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Medicaid Update

University of Texas School of Law
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The Current HHSC Policies on IRAs

- Annuities within IRAs are exempt (from counting as resources)
- IRAs with Required Minimum Distributions are exempt

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Sources of Law of the HHSC Policies on IRAs

- There are no sources of law.
- Federal Medicaid law does not require any of these exemptions.
- No state statute, rule or written policy requires them—except for the slides and memo in Appendices 2 and 3 of our paper, obtained by Public Information Request.
- Therefore, they can change at any time without notice.

Page 1, HHS Slides & Memo in Appendices 2-3, pages 30-33



Annuities within IRAs are exempt—what we know

- *Only* annuities can be exempt, unless there is RMD.
- *Only* IRAs get this treatment. Assets in a 401k, 403b, 457 or other retirement account must be rolled over into an IRA for exemption.
- Spousal impoverishment case strategy: “Spend down” by rolling over retirement account assets without RMD into a deferred annuity in an IRA
- Reinvestment in a deferred annuity will make any Traditional IRA exempt even if there is no RMD—e.g. owner is too young to have RMD and it is participatory (not inherited)

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IRAs with RMD are exempt-what we know

- After SECURE ACT: RMD begins in year in which IRA owner reaches age 72, if born on or after July 1, 1949; otherwise (if older), in year the owner reaches age 70 ½
- Younger retirement account owners can always make the account exempt by rolling over to an IRA & investing in a deferred annuity.
- Same policy applies to applicants and community spouses.

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IRAs with RMD are exempt-what we know continued

- RMD is “income” both for eligibility and copayment
- RMD countable as income in any given month is computed by dividing annual RMD by 12
- RMD is determined by HHSC by reviewing a statement by the IRA custodian (not from your citations and calculations)
- RMD is counted as “non-resource produced income” when an enhanced SPRA is calculated (so often blocks that benefit)
- All *inherited* IRAs are exempt, because all have RMDs
- RMD is not reduced by amount paid as income tax

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