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Information Brief

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Medical Assistance Treatment of Assets and Income

For Persons Seeking Long-term Care Services

This information brief outlines the general income and asset limits in the Medical Assistance (MA) program; explains the spousal impoverishment provisions that apply to persons receiving long-term care services who have spouses that live in the community; and summarizes the prohibitions in current law against an MA applicant or recipient transferring assets for less than fair market value. The brief also notes the changes that have been made to the asset transfer prohibitions by the 1996 state legislature for which federal approval is being sought.

Please note: This information brief provides general information on the spousal impoverishment provisions and asset transfer prohibitions under the Medical Assistance program. The House Research Department provides services to the Minnesota House of Representatives; it does not and cannot represent or provide legal services to private individuals, private entities, or other government organizations. For advice or an opinion as to what law applies in a specific situation, the person involved will need to contact his or her own attorney or advisor.

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MA Program Long-term Care Coverage

MA provides coverage for nursing home and other long-term care services to qualified persons.

Medical Assistance (MA), Minnesota's Medicaid Program, is the federal-state program that reimburses health care providers for services to persons who meet the eligibility requirements. The MA program will pay for nursing home care for financially needy individuals, i.e., persons whose income and assets are below the limits prescribed in federal and state law. Minnesota's MA program also has federal approval to provide "waivered services," or home and community-based services, to certain MA recipients who would otherwise need a nursing facility level of care. Persons can apply for MA by contacting their local county human services agency.

General Income and Asset Limits in the MA Program

The MA program sets limits on the value of income and assets a recipient may have. **Income** is defined as net income after certain allowable deductions have been subtracted. **Assets** include all real and personal property owned by the recipient.

In general, an MA recipient who is age 65 or older and who is not living in an institution may have no more than $420 per month in income. (This limit is $524 for a couple.) When a couple is living together, and neither spouse is receiving long-term care services, all assets and income of each spouse are considered available to the other in determining eligibility for MA. Certain assets may be retained, i.e., they are excluded from consideration when eligibility for MA is determined.[1] Allowable excluded assets include the following:

- √ Homestead (real property or personal property used as a home)
- √ A motor vehicle (subject to certain limitations)
- √ Household goods and certain personal effects
- √ Prepaid burial spaces and burial space items
- √ Prepaid burial contracts (up to $1,500 each for the recipient and the recipient's spouse)
- √ Assets of $3,000 or less

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[1] See **Minn. Stat. §256B.056** for a more complete explanation of asset limits in the MA program. "Personal property" means all property other than real estate.

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MA Program Provisions for Dividing Income and Assets

Definition of Terms

Long-term care services: For purposes of spousal impoverishment provisions, "long-term care services" means care services provided in a nursing facility, an intermediate care facility for persons with mental retardation (ICF/MR), an MA-covered bed in a Regional Treatment Center, or through the Elderly Waiver program of home and community-based services under MA.

Long-term care spouse: The spouse who is receiving long-term care services.

Community spouse: The spouse living in the community who is not receiving long-term care services.

The MA program specifies how the income and assets of a married couple are treated when one spouse receives long-term care services and applies for MA.

When one spouse receives long-term care services, the MA program uses "spousal impoverishment" provisions to divide the income and assets of the married couple in order to determine how much of the couple's total assets and income will be designated for each spouse. The size of the share that is designated to the spouse receiving long-term care services determines that individual's eligibility for MA. The spousal impoverishment provisions in federal law, as enacted into state law, guide the way assets and income are calculated in this situation; the provisions are intended to prevent the impoverishment of the community spouse.

The long-term care spouse must apply nearly all of his or her income towards the cost of the long-term care services.

MA permits the long-term care spouse a specified number of deductions from income, but the person must then contribute all of his or her remaining countable income towards the cost of the long-term care services. In many cases, the only permitted deduction is a personal needs allowance of $61 per month.[2]

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[2] This personal needs allowance is adjusted for inflation each year; the $61 amount became effective January 1, 1996. For a more detailed list of the permitted deductions, see **Minn. Stat. §256B.0575**.

Income paid solely in the name of one spouse is considered available only to that spouse.

