



# **Minnesota Health Care Programs**

## **Eligibility Policy Manual**

**This document provides information about additions and revisions to the Minnesota Department of Human Service's Minnesota Health Care Programs Eligibility Policy Manual.**

**Manual Letter #19.1**

**January 1, 2019**

# Manual Letter #19.1

This manual letter lists new and revised policy for the Minnesota Health Care Programs (MHCP) Eligibility Policy Manual (EPM) as of January 1, 2019. The effective date of new or revised policy may not be the same date the information is added to the EPM. Refer to the Summary of Changes to identify when the Minnesota Department of Human Services (DHS) implemented the policy.

## I. Summary of Changes

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This section of the manual letter provides a summary of newly added sections and changes made to existing sections.

### A. [EPM Home Page](#)

The Policy in the following bulletins has been incorporated into the EPM with this manual letter so the bulletins have been removed from the EPM home page.

- Bulletin #18-21-08, DHS Announces Spousal Impoverishment Protections Rules for Some Waiver Programs will End
- Bulletin #18-21-09 DHS Announces the Increase in the Medical Assistance Spenddown Standard for Certain Enrollees

### B. [Section 2.3.3.2.7.4.3 MA ABD Life Estates and Remainder Interests](#)

In this section the policy was updated to define life estate interest and determining the value of the life estate interest in real property. It also clarifies that life estate interest is calculated differently depending on whether the property has been sold or not.

### C. [Section 2.3.3.4 MA ABD Medical Spenddowns](#)

This section was updated to reflect that the income standard for MA ABD is increasing to 81% FPG for June 1, 2019.

### D. [Section 2.4.1.3.2 MA LTC Transfer Penalty](#)

This section was updated to reflect changes in the spousal impoverishment rules ending for disability waiver recipients. These updates further define an MA LTC spouse as a spouse who is applying for MA LTC.

### E. [Section 2.4.1.3.4 MA LTC Other Asset Transfer Considerations](#)

This section was updated to clarify how to determine whether an uncompensated transfer has occurred when a life estate is sold or terminated. This section also further details types of allowable closing costs.

#### **F. Section 2.4.2.1 MA LTC Asset Eligibility for a Long Term Care Spouse**

This update clarifies the definition of LTC spouse. Since Spousal Impoverishment rules are ending for the Brain Injury (BI), Community Alternative Care (CAC), Community Access for Disability Inclusion (CADI), and Developmental Disability (DD) waiver programs, a married person receiving services through any of those programs is not an LTC spouse beginning January 1, 2019.

#### **G. Section 2.4.2.1.2 MA LTC Community Spouse Asset Allowance**

This section was updated to reflect the end of the Spousal Impoverishment rules for the BI, CAC, CADI, and DD waiver programs. These updates reflect that a person receiving services through any of these waiver programs is no longer considered an LTC spouse if they are married so the community spouse asset allowance does not apply as of January 1, 2019.

#### **H. Section 2.4.2.5.1 MA LTC Income Calculation Deductions**

This section was updated to clarify that a person receiving both SSI and RSDI benefits and residing in a LTC facility for 3 months or less and has a home to maintain in the community is eligible for both the SSI deduction and the Home Maintenance Allowance.

#### **I. Section 2.5.1.1.1 MA-BC Applications**

The policy in this section has been updated to clarify when a woman is presumptively eligible for MA under MA- BC. This section was also updated to provide additional information about ongoing MA BC eligibility.

## II. Documentation of Changes

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This section of the manual letter documents all changes made to an existing section. Deleted text is displayed with strikethrough formatting and newly added text is displayed with underline formatting. Links to the revised and archived versions of the section are also provided.

- A. [EPM Home Page](#)
- B. [Section 2.3.3.2.7.4.3 MA ABD Life Estates and Remainder Interests](#)
- C. [Section 2.3.3.4 MA ABD Medical Spenddowns](#)
- D. [Section 2.4.1.3.2 MA LTC Transfer Penalty](#)
- E. [Section 2.4.1.3.4 MA LTC Other Asset Transfer Considerations](#)
- F. [Section 2.4.2.1 MA LTC Asset Eligibility for a Long Term Care Spouse](#)
- G. [Section 2.4.2.1.2 MA LTC Community Spouse Asset Allowance](#)
- H. [Section 2.4.2.5.1 MA LTC Income Calculation Deductions](#)
- I. [Section 2.5.1.1.1 MA-BC Applications](#)

## A. EPM Home Page

Minnesota Health Care Programs

# Eligibility Policy Manual

Welcome to the Minnesota Department of Human Services (DHS) Minnesota Health Care Programs Eligibility Policy Manual (EPM). This manual contains the official DHS eligibility policies for the Minnesota Health Care Programs including Medical Assistance and MinnesotaCare. Minnesota Health Care Programs policies are based on the state and federal laws and regulations that govern the programs. See Legal Authority section for more information.

The EPM is for use by applicants, enrollees, health care eligibility workers and other interested parties. It provides accurate and timely information about policy only. The EPM does not provide procedural instructions or systems information that health care eligibility workers need to use.

## Manual Letters

DHS issues periodic manual letters to announce changes in the EPM. These letters document updated sections and describe any policy changes.

[MHCP EPM Manual Letter #19.1, January 1, 2018](#)

### 2018 Manual Letters

MHCP EPM Manual Letter #18.1, January 1, 2018

MHCP EPM Manual Letter #18.2, April 1, 2018

MHCP EPM Manual Letter #18.3, June 1, 2018

MHCP EPM Manual Letter #18.4, September 1, 2018

MHCP EPM Manual Letter #18.5, December 1, 2018

### 2017 Manual Letters

MHCP EPM Manual Letter #17.1, April 1, 2017

MHCP EPM Manual Letter #17.2, June 1, 2017

MHCP EPM Manual Letter #17.3, August 1, 2017

MHCP EPM Manual Letter #17.4, September 1, 2017

MHCP EPM Manual Letter #17.5, December 1, 2017

### 2016 Manual Letters

MHCP EPM Manual Letter #16.1, June 1, 2016

MHCP EPM Manual Letter #16.2, August 1, 2016

MHCP EPM Manual Letter #16.3, September 1, 2016

MHCP EPM Manual Letter #16.4, December 1, 2016

## Bulletins

DHS bulletins provide information and direction to county and tribal health and human services agencies and other DHS business partners. According to DHS policy, bulletins more than two years old are obsolete. Anyone can subscribe to the Bulletins mailing list.

A DHS Bulletin supersedes information in this manual until incorporated into this manual. The following bulletins have not yet been incorporated into the EPM:

- Bulletin #17-21-05, DHS Explains How Unified Cash Asset Policy Affects Medical Assistance (MA) Eligibility
- Bulletin #17-21-08, DHS Explains Changes to the Minnesota Health Care Programs (MHCP) Application for Medical Assistance for Long-Term Care Services (MA-LTC)
- Bulletin #18-21-03, Periodic Data Matching for Medical Assistance and MinnesotaCare
- Bulletin #18-21-04, DHS Announces the Addition of DEED Income Data for Medical Assistance and MinnesotaCare Renewals in METS
- Bulletin #18-21-05, DHS Implements Automated Reasonable Opportunity Period Functionality for Post-eligibility Verifications in METS
- ~~#18-21-08, DHS Announces Spousal Impoverishment Protection Rules for Some HCBS Waiver Programs Will End~~
- ~~Bulletin #18-21-09, DHS Announces the Increase in the Medical Assistance Spenddown for Certain Enrollees~~

## Archives

This manual consolidates and updates eligibility policy previously found in the Health Care Programs Manual (HCPM) and Insurance Affordability Programs Manual (IAPM). Prior versions of policy from the HCPM and IAPM are available upon request.

Refer to the EPM Archive for archived sections of the EPM.

