

STATEMENTS OF POLICY

Title 55--PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 178]

Provisions of the Deficit Reduction Act of 2005 on Medicaid Eligibility for Long-Term Care Services

[37 Pa.B. 1043]

[Saturday, March 3, 2007]

Scope

This statement of policy applies to applicants and recipients in need of payment for the following long-term care (LTC) services:

- (1) Nursing facility services.
- (2) A level of care in any institution equivalent to that of nursing facility services.
- (3) Home and community-based services furnished under a waiver granted by the Centers for Medicare and Medicaid Services.

Purpose

The purpose of this statement of policy is to interpret the Department of Public Welfare's (Department) regulations regarding eligibility for payment of LTC services. The Department's regulations can be accessed online at the *Pennsylvania Code* website at www.pacode.com.

Background

The Deficit Reduction Act of 2005 (DRA of 2005), the act of February 8, 2006 (Pub. L. No. 109-171, 120 Stat. 4) became law on February 8, 2006. The DRA of 2005 made a variety of changes in the rules regarding eligibility for services and benefits in the Medicaid Program. In compliance with the DRA of 2005, several cost containment measures are being implemented.

Discussion

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The Department's regulations require that a period of ineligibility for payment of LTC services be imposed on an individual applying for or receiving payment for those services when transfers of assets for less than Fair Market Value (FMV) were made by the individual or the individual's spouse during the look-back period. The DRA of 2005 amended the asset transfer rules regarding eligibility for payment of LTC services under the Medicaid Program. The look-back period has been extended to 60 months for all transfers of assets made on or after the date of enactment. The DRA of 2005 changes the determination of the period of ineligibility to be imposed on an applicant or recipient when the applicant or recipient or the spouse of the applicant transfers assets for less than FMV. Formerly, the beginning date of a period of ineligibility for an applicant who transferred assets for less than FMV was the first day of the month in which assets were transferred. For a recipient, the beginning date of the period of ineligibility was the first day of the month following the month of the transfer. States are now required to impose periods of ineligibility prospectively in those cases where the applicant or recipient or the spouse of the applicant or recipient has transferred assets for less than FMV. The beginning date of a period of ineligibility for payment of LTC services is the date the applicant would be otherwise eligible for Medical Assistance based on an approved application. For a recipient, the beginning date of a period of ineligibility for payment of LTC services is the first day of a month immediately following proper advance notification provided to the recipient.

The DRA of 2005 mandated new requirements that must be applied in evaluating certain resources to qualify for payment of LTC services. Resources that fail to meet these new requirements will be treated as transfers of assets for less than FMV.

It is a requirement that an applicant or recipient or spouse of an applicant or recipient disclose any ownership interest in an annuity. A nonqualified annuity is one purchased outright by an individual or a couple that is not part of an employer retirement plan or Roth individual retirement plan. The DRA of 2005 mandates that nonqualified annuities name the Department as the beneficiary for at least the total amount of medical services provided by the Department on behalf of the recipient.

States are no longer allowed the option of first looking to the couples' resources to address spousal impoverishment. The DRA of 2005 now requires the allocation of available income from the institutionalized spouse to the community spouse (CS) to meet the Community Spouse Monthly Maintenance Needs Allowance (CSMMNA). If the CS still needs additional income to fully fund the CSMMNA, resources from the nonprotected share of the couples' resources can be allocated to the CS.

The DRA of 2005 also instituted a new eligibility requirement regarding the equity value of the home owned by the applicant or recipient who is in need of LTC services under the Medicaid Program. Individuals with equity value in their home in excess of \$500,000 are not eligible for payment of LTC services except when there is a spouse, a child under 21 years of age or a blind or permanently and totally disabled child residing in the home. The excess equity value in the home disqualifies the applicant or recipient for payment of LTC services.

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Effective Date

This statement of policy is effective March 3, 2007.

Contact Person

Questions and comments to this statement of policy should be directed to Edward J. Zogby, Director, Bureau of Policy, Office of Income Maintenance, (717) 787-4081.

(Editor's Note: Title 55 of the Pennsylvania Code is amended by adding statements of policy in §§ 178.3a, 178.62a, 178.104a, 178.124a and 178.174a to read as set forth in Annex A.)

(Editor's Note: For a document relating to this statement of policy, see 37 Pa.B. 1046 (March 3, 2007).)

