# The Law and You
## Medicaid and Annuities - Major Changes

In February 2006, the Deficit Reduction Act (the "Act") was enacted at the Federal level. The Act made sweeping changes to the eligibility requirements for Medicaid.

More recently, on April 1, 2008, Utah made further changes to the Medicaid Program. In particular, the way annuities are now valued is substantially changed.

Before getting to annuities, however, an overview of the Medicaid Program as it relates to long term care is appropriate.

Unlike Medicare, which is an entitlement program for almost everyone who is 65 years and older, Medicaid is basically a welfare program.

To qualify for Medicaid's long term care program, a person cannot have more than $2,000. A home is an exempt asset and certain other assets are also exempt such as a vehicle and a funeral plan.

The Medicaid Program provides assistance with long term care. However, it is necessary to deter persons from gifting their estate to their children and then asking Medicaid to pay for their long term care. This represents fundamental fairness.

This deterrence is accomplished by having a five-year "look back period" during which any gifts made by an applicant must be reported when applying for Medicaid. Such gifts will be added to the then current estate, and if more than $2,000 in total, Medicaid assistance will be denied.

Gifts made more than five years prior to applying for Medicaid will not affect eligibility, since they are not reported.

A person's home is considered sacred to most seniors. Consistent with this philosophy, Medicaid has long considered a home as an exempt asset. However, if the home's equity is more than $500,000, it will not be considered exempt under the Act.

Now, a discussion on annuities.

An annuity is a financial instrument that is purchased over time or in a lump sum. In exchange, the issuer or seller of the annuity, usually an insurance company, makes monthly payments to the annuitant, generally the purchaser.

Ordinarily, an annuity has value and is counted as an asset in determining eligibility for Medicaid. However, if the annuity meets strict requirements, it can be deemed by Medicaid as an exempt asset like a person's home.

First, the annuity must be "actuarially sound." That means that the payout of the annuity must coincide with the expected lifetime of the annuitant as defined by Medicaid.

Second, the Utah State Medicaid agency must be the primary beneficiary of the annuity. This means that if the annuitant dies before his or her life expectancy, then the balance goes to the State of Utah up to the amount of assistance provided by Medicaid.

Third, the annuity must be irrevocable. This means it can't be changed.

Notwithstanding the foregoing requirements for eligible annuities, Utah has now added a new and rather draconian rule.

As of April 1, 2008, Utah will now count an annuity as an asset in determining eligibility for Medicaid by presuming that it can be sold to a third party or that the income stream can be sold.

This means that the annuity will be counted even if it is actuarially sound, the primary beneficiary is the State of Utah, and it is irrevocable.

However, an applicant can rebut the presumption that the annuity can be sold by providing factual evidence to the contrary, in which case the annuity will not be considered as an available resource.

To rebut the presumption, an applicant must identify at least two companies that are in the business of purchasing annuities have declined to purchase the applicant's annuity. This is acceptable evidence that the annuity cannot be sold.

This change in the way annuities are treated by Medicaid will likely make most annuities unattractive for Medicaid applicants. Accordingly, any prospective Medicaid applicant should strictly avoid the purchase of annuities or be prepared to provide rebuttal evidence that the annuity can't be sold.

To better understand your rights and to better plan for your long term care, you should consult with an Elder Law Attorney who specializes in Medicaid matters. Check the National Academy of Elder Law Attorneys at (520) 881-4005, or the Yellow Pages under the heading of "Elder Law."