## Contact Us

Direct questions about the Minnesota Health Care Programs Eligibility Policy Manual to the DHS Health Care Eligibility and Access (HCEA) Division, P.O. Box 64989, 540 Cedar Street, St. Paul, MN 55164-0989, call (888) 938-3224 or fax (651) 431-7423.

Health care eligibility workers must follow agency procedures to submit policy-related questions to HealthQuest.

## Legal Authority

Many legal authorities govern Minnesota Health Care Programs, including but not limited to: Title XIX of the Social Security Act; Titles 26, 42 and 45 of the Code of Federal Regulations; and Minnesota Statutes chapters 256B and 256L. In addition, DHS has obtained waivers of certain federal regulations from the Centers for Medicare & Medicaid Services (CMS). Each topic in the EPM includes applicable legal citations at the bottom of the page.

DHS has made every effort to include all applicable statutes, laws, regulations and other presiding authorities; however, erroneous citations or omissions do not imply that there are no applicable legal citations or other presiding authorities. The EPM provides program eligibility policy and should not be construed as legal advice.

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Manual Letter #18.4, September 1, 2018

Manual Letter #18.3, June 1, 2018

Manual Letter #18.2, April 1, 2018

Manual Letter #18.1, January 1, 2018

Manual Letter #17.5, December 1, 2017

Manual Letter #17.4, September 1, 2017

Manual Letter #17.3, August 1, 2017

Manual Letter #17.2, June 1, 2017

Manual Letter #17.1, April 1, 2017

Manual Letter #16.4, December 22, 2016

Manual Letter #16.3, September 1, 2016

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  - [Revised page](#)

## **B. Section 2.3.3.2.7.4.3 MA ABD Life Estates and Remainder Interests**

Medical Assistance for People Who Are Age 65 or Older and People Who Are Blind or Have a Disability

### **2.3.3.2.7.4.3 Life Estates and Remainder Interests**

A life estate is an ownership interest in real property. The right of ownership exists for the lifetime of the person holding it, the lives of one or more other designated persons, or one or more other specified conditions within the lifetime of the life estate owner. A life estate document specifies when the life estate terminates.

The owner(s) of a life estate is called a “life tenant” or “tenant for life.” Generally, a life estate entitles the life tenant to occupy, possess or otherwise use the property as long as he or she lives.

When the owner of property gives it to one party in the form of a life estate, and designates a second person to inherit it upon the death of the life estate owner, the second person has a remainder interest in the property and is referred to as a remainderman.

A life estate is generally created:

- When a person with property rights in real property transfers a remainder interest in the property to another and retains a life estate in the property
- When a person purchases a life estate interest in someone else’s property
- By operation of probate law

### **Rights and Responsibilities of the Life Estate Owner**

The life estate owner:

- Has the right to occupy, possess, or otherwise use the property until the life estate is terminated
- Has the right to sell the life estate interest if not prohibited in the legal instrument establishing the life estate interest
- Is entitled to all income and profits of the life estate interest, such as rent on the property
- Cannot sell the property or the remainder interest
- Is responsible for paying the mortgage, taxes, and insurance on the property
- Is responsible for the upkeep and the repair of the property

## Rights of the Remainderman

The remainderman has ownership interest in the property subject to the life estate interest. The remainderman does not have the right to occupy, possess or otherwise use the property until the life estate is terminated.

The remainderman can:

- Sell his or her interest in the property even before the life estate interest terminates, if allowed by the legal instrument establishing the life estate interest. In such cases, the life estate owner retains the life estate interest until the life estate terminates.
- Sell the entire property with the permission of the life estate owner

## Evaluation of a Life Estate Owner's Interest Evaluation

Life estates interests are treated as real property.

- A life estate interest in ~~If the life estate is the~~ a person's principal place of residence, it is considered excluded as homestead property and is excluded.
- A life estate interest that is not excluded as homestead property, ~~If the life estate is not the person's principal place of residence,~~ it is treated as non-homestead real property. However, ~~aperson~~ MA enrollees are is not required to make a good faith effort to sell a life estate interest in non-homestead real property because life estates are assumed to not be salable. Therefore, nonhomestead The life estates interest is are considered unavailable and are is not counted toward the MA asset limit.

~~The proceeds from the sale of a~~ value of a life estate interest is counted as an asset in the month following the month ~~of the sale, if retained:~~

- ~~When~~ the property is sold, or
- ~~When~~ the remainderman or someone else purchases the life estate interest.

### **Determining the value of a life estate interest in real property**

The value of a life estate interest in real property is the property's ~~equity value~~ estimated market value (EMV) multiplied by the person's mortality figure ~~based on the person's age~~ as determined by the Life Estate Mortality Table. The value of the property may be determined by a licensed real estate appraiser if the accuracy of the EMV is disputed.

The value of a life estate interest at the time the property is sold is the sale price of the property multiplied by the person's mortality figure as determined by the Life Estate Mortality Table. Expenses related to the sale of the property that are the responsibility of the life estate owner are deducted from the value of the life estate.

If there are two or more life estate owners, each life estate ~~owner~~ interest is calculated separately based on each ~~has a different amount of life estate interest due to differences in the owners' ages.~~

See 2.4.1.3.4 – Other Asset Transfer Considerations for information about evaluating life estates to determine in an uncompensated transfer occurred.

## **Evaluation of a Remainder Interest Evaluation**

Remainder interests are treated as real property and ~~counted as an~~ are a countable asset.

### **Determining the value of a remainder interest in real property**

The value of a remainder interest ~~when a person is a remainderman~~ in real property is the property's equity value, multiplied by the remainderman mortality figure that corresponds to the life estate owner's age, as determined by the Life Estate Mortality Table.

## **When the Remainder Interest is Available to the Life Estate Owner**

If a person owns both the life estate interest and the remainder interest, the life estate and remainder interests merge into full ownership of the property. The property is evaluated as a non-life estate real property and the equity value of the property is a countable asset.

## **Legal Citations**

Minnesota Statutes, section 256B.056, subdivision 1a

Minnesota Statutes, section 256B.056, subdivision 4a

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## C. Section 2.3.3.4 MA ABD Medical Spenddowns

### 2.3.3.4 Medical Spenddowns

A medical spenddown is a cost-sharing approach that allows Medical Assistance (MA) eligibility for people whose income is greater than the applicable income limit. Federal rules refer to this population as “medically needy.”

People with an aged, blind or disabled basis of eligibility, who are not eligible for Medical Assistance for People Who Are Age 65 or Older and People Who Are Blind or Have a Disability (MA-ABD) because they are over the income limit and who have medical expenses may be eligible for MA-ABD with a spenddown.

See the MA for Families and Children Medical Spenddown policy for more information about medical spenddowns for parents, pregnant women and children.

Topics included in this section are:

MA-ABD Medical Spenddown Types

MA-ABD Health Care Expenses

#### MA-ABD Spenddown Standard

The spenddown standard for MA-ABD with a spenddown is:

- ~~Before July 1, 2016: 75% FPG~~
- ~~On or after July 1, 2016: 80% FPG~~
- Before June 1, 2019: 80% FPG
- On or after June 1, 2019: 81% FPG

#### Legal Citations

Code of Federal Regulations, title 42, section 435.811

Code of Federal Regulations, title 42, section 435.831

Code of Federal Regulations, title 42, section 435.840

Minnesota Statutes, section 256B.056, subdivision 5

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## **D. Section 2.4.1.3.2 MA LTC Transfer Penalty**

Medical Assistance for Long-Term Care Services

### **2.4.1.3.2 Transfer Penalty**

The transfer penalty for uncompensated transfers is a period of ineligibility for Medical Assistance for Long-Term Care Services (MA-LTC). The transfer penalty only applies to people who meet all of the other criteria to receive MA-LTC. See MA-LTC Eligibility Requirements for more information regarding MA-LTC eligibility. Therefore, the transfer penalty cannot start until a person would be otherwise eligible for MA-LTC. This section discusses how the transfer penalty is calculated.

