INFORMATION BRIEF
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Medical Assistance
Treatment of Assets and Income

For Persons Seeking Long-term Care Services

This information brief outlines the general income and asset limits in the Medical Assistance (MA) program, explains the spousal impoverishment provisions for people receiving long-term care services who have spouses that live in the community, and summarizes the prohibitions in current law against an MA applicant or recipient transferring assets or income for less than fair market value.

Please note: This information brief provides general information on the spousal impoverishment provisions and transfer prohibitions under the Medical Assistance program. The House Research Department provides services to the Minnesota House of Representatives; it does not and cannot represent or provide legal services to private individuals, private entities, or other government organizations. For advice or an opinion as to what law applies in a specific situation, the person involved will need to contact his or her own attorney or advisor.

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MA Program Long-term Care Coverage

MA provides coverage for nursing home and other long-term care services to qualified persons.

Medical Assistance (MA), Minnesota's Medicaid program, is the federal-state program that reimburses health care providers for services to persons who meet program eligibility requirements. The MA program will pay for long-term care services for individuals whose assets are at or below the limits prescribed in state law and whose income, minus certain deductions, has been contributed toward the cost of nursing home care. Minnesota's MA program also has federal approval to provide home and community-based "waivered services" to certain MA recipients who would otherwise need nursing facility or other institutional level of care. Persons can apply for MA by contacting their local county human services agency.

General Income and Asset Limits in the MA Program

The MA program sets limits on the amount of income and the value of assets a recipient may have.

Income is defined as net countable income after certain allowable deductions have been subtracted. **Assets** include all real and personal property owned by the recipient. When a married couple is living together and neither spouse is receiving long-term care services, all assets and income of each spouse are considered available to the other in determining eligibility for MA.

In general, an MA recipient living in the community who is age 65 or older may have no more than $776 per month in income. (This limit is $1,041 for a couple.)[1] However, individuals with incomes higher than these limits can still qualify for MA by "spending down" their income. Spending down means that the individual incurs medical expenses that equal or exceed the amount by which the individual's income exceeds the MA spenddown limit.[2]

In contrast to an MA recipient living in the community, an MA recipient living in a nursing home must contribute most of his or her income towards the costs of nursing home care (see page 5).

[1] These income limits are effective July 1, 2004, and are set at 100 percent of the federal poverty guidelines. They are adjusted each July 1 to reflect changes in the federal poverty guidelines.

[2] The spenddown limit for persons who are aged, blind, or disabled is 75 percent of the federal poverty guidelines ($582 per month for an individual and $781 per month for a couple, as of July 1, 2004).

The MA asset limit is $3,000 for an individual and $6,000 for a couple. The following assets are excluded from consideration when eligibility for MA is determined:[3]

- The homestead (real property or personal property used as a home)
- A motor vehicle (subject to certain limitations)
- Household goods and certain personal effects
- Prepaid burial spaces and burial space items
- Burial funds (up to $1,500 each for the recipient and the recipient's spouse), prepaid funeral trusts ($2,000), and life insurance or annuity-funded burial arrangements under contract.
- Capital and operating assets of a business necessary to earn an income

MA Program Provisions for Dividing Income and Assets

Definition of Terms

Long-term care services: For purposes of spousal impoverishment provisions, "long-term care services" means care provided in a nursing facility, hospital, an intermediate care facility for persons with mental retardation (ICF/MR), or through the Elderly Waiver or another MA home and community-based waiver program.

Long-term care spouse: The spouse who is receiving long-term care services for at least 30 consecutive days.

Community spouse: The spouse living in the community who is not receiving long-term care services.

The MA program specifies how the income and assets of a married couple are treated when one spouse receives long-term care services and applies for MA.

When one spouse seeks MA coverage for nursing facility, hospital, intermediate care facility for persons with mental retardation (ICF/MR), or the Elderly Waiver services for a continuous period expected to last at least 30 consecutive days, the MA program uses "spousal impoverishment" provisions to divide the income and assets of the married couple in order to determine how much of the couple's total assets and income will be designated for each spouse. (See Minn. Stat. §§ 256B.058 and 256B.059.) When the spouse in the nursing home reduces his

[3] See Minnesota Statutes, section 256B.056 for a more complete explanation of asset limits in the MA program. "Personal property" means all property other than real estate.

or her share of assets to $3,000, he or she becomes eligible for MA. The spousal impoverishment provisions in federal law, as enacted into state law, are intended to prevent the impoverishment of the community spouse.

