REPORT OF THE
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

EXAMINATION OF MEDICAID TRANSFER OF ASSETS RULE AS IT RELATES TO LAND-USE ASSESSMENTS

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 7

COMMONWEALTH OF VIRGINIA
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TABLE OF CONTENTS

	Page
INTRODUCTION	3
Study Methods	3
Summary of Findings	3
BACKGROUND	4
Medicaid Eligibility	4
Resource Eligibility	4
LONG TERM CARE SERVICES	4
Asset Transfers	5
PROPERTY ASSESSMENTS	6
Use Value Taxation	6
RESOURCE EVALUATION METHODS	7
Survey of States-Summary	7
Centers for Medicare and Medicaid Services' Response	7
CONCLUSION	8
APPENDICES	9

INTRODUCTION

House Joint Resolution (HJR) No. 5 from the 2002 General Assembly Session directed the Department of Medical Assistance Services (DMAS) to examine its transfer of assets rule as it relates to land-use assessments and eligibility for Medicaid. (See Appendix A for a copy of the resolution). This report discusses the federal Medicaid eligibility requirements and the ability to implement an alternative method for evaluating transfer of assets when an individual applies for long term care services under Medicaid.

Study Methods

DMAS used three methods to conduct this study.

- A review of current Virginia statutes and regulations regarding Medicaid eligibility and a review of land use assessments in Virginia.

- A survey questionnaire was mailed to all 50 States and the District of Columbia to evaluate methods utilized by other states for ascertaining current market value of real property for Medicaid eligibility. Survey responses were received from 33 out of 51 mailed. (See Appendix B for a copy of the survey and a summary of the responses.)

- Written clarification was requested from the Centers for Medicare and Medicaid Services (CMS) regarding the viability of substituting land-use assessment for the full assessed value of property for the purpose of assessing Medicaid asset transfers. (See Appendix C for a copy of the response from CMS.)

Summary of Findings

There were two major findings of this report.

First, a compilation of the survey responses received from the 33 states that responded reflected one consistent response; for Medicaid eligibility determinations and the evaluation of asset transfers, the current market value of property is evaluated. No other method is utilized by the states.

Second, the Centers for Medicare and Medicaid Services responded that "tax assessments at other than 100 percent of fair market value would not meet the Federal definition of fair market value, and could not be used as a proxy for fair market value for Medicaid asset transfer purposes."

This report consists of four sections; the first section, Background, provides an overview of Medicaid Eligibility and Resource Eligibility; the second section is Long Term Care Services and an explanation of Asset Transfer; the third section is Property Assessments and Use Value Taxation; and the fourth section discusses Resource Evaluation Methods consisting of the Survey to States-Summary and Centers for Medicare and Medicaid Services' Response.

BACKGROUND

Medicaid Eligibility

Medicaid is authorized under Title XIX of the federal Social Security Act. It is a means-tested entitlement program with income and resource limits. States have considerable flexibility in establishing eligibility standards and the type and amount of services provided in administering the program as long as the federal minimum standards are met. Medicaid covers three main groups of low-income individuals: the elderly, the disabled, and parents and children. For each group there are federal statutory and regulatory requirements for establishing eligibility. Historically, Medicaid eligibility has been tied to eligibility for cash assistance. The Supplemental Security Income program is the basis for eligibility determinations for the adult population.

Resource Eligibility

In the resource determination, not everything an individual owns (asset) is a countable resource for Medicaid; however, all assets owned by an applicant and spouse, if married, are evaluated. The resource limit is $2,000 for a single person and $3,000 for a couple. Some Medicaid covered groups that provide limited coverage of payment for Medicare expenses, such as coinsurance, deductibles and premiums, have resource limits of $4,000 and $6,000 for a single person and couple respectively.

Assets are evaluated based on the current market value. The value of an asset is the amount of an individual's/couple's equity in it. For real property, the current market value is determined by applying the local assessment rate to the tax assessed value. In Virginia, localities are required to assess property at 100% of the current market value. In general, the home property is not a countable resource as long as the individual and/or spouse, if married, continues to reside in the home. There are some additional exemptions that can apply if there is an adult disabled child or dependent relative living in the home.

