

CHANGE NOTICE FOR MANUAL NO. 25-07, DRA TRANSFER OF ASSETS DATE: OCTOBER 29, 2007

Manual: Aged, Blind, and Disabled Medicaid

Change No: 25-07

To: County Directors of Social Services

Effective: November 1, 2007

I. BACKGROUND

The Deficit Reduction Act of 2005 (DRA) became law effective February 8, 2006. The DRA amended section 1917 of the Social Security Act (the Act) to make several changes concerning resources and transfers. Refer to Change Notice 24-07, [MA-2240](#), Transfer of Assets, [MA-2241](#), Transition Policy for In-Home Health Services & Supplies, [MA-2242](#), Home Equity Value & Eligibility For Institutional Services, and [MA-2245](#), Undue Hardship Waiver For Transfer Of Assets.

II. CONTENT OF CHANGE

A. MA-200, Definitions, lists additional and revised definitions.

1. Actuarially Sound – A promissory note, annuity, mortgage or loan established to pay off the entire asset value over the actual or expected lifetime of the annuitant/lender is actuarially sound. The annuitant/lender is expected to live long enough to receive an amount that is equal to or greater than the amount originally invested. The total amount of proceeds must be designed to be paid out in equal regular payments during the term of the agreement, with no deferral and no balloon payments.
2. Annuitant – An annuitant is the person who receives the income payments of an annuity policy at maturity date for life or for a specified period. The annuitant may or may not be the same as the owner.
3. Annuitize – Converting the principle of an annuity into a series of payments.
4. Annuity - An annuity is a type of trust. An individual pays an entity a lump sum of money in return for the right to receive fixed, periodic payments, either for life or a term of years. This includes the investment portion of a single premium pure endowment life insurance policy.
5. Asset – For purposes of transfer of assets, is resources and income.

6. Beneficiary of an annuity – The beneficiary is the person who receives any benefit that is paid upon death of the annuitant prior to the maturity date of the annuity.
7. Child Tax Credit (CTC) - Supplement to the earnings of low income taxpayers with earned income. Must be a parent, step-parent, grandparent, or foster parent with a dependent child. The child tax credit may provide a refund to individuals even if they do not owe any tax. There is no advance payment with CTC.
8. Compensation - Something received as payment for an asset. Payment is usually considered to be cash, but other forms of payment include in-kind income, real or personal property, support and maintenance, services, or assumption of a legal debt.
9. Cost of Care - The amount of money charged to an individual for NF or ICF-MR level of care, a swing bed, or inappropriate level of care bed in a hospital, or waiver services for the Community Alternatives Program (CAP).
10. Current Market Value - The value of an asset if sold on the open market. For real and personal property it is the tax assessed value of the property, unless that value is rebutted and a different value established.
11. Demonstrated Hardship - The a/r, spouse or personal representative proves through the greater weight of evidence that a denial of institutional services due to excess home equity value will cause the a/r an undue hardship.
12. Equity - The equity of real or personal property is the current market value (see definition above) less any encumbrances (mortgages, liens, or judgments) on the property.
13. Focused Risk Management Program (FORM) – (formerly Medication Therapy Management) Medicaid recipients participating in FORM may have their prescription overridden at the discretion of the pharmacist. The pharmacist coordinates, integrates and communicates medication regimen discussions with the recipient's primary care provider and upon consensus, translates the information to the recipient.
14. Greater Weight of the Evidence – Refers to the quality and convincing force of the evidence rather than to the quantity of the evidence.
15. Homesite - When applying the transfer policy the homesite is defined as any property in which the a/r or financially responsible person has an ownership interest **and**
Which is currently used (or during the lookback period was used) as his principal place of residence, or to which he intends (or intended) to return, or
Which is currently used (or during the lookback period was used), as the principal place of residence of his spouse or his dependent relative. It includes the land the home sits on and all buildings and land contiguous to the home.
16. In-Home Health Services and Supplies – Medically necessary services provided to an applicant/recipient (a/r) by a Medicaid certified provider can be sanctioned due to a transfer of assets. These services include the following:

