

CHANGE NOTICE FOR MANUAL NO. 24-07, DRA TRANSFER OF ASSETS

DATE: OCTOBER 22, 2007

Manual: Aged, Blind, and Disabled Medicaid

Change No: 24-07

To: County Directors of Social Services

Effective: November 1, 2007

I. BACKGROUND

The Deficit Reduction Act of 2005 (DRA) amended section 1917 of the Social Security Act (the Act) to make several changes concerning assets. In addition, the 2006 NC State Appropriations Act provided a change that any asset, countable or excluded under Medicaid policy, can be sanctioned if an asset was transferred for less than fair market value and the 2007 NC General Assembly enacted a bill providing for a waiver of transfer of assets penalty due to undue hardship.

- A. The DRA lengthens the lookback period for all transfers of assets from 36 to 60 months.**
- B. The DRA changes the begin date for the sanction period to the month the individual is institutionalized and is otherwise eligible for Medicaid.**
- C. Under the DRA fractional portions of a month are included when determining the sanction period. Previously the fractional period was dropped.**
- D. Additional changes to the Medicaid transfer of asset rules include making additional assets subject to the lookback period and imposition of a sanction period if the asset was established or transferred for less than fair market value. These assets include funds used to purchase a promissory note, loan, or mortgage. The purchase of life estate interest must meet certain criteria.**
- E. The DRA also addresses the growing use of annuities to shelter assets. As a condition of eligibility for institutional services, the State must be named the remainder beneficiary of all annuities held by the a/r or the a/r's spouse that are purchased or changed on or after November 1, 2007. Unless an annuity meets certain criteria, a transfer of assets sanction on annuities purchased or changed must be imposed. The criteria are outlined in policy.**

F. The DRA amended Section 1917 of the Act to impose a home equity limitation of \$500,000 for persons requesting assistance for institutional services.

II. CHANGES TO MA-2240, TRANSFER OF RESOURCES

MA-2240, Transfer of Resources, title was changed to Transfer of Assets and includes changes reflecting the DRA and G.S. 108 A-58.1.

Assets are all resources and income. When an individual, legal representative, or financially responsible spouse transfers any real property, personal property or any other assets, including assets counted or excluded in determining Medicaid eligibility, for less than current market value, a transfer of assets sanction may be imposed. If a sanction is imposed, the individual is ineligible for certain Medicaid covered services.

The services that can be sanctioned are called institutional services. They include services provided to individuals by a nursing facility (NF), intermediate care facility for the mentally retarded (ICF-MR), swing bed or inappropriate level of care bed, and through Community Alternatives Program (CAP). In-home health services and supplies can be sanctioned after the individual has been sanctioned for institutional services and goes to a PLA living arrangement while under a sanction period.

Transfer of asset regulations do not apply to all Medicaid covered services. An individual under a transfer of assets sanction may be eligible for other services covered by the North Carolina Medicaid program.

Changes affecting eligibility policy include:

- A. Definitions for the following are added or revised: actuarially sound, annuity, annuitant, annuitize, beneficiary of an annuity, cost of care, demonstrated undue hardship, greater weight of the evidence, in-home health services and supplies, institutional services, institutionalized for transfer of assets, legal representative, lookback date, rebuttal, remainder beneficiary, sanction period, transfer, uncompensated value, undue hardship, and undue hardship waiver.**
- B. Apply transfer rules to the a/r requesting or receiving assistance with institutional services or in-home health services and supplies after being penalized for institutional services.**

Do not apply transfer rules to:

1. Individuals who do not request or receive institutional services or in-home health services and supplies,
2. Those in acute care in a hospital,
3. Individuals in the psychiatric unit of a hospital,
4. Children under age 21 admitted to a Psychiatric Residential Treatment Facility,

5. Those requesting MSB, MQB-B, MQB-E, MWD,
 6. An institutionalized spouse (ISP) or a CAP spouse when the community spouse (CUSP) transfers an asset while the ISP/CAP spouse is authorized for nursing home cost of care or CAP.
- C. To determine if any transfers have occurred, the county must explore all assets on all applications, redeterminations, and change in situations for individuals requesting or receiving institutional services. Transfer rules apply to both countable and excluded assets. This may include but not be limited to purchases of life estates in another individual's home or other piece of property, purchase of a promissory note, loan, or mortgage, and the purchase of an annuity.**
- D. The lookback date is the earliest point in time on or after which all transfers of assets are reviewed for the a/r requesting or receiving institutional services.**
1. For applications taken on or after November 1, 2007, the lookback period for transfers, including transfers to trusts and annuities, is 60 months prior to the starting point. The full 60 months will be phased in until the year 2012 is reached. For applications prior to November 1, 2007, the lookback period remains 36 months, except for transfers to trusts and annuities. In which case the lookback period is 60 months.
 2. For individuals who first applied for Medicaid in any category on or after February 1, 2003, but prior to November 1, 2007, the starting point is the date of the first application for Medicaid. For individuals who first applied for Medicaid in any category prior to February 1, 2003, or on or after November 1, 2007, the starting point is the earliest date the a/r is institutionalized or requests CAP and applies for Medicaid.
- E. The allowable transfers (non-trusts) policy is revised to make it clear that a compensated transfer of real or personal property or liquid assets is an allowable transfer.**
- F. For a transfer of a homesite on or after November 1, 2007, to a co-owning sibling to remain an allowable transfer, the sibling must have been residing in the home for a period of at least one year immediately before the a/r entered a nursing facility or requests CAP. For a transfer of a homesite to a natural, adopted, or step child(ren) age 21 or over to remain an allowable transfer, the natural, adopted, or step child(ren) age 21 or over must have been residing in the home for a period of at least two years immediately before the a/r entered a nursing facility or requests CAP and provided care to the a/r to permit him to live at home during the two year period. Receiving in-home health services and supplies is not a factor for transfers made on or after November 1, 2007.**
- G. Annuities purchased or changed on or after November 1, 2007, must name the State of North Carolina Medicaid Program as the remainder beneficiary in the**