LONG TERM CARE SERVICES

Long term care (LTC) services include nursing facility admission or home and community based care (HCBC) waiver services, which are designed to offer individuals an alternative to institutionalization in a medical facility.

Special resource rules apply to married individuals who apply for LTC services. The Medicare Catastrophic Coverage Act of 1988 was intended to prevent the impoverishment of the spouse who remained in the community. The provision helps ensure that community spouses are able to live out their lives with independence and dignity. Section 1924 of the Social Security Act sets forth the requirements for treatment of income and resources when there is an individual in a medical institution with a spouse still living in the community. It provides for allocating income and resources between the institutional spouse and the community spouse so that the community spouse does not become impoverished because the individual is in a medical institution. The community spouse can retain resources up to a maximum amount, as of

January 1, 2002 the amount is $89,280. Excluded resources, such as the home property, are not included in determining the maximum resource amount. Once eligibility is established, any resources belonging to the community spouse are no longer considered available to the spouse in the medical or nursing facility.

For unmarried individuals, the home property is excluded as long as the individual continues to reside in the home or if occupied by a minor dependent child or adult dependent child or parent if certain conditions are met. The home property is excluded as a resource for six months following admission to a medical or nursing facility. At the end of six months of continuous absence due to institutionalization, the former home property is counted as an available resource unless it can be excluded for another reason.

Asset Transfers

An application for long-term care services requires an evaluation of assets transferred in the last 36 months (60 months if a transfer involves a trust) prior to the date that the individual was institutionalized and applies for Medicaid. Under Section 1917(c) of the Social Security Act (see Appendix D for a copy of the statute), when a transfer of assets is for less than fair market value, the individual is not eligible for Medicaid payment of long term care services for a specific period of time (penalty period) based on the uncompensated value of the transferred asset and the date the transfer occurred. The penalty period is the number of months calculated by taking the uncompensated value of the assets transferred, divided by the average monthly cost of nursing facility services to a private patient at the time of application for Medicaid.

Example: Mr. Smith transferred his home valued at $85,000 to his adult son on July 5, 2001 and received no compensation for the property. On August 5, 2002, Mr. Smith was admitted to a nursing facility and applied for Medicaid. Because the transfer occurred within the 36 months prior to his nursing facility admission and application for Medicaid, the transfer must be evaluated and a penalty period established:

$85,000	uncompensated value transferred
÷ $3,376	average cost NF care at the time of his 8/5/02 application
25.18	rounded down to 25 months penalty period

Mr. Smith would be ineligible for Medicaid payment of long term care services for 25 months. The penalty period begins July 1, 2001 and ends July 31, 2003.

For certain types of transfers, a penalty is not applied. For example, any asset transfer to the spouse or home property transferred to a child under age 21 or a child of any age who is blind or disabled does not affect eligibility.

During the penalty period individuals may remain eligible for Medicaid, however, they are not eligible for Medicaid payment of long-term care services. The following definitions from the State Medicaid Manual issued by the federal Department of Health and Human Services are provided for the transfer of assets:

> Fair Market Value.--An estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred. Value is based on criteria used in appraising the value of assets for the purpose of determining Medicaid eligibility.

Uncompensated Value--The difference between the fair market value at the time of transfer (less any outstanding loans, mortgages or other encumbrances on the resource), and the amount received for the resources.

Institutionalized Individual--An individual who is an inpatient in a nursing facility, or who is an inpatient in a medical institution for whom payment is based upon a level of care provided in a nursing facility, or who is a home and community-based care services recipient.

Federal law requires that the evaluation of asset transfer for long term care services be at fair market value and that the method for determining fair market value for asset transfer must be the same when determining eligibility for Medicaid. The two evaluations must be the same. Even when assets are excluded as resources such as the home property, an asset value is determined.

PROPERTY ASSESSMENTS

The Code of Virginia §58.1-2301 requires that all general reassessments or annual assessments in those localities, which have annual assessments of real estate, be made at 100 percent fair market value. §58.1-3231 permits localities to adopt an ordinance for a land-use plan to provide for the use value assessment and taxation of real estate classified in §58.1-3230, (real estate devoted to agricultural use, horticultural use, forest use and open-space use). For those localities that have adopted use assessment taxation, the land books must reflect both the use value and the fair market value.

