Subject: RE: Life annuity for C.S. [not-secure]
From: "Butler, Daniel T." <Daniel.Butler@ct.gov>
Date: 12/19/2018, 8:31 AM
To: "davis@sharinglaw.net" <davis@sharinglaw.net>

Lisa: Thank you for calling to my attention the Department's response to Attorney Barbara Reynolds five years ago regarding life annuities purchased by community spouses.

Please be advised that, after reviewing the advice given five years ago and the Deficit Reduction Act of 2005's provisions concerning annuities, specifically 42 U.S.C. 1396p (C)(1)(F), effective 1/1/2019 the Department will treat life annuities purchased by either the individual applying for assistance or a community spouse to be transfers for less than fair value based on the DRA's requirement that, in order to qualify as a penalty-free transfer, the annuity must name the state as a beneficiary. Life annuities do not have a beneficiary, and, accordingly, cannot comply with the beneficiary designation requirement set forth in 42 U.S.C. 1396p (C)(1)(F).

Additionally, for institutionalized individuals, in order to be actuarially sound, the annuity term must be equal to or less than their life expectancy based on the Social Security Administration's life expectancy tables providing an additional basis, as of 1/1/2019, to preclude the use of life annuities for institutionalized individuals applying for Medicaid.

Dan

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-----Original Message-----
From: Lisa Nachmias Davis [mailto:davis@sharinglaw.net]
Sent: Tuesday, December 18, 2018 5:30 PM
To: Butler, Daniel T.
Subject: Life annuity for C.S.

Dan,

It has come to my attention that in a case unrelated to me, you are advising the worker that a CS who purchased a LIFE ONLY annuity made a transfer of assets.

However, 5 years ago you sent an email in response to Atty. Barbara Reynolds that reached the contrary conclusion. You wrote in part:

"I am responding to your question concerning whether the State of Ct. must be named as a beneficiary of a life-only annuity. If an annuity contact is a life-only annuity, meaning that all payments stop upon the death of the annuitant and no death benefit is payable, **then the State of Ct need not be named as a beneficiary of the policy in order to avoid a transfer of assets penalty.** (emphasis added)

"If, however, there are any circumstances under which a benefit may be paid upon the death of the annuitant, such as an annuity contract that provides for a refund of the balance of the single premium if the annuitant dies before the amount of annuity payments made equals the amount of the single premium paid, then the State of CT must be named as a beneficiary in order to avoid a penalty."

Noeline Randall went on to say "In answer to your follow up question, we do consider the life only annuity to be actuarially sound based, in part, on the fact that there is no death benefit and is therefore not an estate planning tool."

In other words, no transfer of assets if the CS purchases a life annuity.

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Through my contacts I hear you are saying such a purchase WOULD be a transfer of assets. My many, many colleagues are very confused by this contradiction.

Surely, if an annuity company issues a life annuity to a community spouse in return for payment, and no third party ever gets any benefit -- only the community spouse -- to whom is a transfer being made? If you say "the annuity company," then the UPM provisions that say there is no transfer penalty if a transfer is INTENDED to be made for consideration surely would apply. If I go to an insurance company and say I want income for life, what will it cost me, and I pay them, I am intending to purchase income for life in exchange for consideration. Otherwise the only "transfer" is to the CS herself which of course is an exempt transfer! and of course the CS is making the transfer for a reason other than SHE HERSELF qualifying for Medicaid.

Since I have relied on your 2013 statements for quite some time in advising clients and providing education to the bar, I am very distressed that apparently you are taking a different position. Also, it makes no practical sense / would be against the interests of DSS.

If Mrs. X has a 5 year life expectancy and purchases a 2-year "term certain" annuity which the bar seems to like to call a SPIA, odds are she gets all the money back within the 2 years and the state gets nothing and she can design her estate plan so that the money she regains will not go to her spouse. If, however, Mrs. X purchases a life annuity and gets $300 more/month for life, then some day when she enters the SNF, her $300/month is going to reduce what the state has to pay towards her care. She really has no way to use that money for any third party's benefit -- only for herself, or for her future long-term care. By pushing people into ridiculous fix-term annuities, the state would be biting off its nose to spite its face. The life annuity benefits Mrs. X

just as blowing the money on a cruise or whatever would benefit her.
While I suppose in some cases the spouse with the SPIA dies and the
state gets paid, the SPIA may also benefit the asset-protection sections
of the bar, the kids, etc., and only by accident benefit the State.
Unless the family plans very badly it will not necessarily benefit the
State to have her purchase a SPIA (which she is much more likely to do
than to use the money on her spouse's care). Don't you want to
ENCOURAGE a community spouse to purchase life-only annuities, rather
than the contrary?

Can you respond?

Thanks,

Lisa Davis
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NOTE CHANGED SUITE NUMBER #503 EFF 7/15/15

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