- a. Durable Medical Equipment (DME) and related medical supplies such as wheelchairs, walkers, canes, hospital beds, oxygen and oxygen equipment, needed to maintain or improve a recipient's medical, physical, or functional level.
- b. Home Health Services covers home health aide services, skilled nursing, physical therapy, speech pathology and audiology, and occupational therapy provided by a Medicaid certified home health agency to help restore, rehabilitate or maintain a recipient in the home.
- c. Home Health Supplies include items such as adult diapers, disposable bed pads, catheter and ostomy supplies provided by a Home Health or Private Duty Nursing (PDN) agency. PDN services are not provided to individuals in an Adult Care Home (ACH).
- d. Home Infusion Therapy (HIT) covers self-administered therapies such as nutrition therapy (tube feeding), drug therapy including chemotherapy for cancer treatments, antibiotic therapy and pain management therapy.
- e. Personal Care Services (PCS) are personal care activities such as bathing, toileting, monitoring vital signs, housekeeping and home management tasks essential for maintaining the recipient's health performed by an in-home aide in a private residence.

PCS services provided to individuals in an ACH are not subject to this policy. Refer to [MA-2240](#), Transfer of Assets.

- 17. Institutional Living Arrangement – Institution or establishment that provides food, shelter and some treatment to 4 or more persons who are not related to the owner. This includes nursing facilities, group homes, orphanages, adult care homes, and residential treatment facilities.
- 18. Institutionalized – Long Term Care Budgeting/Community Spouse Resource Allowance and Continuous Period of Institutionalization. This is 30 consecutive days in a medical facility or combination of medical facilities. The facilities are nursing facility, intermediate care facility-mental retardation (ICF-MR), swing bed, inappropriate level of care in a hospital, or hospital acute level, and psychiatric residential treatment facility (PRTF).
- 19. Institutional Services – These services include services provided in a nursing facility (NF), intermediate care facility for the mentally retarded (ICF-MR), swing bed or inappropriate level of care bed, services provided through the Community Alternatives Program (CAP). These services can be sanctioned due to a transfer of assets. This does not include acute hospital care regardless of length of stay.
- 20. Institutionalized for Transfer of Assets – As defined for a transfer of assets review, institutionalized is an individual receiving institutional services in a nursing facility (NF), intermediate care facility for the mentally retarded (ICF-MR), swing bed or inappropriate level of care bed in a hospital or services provided through the Community Alternatives Program (CAP). This is different from the definition of

institutionalized for long term care budgeting or institutional living arrangement when determining state/county residency.

21. Katie Beckett -- (CAP for Children) Medicaid Community Alternatives Program to allow disabled children who are at risk for institutionalization to receive medical care at home. Term used by other states. Katie Beckett is referred to as CAP-C in North Carolina.
22. Legal Representative - A person acting for and legally authorized to execute a contract for the a/r, such as but not limited to a general guardian, guardian of the estate, parent of a minor child, power of attorney, fiduciary (agent), conservator or any trustee managing the a/r's resources. Legal authorization requires a separate legal document except for parents of minor children.
23. Lookback Date - The earliest date in which a transfer of assets for less than fair market value can be assessed. The lookback date varies depending on when an individual applies for Medicaid, is admitted to a NF or ICF/MR or requests CAP services. Sanctions can be determined for transfers that take place on or after the lookback date.
24. Medicare Medical Health Savings Account (MHSA) - Yearly Medicare deposits into an interest-bearing account to help the plan member cover their health care costs until the deductible is met. The accounts are linked to high deductible health insurance policies.
25. Plan to Achieve Self-Support (PASS) --- The Social Security Act authorizes the exclusion of income and resources of an individual who has a disability or is blind when the individual needs such income and resources to fulfill an approved Plan to Achieve Self-Support (PASS).
26. Program of All-Inclusive Care for the Elderly (PACE) --- A program of all-inclusive care for the elderly. Managed care service delivery for the frail community-dwelling elderly, most of whom are dually eligible for Medicare and Medicaid benefits, and all of whom are certified eligible for nursing home placement according to North Carolina standards.
27. Rebuttal – The process by which an a/r or the a/r's spouse proves through a greater weight of evidence factors that eliminate or decrease a sanction period.

