Medical Assistance Treatment of Assets and Income

September 2021

Executive Summary

Medical Assistance (MA) provides payment for nursing home and other long-term care services for people whose assets are at or below the limits prescribed in state law and whose income has been used to pay health service bills.

The MA program limits the amount of income and the value of assets a recipient may have. If an MA recipient lives in the community and is age 65 or older, the income limit is $1,074 per month, or $1,453 for a couple. Individuals with incomes higher than this can spend down their income to qualify for MA. MA recipients who live in a nursing home must contribute most of their income to the cost of nursing home care.

The asset limit is $3,000 for an individual and $6,000 for a couple. Several assets are excluded from the MA asset limit.

The MA program specifies how the income and assets of a married couple are treated when one spouse receives certain long-term care services and applies for MA. At the time of application for MA for Elderly Waiver services or for a spouse residing in a long-term care facility, an asset assessment is conducted. In 2021, the spouse receiving long-term care can transfer assets to the spouse who is still living in the community to bring that spouse's assets to a maximum of $130,380.

The long-term care spouse must use nearly all of his or her income to pay for the cost of long-term care services, while the community spouse can keep all of his or her income and is not required to pay for the care of the long-term care spouse if that spouse is eligible for MA.

The MA program places some prohibitions on the transfer of assets and income. In general, a person seeking or receiving long-term care cannot transfer assets or income for less than fair market value, though there are several exceptions. If a person does so, he or she may lose eligibility of MA coverage of long-term care services.

Please note: This publication provides general information on asset and income provisions and 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

By **Sarah Sunderman**

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.

Contents

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 program eligibility requirements. The MA program will pay for long-term care services for individuals whose assets are at or below the limits prescribed in state law and whose income, minus certain deductions, has been contributed toward the cost of long-term care services. Minnesota's MA program also has federal approval to provide home and community-based "waivered services" to certain MA recipients who would otherwise need nursing facility or other institutional level of care.[1] Persons can apply for MA by contacting their local county or tribal human services agency.

General Income and Asset Limits in the MA Program

The MA program sets limits on the amount of income and the value of assets a recipient may have.

Income is defined as net countable income after certain allowable deductions have been subtracted. **Assets** include all real and personal property owned by the recipient. When a married 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.

[1] For more information on home and community-based waivered services, see the House Research Department publication, *Medicaid Home- and Community-Based Waivered Services*, October 2016.

In general, an MA recipient living in the community who is age 65 or older may have income of no more than $1,074 per month. This limit is $1,453 for a couple.[2] However, individuals with incomes higher than these limits can still qualify for MA by "spending down" their income. Spending down means that the individual pays for medical expenses out-of-pocket that equal or exceed the amount by which the individual's income exceeds the MA spenddown limit.[3]

In contrast to an MA recipient living in the community, an MA recipient living in a nursing home must contribute most of his or her income towards the costs of nursing home care (see page 5).

The MA asset limit is $3,000 for an individual and $6,000 for a couple. The following assets are excluded from consideration when eligibility for MA is determined:[4]

- The homestead (real property or personal property used as a home), subject to an equity limit of $603,000 effective January 1, 2021 (see Appendix B for more details)
- A motor vehicle, regardless of value, if it is used for transportation of the recipient or a member of the recipient's household
- Household goods and certain personal effects
- Prepaid burial spaces and burial space items
- Burial funds (up to $1,500 each for the recipient and the recipient's spouse), irrevocable prepaid burial arrangements ($2,000 for an individual, or $3,000 for a couple), and life insurance or annuity-funded burial arrangements under contract
- Capital and operating assets of a business necessary to earn an income

In addition, if an applicant for MA payment of long-term care services has exhausted benefits under a long-term care insurance policy issued on or after July 1, 2006, and that policy qualifies under the state's long-term care partnership program, an amount of assets equal to the dollar amount of benefits paid out under the qualifying policy is disregarded for purposes of determining eligibility for MA payment of long-term care services. These assets are also protected against estate recovery[5] and are not subject to asset transfer penalties.[6]

---

[2] These income limits became effective July 1, 2021, and are set at 100 percent of the federal poverty guidelines. They are adjusted each July 1 to reflect changes in the federal poverty guidelines.

