, the purchase of an annuity by the institutionalized spouse or the community spouse will be treated as the disposal of an asset for less than fair market value unless:

(1) The state is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant; or

(2) The state is named as a 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 a representative of such child disposes of any remainder for less than fair market value.

b. The purchase of annuity by or on behalf of an annuitant who has applied for medical assistance for long-term care services will be considered a transfer of assets for less than fair market value unless:

(1) The annuity is described in subsection (b), individual retirement annuities, or (q), deemed IRAs under qualified employer plans, of § 408 of the Internal Revenue Code of 1986; or

(2) Purchased with the proceeds from:

(a) An account or trust described in subsection (a), individual retirement account, (c), accounts established by employers and certain associations of employees, or (p), simple retirement accounts, of § 408 of such Code;

(b) A simplified employee pension (within the meaning of § 408(k) of such Code; or

(c) A Roth IRA described in § 408A of such Code; or

(3) The annuity is:

(a) Irrevocable and nonassignable;

(b) Is actuarially sound (as determined by Social Security Administration publications); and

(c) Provides for payments in equal amounts during the term of the annuity with no deferral and no balloon payments made.

c. For annuities purchased prior to February 8, 2006, certain transactions occurring on or after that date shall make an annuity subject to this section including any action taken by the individual that changes the course of payment made by the annuity or the treatment of the income or principal of the annuity. The Commonwealth shall take such changes into account in determining the amount of the state's obligation for medical assistance or in the individual's eligibility for such assistance.

(1) These actions include additions of principal, elective withdrawals, requests to change the distribution of the annuity, elections to annuitize the contract, and similar actions.

(2) Changes that occur based on the terms of the annuity that existed prior to February 8, 2006, and that do not require a decision, election, or action to take effect shall not be subject to this section.

(3) Changes beyond the control of the individual, such as a change in law, in the policies of the insurer, or in the terms based on other factors, shall not cause the annuity to be subject to this section.