STATE OF CALIFORNIA–HEALTH AND WELFARE AGENCY PETE WILSON, Governor

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Letter No: 97-46

TO: All County Welfare Directors
All County Administrative Officers
All County Medi-Cal Program Specialists/Liaisons

CALIFORNIA PARTNERSHIP FOR LONG-TERM CARE NEWSLETTER

The Department of Health Services California Partnership for Long-Term Care issues a newsletter entitled "Partnership News." The purpose of the newsletter is to provide information to agents selling partnership policies and consumers who are interested in purchasing long-term care insurance.

The September 1997 issue of "Partnership News," volume 3, number 3, included an article about the connection between annuities and Medi-Cal eligibility. The article was intended to address false, or misunderstood information about, first, the treatment of annuities within the Medi-Cal program and second, recovery of funds paid by the State's Medi-Cal program.

A copy of the article entitled "The Truth About Annuities" has been enclosed with this letter. This will provide counties with the opportunity to review information which may be provided to Medi-Cal applicants and recipients by their attorneys and financial planners through the distribution of the Partnership News.

If you have any questions, please contact Kathy Harwell at (916) 657-0146 or Sharyl Shanen-Raya at (916) 657-2942.

Sincerely,

ORIGINAL SIGNED BY

Frank S. Martucci, Chief
Medi-Cal Eligibility Branch

Enclosure

The Truth About Annuities and Medi-Cal

The Partnership office has received many calls regarding the connection between annuities and Medi-Cal eligibility for long-term care services. This article is intended to address the false, or at least not fully understood, information currently circulating within the long-term care insurance/annuity industry in California.

Purchasing an Annuity May Not Make You Eligible for Medi-Cal

There are two issues that agents and consumers need to understand to gain a clearer understanding of the relationship between annuities and Medi-Cal. The first has to do with being considered eligible to qualify for Medi-Cal benefits. The second deals with recovery of funds paid by the State's Medi-Cal Program. Recovery from the estate takes place after the recipient of Medi-Cal benefits passes away.

"Rules for qualifying for Medi-Cal are extremely complex and are often misunderstood," explains Ms. Sharyl Shanen-Raya, Resource Eligibility Analyst, Medi-Cal Eligibility Branch, Department of Health Services. "But one thing is certain; only the local County eligibility office can determine who qualifies for Medi-Cal benefits."

When determining eligibility, Medi-Cal looks at both property and income. Each item of property is divided into one of these three categories; countable, exempt, or unavailable. Annuities are *not* considered exempt property. The balance may, however, be considered unavailable for purposes of determining Medi-Cal eligibility—*only* if the annuity contract meets the following conditions: 1) the annuitant must be receiving fixed, equal, monthly payments; and 2) payments must be received for a period of years equal to or less than the life expectancy of the annuitant/owner, based on life expectancy tables designated by the Secretary of the U. S. Department of Health and Human Services. The monthly payments will be considered income.

There are three very important considerations: First, in purchasing an immediate, non-deferred annuity, the amount of money used to fund/or purchase the annuity (the premium payment) becomes the property of the annuity company. It is never again available to the consumer. Second, the monthly payments produced by the annuity *will* be counted in the Medi-Cal income formula. Finally, in purchasing a deferred annuity, the cash surrender value will be considered available countable property for Medi-Cal.

Risking a Period of Ineligibility

Medi-Cal's eligibility unit has received reports of cases where individuals are being sold annuities which use formulas that payout only a small amount of principal and interest on a regular basis, with a large balance held until the last payment.

The balances of annuities structured like this are counted for Medi-Cal eligibility determinations unless the annuitants restructure the pay out plan to meet the criteria explained previously. Some companies permit restructuring and charge a substantial penalty for this purpose. Others do not allow it. (If an annuity cannot be restructured, the individual may have to cash it out, or the individual may not be eligible for Medi-Cal long-term care benefits.)

The only way an annuity that pays out a small amount and reserves a large payment for the end would not result in * in eligibility for Medi-Cal benefits, is if there was nothing to count. This means the payout plan would have to be irrevocable and the individual would not have any access to the money invested. As a result, the monthly income from the annuity would be very small and the individual would not be able to change it under *any* circumstance.

In situations where the annuity cannot be restructured to comply with the Medi-Cal rules, the individual could end up facing a period of ineligibility for Medi-Cal long-term care benefits (and the ***seller*** could face potential Federal prosecution for violation of federal law). The individual would need to pay for their own long-term care, or if they have no assets, forgo care for the period of time that Medi-Cal deems them to be ineligible.

Medi-Cal Can Recover Against the Balance of an Annuity

In some cases, when an individual purchases a "lifetime" annuity, the insurance company returns no funds to the family or heirs upon the death of the annuitant. There are other annuities that pay designated amounts for a period of years or return funds upon the death of the annuitant.

Even though certain annuities may not result in ineligibility for Medi-Cal benefits, Medi-Cal Estate Recovery Unit (ERU) can make a claim to recover amounts of benefits paid by the State for care of the individual. The ERU, as permitted by State and Federal law, can file a claim against any asset the beneficiary has legal title to or interest in at the time of their death (unless they had participated in a Partnership policy and had protected some or all assets through their policy). Based on these laws, the ERU makes claims against the balance of an annuity that passes to the heir or beneficiary upon the death of the Medi-Cal recipient/annuitant.

Annuities have their place in the range of financial products and retirement planning available to individuals. But using them to qualify for Medi-Cal benefits and as an attempt to shelter assets from Medi-Cal Estate Recovery may not be in one's best interest.

"Our advice to agents is the same as our advice to consumers," declares Ms. Sandra Pierce-Miller, Project Director of the California Partnership for Long-Term Care. "Read everything carefully, ask questions, and get it in writing. And if it sounds too good to be true, it probably is."

* THIS CORRECTION WILL BE ADDRESSED IN THE NEXT NEWSLETTE