**Transfer of Assets**

The client is ineligible if an improper transfer of assets occurs **within five years** of an application for Medicaid. The penalty period for transfers will begin as of the date on which the individual is eligible for Medicaid services under the Medicaid program based on an approved application, and which does not occur during any other period of ineligibility.

Annuities are evaluated both as assets if they are assignable or have not been annuitized, and as income if they generate an income stream to the beneficiary. The right to receive income from an annuity is (can be) regarded as a counted asset, whether the annuity is or is not assignable, (i.e. the income stream is a counted asset). The purchase of an annuity may also be considered as a transfer of assets if funds that had previously been available to an individual may now be unavailable.

The purchase of an annuity will automatically be considered to be a transfer of assets unless: the department is named as the remainder beneficiary in the first position for at least the total amount of Medicaid paid on behalf of the annuitant; or, the department is named as such a beneficiary in the second position after the community spouse or minor or disabled child, and is named in the first position if the spouse or representative of the child disposes of any such remainder for less than fair market value. The annuity must meet all the following criteria: it must be irrevocable and non-assignable; it must be actuarially sound; and it must provide for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments.

Certain types of annuities are not subject to the transfer of asset rules. Examples of such annuities are those described in certain subsections of sections 408 and 408A of the Internal Revenue Code of 1986, including simplified employee pensions and certain Roth IRAs.

There is no limit on the amount of equity an individual may have in his or her home property. If he or she permanently enters a long term care facility and there is no spouse or minor or disabled child in the home, the home continues to be excluded as an asset as long as the individual is making a bona fide effort to sell it.

Individuals may reduce their equity in home property by taking out a home equity loan or a reverse annuity mortgage which are excluded as income. The proceeds of a loan or mortgage are counted assets, and that if an individual or his or her spouse improperly transfers the proceeds from a loan or mortgage, a penalty period should be imposed.

Promissory notes, loans, mortgages and similar financial instruments are considered assets if the owner can sell or otherwise obtain its equity. Monies derived from such assets are considered income. A promissory note, loan, mortgage or similar financial instrument is considered an asset or as an income-producer. For transfer of asset purposes only, funds used to purchase a promissory note, loan, mortgage or similar financial instrument are considered assets that have been transferred for less than fair market value unless the financial instrument is bona fide (as explained in policy) and meets all of the following criteria: it has a repayment term that is actuarially sound; it provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments; and it prohibits the cancellation of the balance upon the death of the lender.

Life use of property may or may not be counted, depending on whether the owner can sell it. Funds used to purchase life use of another person’s home are considered assets transferred for less than fair market value unless the purchaser resides in the home for a period of at least one year after the date of the purchase.