State of Florida
Department of Children and Families

Charlie Crist
Governor

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Secretary

MEMORANDUM

Date: October 31, 2007 **Transmittal #: P-07-10-0015**

To: ACCESS Florida Operations Managers
ACCESS Florida Program Offices

From: Jennifer Lange, Director, ACCESS Florida **(Signature on File)**

Subject: Implementation of the Deficit Reduction Act Asset Provisions

Effective: November 1, 2007

The purpose of this memorandum is to provide staff with information regarding changes in policy resulting from the Deficit Reduction Act of 2005 (DRA), signed into law February 8, 2006. Programs affected by this memorandum (unless otherwise noted) are Institutional Care (ICP), Institutional Hospice, Home and Community Based Services (HCBS) waiver, and Program of All-inclusive Care for the Elderly (PACE). For the purpose of this memo, these programs will be referred to as long term care programs.

POLICY CHANGES/NEW POLICIES

Below is a list of policies that changed, or new policies, followed by a discussion of the policy, implementation instructions, and attachments. The manual will be updated to reflect the policy changes or new policies in the quarterly release following implementation of this memorandum.

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- How to Process Home Equities Exceeding $500,000
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TRANSFER OF ASSET PROCESSES

Look Back Period

The current 36-month look-back period for transfers will increase to 60 months, beginning December 2010. The 60 month look back period will be "phased in" in one-month increments. More information regarding the 60 month look back period and how it will be "phased in" will be provided at a later date.

Cases will continue to be subject to the 36-month look-back period until phase-in of the 60-month look back period begins.

Multiple Transfers

The uncompensated value of all transfers made on or after November 1, 2007 are added together to arrive at one total value, with one penalty period assigned. Transfers made before November 1, 2007 will be evaluated using pre DRA policy.

Begin Date for Applying Transfer Penalty Period

The begin date of a penalty period for assets transferred on or after November 1, 2007 will be the later of the following dates:

- The first day the individual would be eligible for long term care Medicaid were it not for imposition of a transfer penalty (this includes filing an application and meeting all other program criteria for long term care Medicaid), or
- The first day of the month in which the individual transfers the assets, or
- The first day following the end of an existing penalty period.

Example: In November 2007, Mr. Smith made an asset transfer that would result in a penalty period. He applies for Medicaid in December 2007. The transfer penalty would start in December if he meets all factors of eligibility except for the transfer. Do not start the penalty period in November (when the transfer occurred) even if Mr. Smith was in receipt of long term care services, as he did not apply and qualify for Medicaid until December.

Once the penalty period is started, it will continue even if the individual later becomes ineligible for MI T (basic Medicaid without long-term care) coverage based on other eligibility factors, such as assets or income over the limits.

Continue to apply pre DRA policy for assets transferred prior to November 1, 2007.

Partial Month Penalty Periods

For transfers made on or after November 1, 2007, when a penalty period is imposed, the individual will be ineligible for a period rounded down to the nearest day. Based on this, the penalty period may be prorated in the last month and therefore, once the penalty period ends, the individual may be eligible for a portion of that month. To arrive at the length of time for a fractional penalty period:

- Total the amount of the uncompensated transfer.
- Divide that total by $5000.
- Multiply any fraction by 30 (regardless of how many days are in the month).
- The result is the length of the fractional penalty period.

Example: John Smith was admitted to a nursing home on January 3, 2007. He transfers $10,000 on November 15, 2007 and $8,500 on December 12, 2007 for which he receives no compensation and then applies for ICP on December 28, 2007. The total transfer is $18,500. The penalty period makes him ineligible for ICP-related benefits for a period of 3.7 months ($18,500 divided by $5000 = 3.7). To convert the fractional month to days, multiply **.7** times 30 for a result of 21 days, or a total penalty period of 3 months and 21 days.

John meets all the criteria for ICP effective December 1, 2007, and is approved for MI T, which provides basic Medicaid coverage. He is ineligible for ICP-related services for 3.7 months. The penalty period would start on December 1, 2007 and run through March 21, 2008.

Implementation Instructions (Transfer of Assets Processes)

For transfers that occur on or after November 1, 2007, apply the new DRA policies. For transfers that occur before November 1, 2007, apply pre DRA policies.