#### **Uncompensated Transfer Amount**

The calculation for the transferred penalty starts by determining the uncompensated transfer amount.

The amount of the uncompensated transfer varies for certain assets. See Other Asset Transfer Considerations for transfers involving the following assets:

- An annuity
- A life estate
- A trust

The uncompensated amount of all other transfers is the amount of income transferred or the fair market value (FMV) of the asset transferred, less any encumbrances and compensation received, on the transfer date.

#### **Determining the Transfer Penalty**

The transfer penalty begin date depends on several factors, including:

- When the transfer took place
- When the transfer was reported or discovered
- When the person first applied for or requested MA-LTC
- When the person was otherwise eligible
- Whether the person was receiving LTC services at the time the transfer was reported or discovered

The transfer penalty is applied differently for applicants and enrollees.

## **Applicants Requesting MA-LTC**

For applicants, the transfer penalty may be imposed for transfers made during the lookback period. The transfer penalty is calculated by adding together all uncompensated transfers and dividing that amount by the MA Statewide Average Payment for a Skilled Nursing Facility (SAPSNF) in effect in the month the applicant was found to be otherwise eligible for MA-LTC. The penalty period is the full number of months plus any partial months resulting from this calculation.

- The partial month is an amount that the MA-LTC payment is reduced in that month.
- If the transfer penalty amount is less than a full month of eligibility for MA-LTC, the MA-LTC payments are reduced by the transfer penalty amount.

If the person is eligible for MA during the transfer penalty period, MA will pay for non-LTC services.

The transfer penalty period begins with the first month for which the person is requesting and is otherwise eligible for MA-LTC.

## **Enrollees Receiving MA-LTC**

For enrollees, a transfer penalty may be imposed for transfers made during the lookback period but not previously reported and transfers made while the person was enrolled in MA-LTC. The transfer penalty is calculated by adding together all uncompensated transfers and dividing by the SAPSNF in effect at the time of the last renewal. The penalty period is the full number of months plus any partial months resulting from this calculation.

- The partial month is an amount that the MA-LTC payment is reduced in that month.
- If the transfer penalty amount is less than a full month of eligibility for MA-LTC, the MA-LTC payments is reduced by the transfer penalty amount.

If the person remains eligible for MA during the transfer penalty period, MA will pay for non-LTC services.

The transfer penalty period begins with the first month following the month in which a 10-day notice is provided. In order to impose the full transfer penalty, the agency must send the 10-day notice no later than three calendar months after the uncompensated transfer is reported or otherwise discovered. If the agency does not send the 10-day notice within those three calendar months, only the remaining months of the transfer penalty following the month the 10-day notice is sent can be imposed.

## **Imposing a Transfer Penalty for People who are Married**

The policy below describes how a transfer penalty is applied when one or both spouses of a married couple receive MA-LTC.

The transfer penalty is applied as follows if only one spouse is requesting MA-LTC:

- ~~If both spouses are receiving LTC services but only one spouse is applying for or enrolled in MA-LTC, the entire transfer penalty is applied to the MA-LTC spouse who is applying for or enrolled in MA-LTC, regardless of which spouse transferred the asset.~~
- ~~If one spouse is receiving MA-LTC, the entire transfer penalty is applied to the spouse who is receiving MA-LTC regardless of which spouse made the uncompensated transfer.~~

Transfer penalties are divided between spouses when they are both requesting MA-LTC and receiving LTC services.

- If one spouse is subject to an existing transfer penalty period at the time the other spouse requests MA-LTC, any remaining transfer penalty is divided evenly between the spouses.
- If the transfer penalty is not exhausted when one spouse's MA-LTC ends, the remaining balance is applied to the remaining spouse receiving MA-LTC.

## **Eliminating a Transfer Penalty**

A transfer penalty is imposed on the date the agency calculates a transfer penalty and sends the person a notice regarding the penalty period. Once the penalty is imposed, the only way to eliminate it is by receiving a full return of the transferred assets. A transfer penalty is not eliminated if assets are partially returned.

### **Clarification of Full Return**

A transfer penalty cannot end unless the transferor(s) receives a full return of the transferred assets. When the transferee is returning the same transferred asset, the value of the asset at the time of the return must be equal to or greater than the value of the asset at the time of the transfer in order to be considered a full return.

For non-cash transfers, the transferee has the option to substitute a cash payment in exchange for the return of the transferred asset. The amount of the cash payment must be equal to or greater than the uncompensated amount used to calculate the transfer penalty. If the value of the transferred asset has decreased or the transferee no longer has the transferred asset, the only way the transfer penalty can end is if the transferee provides a cash payment to the transferor. A transferee cannot substitute a non-cash asset in exchange for the transferred asset.

In order to return transferred assets, the transferee must make the returned asset or its cash equivalent available to the transferor. It is available if the transferor has both the legal authority and the actual ability to use the asset or to convert it to cash. A direct payment of the transferor's obligations by the transferee (such as payment of his or her nursing home bill) is not a return of transferred assets because the assets are never actually available to the transferor.

### **Verification Requirements**

The transfer penalty cannot end unless a person has verified that:

- The transferee returned all of the transferred assets or their cash equivalent to the transferor.

- The value of the returned asset at the time of the return is equal to or greater than the value of the asset at the time of the transfer.

Upon receipt of the verification, the transfer penalty ends the first of the month following the month of the full return.

### **Effect of Returned Assets on Eligibility for MA**

Once returned, the assets are treated as if they had been available to the transferor from the date of the transfer. Asset eligibility is evaluated when the assets are returned to determine a person's ongoing eligibility for MA. If the return of assets results in excess countable assets, the enrollee should be provided the opportunity to reduce excess countable assets, and if the enrollee is unable to reduce the assets MA should be closed with timely notice. See MA for People Who Are Age 65 or Older and People Who Are Blind or Have a Disability (MA-ABD) Excess Assets for more information.

If the asset would have put the person over the MA asset limit during that time, an overpayment occurred during the months the person was an MA enrollee.

### **Eligibility for MA-LTC**

A person is not automatically eligible for MA-LTC upon the end of a transfer penalty. Ending the transfer penalty only eliminates a barrier for MA-LTC identified in a previous request. When a transfer penalty ends, a determination must be made to ensure the person currently meets all eligibility requirements for MA-LTC.

- People not enrolled in MA when the transfer penalty ends must reapply for MA if it is outside the application processing period associated with the last completed application
- People enrolled in MA when the transfer penalty ends must submit a Minnesota Health Care Programs (MHCP) Request for Payment of Long-Term Care Services ([DHS-3543](#)) if they had a gap of one calendar month or more between the date the transfer penalty was imposed and the date of the request for MA-LTC.

## **Legal Citations**

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United States Code, title 42, section 1396p(c)

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## **E. Section 2.4.1.3.4 MA LTC Other Asset Transfer Considerations**

Medical Assistance for Long-Term Care Services

### **2.4.1.3.4 Other Asset Transfer Considerations**

This section describes if a person has received adequate compensation for transfers involving the following types of assets:

- Annuities
- Coverdell Education Savings Account
- Life Estates
- Trusts

#### **Annuities not Evaluated under the Transfer Policy**

Annuities are not evaluated under the uncompensated transfer policy in the following situations:

- The annuity is a deferred annuity in the accumulation phase. An annuity in the accumulation phase is evaluated as an available asset.
- Revocable or assignable annuities are evaluated as an available asset. See Medical Assistance for People Who Are Age 65 or Older and People Who Are Blind or Have a Disability (MA-ABD) Annuities for information on verifying these annuities.
- The annuity is an employer sponsored retirement fund. See MA-ABD Retirement Funds and Retirement Plans for more information.
- Annuities that meet a transfer exception are not evaluated for a transfer penalty; however, any annuity that meets an exception is evaluated for availability. See MA-ABD Annuities for more information.