[3] See Minnesota Statutes, section 256B.056, subdivision 5c. As of July 1, 2021, the spenddown limit for persons who are elderly, blind, or disabled is 81 percent of the federal poverty guidelines ($870 per month for an individual and $1,177 per month for a couple).

[4] See Minnesota Statutes, section 256B.056, for a more complete explanation of asset limits in the MA program. "Personal property" means all property other than real estate.

[5] Federal and state law require the Department of Human Services and local county or tribal agencies to recover costs that MA paid for specified health care services through estate recovery processes. For more information, see the House Research Department publication, *Medical Assistance Estate Recovery and Liens*, November 2017.

[6] See Minnesota Statutes, section 256B.0571, for a more complete description of the long-term care partnership program.

MA Program Provisions for Dividing Income and Assets

Definition of Terms

Long-term care services: For purposes of spousal asset assessments, "long-term care services" means care provided in a nursing facility, hospital, an intermediate care facility for persons with developmental disabilities (ICF/DD), or home care services that would be covered through the Elderly Waiver or the Alternative Care program. The other home and community-based waiver services, Community Alternative Care (CAC), Community Alternatives for Disabled Individuals (CADI), Developmental Disabilities (DD), and Brain Injury (BI), are also long-term care services.

Long-term care spouse: The spouse who resides in a long-term care facility or who receives Elderly Waiver services for at least 30 consecutive days and is married to a community spouse.

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

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

When a long-term care spouse seeks MA coverage for certain long-term care services for a continuous period expected to last at least 30 consecutive days, the MA program conducts an **asset assessment to determine the Community Spouse Asset Allowance (CSAA)—the amount the community spouse is permitted to keep.**

A Medicaid state plan amendment was approved in May 2020, effective October 1, 2019, limiting the spousal asset assessment to long-term care spouse applicants for MA applying for Elderly Waiver services or who live in a long-term care facility. **The spousal asset assessment is no longer conducted for applicants for other types of home and community-based waiver services; community spouse assets are not considered for eligibility purposes for these applicants.**

The asset assessment is based on the assets owned by one or both spouses on the date of application for MA coverage. The spousal share is calculated only once and is used for any subsequent periods during which a person may receive long-term care services.

The division of marital assets is subject to a maximum specified in law; the long-term care spouse can transfer available assets to the community spouse to bring that spouse's assets up to the maximum.

All assets not protected for the community spouse must be reduced to the MA asset limit of $3,000. The assets determined to be available to the long-term care spouse must be reduced to the MA asset limit of $3,000.

The long-term care spouse is allowed to transfer available assets to the community spouse until the value of the assets retained by the community spouse reaches the federal maximum. The $130,380 maximum spousal share amount is effective from January 1, 2021, to December 31, 2021. These amounts are adjusted each January 1 by the percentage change in the Consumer Price Index (CPI-U).

The long-term care spouse may be eligible for MA under a **hardship waiver**, even if assets in excess of the maximum amount exist (in a tax-deferred retirement account or postsecondary education savings plan, for example). A hardship waiver may be granted if the community spouse owns the assets and does not make those assets available to the long-term care spouse (the long-term care spouse cannot use those assets without the consent of the community spouse), and if any of the following circumstances exist:

- the long-term care spouse assigns the right to support from the community spouse to the commissioner of human services
- the long-term care spouse cannot assign the right to support due to a physical or mental impairment
- the denial of eligibility would cause an imminent threat to the long-term care spouse's health and well-being

When a hardship waiver is granted, the local agency makes a referral to the county attorney's office to determine if a cause of action exists against 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 specified 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 $105 per month.[7] Other allowable deductions are listed in Minnesota Statutes, section 256B.058.

The community spouse can keep all of his or her income and is not required to contribute towards the cost of care of the long-term care spouse after the long-term care spouse is determined eligible for MA.

Beginning with the first 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. The community spouse's income does not affect the long-term care spouse's eligibility once the long-term care spouse has received long-term care services under MA, as long as there is no break in MA-LTC eligibility for one or more calendar months.

[7] This personal needs allowance is adjusted for inflation each year. For a more detailed list of the permitted deductions, see Minnesota Statutes, section 256B.0575.