At the time of the first admission of one spouse to a long-term care facility for a stay expected to last at least 30 days (this is referred to as a continuous period of institutionalization), a couple can request that an asset assessment be completed and an estimated protected spousal share of assets calculated. The protected spousal share is equal to one-half of all nonexempt assets owned by either spouse, subject to a minimum and maximum amount set by law. All assets not protected for the community spouse must be used to pay for care for the spouse in the long-term care facility or on the Elderly Waiver.

The asset assessment is based on the assets owned by one or both spouses as of the date of the first continuous period of institutionalization. This date is used even if the individual does not apply for MA until a later time. The spousal share is calculated only once and is used for any subsequent periods during which a person may receive long-term care services, except that at the time of application for long-term care services the community spouse’s protected share will be increased by annual cost-of-living changes in the minimum and maximum amounts.

The assets determined to be available to the long-term care spouse must be reduced to the MA asset limit of $3,000. The long-term care spouse is allowed to transfer assets to the community spouse, to provide the community spouse with the protected share of assets specified below.

- If the spousal share is less than $26,190, the long-term care spouse may transfer assets to the community spouse in order to bring the amount of assets held by the community spouse up to the $26,190 minimum.

- If the spousal share is greater than $26,190 but less than or equal to $92,760 the community spouse may retain this amount (equal to one-half of the couple’s total nonexcluded assets).

- The maximum spousal share that can be retained by the community spouse is $92,760.

- The $26,190 and $92,760 amounts are effective from January 1, 2004 to December 31, 2004. These amounts are adjusted each January 1 by the percentage change in the Consumer Price Index.

The table below illustrates how spousal assets are distributed for couples with various amounts of total assets.

Division of Spousal Assets
for Persons Receiving Long-term Care Services on MA*

Total Nonexcluded Assets of Couple	Assets Considered Available to Long-term Care Spouse	Assets Permitted to Be Held by Community Spouse
$26,190 or less	$0	Total assets
$26,190 to $52,380	Amount of total assets exceeding $26,190	$26,190
$52,381 to $185,520	One-half of total assets	One-half of total assets
$185,521 and over	Amount of total assets exceeding $92,760	$92,760

*Note: These dollar amounts apply to applications for MA made between January 1, 2004, and December 31, 2004.

The long-term care spouse must apply nearly all of his or her income towards the cost of the long-term care services.

MA permits the long-term care spouse specified deductions from income, but the person must then contribute all of his or her remaining countable income towards the cost of the long-term care services. This requirement applies both to individuals with incomes below the MA income limit and individuals with incomes above the MA income limit who qualify for MA through a spenddown. In many cases, the only permitted deduction is a personal needs allowance of $74 per month.[4] Other allowable deductions are listed in Minnesota Statutes, section 256B.058.

The community spouse can keep all of his or her income and is not required to contribute towards the cost of care of the long-term care spouse after the long-term care spouse is determined eligible for MA.

Beginning with the first full month that the long-term care spouse is determined to be eligible for MA and receives long-term care services, **none** of the community spouse's income is considered available to the long-term care spouse.

Some income of the long-term care spouse can be used to provide a minimum monthly income allowance to the community spouse and a monthly family allowance for certain dependent family members.

The long-term care spouse can use his or her income to provide the community spouse with a monthly income allowance. This allowance is the amount sufficient to raise the income of the community spouse to the **lesser** of:

[4] This personal needs allowance is adjusted for inflation each year; the $74 amount became effective January 1, 2004. For a more detailed list of the permitted deductions, see Minnesota Statutes, section 256B.0575.

- the sum of 150 percent of the monthly federal poverty guideline for two (this amount is $1,562, effective July 1, 2004[5]), plus an excess shelter allowance equal to the amount by which the community spouse's housing costs exceed 30 percent of this federal poverty guideline figure for two; or

- $2,319.[6]

If the income of the long-term care spouse is not sufficient to raise the income of the community spouse to this standard, income-producing assets can also be transferred in an amount sufficient to reach the standard.

If the community spouse obtains a court order for support that specifies a higher monthly income allowance than the monthly maximum, the long-term care spouse can transfer to the community spouse the amount of monthly income specified by the court order.

The long-term care spouse can also provide a monthly family allowance to minor or dependent children, dependent parents, or dependent siblings residing with the community spouse. The family allowance is equal to one-third of the amount by which 150 percent of the monthly federal poverty guideline exceeds the monthly income for that family member.