If an annuity is not evaluated under the transfer analysis, it is evaluated to determine whether it is an available asset or if it provides unearned income.

#### **Annuities Evaluated under the Transfer Policy**

Certain annuitized annuities purchased by or on behalf of the person requesting MA for Long-Term Care (LTC) or the person's spouse must be evaluated to determine if an uncompensated transfer occurred within the lookback period.

There are two sets of policies for evaluating these transfers: Method 1 and Method 2. Method 2 is used to evaluate annuities that do not include all of the elements of annuities evaluated under Method 1.

The policies described below do not apply to employment-based pension plans held in the form of an annuity. See Retirement Funds.

### **Method 1 Transfer Analysis**

An annuity is evaluated under Method 1 if it meets all of the following criteria:

- The annuity was purchased with the funds of the person requesting MA-LTC.
- The person requesting MA-LTC is a payee under the annuity contract.
- An annuity transaction occurred within the lookback period.
- The annuity is in the annuitization phase.

Annuities that meet the Method 1 transfer analysis criteria are evaluated as follows:

- A. The purchase of an annuity is an uncompensated transfer unless all of the following criteria are met:
  - The annuity is a commercial annuity
  - The annuity provides for payments in equal amounts during the term of the annuity with no deferral of payments and no balloon payments
  - The annuity is actuarially sound using the life expectancy tables published by the Chief Actuary of the Social Security Administration (SSA). The current actuarial life table is found on SSA's website.

The value of the uncompensated transfer is the total amount annuitized less any payments the person or their spouse already received.

- B. The transfer of any ownership interest or payments, through a gift, assignment or sale, from an annuity to anyone other than the person requesting MA-LTC or their spouse may be an uncompensated transfer.

An uncompensated transfer occurred if ownership interest or payments the person or their spouse were entitled to receive is transferred to a third party without receiving adequate compensation. The amount of the uncompensated transfer is the cash value of the ownership interest or payments the person or their spouse was entitled to receive, as of the transfer date, after subtracting any compensation received.

### **Method 2 Transfer Analysis**

An annuity is evaluated under Method 2 if it meets all of the following criteria:

- The annuity was purchased with the funds of the person and their spouse within the lookback period
- The person requesting MA-LTC and/or their spouse is:
  - An owner
  - A payee

- An annuitant
- A combination of the above
- None of the above
  - The funds of the person and their spouse were used to purchase an annuity to benefit someone other than the person and their spouse, or someone other than the person and their spouse holds ownership of the annuity.
- The person requesting MA-LTC is a payee under the annuity and no annuity transaction has occurred.
- The annuity is in the annuitization phase.

Annuities that meet the Method 2 transfer analysis criteria are evaluated as follows:

A. The purchase of an annuity is an uncompensated transfer unless all of the following criteria are met:

- the annuity is a commercial annuity;
- the annuity provides for payment of principal and interest in equal monthly installments during the term of the annuity contract; and
- principal and interest payments from the annuity begin at the earliest possible date after annuitization
- the annuity is actuarially sound using the applicable [actuarial life table](#).

The value of the uncompensated transfer is the total amount annuitized less any payments the person or their spouse already received.

B. The transfer of any ownership interest or payments, through a gift, assignment or sale, from an annuity to anyone other than the person requesting MA-LTC or their spouse may be an uncompensated transfer.

An uncompensated transfer occurred if ownership interest or payments the person or their spouse were entitled to receive is transferred to a third party without receiving adequate compensation. The amount of the uncompensated transfer is the cash value of the ownership interest or payments the person or their spouse was entitled to receive, as of the transfer date, after subtracting any compensation received.

### **Actuarial Soundness**

An annuity is actuarially sound if the cash value, on the date it was annuitized, is less than or equal to the amount of payments the person will receive during the payee's life expectancy. If both the person and their spouse are listed as payees under the annuity contract, the person with the longest life expectancy is used to determine actuarial soundness.

The life expectancy of the person requesting or receiving MA-LTC or their spouse is determined using the actuarial life table found on the SSA website.

Any portion of the annuity that is funded with money contributed by a third party is not included in the cash value used to determine actuarial soundness.

## **Coverdell Education Savings Accounts Evaluated under the Transfer Policy**

Funds in a Coverdell Education Savings Account (ESA) may be transferred or “rolled over” to a member of the beneficiary’s family. When a designated beneficiary “rolls over” funds in a Coverdell ESA to a family member, the rollover must be evaluated as an uncompensated transfer.

## **Life Estates Interest Evaluated under the Transfer Policy**

There are several instances when ~~a life estate~~ the transfer of assets a life estate interest must be evaluated to determine if an uncompensated transfer occurred. See Uncompensated Transfers for more information on transfer policy. See Purchases as Transfers for more information when a person purchases a life estate interest in another person's home.

A life estate must be evaluated to determine if an uncompensated transfer occurred when ~~by the original owner of the property when~~:

- ~~The life estate interest is established during the lookback period. The life estate is evaluated as a transfer at the time of request for MA LTC if the life estate is established prior to the application and the life estate was created during the lookback period.~~
  - ~~Creating the life estate and granting the remainder interest to someone other than the property owner is a transfer of real property.~~
  - ~~The amount of the value of the uncompensated transfer, if any, is the value of the remainder interest, less any compensation received. See MA-ABD Life Estate and Remainder Interests.~~
- ~~The life estate interest is sold terminated prior to the death of the life estate owner or terminated prior to expiration under the terms of the life estate, such as with a conditional limitation.~~
  - ~~The amount of the uncompensated transfer, if any, is the value of this transfer is the value of the life estate interest on the date of the sale of the property or the termination of the life estate interest, less any compensation received. Compensation for the life estate interest may be reduced by allowable costs for the sale of the property which are the responsibility of the life estate owner, including:~~
  - ~~See MA-ABD Life Estate and Remainder Interests.~~
    - Payment of a pro rata or proportional share of allowable costs related to the sale of the property between the life estate owner and the remainderman. Allowable costs for the life estate owner are limited to the following:
      - Seller’s closing costs, including real estate broker fees
      - Expenses required by the county or state

- Repairs necessary for the sale
- Buyer's closing costs, including real estate broker fees, so long as the life estate owner receives no less than two-thirds the value of the life estate interest

Payment of costs associated with making improvements (rather than repairs) to the property by the life estate owner is considered an uncompensated transfer.

See MA-ABD Life Estate and Remainder Interests.

## **Trusts Evaluated under the Transfer Policy**

### **Client Funded Trusts**

If a non-excluded asset is placed in a trust, during the lookback period or while the person is receiving MA-LTC, an uncompensated transfer takes place if the grantor is no longer able to access all or a portion of the trust income or trust corpus. The amount of the uncompensated transfer is the portion of the trust income or trust corpus that is considered unavailable.

Any distributions from the trust that are not to or for the benefit of the beneficiary are an uncompensated transfer. The amount of the uncompensated transfer is the amount of the distribution that is to or for the benefit of someone other than the beneficiary.

### **Special Needs Trusts**

Special needs trusts are excluded assets when determining eligibility for MA. However, funds entering and leaving the trusts must be evaluated to determine if an uncompensated transfer occurred.

- The establishment, or addition to a special needs trust before the beneficiary reaches age 65 is not considered an uncompensated transfer and a penalty cannot be imposed.
- A distribution from a special needs trust that does not meet the sole benefit requirement is an uncompensated transfer. The amount of the uncompensated transfer is the amount of the distribution that is not for the sole benefit of the trust beneficiary.
- A special needs trust cannot be added to after the beneficiary reaches age 65. Additions to the trust after the beneficiary reaches age 65 are not considered excluded assets. The value of any non-excluded assets added to the trust after the beneficiary reaches age 65 are considered available to the beneficiary.

