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. The information brief reflects changes made by the legislature to comply with the requirements of the federal Deficit Reduction Act of 2005.

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 $817 per month in income. (This limit is $1,101 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, 2006, 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 ($613 per month for an individual and $826 per month for a couple, as of July 1, 2006).

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), subject to an equity limit of $500,000 effective July 1, 2006 (see Appendix C for more details)
- A motor vehicle, regardless of value, if it is used for transportation of the recipient or a member of the recipient's household
- 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

In addition, if an applicant for MA payment of long-term care services has exhausted benefits under a long-term care insurance policy issued on or after July 1, 2006, and that policy qualifies under the state's long-term care partnership program, an amount of assets equal to the dollar amount of benefits paid out under the qualifying policy is disregarded for purposes of determining eligibility for MA payment of long-term care services. These assets are also protected against estate recovery and are not subject to asset transfer penalties.

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 home care services that would be covered through the Elderly Waiver or the Alternative Care 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.

[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.

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.) The intent of the spousal impoverishment provisions is to allow the community spouse to retain an adequate level of income and assets, while requiring the long-term care spouse to contribute most of his or her assets towards the cost of care.

An asset assessment, conducted at the time of the first continuous period of institutionalization, is used to determine the division of spousal assets.

The division of spousal assets is based upon an asset assessment that is conducted, upon the request of either the long-term care or community spouse, at the time of the first continuous period of institutionalization.

The first continuous period of institutionalization occurs when a spouse:

(1) begins a period of institutionalization in a nursing home, ICF/MR, or hospital that is expected to last at least 30 days; or

(2) is screened by a long-term care consultation team and was receiving home care services that would be covered under the Elderly Waiver or Alternative Care program, or is anticipated to receive these services within 90 days of the screening, and these services are expected to be provided for at least 30 days.

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 division of spousal assets is subject to minimums and maximums specified in law; the long-term care spouse can transfer assets to the community spouse to bring that spouse's assets to the minimum.

An estimated protected spousal share of assets is calculated following the assessment. 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 reduced to the MA asset limit of $3,000. 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 $28,001, 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 $28,001 minimum.
- If the spousal share is greater than $28,001 but less than or equal to $99,540, 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 $99,540.
- The $28,001 and $99,540 amounts are effective from January 1, 2006, to December 31, 2006. 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
$28,001 or less	$0	Total assets
$28,001 to $56,002	Amount of total assets exceeding $28,001	$28,001
$56,003 to $199,080	One-half of total assets	One-half of total assets
$199,081 and over	Amount of total assets exceeding $99,540	$99,540
*Note: These dollar amounts apply to applications for MA made between January 1, 2006, and December 31, 2006.		

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 $79 per month.[4] Other allowable deductions are listed in Minnesota Statutes, section 256B.058.

[4] This personal needs allowance is adjusted for inflation each year; the $79 amount became effective January 1, 2006. For a more detailed list of the permitted deductions, see Minnesota Statutes, section 256B.0575.

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:

- the sum of 150 percent of the monthly federal poverty guideline for two (this amount is $1,650, effective July 1, 2006[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

- $2,489.[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, who have incomes that are less than 150 percent of the federal poverty guidelines. 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 the family member who will receive the family allowance.

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[5] The $1,650 amount became effective July 1, 2006; it is adjusted each July 1 to reflect changes in the federal poverty guidelines.

[6] The $2,489 monthly maximum became effective January 1, 2006; it is adjusted for inflation each January 1.

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 (see Appendix B and also 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.

The federal Deficit Reduction Act of 2005 (DRA), P.L. 109-171, changed federal law to require states to adopt some but not all of the provisions for which a waiver was being requested by Minnesota. In July of 2006, CMS informed Minnesota that it had discontinued review of the state's waiver request, and that it would no longer consider requests for a waiver of other asset transfer provisions, since it considered the provisions in DRA to be adequate. CMS has not provided a written denial of the state's waiver request. Since DHS is required by law to submit the waiver request, the agency will work to obtain waiver approval or a written denial from CMS.

The sections that follow describe current law, including DRA changes, and not the law that would apply if the state's waiver requests are approved.

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 a request for MA payment of long-term care services during which transfers made by a person or the person's spouse are evaluated.

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 a "look-back period," while the MA application is pending, or while the person is eligible for MA.

For transfers made on or after August 11, 1993, ***through February 7, 2006***, the look-back period is 36 months prior to applying for MA. During this time span, the look-back period is 60 months in the case of certain transfers into trusts.

