

The View from HHSC
17th Annual Estate Planning, Guardianship and
Elder Law Conference
August 6 - 7, 2015

Shari L. Nichols
Staff Counsel
Texas Health and Human Services Commission

The following are questions submitted to HHSC for the 17th Annual Estate Planning, Guardianship and Elder Law Conference and answers to those questions.

Answers to questions that include scenarios are given based solely on the information provided in the questions. While the issues addressed in the questions and answers may be relevant to an eligibility determination, determinations of eligibility are made on a case by case basis and include evaluation of income, resources, disability and other relevant information.

Spousal Impoverishment HCBS Waiver Programs and the ACA

The Affordable Care Act Section 2404 amended Section 1924 of the Social Security Act (42 USC 1396r-5), to require states (for a five year period beginning January 1, 2014) to apply the spousal impoverishment rules to additional individuals receiving Home and Community Based Services (HCBS). CMS issued guidance on implementation of the ACA changes in a State Medicaid Director Letter on May 7, 2015.

HHSC is developing guidance for implementation of changes in spousal impoverishment policy for HCBS waiver recipients that will be distributed to eligibility staff in the near future. The policy will apply to recipients of all HCBS programs.

Recognition of Same Sex Marriage

The U. S. Supreme Court's decision in *Obergefell v. Hodges* issued June 26, 2015, requires states to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when the marriage was lawfully performed in another state that recognizes same-sex marriage.

HHSC is currently developing guidance for MEPD eligibility staff to implement the decision.

Annuities

QUESTION: If funds in an IRA are held in a Certificate of Deposit or other countable investment product and then used to purchase an annuity, are the IRA funds exempt?

ANSWER: According to 42 USC 1396p(c)(1)(G), the purchase of an annuity by an individual applying for Medicaid (or the community spouse) is **not** considered a transfer of assets if

- The annuity purchased is an IRA annuity [IRC 408(a), 26 USC 408(a)], or
- The annuity was purchased with the proceeds of an IRA, or a Roth IRA [IRC 408A, 26 USC 408A]

Continued on next slide

Annuities - Continued

If the individual uses the funds in the IRA to purchase the IRA annuity, no transfer penalty would be imposed, and the value of the IRA annuity would not be counted in the resource calculation for that individual.

The purchase of an IRA annuity is not considered a transfer of assets.

According to current HHSC policy, the funds in the IRA annuity are not counted in the resource calculation for the individual.

See MEPD Handbook Section F-7210 and F-7220

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: The View from HHSC

Also available as part of the eCourse

[Elder Law: Insurance, Medicaid, and View from HHSC](#)

First appeared as part of the conference materials for the
17th Annual Estate Planning, Guardianship and Elder Law Conference session
"The View from HHSC"