See MA-ABD Special Needs for more information.

## Pooled Trusts

Pooled trusts may be considered excluded assets when determining eligibility for MA. However, funds entering and leaving the trusts must be evaluated to determine if an uncompensated transfer occurred.

- The establishment, or addition to a pooled trust before the beneficiary reaches age 65 is not considered an uncompensated transfer and a penalty cannot be imposed.
- The establishment of a pooled trust after the beneficiary reaches age 65 is evaluated as an uncompensated transfer. The amount of the transfer is the amount for which the beneficiary has not received adequate compensation. The beneficiary must provide proof that adequate compensation was received.
- An addition to a pooled trust by a beneficiary or a beneficiary's spouse after the beneficiary reaches age 65 is evaluated as an uncompensated transfer. The amount of the uncompensated transfer is the amount for which the beneficiary has not received adequate compensation. The beneficiary must provide proof that adequate compensation was received.
- A distribution from a pooled trust that does not meet the sole benefit requirement is an uncompensated transfer. The amount of the uncompensated transfer is the amount of the distribution that is not for the sole benefit of the trust beneficiary.

See MA-ABD Pooled Trusts for more information.

## Legal Citations

Minnesota Statutes, section 256B.0595

United States Code, title 42, section 1396p(c)

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## F. Section 2.4.2.1 MA LTC Asset Eligibility for a Long Term Care Spouse

Medical Assistance for Long-Term Care Services

### 2.4.2.1 Asset Eligibility for a Long-Term Care Spouse

An asset assessment evaluation is required to determine asset eligibility when ~~one spouse, referred to as a long-term care (LTC) spouse~~ requests Medical Assistance for Long-Term Care Services (MA-LTC).

An LTC spouse is a married person who:

Resides in a long term care facility (LTCF) or receives Elderly Waiver program services, and is expected to remain in the LTCF or receive EW services for at least 30 consecutive days; and

Has a spouse who does not reside in a LTCF and does not receive waiver services from Brain Injury (BI), Community Alternative Care (CAC), Community Access for Disability Inclusion (CADI), Developmental Disability (DD), or Elderly Waiver (EW) programs.

The asset assessment determines the amount of assets protected for the community spouse, known as a Community Spouse Asset Allowance (CSAA). A community spouse is someone who is married to a LTC spouse lives in the community and does not receive services through the Brain Injury (BI), Community Alternative Care (CAC), Community Access for Disability Inclusion (CADI), Developmental Disability (DD) or EW waiver programs. A community spouse can receive MA or services through the Alternative Care (AC) program.

The asset assessment is only required when the LTC spouse's basis of eligibility is MA for People Who Are Age 65 or Older or People Who Are Blind or Have a Disability (MA-ABD). An asset assessment is not required when the LTC spouse's basis of eligibility is MA for Families with Children and Adults (MA-FCA) or when a person enrolled in MA for Employed Persons with Disabilities (MA-EPD) requests MA-LTC.

~~Nursing homes are required to advise a newly admitted person and their families that asset assessments are available from county and tribal agencies upon request. To assist nursing homes with this responsibility, Minnesota Department of Human Services (DHS) provides a one page brochure entitled Asset Assessment Fact Sheet (DHS-3340D).~~

This section discusses the asset assessment process that determines the CSAA.

MA-LTC Asset Assessment

MA-LTC Community Spouse Asset Allowance

## Legal Citations

United States Code, title 42, Section 1396r-5(h)

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## **G. Section 2.4.2.1.2 MA LTC Community Spouse Asset Allowance**

Medical Assistance for Long-Term Care Services

### **2.4.2.1.2 Community Spouse Asset Allowance**

At the time of a request for Medical Assistance for Long-Term Care Services (MA-LTC), the LTC spouse who has a community spouse must report and verify their assets. An asset evaluation is used to calculate which assets are protected for the community spouse. The assets that the community spouse is allowed to keep is called the Community Spouse Asset Allowance (CSAA).

There are many factors that a couple must consider when deciding which of the couple's assets are included in the CSAA, including tax implications as well as personal factors such as the desire to retain ownership of a particular asset. The decision on how to divide the couple's assets is up to the couple. The couple can contact a tax accountant, an attorney or someone who specializes in estate planning for questions unrelated to Medical Assistance (MA) policy.

#### **Determining the Community Spouse Asset Allowance**

The CSAA includes the couple's total countable assets as determined by the asset evaluation. The couple must provide proof of the value of all of their assets, regardless of whether the asset is excluded or unavailable.

The total value of the couple's countable assets are compared to the maximum CSAA. The community spouse may keep up to the maximum asset allowance in effect on the date of the request. The maximum CSAA is updated annually.

The remaining assets that do not make up the CSAA are evaluated in an asset eligibility determination for the LTC spouse, to determine whether the LTC spouse meets the MA asset limit. If the couple's assets exceed the CSAA and the MA asset limit, the LTC spouse may have to reduce assets before MA can be approved.

An asset evaluation is not used to determine asset eligibility if an enrollee receiving MA-LTC marries a person who meets the definition of a community spouse after eligibility for MA-LTC is approved.

A new asset evaluation is required if a person has a break in LTC services of one calendar month or more and the county or tribal agency receives a new request for MA-LTC.

#### **Whereabouts of the Community Spouse are Unknown**

When an asset evaluation is required and the LTC spouse does not know the whereabouts of the community spouse, they must make a reasonable effort to locate the community spouse.

If reasonable efforts to locate the community spouse do not succeed, eligibility for MA-LTC for the LTC spouse is still possible. The LTC spouse must report assets on the application based on the information they know about the community spouse's assets.

## Notification Requirements

The LTC spouse, the LTC spouse's authorized representative, if applicable, and the community spouse must be notified of the CSAA. Any of these individuals may appeal the results.

## Increased Community Spouse Asset Allowance

The CSAA is increased beyond the maximum CSAA in the following situations:

- A court, due to a legal separation, orders an amount of the couple's assets for the community spouse that is greater than the CSAA.
- The community spouse qualifies for additional income-producing assets to meet the community spouse's monthly maintenance needs.

## Additional Income-Producing Assets to Meet Community Spouse's Monthly Maintenance Needs

A community spouse may keep additional income-producing assets above the CSAA, if he or she cannot meet his or her monthly maintenance needs with the income allocated from the LTC spouse combined with his or her own income.

The couple must meet the following requirements for the community spouse to keep additional income-producing assets above the CSAA:

- The community spouse's income, combined with any income allocation from the LTC spouse, is less than the calculated monthly maintenance needs.
  - ~~Income is not allocated to the community spouse of a person receiving Brain Injury (BI), Community Alternative Care (CAC), Community Access and Disability Inclusion (CADI), or Developmental Disability (DD) waiver services. In this instance, the increased CSAA may be available based on an income allocation of zero. The CSAA must already include as many income-producing assets as possible.~~
- The LTC spouse must make available, and the community spouse must accept, the community spouse income allocation. The couple cannot refuse to make or accept a community spouse income allocation as a way to reduce the community spouse's income in order to qualify for additional income-producing assets.
- The purchase of an income-producing asset for the benefit of the community spouse, under this provision, must occur before MA-LTC may be approved.
- The amount of assets above the CSAA is limited to an amount necessary to produce the additional income needed to meet the community spouse's monthly maintenance needs.
- Assets already producing an income cannot be used to purchase another income-producing asset, unless the asset purchased produces more income.