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

The DRA expands the look-back period for all transfers ***made on or after February 8, 2006,*** to 60 months. This expansion will be phased in over a 24-month period starting in February 2009. The look-back period remains 36 months (60 months for trusts) for persons seeking payment of long-term care services through January 31, 2009. Starting on February 1, 2009, the look-back period that applies to persons seeking payment for long-term care services will increase in a one-month increment each successive calendar month through January 1, 2011. For example, the look-back period will be 37 months beginning February 1, 2009, and increase to 38 months beginning March 1, 2009. For persons seeking payment of long-term care services on or after January 1, 2011, the full 60-month look-back period will apply.

The 2006 Legislature, in order to comply with the DRA, classified certain transactions involving: (1) annuities; (2) promissory notes, loans, or mortgages; and (3) life estate interests in another individual's home, as transfers for less than fair market value, unless specified criteria are met. See Appendix C for a description of these changes.

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.

The length of the penalty period is determined by dividing the value of the uncompensated transfer by the average monthly payment rate for nursing facility services.

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 (SAPSNF).[8] 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.

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[8] The current statewide average monthly payment rate for nursing facility services is $4,438. This amount became effective July 1, 2006, and applies to persons who apply for MA on or after that date; it is recalculated each July 1.

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 $4,438, (the statewide average monthly payment rate for nursing facility services in effect on the date the person requests MA payment of long-term care services) resulting in a quotient of 3.38. The individual will be ineligible for long-term care services for three months and will be financially responsible for $1,686 as a result of the fractional month of ineligibility (.38 x $4,438 = $1,686).

Periods of ineligibility now begin on the date an individual would otherwise be eligible for MA payment of long-term care services.

For transfers made ***on or after February 8, 2006***, a person's period of ineligibility begins in the month in which the individual requests MA payment of long-term care services and is otherwise eligible to receive MA payment of long-term care services but for application of the penalty period. This provision is effective for requests for MA payment of long-term care services on or after July 1, 2006.

For transfers made ***prior to February 8, 2006***, a person's period of ineligibility begins with the first day of the month after the month in which the transfer took place.

DHS has not yet received clarification from CMS on when the penalty period begins for persons who make uncompensated transfers at a time when MA is already paying for long-term care services.[9] Until clarification is received, DHS is instructing county agencies to start the penalty period on the first day of the month after the month in which the transfer took place.

Penalty periods for transfers that result in partial months of ineligibility are now combined and treated as one transfer.

For transfers made ***on or after February 8, 2006***, if transfers of assets valued at less than the statewide average monthly payment rate for nursing facility services are made in more than one month, the total, cumulative, uncompensated value of all assets transferred is treated as one transfer, and the penalty period begins on the date the individual would otherwise be eligible for MA payment of long-term care services. This provision is effective for applications, renewals, and reports of transfers received on or after July 1, 2006.

For transfers made ***prior to February 8, 2006***, if transfers of assets valued at less than the statewide average monthly payment rate for nursing facility services are made in more than one month, a separate partial month of ineligibility is calculated for each separate transfer, and each separate penalty period begins on the first day of the month following the month in which the transfer took place.

[9] Laws of Minnesota 2006, chapter 282, article 17, section 31 added language that authorized the penalty period to begin in this situation "on the first day of the month in which advance notice can be given following the month in which assets have been transferred for less than fair market value . . ." (codified at Minn. Stat. § 256B.0595, subd. 2, para. (c)). Ten days' advance notice is required before a penalty period can begin.

If penalty periods overlap, the period of ineligibility is based on the total value of the transfers.

For transfers made ***prior to February 8, 2006***, if separate periods of ineligibility overlap, the period of ineligibility is calculated based on the total value of the separate transfers. For example, if an individual transferred $8,396 in August 2005 and was ineligible for two months, and transferred an additional $4,198 in September 2005, the second period of ineligibility begins during the period of ineligibility that results from the first transfer. In this case, the total amount transferred is added together, and the resulting three-month period of ineligibility would have begun on September 1, the month after the August transfer.

For transfers made ***on or after February 8, 2006***, if separate periods of ineligibility overlap, the period of ineligibility is similarly based on the total value of the separate transfers, but the period of ineligibility would begin on the date on which the individual is eligible for MA payment of long-term care services.

A person may no longer transfer up to $200 per month without penalty under the MA program.