28. Remainder Beneficiary - The person(s) entitled to an annuity's principal, possibly including income that has been accumulated and added to the principal, after the death of the annuitant.
29. Sanction Period - The period of time in which an a/r is ineligible for Medicaid payment of institutional services and in-home health services. In order to sanction in-home health services, the sanction period must have begun during a period the individual received institutional services and continues when the individual goes to private living arrangement. The sanction period is also referred to as a penalty period.
30. Transfer - To change ownership or title from one person(s) to another. A transfer also occurs when an individual takes action to waive or renounce assets or an inheritance to which he is entitled or when an individual takes any action that eliminates his ownership or reduces his control of a asset. For example, changing fee simple property to tenancy-in-common property or adding an additional owner to a savings account is considered a transfer.
31. Transfer Date for Real Property or Interest in Real Property - The date of transfer for real property is the day the deed is signed by the grantor, delivered, and accepted by the grantee. Unless fraud is suspected, it is presumed this is the date recorded on the front of the deed. The deed does not have to be notarized or registered in order to be a valid title transfer. However, a deed of gift must be registered within 2 years to remain valid.
32. Undue Hardship – The application of the sanction period would deprive the individual of medical care, such that the individual's health or life would be endangered; or of food, clothing, shelter, or other necessities of life.
33. Undue Hardship Waiver- An individual who incurs a sanction for transfer of assets and is denied or terminated from Medicaid payment of institutional services may request this sanction be waived and can demonstrate the sanction will cause the a/r an undue hardship.

B. MA-2230, Financial Resources

1. Lists assets that are not considered resources for purposes of Medicaid eligibility.

The following are not resources in determining Medicaid eligibility:

- a. Cash to purchase medical or social services, cash placed in burial accounts, money used as part of a Plan for Achieving Self-Support (PASS), and money placed in dedicated accounts for children.

For one calendar month following its receipt, cash paid by a recognized medical or social services program is not a resource provided the cash is not income and not repayment for a bill already paid.

- b. Home energy assistance/support and maintenance assistance (HEA/SMA) regardless of how long a person retains it.
 - c. Certain stock in Alaska regional or village corporations. Do not include shares of stock held by a native Alaskan in a regional or village corporation as a resource.
2. Includes the description of the Plan to Achieve Self-Support (PASS) program.

The Social Security Act authorizes the exclusion of income and resources of an individual who has a disability or is blind when the individual needs such income and resources to fulfill an approved Plan to Achieve Self-Support (PASS).
3. Counts as an available resource certain continuing care retirement community entrance (CCRC) fees.
4. Instructs the caseworker not count as income money paid directly to a provider for any items other than food or shelter. The value assigned to in-kind income cannot exceed 1/3 of the SSI amount plus \$20.
5. Clarifies that the homesite or former homesite, even after it is made income producing, may result in sanction for transfer of assets if requesting or receiving institutional services.
6. Clarifies procedures regarding term life insurance that carries a cash value.
7. Includes a new Life Estate and Remainder Interest Table.
8. Includes additional space on the [MA-2230, Figure 8](#), Income Producing Property Guide, to show the value of the property after deducting \$6,000 before adding other assets.
9. Annuities
 - a. Clarifies that an annuity guarantees the annuitant (person who receives benefit from the annuity) periodic payments of a fixed amount for a specified term of years, for life, or until some specified event takes place in exchange for the payment of a fixed sum.
 - b. Eliminates evaluation of an annuity as whole life when not annuitized.
 - c. Clarifies that the Single Premium Pure Endowment policies pay a benefit in a balloon payment only to those persons who survive a certain period of time. The endowment portion is similar to an annuity. The purchase of a Single Premium Pure Endowment policy is an uncompensated transfer.