SPECIAL ASSET POLICIES

Annuities

Annuity Disclosure

In order to receive assistance under Medicaid long-term care programs, an applicant/recipient must disclose their ownership interest in **any** annuity. This also applies to a community spouse.

Annuity of an Applicant/Recipient

The purchase of an annuity on or after November 1, 2007 by an individual (or his designated representative) will be evaluated under transfer of asset policies.

If an annuity meets all of the criteria listed below, it is not considered an asset transferred without fair compensation and is excluded as an asset in the eligibility determination. The periodic payments (including the interest portion) are counted as unearned income in the eligibility determination and patient responsibility.

1. Names the State of Florida (AHCA) as the primary beneficiary, for the total amount of medical assistance paid on behalf of the applicant/recipient, except for when the individual has a spouse, minor or disabled adult child. In this case, the State of Florida may be named as the secondary beneficiary after the spouse, minor or disabled adult child.

   Note: If the spouse or minor/disabled child disposes of their interest in the annuity for less than fair market value (for example, transferred their interest to someone who does not meet the criteria), the State must be named primary beneficiary or the applicant/recipient will be subject to a transfer of asset penalty.

2. Is irrevocable (cannot be cashed in) and non-assignable (cannot be sold or transferred to a third party).

   Note: An annuity that is revocable and/or assignable is not considered a transferred asset, but is a countable asset. If the annuity is revocable, the asset value is the amount the purchaser would receive from the annuity issuer if the annuity is cancelled. If the annuity is assignable, the asset value is the amount the annuity can be sold for on the secondary market.

3. Makes payments (that include both principle and interest) to the individual in equal amounts during the term of the annuity, with no balloon or deferred payments.

4. Is actuarially sound based on the actuarial tables used by the Social Security Administration. **(Refer to Appendix 14, Program Policy Manual)**

If an annuity does not meet all of the above criteria, the total amount of funds transferred into the annuity is considered a transfer, except for when the annuity is revocable or assignable, then the annuity is countable as indicated in the note under #2 above.

Note: Certain transactions that occur on or after November 1, 2007 make an annuity (including an annuity purchased before November 1, 2007) subject to the above asset transfer policies. Such transactions include changes to the course of the payments or treatment of the income or principal, as well as additions of principal, elective withdrawals, requests to change the distribution, and elections to annuitize the contract.

Annuities of Community Spouses

The purchase of an annuity on or after November 1, 2007 by the community spouse will be evaluated under transfer of asset policies with a potential penalty against the applicant/recipient spouse, unless the annuity meets the following criteria:

1. Names the State of Florida (AHCA) as the primary beneficiary, for the total amount of medical assistance paid on behalf of the applicant/recipient spouse, except for when the spouse has a minor or disabled adult child. In this case, the AHCA shall be named as secondary beneficiary after the minor/disabled child; and

2. Is actuarially sound based on the spouse's age on actuarial table used by the Social Security Administration **(Refer to Appendix 14, *Program Policy Manual*)**.

DRA transfer provisions do not require a community spouse's annuity to be irrevocable, non-assignable, or pay equal payments that include both interest and principal. However, the term "transactions" and policy in the "**Note**" on the previous page (except for elective withdrawals) may also apply to a community spouse's annuity.

The recipient will be required to report changes that may have occurred to the community spouse's annuity (for example, change in beneficiary designation) that could result in the annuity being evaluated as a transfer of assets. However, annuities purchased by the community spouse after approval of long-term care Medicaid for the recipient spouse are not evaluated for transfer of assets policies.

Annuities Not Considered Under Transfer Provisions

Individual Retirement Accounts (IRAs) or annuities established by an employer or employee are not considered under the transfer of assets policies. These include Individual Retirement Annuities, Simplified Employee Pensions and Roth IRA's.

Annuities (or accounts) discussed in this section are considered under retirement fund policies as found in manual passage **1640.0505.04**.

Evaluating Annuities

When an individual applying for or receiving Medicaid long-term care programs indicates ownership interest in an annuity, use the following procedures:

- Request a complete copy of the annuity contract.
- Use the Evaluating Annuities' job aide (**Attachment 1**), to help determine if the annuity can be excluded from the transfer of asset policies.