Some income of the long-term care spouse can be used to provide a monthly income allowance to the community spouse and a monthly family allowance for certain dependent family members.

The long-term care spouse can use his or her income to provide the community spouse with a monthly income allowance. This allowance is the 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 $2,178, effective July 1, 2021[8]), plus an excess shelter allowance equal to the amount by which the community spouse's housing costs exceed 30 percent of this federal poverty guideline figure for two; or
- $3,259.50.[9]

If the income of the long-term care spouse is not sufficient to raise the income of the community spouse to this standard, income-producing assets can also be transferred in an amount sufficient to reach the standard.

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 amount of monthly income specified by the court order.

The long-term care spouse can also provide a monthly family allowance to minor or dependent children, dependent parents, or dependent siblings residing with the community spouse, who have incomes that are less than 150 percent of the federal poverty guidelines. For minor children not living with the community spouse, the amount of the allowance is equal to the difference between the gross income of the children and 100 percent of the federal poverty guideline amount for the applicable family size. For other eligible family members, the family allowance is the family member's gross income subtracted from 150 percent of the federal poverty guideline (the minimum monthly income allowance).

[8] The $2,178 amount became effective July 1, 2021, and will remain in effect until the federal poverty guidelines are updated.

[9] The $3,259.50 monthly maximum became effective January 1, 2021, and will remain in effect until December 31, 2021.

Prohibitions on Asset and Income Transfers

Definition of Terms

Long-term care services: For purposes of asset transfer provisions, "long-term care services" means care provided in a nursing facility, hospital swing bed, intermediate care facility for persons with developmental disabilities (ICF/DD), or through one of the home and community-based services under MA.

Look-back period: A designated period of time prior to a request for MA payment of long-term care services during which transfers made by a person or the person's spouse are evaluated.

Transfer penalty: The calculated length of time a person requesting MA payment of long-term care services is ineligible for those payments due to an uncompensated transfer during a look-back period.

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

A person may be penalized under the MA program if the person, the person's spouse, or any other person or entity with legal authority to act on the person's or spouse's behalf, gives away or otherwise transfers assets or income for less than the fair market value. State and federal law on MA asset and income transfers[10] prohibits a person from making such uncompensated transfers, with the intent to obtain or retain MA, within a **60-month "look-back period,"** while the MA application for long-term care services is pending, or while the person is eligible for MA payment of long-term care services.

Certain transactions involving: (1) annuities; (2) promissory notes, loans, or mortgages; and (3) life estate interests in another individual's home, are classified as transfers for less than fair market value, unless specified criteria are met. See Appendix B for a description of these and other uncompensated transfer classifications.

Asset and income transfer prohibitions apply to single adults without children who are eligible for MA under Minnesota's Medical Assistance expansion and who receive long-term care services.

There are exceptions to the prohibition on asset and income transfers.

The MA program allows for several exceptions to the prohibition on asset and income transfers. For example, a person may transfer a homestead, other assets, and income at less than fair market value to a spouse, or to a qualifying child. See Appendix A for a detailed list of the exceptions to the asset and income transfer prohibition.

[10] See Minnesota Statutes, sections 256B.059 and 256B.0595.

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

The transfer penalty for making uncompensated transfers is that the person is ineligible for MA-paid long-term care services for a calculated period of time. The person remains eligible for all other MA services during the transfer penalty.

The length of the transfer penalty is determined by dividing the value of the uncompensated transfer by the average monthly payment rate for nursing facility services.

The length of the transfer penalty is calculated by dividing the total value of all uncompensated transfers of assets or income made during the look-back period by the statewide average monthly payment rate for nursing facility services (SAPSNF).[11] This calculation results in the number of months for which a person is not eligible for long-term care services. If this calculation results in a fractional month of ineligibility, this fraction is multiplied by the statewide average monthly payment rate for nursing facility services. This is the dollar amount of long-term care services that the recipient will be financially responsible for during the last, partial month of ineligibility.

For example, if an individual makes uncompensated transfers of $15,000 in one month, the period of ineligibility is calculated by dividing $15,000 by $8,781,[12] resulting in a quotient of 1.7. The individual will be ineligible for long-term care services for one month and will be financially responsible for $6,146.70 as a result of the fractional month of ineligibility (0.7 x $8,781 = $6,146.70).