## **Transfers from the LTC Spouse to the Community Spouse**

Assets considered available to the community spouse through the CSAA must be put in the community spouse's name no later than the LTC spouse's next annual renewal. At the LTC spouse's next annual renewal, all assets still in the name of the LTC spouse are evaluated in order to determine asset eligibility.

- Income from an asset in the LTC spouse's name is counted in the LTC income calculation even if it is income produced by an asset that is considered part of the CSAA. Therefore, it is in the best interests of the couple to transfer any income-producing asset in the name of the LTC spouse to the community spouse as soon as possible.

## **Transfers from the Community Spouse to the LTC Spouse**

Ownership of assets that are in the community spouse's name but are not included in the CSAA and do not have to be reduced must be transferred to the LTC spouse. Transfer of ownership must be verified before MA-LTC eligibility may be approved.

## **Community Spouse Does Not Make Assets Available to the LTC Spouse**

The community spouse must make assets owned jointly or individually in excess of the CSAA available to the LTC spouse. If the community spouse does not make those assets available, the LTC spouse may still be found eligible for MA-LTC if the LTC spouse cannot use those assets without the consent of the community spouse, and if any of the following occurs:

- the LTC spouse assigns the right to support from the community spouse to the Minnesota Department of Human Services (DHS) (this is done by signing the Minnesota Health Care Programs Application for Long-Term Care Services (DHS-3531));
- the LTC spouse is unable to assign the right to support due to a physical or mental impairment; or
- the denial of eligibility would cause an imminent threat to the LTC spouse's health and well-being.

A person whose request for a hardship waiver is denied can appeal the denial. When MA-LTC is approved under this provision, the county or tribal agency makes a referral to the county attorney's office to determine if a cause of action exists against the community spouse.

## **Treatment of the Community Spouse's Assets after MA-LTC Approval**

Once MA-LTC has been approved, any additional assets acquired by the community spouse are not available to the LTC spouse, as long as there is no break in MA-LTC eligibility for one calendar month or more and the county or tribal agency receives a new request for MA-LTC.

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Minnesota Statutes, section 256B.0913, subdivision 12

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## H. Section 2.4.2.5.1 MA LTC Income Calculation Deductions

Medical Assistance for Long-Term Care Services

### 2.4.2.5.1 LTC Income Calculation Deductions

Certain deductions from countable gross income are allowed in the long-term care (LTC) income calculation to determine the amount a person is required to contribute toward the cost of LTC services, if any. Deductions, like income, count in the month in which they occur. Deductions must be verified at each request for Medical Assistance for Long-Term Care Services (MA-LTC), at each renewal, and when a change is reported.

A person's eligibility for MA-LTC is not denied or closed if the person does not provide required proof of a deduction. However, the deduction is not used in the LTC income calculation if it is not verified.

The following deductions are subtracted from gross countable income in the LTC income calculation in the order listed below:

1. Special Supplemental Security Income (SSI) Deduction
2. Minnesota Supplemental Aid (MSA) Deduction
3. Special Personal Allowance from earned income
4. Medicare premiums paid by the enrollee
5. Applicable LTC Needs Allowance
6. Fees paid to a guardian, conservator, or representative payee
7. Community Spouse Income Allocation
8. Family Allocation
9. Court-ordered child support
10. Court-ordered spousal maintenance
11. Health insurance premiums, co-payments and deductibles
12. Remedial Care Expense
13. Medical expenses

#### **Special Supplemental Security Income (SSI) Deduction**

Supplemental Security Income (SSI) payments received by an enrollee are deducted when the Social Security Administration (SSA) approves continued community level SSI benefits for a person who lives in a long-term care facility (LTCF) because either:

- the person is expected to live in the LTCF for less than three months and continues to maintain a home in the community; or

- the person had 1619(a) or 1619(b) status in the month prior to the first full month of LTCF residence.

Note: A person receiving both SSI and RSDI is eligible for the SSI deduction equal to the amount that they receive in SSI benefits.

## **Minnesota Supplemental Aid (MSA) Deduction**

Minnesota Supplemental Aid (MSA) payments received by an enrollee are deducted when the state approves continued community level MSA benefits for a person who lives in an LTCF because either:

- The person is expected to live in the LTCF for less than three months and continues to maintain a home in the community; or
- The person had 1619(a) or 1619(b) status in the month prior to the first full month of the LTCF residence.

## **Special Personal Allowance from Earned Income**

A special personal allowance from earned income are deducted for a person who is:

- certified disabled by SSA or the State Medical Review Team (SMRT);
- employed under an Individual Plan of Rehabilitation; and
- living in an LTCF.

The following deductions are applied in the order listed but cannot reduce income to less than zero:

- The first \$80 of earned income
- Actual FICA tax withheld
- Actual transportation costs
- Actual employment expenses, such as tools and uniforms
- State and federal taxes if the person is not exempt from withholding

## **Medicare Premiums**

Medicare premiums incurred by an enrollee that are not subject to payment by a third party are deducted. Medicare premiums subject to payment by a third party include Medicare premiums:

- The county, state or tribal agency reimburse to the enrollee as cost effective health insurance
- Paid through the Medicare Buy-In
- Paid through Medicare Part D Extra Help

## **LTC Needs Allowances**

One of the following allowances is deducted:

### **Clothing and Personal Needs Allowance (PNA)**

The Clothing and Personal Needs Allowance (PNA) is used when the enrollee is not eligible for any of the other LTC needs allowances. The PNA is adjusted each year on January 1.

### **Veteran's Improved Pension**

A \$90 veteran's improved pension is available to people who are:

- veterans but who do not have a spouse or dependent child(ren)
- the surviving spouse of a veteran who does not have a dependent child(ren)

### **Home Maintenance Allowance (HMA)**

~~The Home Maintenance Allowance (HMA) amount, listed in Appendix F, is equal to 100% of the federal poverty guidelines (FPG) for a household size of one, minus the PNA. The HMA is adjusted each year on July 1. A person who is eligible for the HMA is also eligible for PNA. The amount listed in Appendix F is a combined total of the HMA and the PNA.~~

The HMA is used when all of the following apply:

- the person lives in an LTCF;
- the person is expected to be discharged from the LTCF within three full calendar months from the month in which MA-LTC is requested to begin;
- the person has expenses to maintain a home (owned or rented) in the community, including room and board charges in group residential housing (GRH) or assisted living; and
- the person meets one of the following conditions:
  - The person did not live with a spouse, a child under age 21, or a person who could be claimed as a dependent of the person for federal income tax purposes at the time he or she was admitted to an LTCF.
  - The person lived with a spouse at the time he or she was admitted to an LTCF, and the person's spouse was admitted to an LTCF on the same day.

Only one spouse can receive the HMA when both spouses live in an LTCF. The HMA is used for the spouse for which it is most advantageous.

Eligibility for the HMA is based on the anticipated discharge date at the time eligibility for MA-LTC is determined. Eligibility for the HMA is not delayed to see if the person will actually be discharged on the anticipated discharge date and is not retroactively adjusted if the person lives in the LTCF for more than three full calendar months.

A person must be discharged from an LTCF for a full calendar month before the HMA may be used again.

## **Special Income Standard Elderly Waiver (SIS-EW) Maintenance Needs Allowance (MNA)**

The Special Income Standard Elderly Waiver (SIS-EW) maintenance needs allowance (MNA) is used for people requesting Elderly Waiver (EW) services and who have income at or below the Special Income Standard (SIS). The SIS-EW MNA is updated annually in July. The SIS-EW MNA is not used for a person with income above the SIS.

When an SIS-EW enrollee moves to or from an LTCF:

- The PNA or veteran's improved pension allowance is used beginning the month following the month the SIS-EW enrollee moves into the LTCF.
- The SIS-EW MNA is used beginning the month following the month the person is discharged from the LTCF and begins receiving EW services.