first position when the a/r is applying for or receiving institutional services or requests CAP. If there is a community spouse or any child under age 21 or a disabled child of any age when the purchase or change takes place, the North Carolina Medicaid Program may be named in the second position after one of those individuals.

At application and review, an a/r or person or institution acting on his behalf must disclose to the agency the existence of any annuities held by the a/r or the spouse of the a/r.

Notify Third Party Recovery of any annuities.

- H. Evaluate promissory notes, loans, or mortgage to determine a sanction period unless the repayment agreement meets certain criteria.**
- I. Evaluate for a transfer of assets when an individual transfers real property and retains a life estate interest, transfers a life estate interest, or purchases a life estate in another individual's home or other asset.**
- J. Evaluate purchase of a remainder interest in real property and of a tenancy-in-common interest or other fractional interest in real property for fair market value at least equal to the value of the purchase price. Evaluate transfer of a remainder interest in real property and of a tenancy-in-common interest or other fractional interest in real property for compensation at least equal to fair market value.**
- K. The purchase of a single premium pure endowment policy is considered an uncompensated transfer.**
- L. When evaluating rebuttal evidence provided by the a/r, consider regular donations/gifts to charities, religious organizations or family members to determine a pattern of giving. A pattern of giving can indicate an intent other than to qualify for Medicaid.**
- M. The sanction period calculation policy is revised to reflect the new requirements. The sanction period depends upon many factors, including when the transfer occurred and the amount of the transfer. For transfers occurring on or after November 1, 2007, the sanction period begins on the date the a/r enters a nursing home or requests CAP and is eligible for Medicaid.**

If an individual is sanctioned for payment of institutional services due to transfer of assets, continue to determine eligibility for other Medicaid services.

- N. Whenever a transfer of asset sanction is determined, regardless of the date of the transfer, the a/r may request an undue hardship waiver.**

O. Always retain a record of pertinent dates concerning transfer of assets in a sub-folder or file in the a/r's permanent record. Use MA-2240 Figure 6, Transfer of Asset Dates Documentation.

P. For all a/r's, regardless of living situation, update the AT screen. For current LTC/CAP recipients, update the AT screen at a change in situation or redetermination.

Q. New forms/figures include:

1. MA-2240 Figure 4, Annuities
2. MA-2240 Figure 5, Establish Starting Point/Lookback
3. MA-2240 Figure 6, Transfer of Asset Documentation Page
4. MA-2240 Figure 7, Calculating Penalty Period

R. Revised forms/figures include:

1. MA-2240 Figure 1, Life Expectancy Table
2. MA-2240 Figure 2, A Guide for Evaluating Transfer of Resources, is eliminated and replaced with a new MA-2240, Figure 2, A Guide to Establishing Lookback Dates and Sanction Periods.
3. MA-2240 Figure 3, Important Notice

S. Changes affecting EIS include:

1. Sanction Begin and End Dates are currently entered in a month/year format. This is changed to a day/month/year format. The week-end of November 3, 2007, EIS will convert all current cases to the new format.
2. The existing indefinite sanction period end date is changed from 12/9999 to 11/30/2010. The week-end of November 3, 2007, EIS will convert all current cases with a Sanction End Date of 12/9999 to 11/30/2010.
3. The Medicaid denial notice codes A2 and A3 are eliminated. Three new approval notice code texts, M1, M2, and M5, and three new denial notice code texts, A4, A5, and A6, were developed to reflect asset transfers and sanction period changes brought about by the DRA. The approval notice codes produce an electronic notice or the worker can choose to send a manual notice. The denial notice codes require the worker to send a manual notice stating the reason for the denial. When sending a manual notice the worker can use the approval/denial code wording. The wording is also provided in the policy at MA-2240, XIV.D.

4. A new Exclusion Reason Code, "WVR = Hardship Waiver" was established for use when evaluation for undue hardship is pending when an application is due and must continue to pend beyond the processing deadline until the information to make the undue hardship decision is received.

