

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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Executive Summary

Medical Assistance (MA) provides coverage for nursing home and other long-term care services for people whose assets are at or below the limits prescribed in state law and whose income has been used to pay health service bills.

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

If an MA recipient lives in the community and is age 65 or older, the income limit is \$990 per month, or \$1,355 for a couple. Individuals with incomes higher than this can spend down their income to qualify for MA. MA recipients who live in a nursing home must contribute most of their income to the cost of nursing home care.

The asset limit is \$3,000 for an individual and \$6,000 for a couple. Several assets are excluded from the MA asset limit.

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.

At the time of application for MA, an asset assessment is conducted. The spouse receiving long-term care can transfer assets to the spouse who is still living in the community to bring that spouse's assets to \$119,220 in 2016.

The long-term care spouse must use nearly all of his or her income to pay for the cost of long-term care services, while the community spouse can keep all of his or her income and is not required to pay for the care of the long-term care spouse if that spouse is eligible for MA.

The MA program places some prohibitions on the transfer of assets and income. For the most part, a person seeking or receiving long-term care cannot transfer assets or income for less than fair market value. If a person does so, he or she may lose eligibility of MA coverage of long-term care services. But there are several exceptions to the transfer prohibitions.

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 long-term care services. 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 income of no more than \$990 per month. (This limit is \$1,335 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).

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 \$552,000 effective January 1, 2016 (see Appendix B 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

¹ These income limits are effective July 1, 2016, 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 See [Minnesota Statutes, section 256B.056](#), subdivision 5c. The spenddown limit for persons who are aged, blind, or disabled is 80 percent of the federal poverty guidelines (\$792 per month for an individual and \$1,070 per month for a couple, as of July 1, 2016).

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.

- 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.⁴

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 developmental disabilities (ICF/MR), or home care services that would be covered through the Elderly Waiver or the Alternative Care program. The other home and community-based waiver services, Community Alternative Care (CAC), Community Alternatives for Disabled Individuals (CADI), Developmental Disabilities (DD), and Traumatic Brain Injury (TBI), are also long-term care services.

Long-term care spouse: The spouse who is receiving long-term care services for at least 30 consecutive days and is married to a community spouse.

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

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 long-term care 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.⁵ 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 (see Appendix C for more details).

⁴ See [Minnesota Statutes, section 256B.0571](#), for a more complete description of the long-term care partnership program.

⁵ See [Minnesota Statutes, sections 256B.058 and 256B.059](#).

An asset assessment is used to determine the division of marital assets.

Effective July 1, 2016, the division of marital assets is based upon an asset assessment that is conducted at the time an application for MA coverage of long-term care services is made. Prior to this date an asset assessment was conducted upon the request of either the long-term care or community spouse at the time of the first continuous period of institutionalization.

The asset assessment is based on the assets owned by one or both spouses on the date of application for MA coverage. The spousal share is calculated only once and is used for any subsequent periods during which a person may receive long-term care services.

Effective July 1, 2016, the division of marital assets is subject to a maximum specified in law; the long-term care spouse can transfer available assets to the community spouse to bring that spouse's assets up to the maximum.

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 available assets to the community spouse until the value of the assets retained by the community spouse reaches the federal maximum. The \$119,220 maximum spousal share amount is effective from January 1, 2016, to December 31, 2016. These amounts are adjusted each January 1 by the percentage change in the Consumer Price Index (CPI-U).

The community spouse is allowed to retain assets in excess of the maximum if the assets are owned by the community spouse in the form of retirement funds of the community spouse or funds protected for the postsecondary education of a child under 25 years of age, and the denial of eligibility for MA would cause an undue hardship on the family.⁶

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. In many cases, the only permitted deduction is a personal needs allowance of \$97 per month.⁷ Other allowable deductions are listed in [Minnesota Statutes, section 256B.058](#).

⁶ This allowance was enacted in [Laws 2016, chapter 189](#), article 19, section 7, and is effective June 1, 2016. The commissioner of human services is required to submit a state plan amendment, and if the federal government denies the amendment, then the commissioner must cease implementation of this provision.