Under prior law, no penalty period was imposed if the total uncompensated amount transferred by a person and the person's spouse did not exceed $200 in a given month and the person was not in a pre-existing penalty period.[10] Persons who were in a penalty period were not permitted to make transfers and had the amount of any transfers added into their penalty period calculation.

Beginning July 1, 2006, any amount of an uncompensated transfer must be added to other fractional transfers and will be counted when determining a penalty period. This provision is effective for applications, renewals, and reports of transfers received on or after July 1, 2006.

[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 rather than in a facility;

(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. The current status of this waiver request is discussed on page 7.

The original 2003 waiver request[11] sought 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. This item was addressed by the DRA.
- 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.) This item was addressed by the DRA.
- 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 (which would result in transfers into these trusts being treated as uncompensated transfers).

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

Appendix C: DRA 2005 Changes

Laws of Minnesota 2006, chapter 282 (H.F. 4162), article 17, contains many sections related to compliance with the federal Deficit Reduction Act of 2005 (DRA), P.L. 109-171. The main DRA provisions related to the subject matter of this information brief are summarized below. The section citation information for chapter 282, article 17 follows, with the statute where the law is codified (unless otherwise noted).

Eligibility

Homestead equity limit for institutionalized persons. Effective for applications submitted on or after July 1, 2006, and renewals submitted on or after July 1, 2006, for recipients who first applied for payment of long-term care services on or after January 2, 2006, homestead equity is limited to $500,000, unless the homestead is the lawful residence of the individual's spouse or child who is under age 21, blind, or disabled. Beginning in 2011, this amount will be increased annually by the change in the Consumer Price Index, rounded to the nearest $1,000. This provision can be waived in the case of demonstrated hardship by a process to be determined by the federal Secretary of Health and Human Services. [Sec. 25; § 256B.056, subd. 2]

Treatment of entrance fees. Effective July 1, 2006, an entrance fee paid to a continuing care retirement or life care community is treated as an available asset to the extent that:

(1) the individual has the ability to use the fee, or the contract allows the fee to be used, to pay for care should other resources or income be insufficient;

(2) the individual is eligible for a refund of remaining fees when the individual dies or terminates the contract; and

(3) the entrance fee does not confer an ownership interest.

[Sec. 26; § 256B.056, subd. 3e]

Nursing facility admission contracts. Effective July 1, 2006, nursing facility admission contracts may require, as a condition of admission, residents to remain in private pay status for a specified period of time. [Sec. 23; § 144.6501, subd. 6]

Disclosure of annuities. Effective July 1, 2006, individuals applying for or seeking recertification of eligibility for MA payment of long-term care services must provide to the department a complete description of any interest either the individual or the individual's spouse has in annuities, using disclosure forms provided by DHS. The disclosure form must include a statement that DHS becomes the remainder beneficiary under the annuity or similar financial instrument by virtue of receipt of MA. The individual and the individual's spouse must execute separate disclosure forms for each annuity or similar instrument.

The issuer of an annuity must confirm that this designation has been made and notify the county agency when there is a change in the amount of income or principal being withdrawn. The county agency must provide the issuer with contact information. [Sec. 27; § 256B.056, subd. 11]

Long-Term Care Partnership Program

The Long-Term Care Partnership Program is a state option under the DRA that allows MA applicants to exclude assets upon MA application, and protect assets from MA recoveries, in an amount equal to the benefits paid out by a qualified long-term care insurance policy. In order to qualify for the program, applicants must have exhausted all of the benefits under the insurance policy and benefits under the policy must not have been paid out prior to July 1, 2006.

Minnesota passed language during the 2005 session that authorized the state to implement a partnership program, subject to obtaining necessary federal approvals and law changes. The 2006 provisions related to the partnership program amend and expand on the 2005 provisions, in order to conform this law to DRA requirements.

The 2006 provisions:

- allow beneficiaries to exchange existing long-term care insurance policies or add necessary riders, in order for those policies to meet federal standards for partnership policies. The exchange of policies and addition of riders is allowed unless the policy is already paying benefits on the date the policy is exchanged or the rider is added;
- exempt assets designated as protected from asset transfer penalties;
- specify inflation protection requirements and eliminate provisions related to offering of an elimination period, meeting implementation requirements, provision of total asset protection policies, and minimum daily benefits;
- allow the Commissioner of Human Services, in cooperation with the Commissioner of Commerce, to alter partnership program requirements to comply with forthcoming requirements of the Department of Health and Human Services and the National Association of Insurance Commissioners;
- require the Commissioner of Human Services to submit a state plan amendment to the federal government to implement the Long-Term Care Partnership Program;
- require the Commissioner of Human Services to develop and present to the legislature, by December 15, 2006, a plan and draft legislation to allow individuals participating in the partnership program to designate assets as contingently protected, and to protect these assets if the assets originally protected decline in value;
- update and revise language in the state long-term care insurance model act (chapter 62S); and
- make other changes necessary to conform to DRA requirements or to establish the procedures necessary to implement the partnership program.