Use Value Taxation

Use value taxation is a local tax policy option that has been exercised widely in Virginia since its inception in 1972. The intent of use value taxation has been to foster "the preservation of real estate for agricultural, horticultural, forest and open space use in the public interest." Currently, agricultural land is assessed at its value in agricultural use in 69 counties and 18 cities in Virginia that have adopted local use value ordinances and in several other localities without use value taxation ordinances that have agricultural districts. Virginia is not alone in providing preferential tax treatment of agricultural land. All fifty states have land use programs that provide property tax relief or agricultural land.

The use value taxation program in Virginia has been in place for 30 years. The program works by allowing the Commissioner of Revenue in local jurisdictions to assess agricultural land at its value in a particular use, or "use value." In jurisdictions with a local use value ordinance, agricultural land must be assessed at both its fair market value and its use value. When a person changes the use of the land that is enrolled in one of the land use assessment programs, they are charged a roll-back tax. This is the difference between the use value and the fair market value of the land for the past five years, in addition to the current year plus interest.

Land use assessment can be a very beneficial program to the citizens of Virginia. It helps maintain rural and open lands while relieving the burden of providing services required if developed into residential areas.

RESOURCE EVALUATION METHODS

Federal law requires comparability when applying resource methods for Medicaid eligibility. The State Medicaid Manual issued by the federal government states that if more liberal resource methods are used the option must be comparable for all persons within each category of assistance within an eligibility group. Use value taxation of real property is not available for all individuals in the State who own property. Therefore, two different definitions of fair market value would be required within the State for the evaluation of resources and asset transfer, which would violate the comparability requirement. Additionally, the use of tax assessments at less than fair market value would not meet the required federal definition of fair market value.

Survey of States-Summary

In an effort to evaluate the methodology utilized in other states relating to the value of real property and asset transfer, DMAS designed a survey questionnaire, *Determining the Value of Real Property for Medicaid.* The survey was mailed to all 50 states and the District of Columbia requesting information regarding procedures used by other states. In summary, the responses received from the 33 states returning the survey reflect that all states use similar approaches in determining the value of real property, tax assessments, appraisals or comparable sales that represent current market value of the property. In most states, tax assessments are based on 100% of the fair market value; a few states reported that tax assessments might be somewhat lower, between 80% - 100% of the fair market value. In all states, the same method was utilized for the real property value determination and the evaluation of asset transfer. No state took into consideration the "use value" of property except when determining whether property could be excluded because it was income producing or if mineral rights were involved.

Centers for Medicare and Medicaid Services' Response

The Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services (HHS) has federal oversight for the Medicaid program and is the approval authority for the State Plan, which describes the State's basic eligibility, coverage, reimbursement, and administrative policies. Eligibility changes to the State Plan require approval by CMS to ensure that the minimum federal requirements are met. A "federal match" reimbursement is available for Medicaid services and associated administrative costs when services are provided to individuals within the federal requirements. In FY 2002, the federal match for Virginia was 51.55%. Services provided to individuals outside the federal statutes are funded with State only funds; no federal match is available.

The federal statute indicated no flexibility for instituting a resource evaluation method that would allow substitution of use value assessments for fair market value. Clarification was requested from CMS whether use value assessments for real property could be substituted for fair market value in the evaluation of asset transfer. CMS responded that a tax assessment value at other than current market value would not satisfy the federal requirement for the evaluation of assets and asset transfers. CMS was not able to provide any guidance with identifying a design within the federal requirements that would allow land use value assessments to be substituted for

the full value assessments. DMAS' inquiry to CMS and CMS' response regarding this issue is provided at Appendix C.

CONCLUSION

- Land use assessment for taxation purposes is a beneficial program that helps preserve open space and farmland in Virginia. However, the Medicaid program is restrictive in the methodology used in eligibility determinations. Use value assessment of real property does not meet the federal statute requirements for resource and asset transfer evaluations.

- The response from CMS confirms that a tax assessment value at other than current market value would not satisfy the federal requirement for the evaluation of assets and asset transfers.