⁷ This personal needs allowance is adjusted for inflation each year. 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 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 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 \$2,003, effective July 1, 2016⁸), 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
- \$2,980.⁹

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. The long-term care spouse may also allocate income to a dependent child not living with the community spouse. The family allowance in this situation is 133 percent of the federal poverty guidelines minus the dependent child's net income.

⁸ The \$2,003 amount became effective July 1, 2016, and will remain in effect until the federal poverty guidelines are updated. Generally, adjustments are made each July 1 to reflect changes in the federal poverty guidelines.

⁹ The \$2,980 monthly maximum became effective January 1, 2016, and will remain in effect until the federal poverty guidelines are updated. Generally, adjustments are made each July 1 to reflect changes in the federal poverty guidelines.

Prohibitions on Asset and Income Transfers

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 developmental disabilities (ICF/DD), 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.

Transfer penalty: The calculated length of time a person requesting MA payment of long-term care services is ineligible for those payments due to an uncompensated transfer.

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 transfers¹⁰ 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 for long-term care services is pending, or while the person is eligible for MA payment of long-term care services.

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

The federal Deficit Reduction Act of 2005 (DRA), Pub. L. No. 109-171, expanded the look-back period for all transfers *made on or after February 8, 2006*, to 60 months. This expansion was phased in over a 24-month period starting in February 2009. Starting on February 1, 2009, the look-back period that applied to persons seeking payment for long-term care services was increased in a one-month increment each successive calendar month through January 31, 2011. For example, the look-back period was 37 months beginning February 1, 2009, and increased to 38 months beginning March 1, 2009. For persons seeking payment of long-term care services on or after January 31, 2011, the full 60-month look-back period applies.

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 B for a description of these changes.

¹⁰ See Minnesota Statutes, sections [256B.059](#) and [256B.0595](#).

Asset and income transfer prohibitions apply to single adults without children who are eligible for MA under Minnesota's medical assistance expansion and who receive long-term care services.¹¹

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

The transfer 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 developmental disabilities (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 transfer penalty.

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

The length of the transfer penalty is calculated by dividing the total value of all uncompensated transfers of assets or income made during the look-back period by the statewide average monthly payment rate for nursing facility services (SAPSNF).¹² 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 \$6,280, (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 2.39. The individual will be ineligible for long-term care services for two months and will be financially responsible for \$2,449 as a result of the fractional month of ineligibility ($0.39 \times \$6,280 = \$2,449$).

¹¹ Effective January 1, 2014, Minnesota's medical assistance program was expanded to provide health coverage to adults without children who have income of less than or equal to 133 percent of the federal poverty guidelines.

¹² The current statewide average monthly payment rate for nursing facility services is \$5,660. This amount became effective July 1, 2016, and applies to persons who apply for MA on or after that date; it is recalculated each July 1.

Periods of ineligibility due to a transfer penalty begin on the date an individual would otherwise be eligible for MA payment of long-term care services.

For transfers made during the look-back period *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 transfer penalty. This provision is effective for requests for MA payment of long-term care services on or after July 1, 2006.

The transfer penalty period for persons who make uncompensated transfers at a time when MA is already paying for long-term care services begins the first month for which ten-day notice can be given following the uncompensated transfer.¹³

Transfer penalties for transfers that result in partial months of ineligibility are combined and treated as one transfer.

The transfer of assets valued at less than the statewide average monthly payment rate for nursing facility services made in more than one month, the total, cumulative, uncompensated value of all assets transferred is treated as one transfer, and the transfer penalty begins on the date the individual would otherwise be eligible for MA payment of long-term care services.

¹³ [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 [Minnesota Statutes, section 256B.0595](#), subdivision 2, paragraph (c)). Ten days' advance notice is required before a penalty period can begin.

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 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
- (d) 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. Convincing evidence may include:
 - Assets owned by the individual would be below the applicable asset limit even if the transferred asset had been retained.

