Agency #016.20

MANUAL TRANSMITTAL

Arkansas Department of Health & Human Services
Division of County Operations

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Medical Services Policy Manual — Issuance Date: October 1, 2006

From: Joni Jones
Director — Expiration Date: Until Superseded

Subj: Deficit Reduction Act of 2005 – Long Term Care Changes

I. BACKGROUND

The Deficit Reduction Act of 2005 (DRA) signed into law by President Bush on February 8, 2006, contains provisions that impact eligibility for Medicaid long term care services. Implementation of the provisions will be effective 10-1-06. The following guidance provides a synopsis of the changes and gives procedures in implementing the changes.

II. ELIGIBILITY CHANGES

A. Uncompensated Asset Transfer – The date of the transfer governs what policy the eligibility worker will apply. For any transfer prior to 2-8-06 the eligibility worker will apply current policy. The DRA provisions apply to transfers made on or after 2-8-06.

1. **Asset transfers made prior to 2-8-06 – pre-DRA policy**
   a. **Penalty period** (MS 3336.10) Penalty period will begin on the first day of the first month when the transfer occurred.
   b. **Consecutive Penalty Periods** (MS 3336.10) Multiple transfers resulting in overlapping and not overlapping penalties will apply to transfers that occur prior to 2-8-06 for less than fair market value.
   c. **Partial Months** (MS 3336.10) Drop the fractional amount in the calculation of the penalty period.
   d. **Undue Hardship** (MS 3335.2) The applicant/recipient or his or personal representative may apply for an undue hardship waiver upon denial of an application or closure of an existing long term care case.

   To ensure consistency with the decisions of what constitutes a hardship, applications (LTC and HCBS Waiver) for an undue hardship waiver will be routed to OPPD, Medicaid Eligibility Unit, Slot S333.

2. **Asset transfers on or after 2-8-06 – DRA Provisions**
   a. **Penalty period** – The penalty period will begin with the date of transfer or the application month whichever is the later date. Once a penalty period has been determined, it continues to run until expiration.

Example #1: The initial application date is 10/30/06 and the transfer occurred 5-30-06. The penalty period will begin with the **date of application** 10-30-06 not the date of transfer. If the transfer occurred after the application date, then the penalty period will begin with the date of transfer.

NOTE: The application can still be approved for Medicaid if all eligibility requirements other than the transfer have been met. The individual will not be eligible for a vendor payment until the expiration of the penalty period but may receive other Medicaid services.

Example #2: At reevaluation on 9/1/07 the eligibility worker discovers a transfer occurred on 4/10/07 which resulted in ineligibility for LTC for 8 months. The penalty period will begin with 4/10/07 (the date of transfer). The eligibility worker will send a 10 day notice and apply the closure of the vendor payment effective with the day after the 10 day notice has expired and will continue with the balance of the penalty. Any payments made prior to the end of the notice will result in an overpayment.

Note: Even though the vendor payment has been closed, Medicaid will continue to cover services not covered under the vendor payment.

For Home and Community Based Waivers (HCBS), the imposition of a transfer of assets penalty negates any eligibility. The penalty for HCBS waiver recipients is the withholding of waiver services, the receipt of which is an eligibility requirement for that particular category. Unless the individual enters a nursing facility, the individual will remain ineligible. Upon entry into a nursing facility, the penalty period will begin and continue for the appropriate period of time.

Example: Ms. Jones applied for HCBS on 10-15-06 and was denied due to transfer of assets made on 6-1-06. The denial of waiver services prevents applying the penalty period. She then entered a nursing facility on November 14, 2006, and applied for Medicaid. The applicant was determined to be otherwise eligible except for the transfer of $55,000 for less than fair market value. The eligibility worker determined that the applicant is not eligible for Medicaid to pay the vendor payment for 14.469 months (55,000 divided by the divisor 3801). Ms. Jones will not be eligible for Medicaid to pay the vendor payment for long term care services until December 30, 2007.

