

CHANGE NOTICE FOR MANUAL NO. 17-07, DRA TRANSFER OF ASSETS

DATE: OCTOBER 29, 2007

Manual: Family and Children's Medicaid
Change No: 17-07
To: County Directors of Social Services
Effective: November 1, 2007

I. BACKGROUND

The Deficit Reduction Act of 2005 (DRA) became law effective February 8, 2006. The DRA amended section 1917 of the Social Security Act (the Act) to make several changes concerning resources and transfers. Refer to Change Notice 24-07, [MA-2240](#), Transfer of Assets, [MA-2241](#), Transition Policy for In-Home Health Services & Supplies, [MA-2242](#), Home Equity Value & Eligibility For Institutional Services, and [MA-2245](#), Undue Hardship Waiver For Transfer Of Assets.

II. CONTENT OF CHANGE

A. [MA-3110](#), Definitions, lists additional and revised definitions.

1. Actuarially Sound – A promissory note, annuity, mortgage or loan established to pay off the entire asset value over the actual or expected lifetime of the annuitant/lender is actuarially sound. The annuitant/lender is expected to live long enough to receive an amount that is equal to or greater than the amount originally invested. The total amount of proceeds must be designed to be paid out in equal regular payments during the term of the agreement, with no deferral and no balloon payments.
2. Annuitant – An annuitant is the person who receives the income payments of an annuity policy at maturity date for life or for a specified period. The annuitant may or may not be the same as the owner.
3. Annuitize – Converting the principle of an annuity into a series of payments.
4. Annuity - An annuity is a type of trust. An individual pays an entity a lump sum of money in return for the right to receive fixed, periodic payments, either for life or a term of years. This includes the investment portion of a single premium pure endowment life insurance policy.

5. Asset – For purposes of transfer of assets, is resources and income.
6. Beneficiary of an annuity – The beneficiary is the person who receives any benefit that is paid upon death of the annuitant prior to the maturity date of the annuity.
7. Child Tax Credit (CTC) - Supplement to the earnings of low income taxpayers with earned income. Must be a parent, step-parent, grandparent, or foster parent with a dependent child. The child tax credit may provide a refund to individuals even if they do not owe any tax. There is no advance payment with CTC.
8. Compensation - Something received as payment for an asset. Payment is usually considered to be cash, but other forms of payment include in-kind income, real or personal property, support and maintenance, services, or assumption of a legal debt.
9. Cost of Care - The amount of money charged to an individual for NF or ICF-MR level of care, a swing bed, or inappropriate level of care bed in a hospital, or waiver services for the Community Alternatives Program (CAP).
10. Demonstrated Hardship - The a/r, spouse or personal representative proves through the greater weight of evidence that a denial of institutional services due to excess home equity value will cause the a/r an undue hardship.
11. Demonstrated Hardship Waiver- An individual who incurs a sanction for transfer of assets and is denied or terminated from Medicaid payment of institutional services may request this sanction be waived and can demonstrate the sanction will cause the a/r an undue hardship.
12. Equity - The equity of real or personal property is the current market value (see definition above) less any encumbrances (mortgages, liens, or judgments) on the property.
13. Focused Risk Management Program (FORM) – (formerly Medication Therapy Management) Medicaid recipients participating in FORM may have their prescription overridden at the discretion of the pharmacist. The pharmacist coordinates, integrates and communicates medication regimen discussions with the recipient’s primary care provider and upon consensus, translates the information to the recipient.
14. Greater Weight of the Evidence – Refers to the quality and convincing force of the evidence rather than to the quantity of the evidence.
15. In-Home Health Services and Supplies – Medically necessary services provided to an applicant/recipient (a/r) by a Medicaid certified provider can be sanctioned due to a transfer of assets. These services include the following:
 - a. Durable Medical Equipment (DME) and related medical supplies such as wheelchairs, walkers, canes, hospital beds, oxygen and oxygen equipment, needed to maintain or improve a recipient’s medical, physical, or functional level.
 - b. Home Health Services covers home health aide services, skilled nursing, physical therapy, speech pathology and audiology, and occupational therapy provided by a

Medicaid certified home health agency to help restore, rehabilitate or maintain a recipient in the home.