- The individual documents that the transfer was beyond his or her control, such as a court order.
- The individual demonstrates that the need for long-term care could not have been anticipated at the time of the transfer.
- The individual demonstrates an unexpected loss of other assets or income that would have caused ineligibility for MA.
- The individual demonstrates a well-established history of making regular contributions to a religious or charitable nonprofit organization to which he or she belongs.
- The individual provides proof of intent to receive fair market value.

Appendix B: DRA 2005 Changes

The 2006 Legislature enacted legislation to comply with the federal Deficit Reduction Act of 2005 (DRA), [Pub. L. No. 109-171](#). These provisions were contained in [Laws of Minnesota 2006, chapter 282](#), article 17 and 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 continuously received MA payment of long-term care services and applied for payment of long-term care services on or after January 1, 2006, homestead equity was 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 was increased annually by the change in the Consumer Price Index, rounded to the nearest \$1,000. In 2016, the homestead equity limit is \$552,000. 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. 25; [Sec. 256B.056](#), subd. 2]

Nursing facility admission contracts. Effective July 1, 2006, admission contracts for nursing facilities that are part of a continuing care community 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; and
- 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.

[Secs. 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]

Extension of look-back period. The look-back period for any disposal of assets made on or after February 8, 2006, was extended from 36 to 60 months. This extension was phased in one month at a time beginning 36 months after February 8, 2006, so that the length of the look-back period was 37 months on February 8, 2009, and reached 60 months on February 1, 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 13). 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)]

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 nonhomestead 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]

Appendix C: 2016 Spousal Impoverishment Changes

The Affordable Care Act (ACA) requires states to apply spousal impoverishment provisions for home and community-based waiver services for a five-year period beginning January 1, 2014, and ending December 31, 2018. Prior to the ACA, applying spousal impoverishment provisions in home and community-based waiver programs was optional and Minnesota exempted persons receiving disability-based waiver services. Minnesota continued to exempt persons receiving these services, and in 2016 the Centers for Medicare and Medicaid Services rejected Minnesota's request to continue this exemption and required the state to take corrective action by June 1, 2016. As a result, changes were made to state law during the 2016 legislative session to bring Minnesota into compliance with federal law and to increase the spousal impoverishment asset limit to the federal maximum for all married MA recipients receiving long-term care services.

Laws 2016, chapter 189, the omnibus supplemental budget bill, enacted various provisions to bring Minnesota into compliance with federal law and to increase the spousal impoverishment asset limit to the federal maximum.

Assessment of marital assets. Effective July 1, 2016, the assessment of marital assets will occur at the time of application for long-term care services. In the past, this assessment was conducted following first continuous period of institutionalization. [[Laws 2016, ch. 189](#), art. 19, §§ 4 and 5]

Increase community spouse asset allowance. Effective July 1, 2016, the community spouse asset allowance was increased to the federal maximum of \$119,220. [[Laws 2016, ch. 189](#), art. 19, §§ 6 and 7]

Undue hardship exemption. Effective June 1, 2016, assets in excess of \$119,220 that are owned by the community spouse in the form of retirement funds for the community spouse or protected for the postsecondary education of a child under age 25, are protected if denial of MA benefits for the institutionalized spouse would cause an undue hardship. This section provides that if the federal government denies the state plan amendment, the commissioner of human services must cease implementation of this section. [[Laws 2016, ch. 189](#), art. 19, §7]

Waiver services; federal compliance. Federal spousal impoverishment provisions for the balance of the required five-year period will be applied as follows:

- on June 1, 2016, for individuals applying for disability-based waiver services on or after that date
- on March 1, 2017, for individuals enrolled in disability-based waiver services prior to June 1, 2016
- on June 1, 2016, for individuals applying for Community First Services and Supports, a program awaiting federal approval

[[Laws 2016, ch. 189](#), art. 19, §8]

For more information about Medical Assistance, visit the health and human services area of our website, www.house.mn/hrd/.