## **Fees Paid to a Guardian, Conservator, or Representative Payee**

Five percent of the enrollee's gross monthly income, up to a maximum of \$100, for fees paid to a guardian, conservator or representative payee is deducted. This deduction cannot be increased over \$100 even if a higher amount is allowed to be paid by SSA or a court.

## **Community Spouse Income Allocation**

An LTC spouse may allocate a portion of their income to the community spouse when the community spouse's income is insufficient to meet their monthly maintenance needs. The community spouse income allocation is calculated by comparing the community spouse's gross monthly income to the minimum monthly allowance plus any excess shelter costs. The income allocation cannot exceed the maximum monthly allowance.

The community spouse's gross monthly income includes all earned and unearned income, including income received from income-producing assets. No exclusions, disregards or deductions apply. If the community spouse's gross monthly income is greater than or equal to the community spouse's monthly maintenance needs, the community spouse does not qualify for an income allocation. If the community spouse's gross monthly income is less than the community spouse's monthly maintenance needs, the community spouse qualifies for an income allocation.

### **Calculation of the Community Spouse's Shelter Costs**

The community spouse's shelter costs, in excess of the basic shelter allowance, are added to the minimum monthly allowance to calculate the community spouse income allocation. Shelter costs include:

- Rent
- Mortgage payments, including principal and interest
- Real estate taxes

- Homeowner's or renter's insurance
- Required maintenance charges for a cooperative or condominium
- Utility allowance

The amount of a shelter expense is based on the full amount that the community spouse must pay. Shelter expenses do not include charges for services received by a person who resides in a residential living arrangement. An itemized statement of monthly charges to identify the amount the community spouse must pay for rent or any other shelter expense is required.

### **Verification Requirements**

A community spouse income allocation cannot be deducted unless the person, or their authorized representative, provides verification of the community spouse's income and shelter expenses at the time of the request for MA-LTC and at each renewal. The community spouse, or the community spouse's authorized representative, must report and verify changes in the income or shelter expenses of the community spouse.

### **When to Deduct the Community Spouse Income Allocation**

The calculated community spouse income allocation is deducted when there is a community spouse at any time in a given month unless:

- There is a court order for spousal support for an amount that is greater than the calculated community spouse income allocation. When this occurs, the court ordered amount replaces the community spouse income allocation as a deduction. This only applies when a court order establishes support while the couple remains married. It does not apply to a court order in a divorce action.
- The LTC spouse does not have enough income remaining, after other allowable deductions, to allocate to the community spouse.
- Exceptional or unusual circumstances have occurred that result in a temporary financial hardship to the community spouse. In these cases, the community spouse income allocation may be temporarily increased while the community spouse takes the necessary steps to resolve the situation. The increased deduction cannot be applied if the situation is not temporary or the community spouse does not take the needed actions to resolve the situation.
- The LTC spouse can choose not to make an income allocation to the community spouse. A deduction can only be made if the income is actually made available to the community spouse.
- The community spouse chooses to accept a reduced income allocation or chooses not to accept any income allocation. The community spouse income allocation is counted as unearned income for the community spouse when determining eligibility for any Minnesota

Health Care Program (MHCP). A community spouse may choose to not accept the income allocation if it will result in ineligibility for MA.

## **Family Allocation**

A person may allocate a portion of their income to the following family members who have a calculated need:

- A minor child, who does not live with a community spouse
- The following relatives who live with a community spouse:
  - A child under age 21
  - A child age 21 or older who is claimed as a tax dependent
  - Parents who are claimed as tax dependents
  - Siblings who are claimed as tax dependents

### **Children Not Living with a Community Spouse**

A family allocation may be made to the minor children of the person who does not live with a community spouse. The allocation is calculated by adding together the gross monthly earned and unearned income of all minor children not living with a community spouse and comparing it to 100% of the FPG for a family size equal to the number of minor children not living with the community spouse. No exclusions, disregards or deductions apply. The amount of the allocation is the difference between the gross income of the children and the applicable FPG amount. No allocation is allowed if the gross income of the children exceeds the applicable FPG standard.

### **Family Members Who Live with a Community Spouse**

A separate family allocation may be made for each family member who lives with a community spouse. The allocation is calculated by adding together the gross monthly earned and unearned income of the family member who lives with the community spouse and subtracting it from the minimum monthly income allowance for a community spouse. No exclusions, disregards or deductions apply. No allocation is allowed if the gross income of the family member exceeds the minimum monthly income allowance for a community spouse.

### **Verification Requirements**

The family allocation cannot be deducted unless the person, or their authorized representative, provides verification of the family member's income at the time of the request for MA-LTC and at each renewal. Changes in income for the family member must be reported and verified.

### **When to Deduct the Family Allocation**

A family allocation is deducted in the LTC income calculation in each month that there is a family member eligible to receive an allocation. The family allocation is deducted regardless of whether it is made available to the family member if the income of the family member is verified.

A family allocation is counted as unearned income to the family member when determining eligibility for any MHCP.

### **Court-Ordered Child Support**

Court-ordered child support that is garnished from the person's income up to a maximum of \$250 per month is deducted. The garnishment can be for current child support or arrearages. The garnishment must be verified.

This deduction does not apply when a family allocation is deducted for the child for whom the court-ordered child support obligation is due unless the calculated family allocation is less than \$250. The difference between the calculated family allocation and \$250 may be deducted.

### **Court-Ordered Spousal Maintenance**

Court-ordered spousal maintenance is deducted for people who reside in a long-term care facility (LTCF) when the spousal maintenance is:

- court-ordered under a judgement and decree for dissolution or marriage; and
- garnished from a source of the person's income

In addition to the spousal maintenance amount, the fees associated with the garnishment can be deducted if also garnished from the person's income.

The garnishment of the spousal maintenance and fees must be verified.

### **Health Insurance Premiums, Co-payments and Deductibles**

The cost of health insurance premiums, co-payments and deductibles incurred by the person that are not subject to payment by MA or a third party, including Extra Help through SSA for Medicare Advantage Plan or Part D coverage or premium reimbursement through MA, are allowable deductions. Health insurance includes Medicare Advantage plans, dental and LTC insurance policies. Only the portion of the premium that reflects coverage for the person is an allowable deduction.

### **Remedial Care Expense**

A remedial care expense deduction is an amount allowed for people who reside in a residential living arrangement or a housing with services establishment where a county agency has a GRH agreement. The amount can change twice a year, on January 1 and July 1.

### **Medical Expenses**

Verified medical expenses incurred by the person that meet the criteria below are deductions in the LTC income calculation:

### **Medical expenses that are medically necessary and recognized under state law**

Medically necessary expenses include medical services, supplies, devices, or equipment that are provided in any of these situations:

- In response to a life-threatening condition or pain
- To treat an injury, illness or infection
- To achieve a level of physical or mental function consistent with prevailing community standards for the diagnosis or condition
- To care for a mother and child through the maternity period
- To provide preventive health service
- To treat a condition that could result in physical or mental disability

People are not required to provide proof of medical necessity for a medical expense provided by a medical provider, such as a pharmacist or medical facility. These services are assumed to be medically necessary.

### **Medical expenses that MA will not pay**

Medical expenses for MA covered services that the person incurred in a month that MA will pay because the person is, or will be, approved for MA are not deductions. A medical expense incurred in a month in which the person is or will be an MA enrollee is assumed an MA covered service unless the person provides proof that it is not.

Medical expenses that are included in the daily rate that MA pays to a Skilled Nursing Facility (SNF) or an Intermediate Care Facility for the Developmentally Disabled (ICF/DD) are medical expenses that MA will pay.