10. Instructs the caseworker to use the NADA book or internet site www.nadaguides.com for unlicensed vehicles not registered in the tax office. If the vehicle is older than those listed, use the last value given in NADA. Reference to “junked” cars has been replaced with “unlicensed vehicle”.
11. Excludes any portion of the lump sum of Child Tax Credit, Earned Income Tax Credit, SSI or RSDI from resources for the 9 calendar months following the month of receipt. This includes SSA/SSI lump sums that are prorated and paid out over a period of time.
12. Instructs the caseworker to count stock or self employed ownership interest as a resource for a Corporation.
13. Updates the telephone number and adds the fax number for the DMA Medicaid Eligibility Unit. The telephone number is (919) 855-4000. The DMA Medicaid Eligibility Unit fax number is (919) 715-0801. Send a fax of the court orders to the DMA Medicaid Eligibility Unit.
14. Clarifies the meaning of the word “child” to “natural child” when determining the dependent relative relationship of who lives in the applicant/recipient’s home for the transfer of the homesite to remain an allowable transfer.
15. Instructs the caseworker that property used in trade or business (e.g. a family farm) is excluded regardless of value and amount of profit. However, it must be in current use or, if not in use for reasons beyond the individual’s control, there must be a reasonable expectation that the current use will resume.
16. Provides additional information about the Tobacco Transition Payment Program (TTPP), also known as the Tobacco Buy-Out, which eliminated the tobacco quota allotment system by calculating the value of lost quota and providing compensation in the form of cash installment payments to both tobacco quota owners and tobacco quota growers. Effective October 22, 2004, eligible quota owners and quota growers who applied for the program receive annual installment payments over a 10 year period. Both the tobacco quota grower and the tobacco quota owner have the option to enter into an assignment or successor-in-interest contract to receive the annual payments in a lump sum payment.

Follow these procedures for the quota owners:

- a. Determine if the balance of the tobacco allotment contract can be sold to an approved financial institution for a lump sum payment. The list for approved financial institutions can be found at www.fsa.usda.gov.
- b. Once the balance of the allotment contract is verified as salable to an approved financial institution, the total allotment contract value is counted as a resource.
- c. If the balance of the allotment contract for a tobacco quota owner has been verified as non-salable to an approved financial institution for a lump sum payment, the annual payments received by the quota owner are counted as annual unearned income for the year in which they are received.

- d. If you verify that the balance of the allotment contract has been sold to an approved financial institution by a tobacco quota owner, count the total cash payments received by the quota owner as a resource for the year in which they are received.
17. Clarifies that Medicare Medical Health Savings Account (Medicare Advantage) (MHSA) are yearly Medicare deposits into an interest-bearing account to help the plan member cover their health care costs until the deductible is met. The accounts are linked to high deductible health insurance policies. These plan account funds are a countable resource for Medicaid purposes.

Every year Medicare makes a deposit into an interest-bearing account to help the plan member cover their health care costs until the deductible is met. Therefore, the account funds are countable as a resource.
 18. Refers caseworker to [MA-2240](#), Transfer of Assets, regarding fair market value for promissory notes, loans, mortgages, or other property agreements.
 19. Includes instructions for using form [DSS-3431](#), Request for Financial Information. These instructions obsolete DMA Administrative Letter Number 34-87.
 20. Provides guidance when evaluating the validity of a Limited Liability Corporation (LLC), when determining if property used in a trade or business is excluded as a resource.
 21. Provides guidance when evaluating annuities purchased prior to November 1, 2007, and guidance when evaluating annuities purchased or changed on or after November 1, 2007.
 22. Includes forms, [MA-2230, Figure 14](#), DMA-5110, Notice About Your Request for Medical Assistance Coverage for Institutionalized Services and Disclosure of Annuities, [MA-2230 Figure 15/DMA-5111](#), Annuity Verification Form, [MA-2230 Figure 16](#), DMA-5112, Informational Notice Regarding Annuities and Medicaid Eligibility.
 23. Clarifies that grants, scholarships, and fellowships are amounts paid by private nonprofit agencies, the U.S. government, instrumentalities or agencies of the U.S., state and local governments, foreign governments, and private concerns to enable qualified individuals to further their education and training by scholastic or research work, etc.
 - a. Any portion of educational assistance that is not used to pay current tuition, fees or other necessary educational expenses, but will be used for paying this type of educational expense at a future date is excluded from resources for 9 months beginning the month after the month it was received. This applies to undergraduate as well as graduate students.
 - b. All financial assistance received by undergraduate/graduate students for educational purposes made under the Higher Education Act of 1965 (HEA) or

Bureau of Indian Affairs (BIA) student assistance programs is excluded from income and resources regardless of use. Refer to MA-2250, Income.