[Sec. 2 to 22 (amendments to Minn. Stat. ch. 62S), 28; § 256B.0571; and sec. 36 (uncodified law)]

Asset Transfer Prohibitions

Treatment of annuities. The purchase of an annuity on or after February 8, 2006, by or for an individual who has applied for or is receiving long-term care services, or the individual's spouse, is treated as a disposal of an asset for less than fair market value unless DHS is named as a preferred remainder beneficiary and the annuity meets specified Internal Revenue Code and other standards.

A change in the designation of DHS as remainder beneficiary results in the annuity being treated as a disposal of assets for less than fair market value. The DRA requires issuers of annuities to notify county agencies when there is a change in the amount of the income or principal being withdrawn from the annuity. A change in the amount of income or principal withdrawn may be treated as a disposal of assets for less than fair market value. [Sec. 30; § 256B.0595, subd. 1, para. (f)]

When a payment becomes due under an annuity that names DHS a remainder beneficiary, the issuer must request and DHS must provide a written statement of the total amount of MA paid. The issuer must pay DHS an amount equal to the lesser of the amount due the department under the annuity or the total amount of MA paid on behalf of the individual or individual's spouse. Any amounts remaining are payable according to the terms of the annuity. [Sec. 29; § 256B.0594]

These provisions are effective July 1, 2006.

Extension of look-back period. The look-back period for any disposal of assets made on or after February 8, 2006, is extended from 36 to 60 months. This extension will be phased in one month at a time beginning 36 months after February 8, 2006, so that the length of the look-back period will be 37 months on February 8, 2009 and reach 60 months on February 8, 2011. [Sec. 30; § 256B.0595, subd. 1, para. (b)]

Promissory notes, loans, and mortgages. Effective July 1, 2006, the prohibition on transfers for less than fair market value applies to the funds used to purchase a promissory note, loan, or mortgage, unless the instrument purchased has a repayment term that is actuarially sound, provides for payments to be made in equal amounts with no deferral or balloon payments, and prohibits cancellation of the balance upon the death of the lender. [Sec. 30; § 256B.0595, subd. 1, para. (i)]

Life estates. Effective July 1, 2006, the purchase of a life estate in another individual's home is considered to be a transfer for less than fair market value, unless the purchaser resides in the home for a period of at least 12 consecutive months after the date of purchase. [Sec. 30; § 256B.0595, subd. 1, para. (j)]

Change in start date for period of ineligibility. For uncompensated transfers made on or after February 8, 2006, the period of ineligibility begins in the month in which the individual requests

MA payment of long-term care services and is otherwise eligible to receive MA payment of long-term care services but for application of the penalty period (see also footnote 9). This provision is effective for requests for MA payment of long-term care services on or after July 1, 2006. [Sec. 31; § 256B.0595, subd. 2, para. (c)]

Elimination of combined transfers not exceeding $200. The disregard of a total amount of uncompensated transfers of no more than $200 in a given month by a person and the person's spouse and not made during a penalty period is eliminated. This provision is effective July 1, 2006. [Sec. 31; § 256B.0595, subd. 2, para. (d)]

Cumulation of multiple fractional transfers. In the case of multiple fractional transfers in more than one month for less than fair market value on or after February 8, 2006, the period of ineligibility is determined by treating the total, cumulative uncompensated value as one transfer. This provision is effective for applications, renewals, and reports of transfers received on or after July 1, 2006. [Sec. 31; § 256B.0595, subd. 2, para. (e)]

Undue hardship waiver requests by facility. Beginning July 1, 2006, a long-term care facility, with the written consent of a resident or the resident's personal representative, may file an undue hardship waiver request on behalf of a resident who is denied eligibility for MA payment of long-term care services. When a waiver is granted, a cause of action exists against the person to whom an asset was transferred. The local agency, in evaluating the waiver request for non-homestead transfers, must take into account whether the individual has taken any action to prevent designation of DHS as a remainder beneficiary on an annuity. [Secs. 32 and 33; § 256B.0595, subds. 3 and 4]

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.