- Send CF-ES 2355, *Letter to Annuity Issuer*, **(Attachment 2)** to the annuity issuer when the State is named beneficiary of the annuity. Attach a copy of the annuity to the form.
- At the annual review, if the recipient has indicated a change has occurred in the annuity, send Form CF-ES 2355 to the issuer.
- When an issuer reports changes to a recipients' or spouse's annuity, evaluate the effect of the change for potential asset transfer penalty.

Notifying AHCA

Use Form CF-ES 2356, *Third Party Recovery Transmittal*, **(Attachment 3)**, to notify AHCA of each annuity naming the Agency as beneficiary. Attach a copy of the annuity to the transmittal and mail to:

Health Management Systems, Inc.
2002 Old St. Augustine Road, Suite E-42
Tallahassee, FL 32301-4887

The Department must notify AHCA of the death of an individual whose annuity named them as a beneficiary. This will assist them in recovering Medicaid dollars from the annuity.

Implementation Instructions

For annuities purchased on or after November 1, 2007, apply the new DRA policies. For annuities purchased before November 1, 2007 and within the look-back period, apply pre-DRA policies.

Home Equity Exceeding $500,000

Home Equity Policy

Individuals with equity interest in their home in excess of $500,000 are not eligible for long-term care. Individuals may qualify for Medicaid benefits other than nursing facility or other long-term care services.

Home equity is calculated using the current market value of the home minus any debt. The current market value is the amount for which it can reasonably be expected to sell on the open market in its geographic area. If a home is held in any form of shared ownership, consider only the fractional interest of the person requesting long-term care services.

NOTE: Existing policies found in manual passage 1640.0534 regarding the asset value of the homestead have not changed.

Exceptions to Home Equity Policy

(1) Home equity policy does not apply if any of the following are residing in the individual's home:

- The individual's spouse,
- The individual's child (biological or adopted without regard to the child's marital status) under age 21, or
- The individual's blind or disabled (per SSA) child of any age.

Accept individual's statement for relative(s) relationship and residence in the institutionalized individual's home, unless questionable.

(2) The home equity policy may be waived when denial of long-term care eligibility would result in demonstrated hardship to the individual.

Verifying and Evaluating Home Equity

- Accept the statement of the applicant/recipient or their designated representative regarding how much their property is worth and how much they owe, unless questionable.
- If the equity value is $450,000 or greater, the applicant/recipient or their designated representative must obtain the market value from a knowledgeable source. At this point, request proof of indebtedness against the home.
- If it appears that an individual may have home equity exceeding $500,000, contact the client or their designated representative to confirm that the exception listed under (1) above does not apply.

Implementation Instructions

Evaluate home equity at the point of application and annual review/interim contact for individuals who file an initial application or reapplication for long-term care services on or after November 1, 2007.

Do not apply home equity policy to individuals who file an application for long-term care programs prior to November 1, 2007 and were determined eligible and have had no break in eligibility.

Continuing Care Retirement Community (CCRC) Entrance Fees

CCRC Entrance Fees policy applies to **all SSI-Related Medicaid** programs.

Definition of a Continuing Care Retirement Community

Continuing Care Retirement Communities, also known as life-care communities, are facilities that provide residents with a range of flexible services that include shelter and health care in return for an entrance fee and periodic monthly payments. Individuals receive specific services and depending on the contract terms and payment plan may shift between independent living, assisted living or a nursing facility as health care needs change.

CCRC Entrance Fee Policy

The entrance fee paid by an individual upon admission into a CCRC is considered a countable asset when all of the following conditions are met:

- The individual has the ability to use the entrance fee or the contract provides that the entrance fee may be used to pay for care when the individual's income and assets are insufficient to pay for their care.
- The individual is eligible for a refund of any remaining entrance fee upon the individual's death or termination of the contract.
- The entrance fee does not confer an ownership interest in the CCRC.

If the individual has the ability to receive a refund of the entrance fee, the amount which could be refunded must be considered as an available asset, regardless of whether a refund is actually received.