EXAMPLES: Perkins Loans; Stafford Loans such as the National Direct (Defense) Loan; Federal Supplemental Educational Opportunity Grant (FSEOG); Pell Grants, College Work-Study Programs including PACE, NC Student Incentives Grants; Upward Bound; etc.

C. MA-2270, Long Term Care Need and Budgeting

1. Refers caseworkers to [MA-2240](#), Transfer of Assets, when the first month's PML must be calculated after a sanction period has been imposed.
2. Changes the name of the Food Stamp Program to Food and Nutrition Services.
3. Updates the phone number for Program Integrity. The number is (919) 647-8000.
4. Clarifies when a sanction period has been imposed, do not allow as an unmet medical need the cost of care for these months or the fractional amount in the last month of the sanction.
5. Changes the name of the Division of Facility Services (DFS) to the Division of Health Service Regulation (DHSR).
6. Changes the amount of monthly prescriptions to which Medicaid recipients are limited to eight unless otherwise participating in the Focused Risk Management Program (FORM) and/or the prescription is overridden at the discretion of the pharmacist with three additional prescriptions per recipient per month.
7. Deletes the words, "half up to" when referring to the monthly incentive amounts.

E. MA-2301, Conducting A Face-To-Face Interview

1. Request a written statement by the applicant/recipient from any non-relative who is applying on behalf of an individual authorizing the non-relative to act as his authorized representative. Do not refuse to take or deny the application if the statement is unavailable at application. If the statement is unavailable at application, request the statement as additional information.
2. Adds a reference link to [MA-2910](#), Medicaid Transportation, for specific information concerning Medicaid Transportation.
3. Adds [MA-2301, Figure 5](#), Explanation of The Effect of Transfer of Assets On Medical Assistance Eligibility. Caseworkers must give this fact sheet to the a/r at each application and each redetermination started on or after November 1, 2007.
4. Adds the Medicaid Family Planning Waiver as a choice of program.
5. Changes the name of the Food Stamp Program to Food and Nutrition Services.

6. Clarifies procedures for completing the Lifeline and/or Link-Up Application, [DSS-8168I/DSS-8168Isp](#), and adds that a Family Planning Waiver (FPW) recipient is not eligible for Life Line Link Up Assistance.
7. Changes the term Carolina Access to Community Care of North Carolina/Carolina Access (CCNC/CA). The caseworker is advised to refer to MA-2425, Community Care of North Carolina/Carolina Access (CCNC/CA) to determine if the assistance unit member is required to participate in CCNC/CA.
8. Updates the phone number for Electronic Data System (EDS) regarding Certificates of Creditable Coverage. The number is (800) 688-6996.
9. Clarifies that if the equity value of the homesite is over \$500,000, and there is not a spouse, disabled, blind or minor child living in the home, the applicant/recipient is ineligible for nursing home cost of care or CAP waiver programs. The individual may still be eligible for Medicaid PLA. Refer to [MA-2242](#), Home Equity Value & Eligibility For Institutional Services.
10. Instructs the caseworkers to interview the individual and the individual's spouse or their legal representative regarding income and resources for a period of 36 months up to 60 months to determine if a transfer (s) occurred and document the response in the case record.
11. Explains that if an annuity is purchased or changed on or after November 1, 2007, by the a/r or by the a/r's spouse, or by their representative the State of North Carolina Medicaid Program must be named as a remainder beneficiary.
12. The DMA-5097, Request For Information, has been revised to request:
 - a. Proof that the State of North Carolina Medicaid Program is named as remainder beneficiary on an annuity.

- b. Documentation to rebut a transfer of assets sanction or to prove a transfer of assets sanction will cause an undue hardship or both.
- c. Proof of homesite equity.
- d. Contact information for issuer of an annuity.

F. MA-2303, Verification Requirements For Applications

1. The following now requires third party verification:
 - a. If the purchase/change date of an annuity is November 1, 2007, or later, the following criteria must be verified:
 - (1) North Carolina's Medicaid Program is named as a remainder beneficiary.

North Carolina's Medicaid Program is named as a remainder beneficiary in the first position. If there is a community spouse and/or any child or children under age 21, or a disabled child or children of any age, when the purchase/change takes place North Carolina's Medicaid Program may be named in the next position after those individuals. This applies to the a/r and the a/r's spouse.