- c. Home Health Supplies include items such as adult diapers, disposable bed pads, catheter and ostomy supplies provided by a Home Health or Private Duty Nursing (PDN) agency. PDN services are not provided to individuals in an Adult Care Home (ACH).
- d. Home Infusion Therapy (HIT) covers self-administered therapies such as nutrition therapy (tube feeding), drug therapy including chemotherapy for cancer treatments, antibiotic therapy and pain management therapy.
- e. Personal Care Services (PCS) are personal care activities such as bathing, toileting, monitoring vital signs, housekeeping and home management tasks essential for maintaining the recipient's health performed by an in-home aide in a private residence.

PCS services provided to individuals in an ACH are not subject to this policy. Refer to [MA-2240](#), Transfer of Assets, in the Aged, Blind, and Disabled Medicaid manual for an explanation of services.

- 16. Institutional Living Arrangement – Institution or establishment that provides food, shelter and some treatment to 4 or more persons who are not related to the owner. This includes nursing facilities, group homes, orphanages, adult care homes, and residential treatment facilities.
- 17. Institutionalized – Long Term Care Budgeting/Community Spouse Resource Allowance and Continuous Period of Institutionalization. This is 30 consecutive days in a medical facility or combination of medical facilities. The facilities are nursing facility, intermediate care facility-mental retardation (ICF-MR), swing bed, inappropriate level of care in a hospital, or hospital acute level, and psychiatric residential treatment facility (PRTF).
- 18. Institutional Services –These services include services provided in a nursing facility (NF), intermediate care facility for the mentally retarded (ICF-MR), swing bed or inappropriate level of care bed, services provided through the Community Alternatives Program (CAP). These services can be sanctioned due to a transfer of assets. These services do not include acute hospital care regardless of length of stay.

19. Institutionalized for Transfer of Assets – As defined for a transfer of assets review, institutionalized is an individual receiving institutional services in a nursing facility (NF), intermediate care facility for the mentally retarded (ICF-MR), swing bed or inappropriate level of care bed in a hospital, or services provided through the Community Alternatives Program (CAP).

This is different from the definition of institutionalized for long term care budgeting or institutional living arrangement when determining state/county residency.
20. Katie Beckett -- (CAP for Children) Medicaid Community Alternatives Program to allow disabled children who are at risk for institutionalization to receive medical care at home. Term used by other states. Katie Beckett is referred to as CAP-C in North Carolina.
21. Legal Representative - A person acting for and legally authorized to execute a contract for the a/r, such as but not limited to a general guardian, guardian of the estate, parent of a minor child, power of attorney, fiduciary (agent), conservator or any trustee managing the a/r's resources. Legal authorization requires a separate legal document except for parents of minor children.
22. Lookback Date - The earliest date in which a transfer of assets for less than fair market value can be assessed. The lookback date varies depending on when an individual applies for Medicaid, is admitted to a NF or ICF/MR or requests CAP services. Sanctions can be determined for transfers that take place on or after the lookback date.
23. Market Value - The value of an asset if sold on the open market. For real and personal property it is the tax assessed value of the property, unless that value is rebutted and a different value established.
24. Medicare Medical Health Savings Account (MHSA) - Yearly Medicare deposits into an interest-bearing account to help the plan member cover their health care costs until the deductible is met. The accounts are linked to high deductible health insurance policies.
25. Plan to Achieve Self-Support (PASS) --- The Social Security Act authorizes the exclusion of resources of an individual who has a disability or is blind when the individual needs such income and resources to fulfill an approved Plan to Achieve Self-Support (PASS).
26. Program of All-Inclusive Care for the Elderly (PACE) – A program of all-inclusive care for the elderly. Managed care service delivery for the frail community-dwelling elderly, most of whom are dually eligible for Medicare and Medicaid benefits, and all of whom are certified eligible for nursing home placement according to North Carolina standards.
27. Rebuttal – The process by which an a/r or the a/r's spouse proves through a greater weight of evidence factors that eliminate or decrease a sanction period.