Staff must request and review a copy of the CCRC contract. Once the potential for a refund is established, staff may accept a written or verbal statement from the CCRC as to the amount of the potential refund.

If a refund is no longer available, it is not necessary to evaluate whether the individual received fair market value for the funds used to pay the entrance fee. Unless questionable, staff will assume the individual made a good faith payment for the services provided by the CCRC and would not include the entrance fee as an available asset.

Implementation Instructions

Apply the new policies to new applications, or reapplications filed on or after November 1, 2007. Once a CCRC contract has been evaluated, it is not necessary to reevaluate at review.

Promissory Notes, Loans and Mortgages

All promissory notes, loans and mortgages signed on or after November 1, 2007 will be considered a transfer of assets without fair compensation unless the promissory note, loan or mortgage meets all of the criteria listed below:

- Has a repayment term that is actuarially sound based on Social Security's life expectancy tables found in Appendix A-14; and
- Has payments made in equal amounts during the term of the loan, with no deferral and no balloon payments made; and
- Does not allow debt forgiveness.

When all of the above criteria are not met, for transfer purposes, the asset value of the promissory note, loan or mortgage is the outstanding balance due as of the date of application for long-term care programs.

If all criteria are met, follow manual passage 1640.0561.03.

Implementation Instructions

For promissory notes signed on or after November 1, 2007, apply the new DRA asset policies. For promissory notes signed before November 1, 2007, apply pre DRA policies.

Purchase of Life Estate Interest

A life estate interest purchased in another individual's home on or after November 1, 2007, may be considered a transfer of assets without fair compensation and be subject to a transfer of asset penalty period. If the purchaser has not resided in the home for at least one year after the date of the purchase, staff must consider the full purchase price paid as a transfer without fair compensation regardless of the value of the life estate or the number of months the purchaser resided in the home.

If the purchaser lived in the home for at least one year after purchasing the life estate, staff must:

- Multiply the fair market value of the property at the time the life estate was purchased by the life estate factor to determine the value of the life estate.
- Deduct the value of the life estate from the purchase price using the life estate factor from the tables in Appendix A-17, *Program Policy Manual*, to determine if fair market value was received, then
- If the amount paid exceeds the value of the life estate, the difference between what was paid and the value received is considered a transfer of assets.

Temporary absences from the home may not affect the applicant's residency, but each situation must be evaluated to determine if the home continued to be the individual's principal place of residency. Such absences include short-term hospital stays and vacations.

Implementation Instructions

For life estates purchased on or after November 1, 2007, apply the new DRA policies. For life estates purchased before November 1, 2007, apply pre DRA policies.

Long-Term Care (LTC) Insurance Partnership Program Policy

This policy applies only to ICP Nursing Home cases. It does not apply to HCBS, PACE, or Hospice programs.

The Florida Legislature approved Florida's participation in a federal initiative to encourage individuals to purchase long-term care insurance policies to cover future long-term care needs. A qualified LTC Insurance Partnership Policy allows for a special asset disregard if the beneficiary applies for Medicaid nursing home care. Individuals who currently own a standard long-term care policy may ask their insurance carrier to convert the policy to the new qualified LTC Insurance Partnership Policy.

Long-Term Care Insurance Asset Disregard

A beneficiary of a long-term care insurance policy certified under standards established by the Office of Insurance Regulation (OIR) as a qualified state LTC Insurance Partnership Policy, will have a portion of their total countable assets disregarded that is equal to the actual amount of LTC insurance benefits paid out by the insurance company for long-term care benefits.

Example: The insurance company paid out $60,000 for benefits for Ms. Brown, a Medicaid ICP applicant. Staff must subtract $60,000 from the individual's total countable assets when determining if the individual's total countable assets are within the Medicaid program limits.

Documentation Requirements

Individuals who state they have a LTC Insurance Partnership Policy must provide the following documentation from the company issuing the policy:

- The policy qualifies as a LTC Partnership Plan policy as defined by OIR.
- The name of the beneficiary and policy number.
- The total insurance benefits paid to or on behalf of the beneficiary as of the date the documentation is provided.
- The amount of any remaining benefits available.