Prohibitions on Asset and Income Transfers

Note on federal waiver request: The 2003 Legislature made a number of changes in state law governing MA asset and income transfers that can be implemented only if the federal government agrees to waive provisions of federal law. These changes included increasing the look-back period (the time during which uncompensated transfers can be penalized) from 36 to 72 months, changing the penalty for uncompensated transfers from ineligibility for MA long-term care services to ineligibility for all MA services, and starting the penalty period at the time of application or eligibility for MA or when the county agency becomes aware of the transfer, rather than in the month in which a transfer was made (see Laws 2003, 1st spec. sess., ch. 14, art. 12, §§ 24 to 29). The Department of Human Services (DHS) submitted waiver requests related to asset and income transfers to the federal Centers for Medicare and Medicaid Services (CMS) in March 2003. As of this writing, the federal government had not acted on the waiver requests.

The sections that follow describe current law and not the law that would apply if the state's waiver requests are approved. For more information on the waiver requests, see Appendix B.

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[5] The $1,562 amount became effective July 1, 2004; it is adjusted each July 1 to reflect changes in the federal poverty guidelines.

[6] The $2,319 monthly maximum became effective January 1, 2004; it is adjusted for inflation each January 1.

Definition of Terms

Long-term care services: For purposes of asset transfer provisions, "long-term care services" means care provided in a nursing facility, hospital swing bed, an intermediate care facility for persons with mental retardation (ICF/MR), or through one of the home and community-based services under MA.

Look-back period: A designated period of time prior to application for MA long-term care services during which a person may not make uncompensated transfers of assets or income.

MA prohibits a person who is seeking or receiving long-term care services from transferring assets or income for less than fair market value.

A person may be penalized under the MA program if the person, the person's spouse, or any other person or entity with legal authority to act on the person's or spouse's behalf, gives away or otherwise transfers assets or income for less than the fair market value. State and federal law on MA asset and income transfers[7] prohibit a person from making such uncompensated transfers, with the intent to obtain or retain MA, within the "look-back period," while the MA application is pending, or while the person is eligible for MA.

Currently, the look-back period is 36 months prior to applying for MA. The look-back period is 60 months in the case of certain transfers into trusts.[8]

There are several exceptions to the prohibition on asset and income transfers.

The MA program permits several exceptions to the prohibition on asset and income transfers. For example, a person may transfer a homestead, other assets, and income at less than fair market value to a spouse, or to a blind or permanently and totally disabled child. (See Appendix A for a more detailed list of the permitted exceptions to the asset and income transfer prohibition.)

The penalty for making prohibited transfers is losing eligibility for MA coverage of long-term care services.

The penalty for making uncompensated transfers is that the person is ineligible for MA-paid services in a nursing facility, hospital swing bed, intermediate care facility for persons with mental retardation (ICF/MR), or through the applicable home and community-based waiver program for a calculated period of time. The person remains eligible for all other MA services during the penalty period.

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[7] See Minn. Stat. §§ 256B.059 and 256B.0595.

[8] The 36- and 60-month look-back periods affect transfers of assets made on or after August 11, 1993.

Periods of ineligibility begin with the month after a transfer occurred and run consecutively.

A separate ineligibility period is calculated for each month in which an uncompensated transfer is made. The length of each ineligibility period is calculated by dividing the uncompensated value of the transferred assets or income by the statewide average monthly payment rate for nursing facility services.[9] This calculation results in the number of months for which a person is not eligible for long-term care services. If this calculation results in a fractional month of ineligibility, this fraction is multiplied by the statewide average monthly payment rate for nursing facility services. This is the dollar amount of long-term care services that the recipient will be financially responsible for during the last, partial month of ineligibility.

For example, if an individual makes uncompensated transfers of $15,000 in one month, the period of ineligibility is calculated by dividing $15,000 by $4,111, (the statewide average monthly payment rate for nursing facility services) resulting in a quotient of 3.65. The individual will be ineligible for long-term care services for three months and will be financially responsible for $2,672 as a result of the fractional month of ineligibility (.65 x $4,111 = $2,672).

If the value of the transferred assets or income is less than the statewide average monthly payment rate for nursing facility services, eligibility is denied for long-term care services equal in value to the amount of the transfer (transfers that do not exceed $200 a month are exempt from any penalty; see next section).

A person's period of ineligibility begins with the month after the month in which the transfer took place. If separate periods of ineligibility overlap, the period of ineligibility is recalculated based on the value of the total transfers. For example, if an individual transfers $8,222 in August 2004 and is ineligible for two months, and transfers an additional $4,111 in September 2004 and is ineligible for a month, the total period of ineligibility would be three months and the period of ineligibility would begin on the September 1, the month after the August transfer.

A person may transfer up to $200 per month without penalty under the MA program.