Ms. Jones still can be approved for Medicaid services – just not the vendor payment. Ms Jones then leaves the nursing home on December 15, 2006. The penalty period continues to run even though Ms. Jones

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leaves the nursing facility. Once the penalty period expires (12-30-07), Ms. Jones could apply and, if otherwise eligible without regard to this transfer, be approved for the HCBS.

b. **Consecutive Penalty Periods** - The eligibility worker will determine the penalty period for asset transfers by treating the total cumulative, uncompensated value of all assets transferred by the individual (or the individual's spouse) during all the months in the look- back period (up to and including 2-8-06) as one transfer. This applies to all transfers regardless of the amount. The eligibility worker will add all the transfers together with the penalty period beginning with the date of application or the date of the first transfer whichever is later.

c. **Partial months** – The penalty period will be determined by dividing the total uncompensated value by the divisor. The fractional amount in the calculation will not be dropped.

EXAMPLE: Ms. Jones application date for nursing home was 11-14-06 She transferred $55,000 after 2/8/06. $55,000 divided by 3801 equals 14.469. The 469 divided by 30 days equals 15.63333 days rounded up to 16 days. Do not round down. Ms. Jones will be ineligible for vendor payment until 12-30-07.

A transfer penalty spreadsheet is being added to ANSWER to compute the penalty period effective 10-1-06.

d. **Undue Hardship Waiver** – The DRA provision permits the facility in which the institutionalized individual is residing to file an undue hardship waiver application on behalf of the individual with the consent of the individual or his or her personal representative.

To ensure consistency with the decisions of what constitutes a hardship, applications (LTC and HCBS Waiver) for an undue hardship waiver will be routed to OPPD, Medicaid Eligibility Unit, Slot S333.

3. **Lengthening the Look-Back Period** – The look-back period has been lengthened from 36 months to 60 months for transfers that have occurred on or after 2/8/06. The eligibility worker must determine when the transfer occurred. If the transfer occurred prior to 2-8-06, it will be considered only if it falls within 36 months prior to the application date or 60 months if transferred to a trust.

Example #1: Application dated March 10, 2009 revealed an uncompensated transfer occurred on January 24, 2006. Since the transfer was prior to 2/8/06, then the 36 month look-back period would apply. Applying the 36 month look-back from the application dated March 2009 would result in the transfer of 1/14/06 **not** being considered as the transfer occurred prior to the 36 months.

Example #2: Ms Jones applied on March 10, 2010 revealing an uncompensated transfer to her son that occurred on 4-10-06. This transfer will be considered because it is within the **60 month** look-back period.

4. **Transfers Occurring Both Before and After 2-8-06**
The eligibility worker will look at the dates of the transfers to determine whether to apply the penalty period based on pre-DRA policy or DRA policy.

Example: Ms. Jones applied on March 10, 2007 revealing three uncompensated transfers. Transfers occurred January 14, 2006, March 1, 2006 and April 20, 2006. The eligibility worker will use pre-DRA policy for the transfer in January and will use the DRA provisions for the transfers that occurred after 2-8-06. Those two transfers (3-1-06 and 4-20-06) will be added together to arrive at the total DRA transfer amount.

B. **Home Equity** – A home equity limit applies only to Long Term Care Medicaid. An individual with an equity interest in the home of greater than $500,000 is ineligible for nursing facility and other long term care Medicaid services. The limitation on home equity does not apply if the spouse of the individual, the individuals children under the age of 21 yrs old, or the individuals blind or disabled child is residing in the home. This provision applies to the first determination of eligibility as well as at future redeterminations. If otherwise eligible without regard to the home equity, the person may be eligible for Medicaid services. This became effective with applications filed on or after 1-1-06. For current recipients, a determination will be made at the next reevaluation provided the application was filed on or after 1-1-06.

NOTE: The home equity limit does not apply to individuals who applied and were determined eligible before January 1, 2006 and have no break in LTC eligibility after January 1, 2006. The limitation on home equity does not apply if the spouse of the individual, the individuals children under the age of 21 yrs old, or the individuals blind or disabled child is residing in the home.