ESTELLE B. RICHMAN,
Secretary

Fiscal Note: 14-BUL-070. No fiscal impact; (8) recommends adoption. Implementation of this statement of policy is expected to generate savings of \$5,020,000 in Fiscal Year 2006-07 and \$12,263,000 in Fiscal Year 2007-08.

Annex A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart D. DETERMINATION OF NEED AND AMOUNT OF ASSISTANCE

CHAPTER 178. RESOURCE PROVISIONS FOR CATEGORICALLY NMP-MA AND MNO-MA

Subchapter A. GENERAL PROVISIONS FOR MA RESOURCES COMMON TO ALL CATEGORIES OF MA

GENERAL PROVISIONS FOR MA RESOURCES

§ 178.3a. Clarification of disclosure requirement on ownership of annuities--statement of policy.

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(a) Consistent with section 1917(e) of the Social Security Act (42 U.S.C.A. § 1396p(e)), regarding liens, adjustments and recoveries, and transfers of assets, effective for an application made on or after March 3, 2007, the Department will require as a condition of eligibility for payment for long-term care services that an applicant or recipient or spouse of an applicant or recipient disclose any interest the applicant or recipient or spouse of the applicant or recipient has in an annuity or similar financial instrument.

(b) Consistent with section 1917(e) of the Social Security Act, effective for an application made on or after March 3, 2007, the Department will inform the applicant or recipient or spouse of the applicant or recipient that the Department shall be named as the remainder beneficiary in the first or second position under an annuity or similar financial instrument with a transaction date on or after February 8, 2006.

Subchapter B. AGED, BLIND AND DISABLED CATEGORIES OF MA

ADDITIONAL RESOURCE REQUIREMENTS FOR THE AGED, BLIND AND DISABLED CATEGORIES OF MA

§ 178.62a. Clarification of disqualification for payment of long-term care services due to substantial home equity--statement of policy.

(a) Consistent with section 1917(f) of the Social Security Act (42 U.S.C.A. § 1396p(f)), regarding liens, adjustments and recoveries, and transfers of assets, effective for an application made on or after March 3, 2007, an individual with equity value in the home in excess of \$500,000 is ineligible for payment of long-term care services unless one of the following circumstances exist:

(1) The home is the residence of the community spouse.

(2) The home is the residence of a child who is under 21 years of age or a child who is blind or permanently and totally disabled as defined in section 1611(a)(3) of the Social Security Act (42 U.S.C.A. § 1382c(a)(3)), regarding definitions.

(b) Consistent with section 1917(f) of the Social Security Act, an individual determined ineligible for payment of long-term care services due to excess home equity will continue to be reviewed for eligibility for Medicaid.

(c) Consistent with section 1917(f)(4) of the Social Security Act, an individual determined ineligible for payment of long-term care services due to excess home equity and who is unable to access the excess home equity may have the ineligibility period waived in the case of a demonstrated hardship.

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**DISPOSITION OF PROPERTY AND FAIR CONSIDERATION
PROVISIONS FOR THE AGED, BLIND AND DISABLED
CATEGORIES OF MA**

§ 178.104a. Clarification of fair consideration provisions for disposition of assets made on or after February 8, 2006--statement of policy.

(a) Consistent with section 1917(c)(1)(B)(i) of the Social Security Act (42 U.S.C.A. § 1396p(c)(1)(B)(i)), regarding liens, adjustments and recoveries, and transfers of assets, effective for an application made on or after March 3, 2007, the look-back period for assets transferred on or after February 8, 2006, shall be 60 months.

(b) Consistent with section 1917(c)(1)(D) of the Social Security Act, effective for an application made on or after March 3, 2007, in the case of a transfer of assets for less than Fair Market Value (FMV) made on or after February 8, 2006, by an applicant or spouse of an applicant, the penalty period shall commence on the date the applicant would otherwise be eligible for Medicaid based on an approved application for these services.

(c) Consistent with section 1917(c)(1)(D) of the Social Security Act, effective with transfers of assets for less than FMV made on or after March 3, 2007, by a recipient, the beginning date of a period of ineligibility for payment of long-term care services shall commence on the first day of the month following the date specified in the Appeal and Fair Hearing section of the Advance Notice provided to the recipient.

(d) Consistent with section 1917(c)(1)(E)(iv) and (H) of the Social Security Act, effective for an application made on or after March 3, 2007, a period of ineligibility for payment of long-term care services will result when an applicant or spouse of an applicant disposes of assets for less than FMV on or after February 8, 2006. The period of ineligibility shall be determined by dividing the total cumulative uncompensated value of all assets disposed of by the applicant or the applicant's spouse on or after the look-back date, by the average daily private pay rate in effect at the time the application is processed.

