



Commonwealth of Massachusetts
Executive Office of Health and Human Services
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MassHealth
Long Term Care Facility Bulletin 93
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TO: Nursing Facilities and Chronic Disease and Rehabilitation Inpatient Hospitals
Participating in MassHealth

FROM: Beth Waldman, Medicaid Director *BW*

RE: Deficit Reduction Act of 2005: Long-Term-Care Eligibility Changes

Background

The federal Deficit Reduction Act (DRA) of 2005 required changes to the MassHealth regulations for applicants who are applying for long-term-care services. The federal Deficit Reduction Act of 2005 was signed into law on February 8, 2006.

This bulletin outlines the mandated changes and the operational requirements for the changes in long-term-care eligibility required by the DRA.

**Look-Back Period
and Start Date**

Effective for transfers occurring on or after February 8, 2006, the look-back period for a transfer of resources for less than fair-market value changed from 36 months to 60 months. This change will be phased in over the 24-month period from February 2006 to February 2008, at which time the 60-month look-back period will be fully implemented.

All transfers for less than fair-market value made by the individual or the individual's spouse on or after the look-back will now cumulate and be treated as one transfer.

Penalty Period

For transfers occurring on or after February 8, 2006, the period of ineligibility begins on the first day of the month in which the resources were transferred for less than fair-market value, or the date on which the individual is otherwise eligible for MassHealth payment of long-term-care services, whichever is later.

Hardship Provision

Individuals and nursing facilities on behalf of individuals (with the individual's permission) may apply for a waiver of the penalty period. The guidelines for the hardship process are described at 130 CMR 520.019(K).

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***Equity Interest
in Real Estate***

Effective for applications filed on or after January 1, 2006, the applicant will be denied payment of nursing facility and other long-term-care benefits if the applicant's or member's equity interest in the individual's home exceeds \$750,000. This figure will be increased each year, beginning in the year 2011, based on the Consumer Price Index.

MassHealth must redetermine the eligibility of any individual who has filed an application on or after January 1, 2006, with regard to the value of the home.

Exemptions

This regulation will not apply if the spouse or minor child or child who is either blind or totally and permanently disabled is living in the home.

Hardship Provisions

Individuals may apply for a review of denial of payment for long-term-care benefits by contacting a MassHealth Enrollment Center (MEC). The guidelines for the hardship process are described at 130 CMR 520.007(G)(13).

Annuities

The existing rules about the countability of annuities have not changed.

New rules have been added about the treatment of annuities as disqualifying transfers. All applicants and members (upon eligibility review) must provide MassHealth with verification of any interest the individual or the individual's spouse has in an annuity, whether or not the annuity or similar instrument is irrevocable or treated as an asset. This verification must include a statement identifying MassHealth as remainder beneficiary in the first position up to the total amount of medical assistance paid on behalf of the individual annuitant.

If there is a community spouse or a minor child or a disabled child or children, the purchase of an annuity will be considered a disqualifying transfer if MassHealth is not named after the spouse or any minor or disabled child or children, or if MassHealth is not named in the first position if the spouse or representative of the child or children disposed of any remainder for less than fair-market value.

Failure to provide documentation of the Commonwealth of Massachusetts being named as such remainder beneficiary will result in the entire amount paid for the annuity being treated as a transfer of assets for less than fair-market value.

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Annuities
(cont.)

The purchase of an annuity will also be treated as a disqualifying transfer unless:

- the terms of the annuity provide for equal payments with no deferral and no balloon payments made and the annuity is irrevocable and nonassignable and is actuarially sound in accordance with the current Social Security Administration (SSA) tables. These tables are available on the SSA Web site at ssa.gov/OACT/STATS/table4c6.html; or
- the annuity is an account or annuity described in the Internal Revenue Code at section 408(b) or (q); or
- the annuity is purchased with proceeds from an account or trust described in the Internal Revenue Code at section 408(a), (c), or (p), from a simplified employee pension (SEP) plan, or from a Roth IRA described at 408A of the Internal Revenue Code. A 408A annuity should be identified on the annuity document. An Internal Revenue Form 5305-R must be filed with the Internal Revenue Service when an individual has a 408A annuity. This document is available on the Internal Revenue Service Web site at www.irs.gov/pub/irs-pdf/f5305r.pdf.

In all cases, the annuity must name the Commonwealth of Massachusetts as the remainder beneficiary as described earlier in this bulletin.

**Promissory Note,
Loan, or
Mortgage**

Effective April 1, 2006, the entire value of any promissory note, loan, or mortgage will be considered a disqualifying transfer of assets unless all of the following conditions are met:

- the repayment terms are actuarially sound, based on actuarial tables on the Social Security Administration Web site at ssa.gov/OACT/STATS/table4c6.html;
 - the promissory note, loan, or mortgage provides for equal payments during the life of the loan, with no deferral or balloon payments; and
 - the promissory note, loan, or mortgage prohibit cancellation upon the death of the lender.
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Life Estates

Effective February 8, 2006, a purchase of a life estate interest in another's home is considered a disqualifying transfer, unless the purchaser resided in the home for at least one year after the date of purchase.

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***Treatment of
Deposits and
Entrance Fees
for Continuing
Care***

Any deposit or entrance fee paid to a continuing care retirement community (CCRC) or life-care community (LCC) is considered a countable asset if the individual can use the fee or the contract provides that the fee can be used to pay for care when other income and assets are insufficient, and if the individual is eligible for a refund at death or on leaving the CCRC or LCC, so long as the fee does not confer any ownership interest in the CCRC or LCC.

Questions

If you have any questions about the information in this bulletin, please contact MassHealth Customer Service at 1-800-841-2900, e-mail your inquiry to providersupport@mahealth.net, or fax your inquiry to 617-988-8974.
