Changes to Medical Assistance (MA) Transfer Penalty Policy

TOPIC
MA Payment of Long-Term Care Services

PURPOSE
This bulletin explains a policy change that prohibits recalculation of a transfer penalty based on a partial return of transferred assets and explains new policy on ending a transfer penalty based on a full return of transferred assets.

CONTACT
MinnesotaCare Operations, counties and tribal agencies should submit policy questions to HealthQuest.

All others should direct questions to:
Health Care Eligibility and Access (HCEA) Division
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SIGNED

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I. Background

An individual must meet specific eligibility requirements in order for Medical Assistance (MA) to pay for long-term care (LTC) services. LTC services include skilled nursing facility care, nursing facility care in an inpatient medical hospital or intermediate care facility and services covered by home and community-based waiver programs.

One of the eligibility requirements for MA payment of LTC services is that an individual cannot be subject to a transfer penalty. An individual may be subject to a transfer penalty if the individual or the individual’s spouse transferred assets without receiving adequate compensation. See Health Care Programs Manual (HCPM) Section 19.40 - Transfers for more information.

In 2009, the Minnesota Legislature enacted legislation prohibiting the recalculation of a transfer penalty. Prior to this legislation, a financial worker was required to recalculate a transfer penalty each time a transferee returned any of the transferred assets. An individual can no longer reduce his or her transfer penalty based on a partial return of transferred assets; a transfer penalty can only end early upon a full return of the transferred assets.

This bulletin uses the following terms:

A. Assets
   Assets include both income and resources of the individual or the individual’s spouse.

B. Transferee
   The transferee is the entity who received the transferred asset. A transferee could be a person or a group of people, a corporation, a trust or some other legal entity recognized by law as having rights and duties.

C. Transferor
   The transferor is the person who owned the asset at the time of the transfer. A transferor can be:
   - the individual who is subject to the transfer penalty.
   - the individual’s spouse.
   - both the individual and his or her spouse.

   These terms apply even if another person acting on behalf of the individual or the individual’s spouse made the transfer.

   Note: There may be multiple transferees/transferors associated with a transfer penalty when multiple transfers are added together to determine a transfer penalty.

II. Policy Change Regarding Transfer Penalties

Prior to the release of this bulletin, a financial worker was required to recalculate a transfer penalty each time assets were returned in whole or in part to the individual. Effective with any transfer penalty imposed on or after December 1, 2011, a transfer penalty does not
change unless the transferor(s) receive a full return of the transferred assets or the agency approves a waiver of the transfer penalty due to an undue hardship. See HCPM Section 19.40.40 - Waiver of Transfer Penalty for more information on hardship waivers.

**A. Clarification of “Full Return”**

A transfer penalty cannot end unless the transferor(s) receive a full return of the transferred assets. In situations where the transferee is returning the same 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.

**Example 1:**

Abigail is married to Bruce. Abigail has a transfer penalty because of the following uncompensated transfers which were made in the lookback period:

- Abigail removed herself as an owner from a parcel of land at 101 Main Street she co-owned with her sister. Bruce was not an owner of the parcel of land. The value of the land at the time of the transfer was $50,000. The financial worker determined the uncompensated amount of the transfer was $25,000. The land is now valued at $40,000.

- Bruce transferred 100 shares of XYZ stock to his granddaughter. Abigail was not an owner of the stock. The value of the 100 shares of stock at the time of the transfer was $20,000. The financial worker determined the uncompensated amount of the transfer was $20,000. The 100 shares of stock are now valued at $25,000.

- Abigail and Bruce transferred their homestead at 789 Elm Street to their son. They both owned the home. The value of the home at the time of the transfer was $175,000. The financial worker determined the uncompensated amount of the transfer was $150,000 because the couple received some compensation for the home. The home is now valued at $200,000.
Action:
In order to end the transfer penalty, all of the following transactions must occur:

1. Abigail’s sister must give Abigail $25,000. Abigail’s sister cannot add her back as a co-owner of the land in order to end the transfer penalty because the value of the land has decreased.

2. Bruce’s granddaughter can either transfer back 100 shares of XYZ stock or give Bruce $20,000.

3. Abigail and Bruce’s son can either transfer back the homestead at 789 Elm Street to Abigail and Bruce or give Abigail and Bruce $150,000.

B. Verification Requirements
An individual must verify all of the following before a transfer penalty can end:

- The transferee(s) returned all of the transferred assets or their cash equivalent to the transferor(s).
- The value of the returned asset(s) at the time of the return is equal to or greater than the value of the asset(s) at the time of the transfer.

C. Ending the Transfer Penalty
The transfer penalty period cannot end unless an individual has verified that all transferees have returned all transferred assets or their cash equivalent. Upon receipt of the verification, end the transfer penalty beginning the first of the month following the month of the full return. See section III.C.2 for MMIS system instructions.

Example 2:
Carol received a Long-Term Care Consultation (LTCC) on December 3, 2011, that documented she needs an institutional level of care. She applied for MA that same day. She was determined eligible for basic MA but ineligible for EW because of a transfer penalty. Carol gave her son $18,000 within her lookback period and did not receive adequate compensation. She has a 3.37 month transfer penalty that began December 1, 2011. On January 19, Carol’s authorized representative provides verification that Carol received a full return of the transferred assets on January 12.