(e) Consistent with section 1917(c)(1)(E)(iv) and (H) of the Social Security Act, effective March 3, 2007, a period of ineligibility for payment of long-term care services will result when a recipient disposes of assets for less than FMV on or after March 3, 2007. The period of ineligibility shall be determined by dividing the total cumulative uncompensated value of all assets disposed of by the recipient on or after the look back date, by the average daily private pay rate in effect at the time the period of ineligibility is determined.

(f) Consistent with section 1917(c)(1)(I) of the Social Security Act, effective for an application made on or after March 3, 2007, the outstanding balance due on a promissory note, loan or mortgage purchased on or after February 8, 2006, that does not meet all of the following requirements will be treated as a transfer of assets for less than FMV:

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(1) The repayment terms must be actuarially sound.

(2) The terms must provide for payments in equal amounts throughout the term, with no deferral of payments and no balloon payments.

(3) The terms must prohibit cancellation of the balance upon death of the lender.

(g) Consistent with section 1917(c)(1)(J) of the Social Security Act, effective for an application made on or after March 3, 2007, the purchase of a life estate interest in another individual's home made on or after February 8, 2006, shall be considered a transfer of assets for less than FMV unless the purchaser resided in the home for at least 1 year after the purchase date.

(h) Consistent with section 1917(c)(1)(F) and (G) of the Social Security Act, effective for an application made on or after March 3, 2007, the purchase of an annuity by an applicant or applicant's spouse on or after February 8, 2006, that does not meet all of the following requirements, will be treated as a transfer of assets for less than FMV:

(1) The annuity must be irrevocable and nonassignable.

(2) The annuity must be actuarially sound.

(3) The annuity must provide for payments in equal amounts, with no deferral and no balloon payments made.

(4) The annuity must name the Department as the remainder beneficiary in the first position for at least the total amount of medical assistance paid by the Department on behalf of the recipient. The annuity must name the Department as beneficiary in the second position when there is a community spouse (CS), minor child, or blind or permanently and totally disabled child for at least the total amount of Medical Assistance paid by the Department on behalf of the recipient and must name the Department in the first position if the CS or a representative of a minor child, or a representative of a permanently and totally disabled child disposes of any remainder for less than FMV.

(i) Consistent with section 1917(c)(1)(F) and (G) of the Social Security Act, effective for an application made on or after March 3, 2007, the purchase of a nonqualified annuity on or after February 8, 2006, by the spouse of an applicant, that does not name the Department as beneficiary in the first position will be treated as a transfer of assets for less than FMV.

(j) The provisions in this statement of policy do not prevent the Department from treating an annuity owned by an applicant or recipient or the spouse of an applicant or recipient that satisfies the requirements in subsection (h) or the requirement in subsection (i), as either income or a resource in the eligibility determination for long-term care services under the Medicaid Program.

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(k) The provisions in this statement of policy do not prevent the Department from treating an outstanding balance due on a promissory note, loan or mortgage satisfying the requirements in subsection (f), as either income or a resource in the eligibility determination for long-term care services under the Medicaid Program.

RESOURCE ELIGIBILITY REQUIREMENTS FOR AN INSTITUTIONALIZED SPOUSE WITH A COMMUNITY SPOUSE

§ 178.124a. Clarification of the "Income-First" rule--statement of policy.

(a) For the purposes of this statement of policy, the Department will define the Community Spouse Monthly Maintenance Needs Allowance (CSMMNA) as defined in section 1924(d) of the Social Security Act (42 U.S.C.A. § 1396 r-5(d)), regarding the treatment of income and resources for certain institutionalized spouses.

(b) Consistent with section 1924(d)(6) of the Social Security Act, effective for an application made on or after March 3, 2007, the institutionalized spouse's (IS) available income shall be used to fund the CSMMNA. If the community spouse (CS) still needs additional income to fully fund the CSMMNA, resources may be allocated to the CS to provide the difference between the CSMMNA and the gross monthly income available to the CS.

Subchapter C. TANF-RELATED AND GA-RELATED CATEGORIES OF MA

DISPOSITION OF PROPERTY AND FAIR CONSIDERATION PROVISIONS FOR THE TANF AND GA CATEGORIES OF MA

§ 178.174a. Clarification of fair consideration provisions for disposition of assets made on or after February 8, 2006--statement of policy.