28. Remainder Beneficiary - The person(s) entitled to an annuity's principal, possibly including income that has been accumulated and added to the principal, after the death of the annuitant.
29. Sanction Period - The period of time in which an a/r is ineligible for Medicaid payment of institutional services and in-home health services. In order to sanction in-home health services, the sanction period must have begun during a period the individual received institutional services and continues when the individual goes to private living arrangement. The sanction period is also referred to as a penalty period.
30. Transfer - To change ownership or title from one person(s) to another. A transfer also occurs when an individual takes action to waive or renounce assets or an inheritance to which he is entitled or when an individual takes any action that eliminates his ownership or reduces his control of a asset. For example, changing fee simple property to tenancy-in-common property or adding an additional owner to a savings account is considered a transfer.
31. Undue Hardship – The application of the sanction period would deprive the individual of medical care, such that the individual’s health or life would be endangered; or of food, clothing, shelter, or other necessities of life.

B. [MA-3205](#), Conducting A Face-To-Face Interview, has the following changes:

1. Request a written statement by the applicant/recipient from any non-relative who is applying on behalf of an individual authorizing the non-relative to act as his authorized representative. Do not refuse to take or deny the application if the statement is unavailable. If the statement is unavailable at application, request the statement as additional information.
2. Adds a reference link to [MA-3550](#), Medicaid Transportation, for specific information concerning Medicaid Transportation.
3. Adds [MA-3205, Figure 5](#), Explanation of The Effect of Transfer of Asset (s) On Medical Assistance Eligibility. Caseworkers must give this fact sheet to the a/r at each application taken and each redetermination started on or after November 1, 2007.
4. Adds the Medicaid Family Planning Waiver as a choice of program.
5. Changes the name of the Food Stamp Program to Food and Nutrition Services.
6. Clarifies procedures for completing the Lifeline and/or Link-Up Application, [DSS-8168I/DSS-8168Isp](#), and adds that a Family Planning Waiver (FPW) recipient is not eligible for Life Line Link Up Assistance.
7. Changes the term Carolina Access to Community Care of North Carolina/Carolina Access (CCNC/CA). The caseworker is advised to refer to [MA-3435](#), Community Care of North Carolina/Carolina Access (CCNC/CA) to determine if the assistance unit member is required to participate in CCNC/CA.

8. Updates the phone number for Electronic Data System (EDS) regarding Certificates of Coverage. The number is (800) 688-6996.
9. The DMA-5097 [MA-3205, Figure 2](#) and [MA-3205, Figure 2a](#) Request For Information, has been revised to request:
 - a. Proof that the State of North Carolina Medicaid Program is named as remainder beneficiary.
 - b. Documentation to rebut a transfer of assets sanction or to prove a transfer of assets sanction will cause an undue hardship or both.
 - c. Proof of homesite equity.
 - d. Contact information for issuer of an annuity.

D. [MA-3210](#), Verification Requirements For Applications

1. The following now requires third party verification:
 - a. If the purchase/change date of an annuity is November 1, 2007, or later, the following criteria must be verified:
 - (1) North Carolina's Medicaid Program is named as a remainder beneficiary.

North Carolina's Medicaid Program is named as a remainder beneficiary in the first position. If there is a community spouse and/or any child or children under age 21, or a disabled child or children of any age, when the purchase/change takes place North Carolina's Medicaid Program may be named in the next position after those individuals. This applies to the a/r and the a/r's spouse.

Note: The amount that the State of North Carolina Medicaid Program can receive, as a beneficiary of a Medicaid recipient's annuities, is limited to the amount that Medicaid paid on behalf of the Medicaid recipient.