Action:
End the transfer penalty effective February 1, 2012.

D. Effect of Returned Assets on Eligibility for MA
Treat the transfer and subsequent return of an asset as a trust-like device. Consider the asset to have been available to the transferor from the point at which the transfer occurred.

For individuals on MA, evaluate the returned assets following MA policy. See HCPM Chapter 19 - Assets for more information. Excess countable assets are a barrier to ongoing eligibility. If an enrollee has excess countable assets, close MA with timely
notice. Continued eligibility is possible if an enrollee reduces the excess countable assets before the effective date of closing.

For individuals enrolled in MA for months after the transfer occurred, follow standard program guidelines for determining overpayments. See HCPM Section 29.15 - Overpayments for more information.

Example 3:
Douglas entered an LTCF on December 5, 2011, and applied for MA the same day. He transferred $20,000 to his grandson within his lookback period and did not receive adequate compensation. Douglas was determined eligible for basic MA but ineligible for MA payment of LTC services. On December 28 you impose a 3.75 month penalty with a begin date of December 1, 2011. Douglas provides verification on February 13 that his grandson returned the $20,000 to him on February 10.

Action:
End the transfer penalty effective March 1, 2012. Consider the $20,000 to have been available to Douglas from the date of the transfer. Therefore, he had excess assets for the months of December, January and February. Determine any MA overpayments for those months. Close MA effective March 1, 2012, for excess assets. Inform Douglas that MA can continue if he reduces the excess countable assets before the effective date of closing.

E. Eligibility for MA Payment of LTC Services
An individual is not automatically eligible for MA payment of LTC services upon the end of a transfer penalty. Ending the transfer penalty only eliminates a barrier for MA payment of LTC services identified in a previous request. When a transfer penalty ends, a financial worker must determine that the individual currently meets all eligibility requirements for MA payment of LTC services.

- Individuals 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.

- Individuals enrolled in MA when the transfer penalty ends must submit a 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 financial worker imposed the transfer penalty and the date of the request for MA payment of LTC services.

Example 4:
This is a continuation of example 3. On February 28, Douglas informs you that he reduced his excess countable assets by paying outstanding obligations, including his LTCF charges for the months of December, January and February. He provides verification that the value of his assets is now within the MA asset limits.

Action:
Reopen MA. Send Douglas an MHCP Request for Payment of Long-Term Care
III. Action Required

A. Effective Date of Policy Change

Apply the new policy in this bulletin to any transfer penalty imposed on or after December 1, 2011. A transfer penalty is imposed on the date the agency calculates a transfer penalty and sends the individual a notice regarding the penalty period.

The new policy is not applicable to any transfer penalty imposed prior to December 1, 2011. Continue to recalculate the transfer penalty whenever a transferee returns the assets used to calculate the transfer penalty completely or partially to the individual.

B. Updated DHS-4915

DHS updated the Notice of Action for MA Payment of Long-Term Care Services (DHS-4915) to inform individuals that they may be able to end their transfer penalty and to contact their financial worker for more information.

Use the updated form for any transfer penalty imposed on or after the date of this bulletin. Continue to follow the instructions in HCPM Chapter 23 - MA Payment of LTC Services, Notification section for when to use this form.

C. System Instructions

1. MAXIS

Enter information in MAXIS regarding transfers following instructions provided in POLI/TEMP section TE02.14.27, Uncompensated Asset/Income Transfers - MA.

2. MMIS

Do not alter the I code on RLVA unless an individual has verified a full return of the transferred assets. Upon receipt of the verification, enter an end date on the I code equal to the last day of the month in which the full return occurred. Change the U code to be contiguous with the I code while eligibility for MA payment of LTC services is being determined.

Enter the results of an eligibility determination for MA payment of LTC services in MMIS following instructions provided in Bulletin #10-21-17, DHS Clarifies Policy and Coding for Medical Assistance (MA) Payment of Long-Term Care (LTC) Services.

Example 5:
Farrah is an MA enrollee. She has a 7.63 month transfer penalty that began December 1, 2011. MMIS shows an I span with a begin date of 12/01/11 and an end date of 06/30/12. MMIS also has an open-ended U code with a begin date of 07/01/12. Farrah verifies she received a full return of transferred assets on January 12.
Action:
Change the end date of the I span to 01/31/11. Change the begin date of the U code to 02/01/12. Follow the coding instructions in Bulletin #10-21-17 after making an eligibility determination for MA payment of LTC services.

IV. Legal References
Laws of Minnesota 2010, First Special Session, chapter 1, article 10, section 11.
Laws of Minnesota 2009, chapter 79, article 5, section 22.
Minnesota Statute, section 256B.0595, subdivision 2(f).

V. Americans with Disabilities Act (ADA) Advisory
This information is available in alternative formats to individuals with disabilities by calling (651) 431-2283 (voice) or toll free at (888) 938-3224. TTY users can call through Minnesota Relay at (800) 627-3529. For Speech-to-Speech, call (877) 627-3848. For additional assistance with legal rights and protections for equal access to human services programs, contact your agency’s ADA coordinator.