Staff may accept the approved Office of Insurance Regulation Form OIR-B2-1781 form **(Attachment 4)** or a similar form developed by the company that provides comparable information.

Documentation is necessary only at application. Follow-up at annual review is necessary only if the individual expects to receive direct payment of benefits beyond the first annual review.

Once approved, if the individual continues to receive LTC insurance benefits directly, follow instructions in manual passage **1840.1007**.

Implementation Instructions

Apply the new DRA polices regarding LTC Insurance Partnership Program Policies to new applications, or reapplications filed on or after November 1, 2007. The asset exclusion will apply for the duration of the individual's Medicaid coverage.

UNDUE HARDSHIP PROVISION

The following hardship provisions apply to transfers, trusts and home equity interest exceeding $500,000.

Undue Hardship Requirements

The DRA requires that all affected individuals be offered an opportunity to demonstrate that the imposition of a penalty period, or excess homestead value policy would create an "undue hardship" prior to the disposition of the application.

Nursing home facilities are allowed to apply for an undue hardship waiver on behalf of an individual, with the consent of the applicant/recipient or the designated representative.

Undue Hardship Process

The undue hardship request is part of the transfer rebuttal procedure. When staff determine a transfer without fair compensation has occurred or that an individual has equity interest in their home that exceeds $500,000 use the following procedure:

- Ensure the transfer rebuttal notice **(Attachment 5)** or, if applicable, CF-ES 2354, *Notice of Excess Home Equity Interest*, **(Attachment 7)** is mailed to the client and designated representative. **Note:** FLORIDA will generate the transfer notice from the AAAT screen. However, if using the manual notice, CF-ES 2264, *Notice of Determination of Asset (or Income) Transfer*, include on the notice a direct contact phone number **other than** the Customer Call Center number.

- When the customer makes contact, use the *Rebuttal/Undue Hardship Questionnaire* (**Attachment 6**) for transfers or the *Waiver of Home Equity Limit Questionnaire* (**Attachment 8**) for home equity to review the case for potential hardship eligibility.

- Request any additional documentation necessary to substantiate the individual's claim.

- The processor must complete entries under "Processor" on pages 1 and 2 of the ES 2357, *Rebuttal/Undue Hardship Evaluation*, (**Attachment 9**). Sign the form in coordination with the unit supervisor, approving a successful rebuttal. Scan all documents and contact the Circuit/Region Program Office.

  If rebuttal is not successful, the processor will continue the development of Part II (Undue Hardship Evaluation) and forward the evaluation form and documentary evidence to the Circuit/Region program specialist for review and signature approving or denying undue hardship. The entire evaluation must be completed within 10 calendar days following the contact from the applicant/recipient, not considering client delay days.

- Complete the case using the FLORIDA instructions attached to this memorandum based on the outcome of the decision regarding rebuttal/undue hardship.

Implementation Instructions

Use the rebuttal/hardship process discussed in this memorandum for any transfer provisions applied on or after November 1, 2007 (regardless of the date of application or the date of transfer) and for evaluations of excessive home equity interest for applications filed on or after November 1, 2007.

Circuit or Region program office staff that have questions or need additional information about the policies discussed in this memorandum may contact Carrie Sheffield by e-mail, or by telephone at SC 292-8002 or (850) 922-8002. If there are questions about FLORIDA instructions, please contact Pat Brennan by email or at SC 291-2307 or (850) 921-2307.

Attachments

cc: Program Policy (Nathan Lewis, Florence Love, Eileen Schilling, Jena Grignon)
FLORIDA Operations (Kara O'Brien, Debbie Owens, Suzanne Poirier, Bill Hudgens)
FLORIDA Help Desk (Cassandra Shaw-Johnson)
Office of Quality Management (Ellen Ransdell)
Office of Quality Control (Connie Reinhardt)
Office of Appeal Hearings (John Pritchard)
Office of the General Council (Herschel Minnis)
Office of Communications (Erin Geraghty)
Florida Legal Services (Cindy Huddleston)
AHCA (Paula McAuley, Beth Kidder, Jennifer Barrett)
Department of Elder Affairs (Sandi Smith, Marcy Hajdukiewicz)