T. If a homesite is transferred to more than one natural, adopted, or step child(ren) who meet the criteria for residing in the home and caring for the a/r, this is an allowable transfer.

U. Each month a report indicating the type of asset transferred, the value of the asset, and the sanction period, if any, imposed for each case is to be sent to the county's Medicaid Program Representative.

III. MA-2241, TRANSITION POLICY FOR IN-HOME HEALTH SERVICES AND SUPPLIES

This new manual section contains policy addressing assets transferred prior to November 1, 2007.

Assets transferred on or after November 1, 2007, may result in a sanction period for an individual's eligibility for in-home health services and supplies only if the sanction period is first applied to the individual due to institutionalization or requesting CAP services and a portion of the sanction period remains after the individual leaves the institution or CAP.

For the period from November 1, 2007, to November 1, 2010, individuals in PLA who receive in-home health services and supplies may have transferred assets prior to November 1, 2007. It is possible that these transfers occurred during part of the lookback period. However, they are subject to the transfer policy in effect prior to November 1, 2007, where a transfer of assets penalty is applied to an a/r receiving in-home health services whether or not he had been sanctioned for institutionalization or CAP services. Until November 1, 2010, look to see if a transfer occurred prior to November 1, 2007.

IV. MA-2242, HOME EQUITY VALUE & ELIGIBILITY FOR INSTITUTIONAL SERVICES

This is a new manual section containing policy for determining eligibility for institutional services when an a/r has home equity in excess of \$500,000.

For applications for institutional services taken on or after November 1, 2007, the individual's equity interest in his or her home cannot exceed \$500,000. This also applies to future redeterminations of these applications. This does not apply to PLA applications.

This requirement applies only to eligibility for nursing home care, ICF-MR, swing bed or inappropriate level of care bed or CAP services. The a/r may be eligible for other Medicaid services.

The \$500,000 home equity provision does not apply to individuals who applied and were determined eligible before November 1, 2007, and have no break in institutional services

eligibility after November 1, 2007, or to a re-open termination when the date of application is prior to November 1, 2007.

The new MA-2242 Figure 1/DMA-5115, Notification of Right to Request a Demonstrated Hardship Waiver (Home Equity Value), notifies the a/r of the right to request a demonstrated hardship waiver.

V. MA-2245, UNDUE HARDSHIP WAIVER FOR TRANSFER OF ASSETS

This is a new manual section containing policy reflecting the new G.S. 108A-58.2 requirements for when an applicant/recipient alleges an application of a transfer of asset sanction would cause an undue hardship. If imposition of the transfer of asset sanction would cause the a/r an undue hardship, Medicaid eligibility may be authorized for the sanction period.

Undue hardship relates to the a/r. Undue hardship does not apply to relatives, responsible parties of the a/r or the facility. Undue hardship also does not exist when the imposition of the penalty period causes the a/r an inconvenience or restricts his lifestyle.

A. Undue hardship exists when imposition of a penalty period due to the asset transfer would deprive the a/r of:

1. Medical care such that the a/r's health or life would be endangered, or food, clothing, shelter, or other necessities of life, and
2. No other sources are available to the a/r to provide for medical care, food, clothing, shelter, or other necessities of life, and
3. The a/r or a person or institution acting on the a/r's behalf is making a good faith effort to pursue all reasonable means to recover the transferred asset or the fair market value of the transferred asset.

B. New forms/figures include:

1. MA-2245 Figure 1/DMA-5113, Notification of Right to Request an Undue Hardship Waiver (Transfer of Assets).
2. MA-2245 Figure 2/DMA-5114, Request for Documentation for Undue Hardship Claim.

VI. EFFECTIVE DATE AND IMPLEMENTATION

This policy is effective November 1, 2007. Apply this policy to applications taken on or after November 1, 2007, and redeterminations begun on or after November 1, 2007.

IV. MAINTENANCE OF MANUAL

A. Remove: MA-2240, Transfer of Resources pages 1 – 35, and Figures 1, 2, and 3.

- Insert: [MA-2240](#), Transfer of Assets, pages 1 – 56, Figures [1](#), [2](#), and [3](#), and new Figures [4](#), [5](#), [6](#), and [7](#) dated 11/1/07.
- B. Insert: New section [MA-2241](#), Transition Policy for In-home Health Services and Supplies, pages 1-2 dated 11/1/07.
- C. Insert: New section [MA-2242](#), Home Equity Value & Eligibility for Institutional Services, pages 1 – 3 and new Figure [1](#) dated 11/1/07.
- D. Insert: New section [MA-2245](#), Undue Hardship Waiver for Transfer of Assets, pages 1-9, and new Figures [1](#) and [2](#) dated 11/1/07.

If you have any questions regarding this information, please contact your Medicaid Program Representative.

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Acting Director

(This material was researched and written by Susan Ryan, Policy Project Manager, Medicaid Eligibility Unit.)