Office of Legislative Research
Research Report

October 28, 2016
2016-R-0253

MEDICAID POLICIES IN SURROUNDING STATES

By: Katherine Dwyer, Associate Attorney
Mary Fitzpatrick, Legislative Analyst II

ISSUE

This report discusses the Department of Social Services' (DSS) proposed regulations on Medicaid long-term care eligibility determinations, related federal legislation, and policies in Massachusetts, New York, and Rhode Island. Specifically, the report discusses provisions related to (1) the look-back period; (2) the start date of the penalty period; (3) notes, loans, and other financial instruments owned by Medicaid applicants or recipients; and (4) when the spouse of a long-term care Medicaid recipient transfers proceeds from certain financial instruments in a way that reduces the spouse's or recipient's equity in the home.

SUMMARY

DSS has proposed changes to its Uniform Policy Manual, which, according to DSS staff, (1) implement provisions of the 2005 federal Deficit Reduction Act (DRA) regarding Medicaid long-term care eligibility determinations and (2) conform to current practice.

The DRA required states to, among other things, (1) extend their look-back periods to 60 months, (2) change the way they calculate the start date for a penalty period imposed for an impermissible asset transfer, and (3) treat the purchase of certain financial instruments (e.g., mortgages and promissory notes) as an impermissible asset transfer unless the instrument met certain criteria. For these provisions, policies in Massachusetts, New York, and Rhode Island are similar to those proposed by DSS.

Additionally, under DSS's proposed regulations, if an institutionalized individual's spouse, after the individual is deemed Medicaid-eligible, transfers the proceeds of a home equity loan, reverse mortgage, or similar instrument that reduced the institutionalized individual's or spouse's home equity, DSS may consider that transfer to be made in order to qualify for Medicaid and thus impose a penalty. In New York, for those applying for Medicaid coverage of nursing home care, transfers of payments received from a reverse mortgage or home equity loan are considered

less than fair market value (i.e., a penalty may be imposed) if transferred during the month of receipt. In Massachusetts, transfer penalties are not imposed on non-institutionalized spouses after an eligibility determination. In Rhode Island, the proceeds from a home equity loan or reverse mortgage do not count as assets or income the month they are received, but they are countable if they are kept beyond that month.

LOOK-BACK PERIOD

DRA Provisions (§ 6011)

Federal law presumes that someone who transfers assets for less than fair market value during a certain period before applying for Medicaid long–term care (look-back) does so in order to qualify for assistance. If these transfers occur, and the presumption is not successfully rebutted, states must impose periods of Medicaid ineligibility based on the value of the uncompensated asset.

Prior law required states to look back 36 months for most transfers but 60 months for transfers made to certain trusts. The DRA requires a 60-month look-back for all transfers. This provision applies to transfers made on or after February 8, 2006.

DSS Proposed Regulations

Proposed policy 3029.05 would conform the policy manual to both current DSS practice and the DRA requirements for the look-back period as described above. Specifically, the policy would require a 60 month look-back period for asset transfers that took place on or after February 8, 2006.

Massachusetts, New York, and Rhode Island

In Massachusetts, New York, and Rhode Island, the look-back period is 60 months for transfers occurring on or after February 8, 2006 (130 CMR 520.019(B)(2)), (DOH Administrative Directive 06 OMM/ADM-5 (p.5)), (R.I. Code R. § 0384.05)).

PENALTY PERIOD START DATE

DRA Provisions (§ 6011(b))

Under federal law, if a Medicaid applicant is found to have made a transfer for less than fair market value within the look-back period solely to qualify for Medicaid, the state must impose a period of Medicaid ineligibility. The duration of the penalty is determined by dividing the uncompensated value of the asset in question by the average monthly cost of care in a nursing home.

Prior to the DRA's passage, applicants who transferred assets early enough before they applied for Medicaid tended not to be penalized. This was because the penalty period began from the first day of a month during or after which the assets were transferred. For example, if someone's penalty was two months, and he or she transferred the asset a year before applying for Medicaid, the transfer would be scrutinized, but the penalty would expire 10 months before the person applied.

The DRA changed the start date of the penalty period to the later of either (1) the first day of the month during or after which the assets were transferred or (2) the date on which the person transferring the asset is eligible for Medicaid and would otherwise be receiving institutional care based on an approved application but for the application of the penalty period.

DSS Proposed Regulations

Under the proposed regulations, the penalty period under this policy is calculated as (1) the first day of the month during which assets are transferred for less than fair market value if that month is not part of another penalty period or (2) the first date on which the individual became eligible for Medicaid that is not part of a penalty period.

Massachusetts

For transfers occurring on or after February 8, 2006, the period of ineligibility begins on the first day of the month in which resources were transferred for less than fair market value or the date on which the individual is otherwise eligible for MassHealth agency payment of long-term-care services, whichever is later (130 CMR 520.019(G)(3)).