Periods of ineligibility due to a transfer penalty begin on the date an individual would otherwise be eligible for MA payment of long-term care services.

If a person makes a transfer during the look-back period, a person's period of ineligibility begins in the month in which the individual requests MA payment of long-term care services and is otherwise eligible to receive MA payment of long-term care services but for application of the transfer penalty.

The transfer penalty period for persons who make uncompensated transfers at a time when MA is already paying for long-term care services begins the first month following the month in which a ten-day notice is provided following the uncompensated transfer.[13]

[11] The current statewide average monthly payment rate for nursing facility services is $8,781. This amount became effective July 1, 2021, and applies to persons who apply for MA on or after that date; it is recalculated each July 1.

[12] $8,781, is the current statewide average monthly payment rate for nursing facility services in effect on the date the person requests MA payment of long-term care services.

[13] Minnesota Statutes, section 256B.0595, subdivision 2, paragraph (b), authorizes the penalty period to begin in this situation: "the first day of the month following advance notice of the period of ineligibility, but no later than

Transfer penalties for transfers that result in partial months of ineligibility are combined and treated as one transfer.

If the transfer of assets is valued at less than the statewide average monthly payment rate for nursing facility services made in more than one month, the total, cumulative, uncompensated value of all assets transferred is treated as one transfer, and the transfer penalty begins on the date the individual would otherwise be eligible for MA payment of long-term care services.

the first day of the month that follows three full calendar months from the date of the report or discovery of the transfer…" Ten days' advance notice is required before a penalty period can begin.

Appendix A: Exceptions to the Transfer Prohibitions

A **homestead** can be transferred for less than fair market value without penalty if:

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

- spouse
- child under 21, including a child of the individual's spouse
- blind or certified disabled child, including a child of the individual's spouse
- sibling who has equity interest in the home and who resided in the home for at least one year before the 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 rather than in a facility

(b) the individual demonstrates intent to dispose of the house at fair market value or for other valuable consideration; or

(c) the local agency grants a waiver because denial of eligibility would cause undue hardship (in this case, a cause of action may exist against the person(s) receiving the asset).

Nonhomestead assets or income may be transferred at less than fair market value if:

(a) the transfer is to the spouse or to another individual for the sole benefit of the spouse;

(b) the transfer is to the transferor's child who is blind or permanently and totally disabled, or is to a trust for an individual under age 65 who is disabled according to criteria of the federal Supplemental Security Income (SSI) program;

(c) the local agency grants a waiver because denial of eligibility would cause undue hardship, based on an imminent threat to the individual's health and well-being; or

(d) the individual demonstrates intent to dispose of the assets at fair market value or for other valuable consideration.

Appendix B: Eligibility and Asset Transfer Prohibitions

Eligibility

Homestead equity limit for institutionalized persons. For recipients who continuously receive MA payment of long-term care services, the homestead equity limit is increased annually by the change in the Consumer Price Index, rounded to the nearest $1,000. In 2021, the homestead equity limit is $603,000. This provision can be waived in the case of demonstrated hardship by a process determined by the federal Secretary of Health and Human Services.

The homestead is excluded if the homestead is the lawful residence of the individual's spouse or child who is under age 21, blind, or disabled, the individual's sibling who has an equity interest in the home and who has lived in the home for at least one year, or a child or grandchild who lived in the home for at least two years prior to the individual's admission to the facility, and who provided care that permitted the person to remain at home. The homestead is excluded for the first six calendar months of a person's stay in a long-term care facility, and continues to be excluded for as long as the individual is reasonably expected to return to the homestead. [Minn. Stat. § 256B.056, subd. 2, 2a]

Treatment of entrance fees. An entrance fee paid to a continuing care retirement or life care community is treated as an available asset to the extent that:

1) the individual has the ability to use the fee, or the contract allows the fee to be used, to pay for care should other resources or income be insufficient;
2) the individual is eligible for a refund of remaining fees when the individual dies or terminates the contract; and
3) the entrance fee does not confer an ownership interest.

