

TO: Local District Commissioners, Medicaid Directors

FROM: Judith Arnold, Director
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SUBJECT: Long Term Care Eligibility Rules and Estate Recovery Provisions for
MAGI Individuals

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The purpose of this General Information System (GIS) message is to inform local departments of social services of recent guidance received from the Centers for Medicare and Medicaid Services (CMS) regarding the application of long term care eligibility rules for individuals who are eligible for Medicaid under a Modified Adjusted Gross Income (MAGI) eligibility group.

Individuals in need of long-term care services may qualify for Medicaid under a MAGI eligibility group. Additionally, MAGI individuals who are medically frail may receive coverage for medically necessary nursing facility services. The need for nursing facility services qualifies the individual as medically frail and no further documentation is required.

Individuals whose eligibility is determined under MAGI rules are not subject to a resource test for purposes of determining Medicaid eligibility. However, several other statutory provisions apply when an individual seeks Medicaid payment for long-term care services.

Transfer of Assets

In accordance with Section 1917(c) of the Social Security Act (the Act), MAGI individuals who meet the definition of an institutionalized individual and who are seeking Medicaid coverage for nursing facility services are subject to the transfer of assets rules, including the review of assets for the 60 month look-back period and the imposition of a transfer penalty for assets that are transferred without compensation. For transfers, an institutionalized individual means an individual who is an inpatient in a nursing facility, including an intermediate care facility, or who is an inpatient in a medical facility and is receiving a level of care provided in a nursing facility. In the case of an individual who is enrolled in Medicaid managed care, the review of assets for the look-back period begins when the institutionalized individual is determined to be in permanent placement status. The look-back period is the 60 months prior to the first month of institutionalization. Any resulting penalty period begins the first month in which the individual is both institutionalized and otherwise eligible for Medicaid.

Note: The transfer look-back for a permanently institutionalized individual who is enrolled in a managed long term care begins the month the individual enters a nursing facility regardless of whether the admission is temporary or permanent.

For new applicants and recipients with fee-for-service coverage who require up to 29 days of short term rehabilitation, there is no transfer look-back. If more than 29 days of short term rehabilitation is required or the individual is permanently placed in a nursing home, including alternate level of care in a hospital, the MAGI individual must document resources for the past 60 months to determine Medicaid eligibility for coverage of nursing facility services.

If an institutionalized individual or his/her spouse transfers assets for less than fair market value (including transfers to a trust) during the look-back period, a transfer penalty may be imposed. An institutionalized MAGI individual is ineligible for coverage of nursing facility services during a transfer penalty. The penalty period is based on the regional transfer rate for the district in which the facility is located.

For purposes of the transfer of assets rules, the Deficit Reduction Act (DRA) of 2005 provides for the purchase of an annuity, promissory note or life estate interest in another individual's home, to be treated as an uncompensated transfer unless the purchase meets specific criteria. The policies concerning transfer rules under the DRA are found in Administrative Directive 06 OMM/ADM-5, "Deficit Reduction Act of 2005 - Long Term Care Medicaid Eligibility Changes." Since assets used to purchase an annuity, promissory note or life estate interest, may affect Medicaid coverage for nursing facility services, these provisions apply to MAGI individuals who meet the definition of an institutionalized individual.

The exceptions to the transfer rules and the undue hardship provisions apply to institutionalized individuals who are eligible under MAGI.

Substantial Home Equity Limit

Administrative Directive 06 OMM/ADM-5, in accordance with Section 1917(f) of the Act, explains the home equity limit for individuals applying for long-term care services. Effective January 1, 2014, if an individual's home equity interest exceeds \$814,000, the individual is not eligible for long-term care services. There are certain exceptions identified in 06 OMM/ADM-5. The home equity limit and exceptions apply to MAGI individuals in determining eligibility for long-term care services.

Post-Eligibility Rules

Post-eligibility rules are used to determine the net available monthly income (NAMI) that a Medicaid eligible institutionalized individual must contribute toward the cost of care. CMS has advised that since the post-eligibility rules apply to discrete categories, they have concluded that current Federal regulations, specifically 42 CFR 435.725 (for New York as an SSI state), do

not include individuals whose eligibility is based on MAGI rules. Therefore, the post-eligibility rules (chronic care budgeting) do not apply. The MAGI income budgeting methodology will continue regardless of whether the MAGI individual's admission to a nursing facility is considered permanent.

Districts must apply the MAGI-like budgeting that is described in Administrative Directive 13 OHIP/ADM-4, "Medicaid Application and Renewal Processing for Modified Adjusted Gross Income (MAGI) Eligibility Groups." Since a permanently institutionalized MAGI individual is no longer residing with his/her spouse, only the institutionalized spouse's income is counted in determining eligibility under MAGI-like rules. Spousal impoverishment rules would not be used for institutionalized individuals in a MAGI eligibility group. If the community spouse was in a MAGI category, the MAGI household would not include the institutionalized spouse. For a MAGI individual who is also SSI-related, if application of spousal is more beneficial, spousal impoverishment rules must be used. MAGI individuals whose household income is at or below 138% of the federal poverty level will not have a NAMI amount to contribute toward the cost of nursing home care.

Liens on Real Property

Real property that is owned by a permanently institutionalized individual is subject to placement of a Medicaid lien when post-eligibility rules are used to determine any contribution toward the cost of care (Section 1917(a)(1)(B) of the Act). Since placement of a lien on real property is based on the individual being permanently institutionalized and the requirement to contribute all but a personal needs allowance (after applicable income disregards) toward the cost of care, CMS has advised that the current regulations regarding liens on real property do not apply to MAGI individuals. As a result, MAGI individuals who are permanently institutionalized may not have liens placed on their real property.

Estate Recovery

Effective April 1, 2014, Section 369 of the Social Services Law was amended to limit the Medicaid costs that can be recovered from the estate of a deceased individual who received Medicaid under a MAGI eligibility group. Recovery from assets in a MAGI individual's estate is limited to the amount of Medicaid paid for the cost of nursing facility services, home and community-based services, and related hospital and prescription drug services received on or after the MAGI individual's 55th birthday. Other than that, the same limitations and exceptions to estate recovery that are described in Section 369 of the Social Services Law apply to recoveries from the estates of both MAGI and non-MAGI individuals.