### **Medical expenses not covered by a third party**

A medical expense is not a deduction if it is subject to payment by a third party. Third parties include people, entities or benefits that are, or may be, liable to pay the expense. This includes:

- Other health care coverage, such as coverage through Medicare, private or group health insurance, long-term care insurance or through the Veterans Administration (VA) health system
- Automobile insurance
- Court judgments or settlements
- Workers' compensation benefits

The person must provide proof of the exact amount of the third party payment, such as an Explanation of Medical Benefits (EOMB) statement. The person can also sign a release form so the county, tribal, or state agency can contact the third party directly.

If not yet known, the amount of the medical expense that will be covered by a third party is estimated at the time of the eligibility determination so that application processing is not delayed.

The LTC income calculation is adjusted for the applicable month once the actual amount of the expense is verified. If not verified before, the person must provide proof of the actual amount of estimated medical expenses that were used in the LTC income calculation at the time of their next renewal. The deduction is removed from the applicable month if proof is not provided.

**The medical expense was incurred during a month in which the person is receiving MA-LTC or during any of the three months prior to the month in which the person requested MA-LTC**

Deductions are allowed for verified medical expenses the person incurred during the month the person requested MA-LTC or while the person is receiving MA-LTC, regardless of whether retroactive MA coverage was requested or approved. Medical expenses incurred during a retroactive month must be unpaid as of the date of the request for MA-LTC. Medical expenses incurred during the month the person requested MA may be paid or unpaid.

Medical expenses are not allowed as a deduction when:

- The medical expense is for LTC services incurred in a month that is included in a transfer penalty period or period of ineligibility for failure to name Minnesota Department of Human Services (DHS) a remainder beneficiary of certain annuities.
- The person paid the medical expense to reduce excess assets.
- The medical expenses were incurred more than three months before the month of application associated with the current period of eligibility.
- The nursing facility expenses were incurred without a required preadmission screening.
- The medical expense was previously used:
  - As a deduction in an LTC income calculation. However, the amount of a medical expense that exceeds the amount of the person's income remaining after all other deductions in one month can be carried forward to future months
  - To meet a medical spenddown

The following services received by a person who lives in an LTCF are not medical expenses:

- Personal care items such as shampoo, toothpaste or dental floss that are included in the daily rate (also referred to as a "per diem rate") paid through MA
- Oral hygiene instruction
- Certain house/extended care facility call charges. A charge for a provider to travel to a person's residence is not an allowable medical expense deduction unless the provider delivers a medical service on the same day.
- A charge for a provider to travel to a person's residence is also not an allowable medical expense deduction if the LTCF pays the cost for the provider to travel to the LTCF through an agreement between the LTCF and the provider.

## Notification

People who report medical expenses must be notified of the:

- Medical expenses that were not allowed as a deduction and the reason(s) why they were not allowed
- Medical expenses that were deducted in the LTC income calculation based on estimated third party payments
- Amount of the allowed medical expense deduction
- Amount of medical expenses that can be carried forward as a deduction to future months

## Legal Citations

Minnesota Statutes, section 256B.0575

Minnesota Statutes, section 256B.058

Minnesota Statutes, section 256B.0915

Minnesota Statutes, section 256B.35

Minnesota Statutes, section 256I.03

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## I. Section 2.5.1.1.1 MA-BC Applications

Medical Assistance for Women with Breast or Cervical Cancer

### 2.5.1.1.1 Applications

Women, who are screened through the Minnesota Department of Health (MDH) Sage Screening Program and are found to need treatment or diagnostic services for breast or cervical cancer, are potentially eligible for Medical Assistance for Wwomen with Breast or Cervical Cancer (MA-BC).

#### Application Paths

A woman must apply for MA-BC. There are two paths to requesting an MA-BC eligibility determination.

1. A temporary eligibility determination, referred to as presumptive eligibility (PE), may be granted by a Minnesota Health Care Programs (MHCP) provider participating in the Sage Screening Program.
2. Some women do not have presumptive eligibility determined and directly apply for MA-BC using the Minnesota MA Application/Renewal Breast and Cervical Cancer (DHS-3525) form.

#### Forms

##### Temporary Medical Assistance Authorization (DHS-3525B)

The Temporary Medical Assistance Authorization (DHS-3525B) is completed by the provider and authorizes presumptive eligibility.

##### Minnesota MA Application/Renewal Breast and Cervical Cancer (DHS-3525)

The Minnesota MA Application/Renewal Breast and Cervical Cancer (DHS-3525) form is for women who were screened by the Sage Screening Program, need treatment or diagnostic services for breast or cervical cancer and are seeking MA-BC coverage. Enrollees also use this form to renew eligibility for coverage.

#### Application Filer

The applicant or an authorized representative is the application filer. Only a person meeting the definition of an application filer or an authorized representative can sign the application or renewal. See the MHCP Authorized Representative policy for more information.

#### Date of Application

The date of application is the date the county, tribal or state servicing agency receives DHS-3525.

## **Presumptive Eligibility**

PE provides immediate MA-BC coverage for women who need to begin treatment. PE is granted to women who meet the MA-BC presumptive eligibility criteria as determined by a Sage PE provider.

Once a Sage PE provider has granted PE, no additional eligibility criteria may be applied. A woman approved for PE cannot be required to attest to or provide more information about her state residency, citizenship or immigration status, household composition, income or other factors. All eligibility factors relevant to PE have been considered by the Sage PE provider when PE is approved.

Presumptive Temporary MA-BC eligibility is effective on the first day of the month PE is granted ~~approved by a Sage PE provider~~ and continues through the end of the month following the month it was granted approved.

The Sage PE provider must complete and submit to the county, tribal or state servicing agency:

- MDH Sage Enrollment form ~~Sage Return Visit form, or Colposcopy Program form~~
- Copy of Temporary Medical Assistance Authorization (DHS-3525B)

The county, tribal or state servicing agency must ~~process~~ enter MA-BC eligibility in MAXIS and MMIS per the DHS-3525B the day the form is submitted. MA-BC must be opened for a woman approved for PE by a Sage PE provider, in accordance with the date of the Temporary Medical Assistance Authorization, regardless of other health care applications that are pending.

~~A woman granted PE must complete the Minnesota MA Application/Renewal Breast and Cervical Cancer(DHS-3525) form to have an ongoing eligibility determination. The DHS-3525 must be submitted to the county, tribal, or state servicing agency within 30 days of the date presumptive eligibility is granted. The county, tribal or state servicing agency must process the application for ongoing MA-BC within 45 days. An applicant may complete and submit the DHS-3525 on the same date PE is granted.~~

If a ~~person~~ woman who has PE does not submit an application for on-going MA-BC coverage or is not eligible for on going MA-BC, PE ends the last day of the month following the month PE was approved.

A woman ~~granted~~ approved for PE who is denied ongoing MA-BC eligibility is entitled to receive coverage for the full PE period.

## **Ongoing Eligibility for MA-BC**

To have an ongoing eligibility determination for MA-BC, a woman approved for PE must complete the Minnesota MA Application/Renewal Breast and Cervical Cancer (DHS-3525) form. The DHS-3525 must be submitted to the county, tribal or state servicing agency within 30 days of the date the presumptive eligibility is approved by a Sage PE provider. The county, tribal or state servicing agency must process the application for ongoing MA-BC within 45 days. An applicant may complete and submit the DHS-3525 on the same date PE is approved.

## **Retroactive Coverage**

A woman may request retroactive coverage. The earliest date of eligibility is three months before the date of application or the first day of the month in which the woman was screened by Sage, whichever is later. The woman must have paid or unpaid medical expenses during the retroactive period that would be covered by MA. Women who have presumptive eligibility for MA-BC must be found eligible for ongoing MA-BC before retroactive eligibility is granted.

## **Legal Citations**

Code of Federal Regulations, title 42, sections 1100-1103

Code of Federal Regulations, title 42, section 435.213

United States Code title 42, section 1396r-1b

Public Law 107-121 January 15, 2002

Public Law 106-354 October 24, 2000

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