Note: The amount that the State of North Carolina Medicaid Program can receive, as a beneficiary of a Medicaid recipient's annuities, is limited to the amount that Medicaid paid on behalf of the Medicaid recipient.
 - b. Meets the annuity criteria in [MA-2230](#), Financial Resources, in the Aged, Blind and Disabled Medicaid Manual.
2. Proof of the homesite equity value. Request proof of the equity of the homesite if the tax value of the homesite exceeds \$500,000.00.
3. Proof to substantiate undue hardship. Request documentation from the a/r or the a/r's spouse or their legal representative to rebut that a sanction for transfer of assets will cause an undue hardship.
4. The DMA-5098, Your Application For Medicaid Is Pending, has been revised to:
 - a. Notify the applicant that his application cannot be completed because documentation to rebut a transfer of assets sanction or to prove a transfer of assets sanction will cause an undue hardship or both has not been received.
 - b. Clarifies that the DSS must obtain the verification for the a/r when third party verification is required for certain eligibility factors.

G. MA-2304, Processing the Application

1. Clarifies that the begin date cannot be earlier than November 1, 2007, when entering the "WVR" code for excluding days due to undue hardship.

2. Clarifies that an application must be reopened within 5 days as a result of any of the following:
 - a. Local or state appeal reversal, or
 - b. Remanded appeal by the local or state hearings officer, or
 - c. Improper denial or withdrawal found by the county, monitors, or Medicaid Program Representatives, or
 - d. Misapplication of policy (incorrect denial), or
 - e. Discouragement.

H. MA-2360, Medicaid Deductible

Refers the caseworker to [MA-2240](#), Transfer of Assets, to determine when the CAP indicator is entered for CAP applicants/recipients subject to a deductible and a sanction period.

III. EFFECTIVE DATE AND IMPLEMENTATION

This policy is effective November 1, 2007. Apply this policy at each redetermination started on or after November 1, 2007, and each application taken on or after November 1, 2007. This change notice obsoletes DMA Administrative Letter Number 34-87.

IV. MAINTENANCE OF MANUAL

A. Remove: Table of Contents, pages 1-3.

Insert: [Table of Contents](#), pages 1-3 revised 11/01/07.

B. Remove: MA-200, Definitions, pages 1-30.

Insert: [MA-200](#), Definitions, pages 1-33 dated 11/01/07.

C. Remove: MA-2230, Financial Resources, pages 1-94 and [Figure 4](#), [Figure 8](#) and [Figure 11](#).

Insert: [MA-2230](#), Financial Resources, pages 1-113 and [Figure 4](#), [Figure 8](#), [Figure 14](#), [Figure 15](#) and [Figure 16](#) dated 11/01/07.

D. Remove: MA-2270, Long Term Care Need And Budgeting, pages 1-44 and [Figure 1](#).

Insert: [MA-2270](#), Long Term Care Need And Budgeting, pages 1-52 and [Figure 1](#) dated 11/01/07.

E. Remove: MA-2301, Conducting A Face-To-Face Interview, pages 1-21 and [Figure 2](#).

Insert: [MA-2301](#), Conducting A Face-To-Face Interview, pages 1-21 and [Figure 2](#)
[Figure 2a](#) and [Figure 5](#) dated 11/01/2007.

F. Remove: MA-2303, Verification Requirements For Applications, pages 1-7 and Figure 2A and Figure 2B.

Insert: [MA-2303](#), Verification Requirements For Applications, pages 1-8 and [Figure 2A](#) and [Figure 2B](#) dated 11/01/07.

G. Remove: MA-2304, Processing The Application, pages 3-14 and the DMA-5097 and the DMA-5098 dated 10/01/02.

Insert: [MA-2304](#), Processing The Application, pages 3-14 dated 11/01/07.

H. Remove: MA-2360, Medicaid Deductible, pages 1 and 2.

Insert: [MA-2360](#), Medicaid Deductible, pages 1 and 2 dated 11/01/07.

If you have any questions regarding this information, please contact your Medicaid Program Representative.

William W. Lawrence, Jr., M.D.

(This material was researched and written by Sandi Morrow, Policy Consultant Medicaid Eligibility Unit.)