Document: Final Rule, **Register Page Number:** 25 IR 2726
Source: June 1, 2002, Indiana Register, Volume 25, Number 9

TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES

LSA Document #01-175(F)

DIGEST

Adds 405 IAC 2-3-1.2 concerning Medicaid penalties for transferring assets for less than fair market value. Specifies that the purchase of an annuity or similar arrangement is considered a transfer of assets for less than fair market value unless the annuity is irrevocable, commercially issued, actuarially sound, and provides substantially equal monthly payments with no balloon payment. Effective 30 days after filing with the secretary of state.

405 IAC 2-3-1.2

SECTION 1. 405 IAC 2-3-1.2 IS ADDED TO READ AS FOLLOWS:

405 IAC 2-3-1.2 Transfers involving annuities
Authority: IC 12-8-1-9; IC 12-8-6-5; IC 12-15-1-10
Affected: IC 12-15-4

Sec. 1.2. (a) For purposes of this section, "annuity" means a policy, certificate, contract, or other arrangement between two (2) or more parties whereby one (1) party pays a lump sum of money or other valuable consideration to the other party in return for the right to receive payments in the future.

(b) The purchase of an annuity, any instrument purporting to be an annuity, or any other arrangement that meets the definition of an annuity in subsection (a) shall be considered an uncompensated transfer of assets resulting in a penalty under section 1.1 of this rule unless the following criteria are met:
(1) The annuity is purchased from one (1) of the following:
(A) An insurance company or another commercial company that sells annuities as part of the normal course of business; or
(B) A nonprofit organization qualified under Section 501(c) of the Internal Revenue Code as amended.
(2) The annuity provides substantially equal monthly payments of principal and interest and does not have a balloon or deferred payment of principal or interest. Payments will be considered substantially equal if the total annual payment in any year varies by five percent (5%) or less from the payment in the previous year.
(3) The annuity will return the full purchase price within the purchaser's life expectancy as determined by life expectancy tables published by the office.

(c) If an annuity complies with the criteria in subsection (b)(1) and (b)(2), but does not comply with *[subsection]* **(b)(3), the uncompensated value of the transfer is the difference between the purchase price and the amount that the annuity will return within the purchaser's life expectancy. If an annuity does not comply with one (1) or more of the criteria in subsection (b)(1) or (b)(2), the uncompensated value is the entire purchase price.**

(d) If an annuity is revocable or can be assigned to another person, it is considered an available resource for Medicaid eligibility purposes.

(e) This section applies to any annuity regardless of purchase date, except that the requirements in subsection (b)(1) and (b)(2) apply only to the following:
(1) Any annuity purchased on or after the later of:
(A) June 1, 2002; or

(B) the effective date of this rule.

(2) Any annuity regardless of purchase date, if the annuity is annuitized on or after the later of:

(A) June 1, 2002; or

(B) the effective date of this rule.

(Office of the Secretary of Family and Social Services; 405 IAC 2-3-1.2; filed May 1, 2002, 10:38 a.m.: 25 IR 2726)

LSA Document #01-175(F)
Notice of Intent Published: 24 IR 2725
Proposed Rule Published: September 1, 2001; 24 IR 4136
Hearing Held: October 4, 2001
Approved by Attorney General: April 15, 2002
Approved by Governor: April 30, 2002
Filed with Secretary of State: May 1, 2002, 10:38 a.m.
Incorporated Documents Filed with Secretary of State: None