Income paid solely in the name of one spouse is considered available only to that spouse. If income is paid jointly to both spouses, one-half is considered available to each, unless an instrument sets forth different percentages. Trust income is considered available to each spouse according to the terms of the instrument pursuant to which payment is made.

Beginning with the first full month that the long-term care spouse is determined to be eligible for MA and receives long-term care services, **none** of the community spouse's income is considered available to the long-term care spouse.

Some spousal _income_ can be used to provide a minimum monthly income allowance to the community spouse.

Each month, the long-term care spouse can transfer to the community spouse an amount sufficient to raise the income of the community spouse to the lesser of:

- the sum of 150 percent of the monthly federal poverty guideline for two (this amount is $1,295, effective July 1, 1996[3]) plus an excess shelter allowance (to cover shelter costs that exceed 30 percent of the federal poverty guideline figure for two); or
- $1,919.[4]

If the community spouse obtains a court order for support that specifies a higher monthly income allowance than the monthly maximum, the long-term care spouse can transfer to the community spouse the higher ordered amount of monthly income.

Spousal _assets_ are divided into "spousal shares" when one spouse receives long-term care services.

The following discussion relates only to the MA treatment of non-exempt spousal assets, i.e. assets which are in excess of allowable excluded assets. (See the list of allowable excluded assets on page 2.) When one spouse receives long-term care services, a "spousal share," which is equal to one-half of all non-exempt assets owned by either spouse, must be calculated. The spousal share of assets that is determined to be available to the long-term care

[3] The $1,295 amount became effective July 1, 1996; it is adjusted each July 1 to reflect changes in the federal poverty guidelines.

[4] The $1,919 monthly maximum became effective January 1, 1996; it is adjusted for inflation each January 1.

spouse must be used for that person's health care needs by "spending down" to the MA asset limit of $3,000.

- If the spousal share is less than $21,685, the long-term care spouse may transfer assets to the community spouse in order to bring the amount of assets held by the community spouse up to the $21,685 minimum.
- In general, if the spousal share is greater than $21,685 but less than or equal to $76,740 the community spouse may retain this amount.
- The maximum spousal share that can be retained by the community spouse is $76,740.
- The $21,685 and $76,740 amounts became effective January 1, 1996. They apply to persons who entered a nursing home on or after October 1, 1989, and applied for MA on or after January 1, 1996. These amounts are adjusted each January 1 by the percentage change in the Consumer Price Index.

The table below illustrates how spousal assets are distributed for couples with various amounts of total assets.

Division of Spousal Assets for Persons Receiving Long-term Care Services on MA*

Total Non-excluded Assets of Couple	Assets Considered Available to Long-term Care Spouse	Assets to Be Held by Community Spouse
$21,685 or less	$0	Total assets
$21,686 to $43,370	Amount of total assets exceeding $21,685	$21,685
$43,371 to $153,480	One-half of total assets	One-half of total assets
$153,481 and over	Amount of total assets exceeding $76,740	$76,740

*Note: The above figures apply to applications for Medical Assistance made between January 1, 1996, and December 31, 1996.

Prohibitions on Asset Transfers

Note: This section generally describes the asset transfer laws in effect as of July 1996. The 1996 Legislature made several changes to state law,[5] but most of these changes need federal approval before they can be implemented. If federal approval is obtained, the changes could affect how MA treats persons who transfer assets on or after March 1, 1996. (See Appendix B for a list of the 1996 changes.)

Definition of Terms

Long-term care services: For purposes of asset transfer provisions, "long-term care services" means care services provided in a nursing facility, an intermediate care facility for persons with mental retardation (ICF/MR), an MA-covered bed in a Regional Treatment Center, or through one of the home and community-based services under MA.

Look-back period: A designated period of time prior to application for MA during which a person may not make uncompensated transfers of assets or income.

MA prohibits a person who is receiving long-term care services from transferring assets for less than fair market value.

A person may be penalized under the MA program if the person, or the person's spouse, gives away or otherwise transfers assets for less than the fair market value of the assets. State and federal law on MA asset transfers[6] prohibit a person from making such uncompensated transfers either: within the "look back period;" while the MA application is pending; or while the person is eligible for MA.