A person who is not in a pre-existing penalty period may transfer $200 per month without the transfer affecting the person's eligibility for MA or status as an MA recipient.[10] However, persons who are in a penalty period are not permitted to make transfers and will have the amount of any transfers added into their penalty period calculation.

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[9] The current statewide average monthly payment rate for nursing facility services is $4,111. This amount became effective July 1, 2004, and applies to persons who apply for MA on or after that date; it is recalculated each July 1.

[10] Laws 2002, ch. 220, art. 15, § 11. This provision took effect July 1, 2002. Immediately prior to this date, a person could transfer up to $500 per month without penalty and between September 1, 1994, and April 12, 1996, a person could transfer up to $1,000 per month without penalty. Prior to September 1, 1994, a person could transfer up to the statewide average nursing facility payment rate without penalty because there were no partial months of ineligibility that resulted in a penalty.

Appendix A: Exceptions to the Transfer Prohibitions

A **homestead** can be transferred for less than fair market value if:

(a) the title is transferred to the individual's

- spouse
- child under 21
- blind or permanently and totally disabled child
- sibling who has equity interest in the home and who resided in the home for at least one year before the individual's receipt of long-term care services
- son or daughter residing in the home for at least two years before the individual received long-term care services, and who provided care that, as certified by the individual's physician, allowed the individual to reside at home;

(b) the individual demonstrates an intent to dispose of the house at fair market value;

(c) the local agency grants a waiver because denial of eligibility would cause undue hardship (In this case a cause of action exists against the person(s) receiving the asset.); or

(d) the individual or the individual's spouse provides convincing evidence that the exclusive purpose of transferring the homestead was not to obtain or maintain MA services for the individual.

Nonhomestead assets or income may be transferred at less than fair market value if:

(a) the transfer is to the spouse or to another individual for the sole benefit of the spouse. At the time of MA application for long-term care services, the assets must be allocated between spouses as provided by the spousal impoverishment provisions;

(b) the transfer is to the transferor's son or daughter who is blind or permanently and totally disabled or is to a trust for an individual under age 65 who is disabled according to criteria of the federal Supplemental Security Income (SSI) program;

(c) the individual demonstrates an intent to dispose of assets at fair market value;

(d) the local agency grants a waiver because denial of eligibility would cause undue hardship (In this case a cause of action exists against the person(s) receiving the asset or income.); or

(e) the individual or the individual's spouse provides convincing evidence that the exclusive purpose of transferring the assets or income was not to obtain or maintain MA services for the individual.

Appendix B: 2003 Waiver Request

DHS submitted a waiver request related to asset and income transfers to the federal Centers for Medicare and Medicaid Services (CMS) in March 2003. As of this writing, CMS has not acted on the waiver request.

The waiver request[11] seeks federal approval to do the following:

- Prohibit the transfer for less than fair market value of assets such as vehicles and jewelry that are now excluded from the asset transfer prohibition
- Prohibit MA payments for all MA services during a penalty period (under current law, payment is prohibited only for long-term care services)
- Extend the MA look-back period from 36 months for most transfers and 60 months for certain transfers into a trust to 72 months for all transfers
- Start the penalty period in the month during which an individual applies for MA or is otherwise eligible, or when the county agency becomes aware of the transfer, whichever is later (Under current law, the penalty period usually begins in the month the assets are transferred.)
- Change the divisor used to calculate penalty periods from the statewide average nursing facility rate to the statewide average nursing facility payment made by MA (This would have the effect of increasing the length of penalty periods, since a smaller divisor is used.)
- Prohibit the transfer of a home at less than fair market value to specified relatives (spouses, adult children who provided care to the recipient in the home for at least two years, siblings, minor or disabled children), but allow an exclusion for the home as long as the relative continues to reside in the home (Under current law, a transfer to a specified relative is permitted, regardless of whether the relative continues to live in the home.)
- Allow transfers at less than fair market value to a spouse only up to the amounts allowed by the spousal asset provisions (Under current law, there are no limits on transfers to a spouse if they are for the sole benefit of the spouse.)
- Regulate transfers for less than fair market value to certain trusts, by: (1) requiring trusts for disabled children to contain a provision that trust funds revert after the death of the child to the state to repay MA; (2) prohibiting transfers to trusts established for the sole benefit of disabled individuals under age 65, unless the trust is for a child or legal ward of the transferor; and (3) giving the state greater authority to declare certain trusts as invalid

For more information about Medical Assistance, visit the health and human services area of our web site, www.house.mn/hrd/issinfo/hlt_hum.htm.

[11] See Minnesota Department of Human Services, Minnesota Asset Transfer Limit § 1115 Waiver Request, March 2003.