- b. Meets the annuity criteria in [MA-2230](#), Financial Resources, in the Aged, Blind and Disabled Medicaid Manual.
 - c. Proof of the homesite equity value. Request proof of the equity of the homesite if the tax value of the homesite exceeds \$500,000.00.
 - d. Proof to substantiate undue hardship. Request documentation from the a/r or the a/r's spouse or their representative to rebut that a sanction for transfer of assets will cause an undue hardship.
2. The DMA-5098, Your Application For Medicaid Is Pending, has been revised to:
- a. Notify the applicant that his application cannot be completed because documentation to rebut a transfer of assets sanction or to prove a transfer of assets sanction will cause an undue hardship or both has not been received.
 - b. Clarifies that the DSS must obtain the verification for the a/r when third party verification is required for certain eligibility factors.

E. [MA-3215](#), Processing the Application

1. Clarifies that the WVR begin date cannot be earlier than November 1, 2007.
2. Clarifies that an application must be reopened within 5 days as a result of any of the following:
 - a. Local or state appeal reversal, or
 - b. Remanded appeal by the local or state hearings officer, or
 - c. Improper denial or withdrawal found by the county, monitors, or Medicaid Program Representatives, or
 - d. Misapplication of policy (incorrect denial), or
 - e. Discouragement.

F. [MA-3315](#), Medicaid Deductible

Refers the caseworker to [MA-2240](#), Transfer of Assets, in the Aged, Blind and Disabled Medicaid Manual, to determine when the CAP indicator is entered for CAP applicant/recipients subject to a deductible and a sanction period.

G. [MA-3320](#), Resources

1. Clarifies that HSF and IAS children are eligible for the Expanded Foster Care Program (EFCP), and are exempt from the assets limits through the month the child turns age 21.
2. Instructs the caseworker to use the NADA book or internet site www.nadaguides.com for unlicensed vehicles not registered in the tax office. If the vehicle is older than those listed, use the last value given in NADA. Reference to “junked” cars has been replaced with “unlicensed vehicle”.
3. Excludes any portion of the lump sum of Child Tax Credit, Earned Income Tax Credit, SSI or RSDI from resources for the 9 calendar months following the month of receipt. This includes SSA/SSI lump sums that are prorated and paid out over a period of time.
4. Instructs the caseworkers to count stock or self employed ownership interest as a resource for a Corporation.

III. EFFECTIVE DATE AND IMPLEMENTATION

This policy is effective November 1, 2007. Apply this policy at each redetermination started on or after November 1, 2007, and each application taken on or after November 1, 2007.

IV. MAINTENANCE OF MANUAL

A. Remove: MA-3110, Definitions, pages 1-30.

Insert: [MA-3110](#), Definitions, pages 1-33 dated 11/01/07.

B. Remove: MA-3205, Conducting A Face-To-Face Interview, pages 1-20.

Insert: [MA-3205](#), Conducting A Face-To-Face Interview, pages 1-20, [Figure 2](#), [Figure 2A](#) and [Figure 5](#) dated 11/01/07.

D. Remove: MA-3210, Verification Requirements For Applications, pages 1-7 and Figure 2A and Figure 2B.

Insert: [MA-3210](#), Verification Requirements For Applications, pages 1-8 and [Figure 2A](#) and [Figure 2B](#) dated 11/01/07.

E. Remove: MA-3215, Processing The Application, pages 1-12.

Insert: [MA-3215](#), Processing The Application, pages 1-12 dated 11/01/07.

F. Remove: MA-3315, Medicaid Deductible, pages 1 and 2.

Insert: [MA-3315](#), Medicaid Deductible, pages 1 and 2 dated 11/01/07.

G. Remove: MA-3320, Resources, pages 1-8 and pages 11-12.

Insert: [MA-3320](#), Resources, pages 1-8 and pages 11-12 dated 11/01/07.

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

William W. Lawrence, Jr., M.D.

(This material was researched and written by Sandi Morrow, Policy Consultant Medicaid Eligibility Unit.)