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[5] This information brief notes the major changes to state law regarding transfers of assets under the MA program. Other changes in the law not described in this brief include amended notice requirements and criteria relating to "undue hardship" waivers, and new consumer fraud penalties the state may recover against certain persons who commit fraud in causing elderly persons to improperly transfer their assets. These provisions do not require federal approval and are now law. **Laws 1996, Chap. 451, Art. 2, §§15, 17, 19, 53, and 62.**

[6] See **Minn. Stat. §256B.059 and 256B.0595.**

Currently, the look-back period is 36 months prior to applying for MA. The look-back period is 60 months in the case of certain transfers into trusts.[7] The state is seeking permission from the federal government to increase the look-back period to 72 months.

There are several exceptions to the asset transfer prohibition.

The MA program permits several exceptions to the asset transfer prohibition. For example, a person may transfer a homestead and other assets at less than fair market value to a spouse, or to a blind or permanently and totally disabled child. (See Appendix A for a more detailed list of the permitted exceptions to the asset transfer prohibition.)

The penalty for making prohibited transfers is losing eligibility for MA coverage of long-term care services.

The penalty for making uncompensated transfers is that the person is ineligible for MA-paid services in a nursing facility, intermediate care facility for persons with mental retardation (ICF/MR), or through the applicable home and community-based waiver program for a calculated period of time.

Although under current law the person remains eligible for all other MA services during the penalty period, the state is seeking permission from the federal government to change the penalty to ineligibility for *all* MA services. The state is also seeking to change the way it calculates the ineligibility period.

Periods of ineligibility begin with the month a transfer occurred and run consecutively.

A separate ineligibility period is calculated for each month in which an uncompensated transfer is made. The length of each ineligibility period is calculated by dividing the uncompensated value of the transferred assets by the statewide average monthly payment rate for nursing facility services.[8] This means that the length of an ineligibility period varies, depending upon the value of the uncompensated transfer.

A person's period of ineligibility begins with the month in which the assets were transferred. If separate periods of ineligibility overlap, the period of ineligibility is recalculated based on

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[7] The 36 and 60-month look-back periods affect transfers of assets made on or after August 11, 1993. The 1996 Legislature also amended the law governing the determination of the value of transfers into certain trusts to comply with federal law. This change is retroactive to August 11, 1993. **Laws 1996, Chap. 451, Art. 2, §§ 11 and 62.**

[8] The current statewide average monthly payment rate for nursing facility services is $2,926. This amount became effective July 1, 1996 and is applicable to persons who apply for MA on or after that date.

the value of the total transfers. For example, if an individual transfers $5,852 in August 1996 and is ineligible for two months, and transfers an additional $2,926 in September 1996 and is ineligible for a month, the total period of ineligibility would be three months and the period of ineligibility would begin on the date of the August transfer.[9]

The state is seeking permission from the federal government to have the period of eligibility begin in the month the person applies for MA and is otherwise eligible, or when the transfer becomes known to the state or local agency, whichever is later. For MA recipients, the penalty period would begin in the month the transfer is made, or when the transfer becomes known to the state or local agency, whichever is later.

A person may transfer up to $500 per month without penalty under the MA program.

Effective April 13, 1996, a person who is not in a pre-existing penalty period may transfer $500 per month without the transfer affecting the person's eligibility for MA or status as an MA recipient. However, persons who transfer any amount while in a penalty period are not permitted to do this, and will have the amount of any such transfers added into their penalty period calculation.[10]

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[9] This procedure applies to transfers made on or after August 11, 1993. For transfers made prior to that date, if separate periods of ineligibility overlap, the periods run concurrently. In the example described above, concurrent running of eligibility periods would reduce the total period of ineligibility from three to two months.

[10] **Laws 1996, Chap. 451, Art. 2, §§13 and 62.** Between September 1, 1994 and April 12, 1996 a person could transfer up to $1,000 per month without penalty. Prior to September 1, 1994, a person could transfer up to the statewide average nursing facility payment rate without penalty because there were no partial months of ineligibility that resulted in a penalty.