The eligibility worker will determine the individual’s equity interest in the home. This should be based solely on the current market value of the home, minus any encumbrances such as mortgages or other loans that are secured by the home. Refer to MS. 3331.4 on determining equity value.

This provision permits an individual to take out a home equity loan or reverse mortgage to reduce the total equity interest in the home converting the equity into an otherwise countable resource. The amount received from the loan has now been converted to a countable resource (e.g. Cash).

If an individual received a home equity loan which was greater than the resource limit, then he/she would be ineligible to receive LTC until the resources are reduced. If the individual gives this money away, this would be considered as an uncompensated transfer and the penalty period will be determined.

Example #1: Mr. Smith is applying for nursing home assistance. He has equity in the amount of $501,000 which exceeds the $500,000 home equity limit. He then converted $1000 into cash. Mr. Smith reports no other resources. His home equity is now within the accepted limits and his resources are below $2000. He is now eligible for long term care.

Example #2: Mr. Jones, an LTC applicant, has equity in his home of $550,000. He obtains a home equity loan of $50,000 reducing his equity to $500,000. He now meets the home equity limit but is ineligible due to countable resources of $50,000.

This provision also allows the individual to file an Undue Hardship Waiver. An example of a request may be the individual makes an allegation that the home equity should not be counted because of a legal impediment to selling or transferring the home. This will not prevent a determination of the individual's equity interest. However this may be a legitimate reason for applying for an undue hardship waiver. Undue hardship waiver will be forwarded to OPPD, Medicaid Eligibility Unit, Slot S333 with all supporting documentation.

C. **<u>Disclosure and Treatment of Annuities</u>** (MS3346.6) Individuals applying for long term care and home & community waivers must follow the guidelines below:

1. The individual must disclose a description of any interest the individual or community spouse has in an annuity regardless of whether the annuity is irrevocable or is treated as an asset.
2. Arkansas must be named as the preferred remainder beneficiary of an annuity or the purchase of the annuity is treated as a disposal of assets for less than fair market value.
3. The annuity must provide for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made.

All annuities will be routed to OPPD, Medicaid Eligibility Unit, Slot S333 for submission to the Office of Chief Counsel for determination. Based on OCC's opinion, OPPD will inform the eligibility worker whether this is a resource or is to be treated as a disposal of assets for less than fair market value.

D. **<u>Promissory Notes</u>** (MS. 3332.2.4) The eligibility worker will evaluate whether the individual has transferred assets for less than fair market value when an individual transfers an asset and receives a promissory note, loan, or mortgage as compensation. When valuing notes, loans and mortgages the eligibility worker must determine whether the transfer of assets was for fair market value and, if not, impose a period of ineligibility. If fair market value was received, then the eligibility worker must consider whether the note, loan or mortgage is a countable resource.

If an applicant transfers assets while providing the appearance of a loan and documented as a promissory note, the funds will continue to be considered as an asset unless the following are met:

1. repayment is actuarially sound or,

2. provides for equal payment amounts during the term of the loan with no deferral or balloon payments and,
3. prohibits cancellation of the balance upon the death of the lender.

E. <u>Life Estates</u> (MS3331.3.3) DRA added the provision that a life estate will be treated as an uncompensated transfer of assets if the purchaser does not live on the property for at least 12 consecutive months after the property is purchased.

If **less** than one year of occupancy, the result would be in treatment as a transfer for less than fair market value and the penalty must be applied. The full amount of the purchase price will be considered as the uncompensated transfer.

If **more** than one year of occupancy, the eligibility worker will look at purchase price of the life estate to determine if the purchase price was for fair market value. If the person's life expectancy is less than the life estate purchased, this can be a basis to impose a transfer penalty.

III. Implementation Procedures

This directive will be followed when processing any application pending on or taken on or after 10/1/06.

Remember: Asset transfers are dependent on the date of the transfer.
See section II.A.1 for transfers prior to 2-8-06
Section II.A.2 for transfers after 2-8-06.

IV. Summary

Medical Services Policy sections are being revised and will be issued within the next few months. This directive will remain in effect until that time.

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