New York

According to New York's Department of Health (DOH), for transfers on or after February 8, 2006, the penalty period starts on the later of the (1) first day of the month of the transfer or (2) date on which the otherwise eligible individual is receiving nursing facility services for which Medicaid coverage would be available were it not for the penalty period (DOH Administrative Directive 06 OMM/ADM-5 (p.5)).

Rhode Island

Under Rhode Island regulations, for all asset transfers made on or after February 8, 2006, the penalty period begins the later of (1) the date on which the individual became eligible for Medicaid and would otherwise be receiving institutional care or (2) the first day of the month during or after which the assets have been transferred for less than fair market value and which does not occur during any other penalty period (R.I. Code R. § 0384.25).

NOTES, LOANS, AND OTHER FINANCIAL INSTRUMENTS

DRA Provisions (§ 6016(c))

Under this provision, states must consider funds used to purchase a promissory note, loan, or mortgage as an asset transfer for less than fair market value unless the repayment terms (1) are actuarially sound, (2) provide for payments to be made in equal amounts during the loan's term with no deferral or balloon payments, and (3) prohibit the cancellation of the balance upon the death of the lender. If the note, loan, or mortgage does not meet these qualifications, its value as an asset must be the outstanding balance due on the date the applicant applies for Medicaid services.

DSS Proposed Regulations

Under proposed policy 4030.50(C), if an individual of his or her spouse uses his or her funds to purchase a mortgage note, loan, installment contract, or similar financial instrument, DSS may consider the transaction a transfer of assets for less than fair market. This proposed policy conforms to both another current policy (UPM 3029.14) and current DSS practice. Under 3029.14, unchanged by the proposed policy revisions, the purchase of a bona fide mortgage note, loan, installment contract, or similar financial instrument is considered an asset transfer for less than fair market value unless the instrument meets the criteria set forth in the DRA (see above).

Massachusetts

Massachusetts regulations provide that annuities, promissory notes, loans, mortgages, and similar transactions are considered assets. According to MassHealth staff, when an individual and his or her spouse uses their funds to purchase such instruments, MassHealth may consider such a transaction a transfer of assets for less than fair market value. The value of any outstanding balance due on a promissory note, loan, or mortgage ("financial instrument") is a disqualifying transfer of assets unless the transfer meets the criteria set forth in the DRA (see above) (130 CMR 520.007(J)(3)).

New York

In New York, funds used to purchase a promissory note, loan, or mortgage on or after February 8, 2006, are treated as an uncompensated transfer of assets unless the note, loan, or mortgage meets the criteria set forth in the DRA (see above) (DOH Administrative Directive 06 OMM/ADM-5 (p.5)).

Rhode Island

Under Rhode Island regulations, a negotiable note, mortgage, or loan agreement is considered an asset in the amount of the outstanding principle balance, unless it meets the criteria set forth in the DRA. If it does not meet these criteria, its value is considered to be the outstanding balance due on the date the applicant applied for Medicaid (R.I. Code R. § 0382.15.20.10).

SPOUSE ASSET TRANSFERS AFTER MEDICAID ELIGIBILITY WAS DETERMINED

DSS Proposed Regulations

Under certain circumstances, DSS may impose a penalty period when a community spouse transfers an asset after the institutionalized spouse has been determined to be Medicaid eligible. Under the current policy, DSS considers the transfer of the spouse's or recipient's home after the recipient is deemed Medicaid-eligible to be an asset transfer that was made for qualification purposes and thus imposes a penalty. Under proposed policy 3029.15 and current DSS practice, if an institutionalized individual's spouse, after the individual is deemed Medicaid-eligible, transfers the proceeds of a home equity loan, reverse mortgage, or similar instrument that reduced the institutionalized individual's or spouse's home equity, DSS may impose a penalty.

Massachusetts

According to MassHealth Staff, current state regulations do not impose a transfer penalty on the spouse of an institutionalized person after an eligibility determination.

New York

Payments received from a reverse mortgage or home equity loan are not counted in the month of receipt for eligibility purposes, but if the funds are transferred during the month of receipt, the transfer is considered to be for less than fair market value for those applying for Medicaid coverage of nursing home care (New York MRG p. 402).

Rhode Island

According to the Rhode Island Department of Human Services, when a spouse transfers the proceeds of a bona fide home equity loan or reverse mortgage for which the applicant was the borrower, the proceeds do not count as income or resources the month the spouse receives them, but if the proceeds are kept beyond a month, they become countable. If the loan is not bona fide, the proceeds are countable as unearned income when the spouse receives them. For a loan to be considered bona fide, the terms of the loan must be legally binding on the borrower under state law.

KD/MF:cmg