Appendix A
Exceptions to the Transfer Prohibitions

A **homestead** can be transferred for less than fair market value if:

(a) the title is transferred to the individual's

- √ spouse
- √ child under 21
- √ blind or permanently and totally disabled child
- √ sibling who has equity interest in the home and who resided in the home for at least one year before individual's receipt of long-term care services
- √ son or daughter residing in the home for at least two years before the individual received long-term care services, and who provided care that, as certified by the individual's physician, allowed the individual to reside at home;

(b) the individual demonstrates an intent to dispose of the house at fair market value;

(c) the local agency grants a waiver because denial of eligibility would cause undue hardship. (In this case a cause of action exists against the person(s) receiving the asset.); or

(d) the individual or the individual's spouse provides convincing evidence that the exclusive purpose of transferring the homestead was not to obtain or maintain MA services for the individual.

Note: A 1996 legislative change, which requires federal approval before it can become law, would provide that a transfer of the homestead to the above relatives be limited to those relatives living in the home at the time of the transfer. (See Appendix B.)

Non-homestead assets or income may be transferred at less than fair market value if:

(a) the transfer is to the community spouse, or to another for the sole benefit of the community spouse, by the long-term care spouse. At the time of MA application for long-term care services, the assets must be allocated between spouses as provided by the spousal impoverishment provisions;

(b) the transfer is to a child who is blind or permanently and totally disabled;

(c) the individual demonstrates an intent to dispose of assets at fair market value;

(d) the local agency grants a waiver because denial of eligibility would cause undue hardship. (In this case a cause of action exists against the person(s) receiving the asset or income.); or

(e) the individual or the individual's spouse provides convincing evidence that the exclusive purpose of transferring the assets or income was not to obtain or maintain MA services for the individual.

Note: 1996 legislative changes may affect the transfers of non-homestead assets if federal approval is received. (See Appendix B.)

Appendix B
1996 Changes to the State Law Regarding MA Asset Transfers Requiring Federal Approval

The 1996 Legislature made several changes to state law on MA asset or income transfers that require federal approval before they can become effective. The Minnesota Department of Human Services is planning to submit a waiver request in July 1996 to the federal Health Care Financing Administration (HCFA) in order to:

(a) increase the look-back period — the time during which uncompensated transfers of assets can be penalized — from 36 to 72 months;[1]

(b) change the penalty for uncompensated asset transfers from ineligibility for MA long-term care services to ineligibility for *all* MA services;[2]

(c) change the timing of the penalty period so that it would begin to run at the beginning of the month in which a person applies for MA and is otherwise eligible (under current law the penalty period begins to run in the month the asset was transferred);[3]

(d) change the calculation of the penalty period by dividing the value of the assets by the statewide average per person nursing facility payment made by the state (the current divisor is the statewide average nursing facility payment rate);[4]

(e) apply the same penalty provisions to uncompensated transfers of excluded assets that apply to uncompensated transfers of nonexcluded assets;[5]

(f) require that transfers of the homestead to specified relatives be limited to those relatives living in the homestead at the time of the transfer;[6]

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[1] Laws 1996, Chap. 451, Art. 2, §12.

[2] Id.

[3] Id. §14.

[4] Id. The current statewide average per person nursing facility payment made by the state is $2,367. The current statewide average nursing facility payment rate is $2,926. These amounts are adjusted on July 1 of each year. This change will result in a longer penalty period for uncompensated transfers.

[5] Id. §12.

[6] Id. §16.

(g) prohibit the institutionalized spouse from transferring assets to the community spouse once eligibility for MA is established, except in accordance with spousal impoverishment provisions;[7] and

(h) change the requirements surrounding transfers to trusts for the benefit of disabled individuals.[8]

The above changes will not become effective until approval is received from HCFA or there is a change in federal law. If federal approval is received or there is a change in federal law, the Department of Human Services will publish a notice in the State Register specifying the date on which the above provisions will become effective. These provisions will apply to persons who apply for Medical Assistance on or after the provisions' effective date, and will affect transfers made by those persons on or after March 1, 1996.

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[7] Id. §18.

[8] Id. This provision would only allow transfers to trusts for a disabled child if the trust reverts to the state at the child's death. Transfers to trusts for a disabled person who is not the MA recipient's child would be disallowed.