(a) Consistent with section 1917(c)(1)(B)(i) of the Social Security Act (42 U.S.C.A. § 1396p(c)(1)(B)(i)), regarding liens, adjustments and recoveries, and transfers of assets, effective for an application made on or after March 3, 2007, the look-back period for assets transferred on or after February 8, 2006, shall be 60 months.

(b) Consistent with section 1917(c)(1)(D) of the Social Security Act, effective for an application made on or after March 3, 2007, in the case of a transfer of assets for less than Fair Market Value (FMV) made on or after February 8, 2006, by an applicant or spouse of an applicant the penalty period shall commence on the date the applicant would otherwise be eligible for Medicaid based on an approved application for these services.

(c) Consistent with section 1917(c)(1)(D) of the Social Security Act, effective with transfers of assets for less than FMV made on or after March 3, 2007, by a recipient, the

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beginning date of a period of ineligibility for payment of long-term care services shall commence on the first day of the month following the date specified in the Appeal and Fair Hearing section of the Advance Notice provided to the recipient.

(d) Consistent with section 1917(c)(1)(E)(iv) and (H) of the Social Security Act, effective for an application made on or after March 3, 2007, a period of ineligibility for payment of long-term care services will result when an applicant or spouse of an applicant disposes of assets for less than FMV on or after February 8, 2006. The period of ineligibility shall be determined by dividing the total cumulative uncompensated value of all assets disposed of by the applicant or the applicant's spouse on or after the look-back date, by the average daily private pay rate in effect at the time the application is processed.

(e) Consistent with section 1917(c)(1)(E)(iv) and (H) of the Social Security Act, effective March 3, 2007, a period of ineligibility for payment of long-term care services will result when a recipient disposes of assets for less than FMV on or after March 3, 2007. The period of ineligibility shall be determined by dividing the total cumulative uncompensated value of all assets disposed of by the recipient on or after the look-back date, by the average daily private pay rate in effect at the time the period of ineligibility is determined.

(f) Consistent with section 1917(c)(1)(I) of the Social Security Act, effective for an application made on or after March 3, 2007, the outstanding balance due on a promissory note, loan or mortgage purchased on or after February 8, 2006, that does not meet all of the following requirements will be treated as a transfer of assets for less than FMV:

(1) The repayment terms must be actuarially sound.

(2) The terms must provide for payments in equal amounts throughout the term, with no deferral of payments and no balloon payments.

(3) The terms must prohibit cancellation of the balance upon death of the lender.

(g) Consistent with section 1917(c)(1)(J) of the Social Security Act, effective for an application made on or after March 3, 2007, the purchase of a life estate interest in another individual's home made on or after February 8, 2006, shall be considered a transfer of assets for less than FMV unless the purchaser resided in the home for at least 1 year after the purchase date.

(h) Consistent with section 1917(c)(1)(F) and (G) of the Social Security Act, effective for an application made on or after March 3, 2007, the purchase of an annuity by an applicant or applicant's spouse on or after February 8, 2006, that does not meet all of the following requirements, will be treated as a transfer of assets for less than FMV:

(1) The annuity must be irrevocable and nonassignable.

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(2) The annuity must be actuarially sound.

(3) The annuity must provide for payments in equal amounts, with no deferral and no balloon payments made.

(4) The annuity must name the Department as the remainder beneficiary in the first position for at least the total amount of medical assistance paid by the Department on behalf of the recipient. The annuity must name the Department as beneficiary in the second position when there is a community spouse (CS), minor child, or blind or permanently and totally disabled child for at least the total amount of Medical Assistance paid by the Department on behalf of the recipient and must name the Department in the first position if the CS or a representative of a minor child, or a representative of a permanently and totally disabled child disposes of any such remainder for less than FMV.

(i) Consistent with section 1917(c)(1)(F) and (G) of the Social Security Act, effective for an application made on or after March 3, 2007, the purchase of a nonqualified annuity on or after February 8, 2006, by the spouse of an applicant, that does not name the Department as beneficiary in the first position will be treated as a transfer of assets for less than FMV.

(j) This statement of policy does not prevent the Department from treating an annuity owned by an applicant or recipient or the spouse of an applicant or recipient that satisfies the requirements in subsection (h) or the requirement in subsection (i), as either income or a resource in the eligibility determination for long-term care services under the Medicaid Program.

(k) This statement of policy does not prevent the Department from treating an outstanding balance due on a promissory note, loan or mortgage satisfying the requirements in subsection (f), as either income or a resource in the eligibility determination for long-term care services under the Medicaid Program.

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