[Minn. Stat. § 256B.056, subd. 3e]

Disclosure of annuities. Individuals applying for or seeking recertification of eligibility for MA payment of long-term care services must provide to the department a complete description of any interest either the individual or the individual's spouse has in annuities, using a form provided by DHS. The disclosure form must include a statement that DHS becomes the remainder beneficiary under the annuity or similar financial instrument by virtue of receipt of MA. The individual and the individual's spouse must execute separate disclosure forms for each annuity or similar instrument.

The issuer of an annuity must confirm that this designation has been made and notify the county agency when there is a change in the amount of income or principal being withdrawn from the annuity. The county agency must provide the issuer with contact information. [Minn. Stat. § 256B.056, subd. 11]

Long-Term Care Partnership Program

The Long-Term Care Partnership Program is a state option that allows MA applicants to exclude assets upon MA application, and protect assets from MA recoveries, in an amount equal to the benefits paid out by a qualified long-term care insurance policy. In order to qualify for the program, applicants must have exhausted all of the benefits under the insurance policy and benefits under the policy must not have been paid out prior to July 1, 2006.

The Long-Term Care Partnership Program:

- allows beneficiaries to exchange existing long-term care insurance policies or add necessary riders, in order for those policies to meet federal standards for partnership policies. The exchange of policies and addition of riders is allowed unless the policy is already paying benefits on the date the policy is exchanged or the rider is added;
- exempts assets designated as protected from asset transfer penalties; and
- specifies inflation protection requirements and provisions related to the offering of an elimination or deductible period, meeting implementation requirements, provision of total asset protection policies, and minimum daily benefits.

[Minn. Stat. ch. 62S, and § 256B.0571]

Asset Transfer Prohibitions

Treatment of annuities. The purchase of an annuity on or after February 8, 2006, by or for an individual who has applied for or is receiving long-term care services, or the individual's spouse, is treated as a disposal of an asset for less than fair market value, unless DHS is named as a preferred remainder beneficiary and the annuity meets specified Internal Revenue Code and other standards.

A change in the designation of DHS as remainder beneficiary results in the annuity being treated as a disposal of assets for less than fair market value. Issuers of annuities are required to notify county agencies when there is a change in the amount of the income or principal being withdrawn from the annuity. A change in the amount of income or principal withdrawn may be treated as a disposal of assets for less than fair market value. [Minn. Stat. § 256B.0595, subd. 1, paras. (e) and (f)]

When a payment becomes due under an annuity that names DHS a remainder beneficiary, the issuer must request and DHS must provide a written statement of the total amount of MA paid. The issuer must pay DHS an amount equal to the lesser of the amount due the department under the annuity or the total amount of MA paid on behalf of the individual or individual's spouse. Any amounts remaining are payable according to the terms of the annuity. [Minn. Stat. § 256B.0594]

Promissory notes, loans, and mortgages. The prohibition on transfers for less than fair market value applies to funds used to purchase a promissory note, loan, or mortgage, unless the instrument purchased has a repayment term that is actuarially sound, provides for payments to be made in equal amounts with no deferral or balloon payments, and prohibits cancellation of the balance upon the death of the lender. [Minn. Stat. § 256B.0595, subd. 1, para. (h)]

Life estates. The purchase of a life estate in another individual's home constitutes a transfer for less than fair market value, unless the purchaser resides in the home for a period of at least one year after the date of purchase. [Minn. Stat. § 256B.0595, subd. 1, para. (i)]

Start date for period of ineligibility. For uncompensated transfers made by or on behalf of an individual *receiving* MA payment of long-term care services, the period of ineligibility begins the first day of the month following the advance notice of the period of ineligibility. For uncompensated transfers by individuals *requesting* MA payment of long-term care services, the period of ineligibility begins on the date on which the individual is eligible for MA and would otherwise be eligible to receive MA payment of long-term care services but for application of the penalty period. [Minn. Stat. § 256B.0595, subd. 2, para. (b)]

Undue hardship waiver requests by facility. A long-term care facility, with the written consent of a resident or the resident's personal representative, may file an undue hardship waiver request on behalf of a resident who is denied eligibility for MA payment of long-term care services. When a waiver is granted, a cause of action exists against the person to whom an asset was transferred. The local agency, in evaluating the waiver request for nonhomestead transfers, must take into account whether the individual has taken any action to prevent designation of DHS as a remainder beneficiary on an annuity. [Minn. Stat. § 256B.0595, subds. 3 and 4]