- The 33 states that returned the survey questionnaire all responded that resource and asset transfer determinations are evaluated based on fair market value for Medicaid eligibility. Even though use value assessment is utilized by all fifty states, no state responding to the DMAS survey uses this assessment in the determination of Medicaid eligibility and/or asset transfer.

- If Virginia adopted a use value assessment method for determining the value of resources and asset transfer, it would not be in compliance with federal statute. The federal match reimbursement would not be available and all services provided would have to be funded with State only funds.

APPENDIX A

House Joint Resolution (HJR) No. 5

HOUSE JOINT RESOLUTION NO. 5

Requesting the Department of Medical Assistance Services to examine its transfer of assets rule as such rule relates to land-use assessments and eligibility for Medicaid.

Agreed to by the House of Delegates, March 6, 2002

Agreed to by the Senate, March 5, 2002

WHEREAS, in Virginia and across the nation, transfers of assets within three years of applying for Medicaid eligibility for long-term care services, such as nursing home and community-based care, must be reviewed to determine if property has been transferred for less than fair market value or meets a federal exception; and

WHEREAS, at this time, if a Medicaid applicant has sold or otherwise transferred property for less than its fair market value, a penalty period is calculated by dividing the uncompensated value of the property by the average monthly cost of nursing home care to a private patient at the time the application was filed; and

WHEREAS, for example, if property with a fair market value of $150,000 is transferred for $50,000 at a time when the private patient was paying an average monthly fee of $5,000, then the applicant would not be eligible for Medicaid long-term care services for 20 months after being placed in a nursing home or a community-based long-term care program; and

WHEREAS, this rule is understandably focused on preventing applicants from transferring their land and other valuables to their relatives for less than fair market value and then becoming eligible for nursing home or other long-term care at public expense; and

WHEREAS, however, when land taxed under land-use assessment must be transferred at the full assessed value rather than the land-use valuation upon which it has been taxed, the sale of the property to maintain its current land use becomes infeasible because the price is beyond the means of land-use purchasers, such as farmers; and

WHEREAS, therefore, this rule has the unfortunate result of impacting rural property owners in localities that use land-use assessments for farming areas if these property owners wish to preserve the use of their land and do not wish to make large sums of money from development or to contribute to urban sprawl; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Department of Medical Assistance Services be requested to examine its transfer of assets rule as such rule relates to land-use assessments and eligibility for Medicaid.

In conducting this examination, the Department shall identify various designs for allowing land-use assessments to be substituted for the full-assessed value in the transfer of assets rule under specific circumstances that will require current owners to preserve, as a condition of Medicaid eligibility, the land-use of their property for at least a period of 10 years beyond the transfer, will restrain urban sprawl, and will sustain rural family land-use businesses. Upon completing such analysis, the Department, within the parameters of federal requirements, shall consider the feasibility of a revised methodology for determining the fair market value of property in areas applying land-use assessments in relationship to transfer of assets and eligibility for Medicaid long-term care.

The Department shall complete its work by November 30, 2002, and shall submit its written findings and recommendations to the Governor and the 2003 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

All agencies of the Commonwealth shall provide assistance to the Department of Medical Assistance for this study, upon request.

APPENDIX B

Compilation of survey responses received from 33 states and copy of questionnaire.

Determining the Value of Real Property for Medicaid
Responses from States to the Survey

1) For Medicaid eligibility purposes, what do you use to determine the value of real property (e.g., tax assessments, tax records, land books, etc.)?

Alabama:	Tax assessments
Alaska:	They usually start with tax assessments (not all land is within tax jurisdictions) and allow the owner to provide other evidence of current market value, such as appraisals.
Arizona	Arizona uses the current market value (CMV) as the value of real property. The CMV is the full cash value of the real property as determined by the county assessor on the most recently issued tax assessment or tax bill. See # 5 for exception.
Arkansas:	Tax assessments. Estimate from a knowledgeable source: real estate brokers, local office of Farmer's Home Administration, local office of Agricultural Stabilization and Conservation Service Banks, savings and loan associations, mortgage companies, etc., County Agricultural Extension Service, local newspaper real estate ads, "multiple listing" publications, etc.
California:	The market value of real property shall be (a) or (b) unless the applicant or beneficiary chooses to meet the condition of (c), and (c) is lower: (a) The assessed value determined under the most recent property tax assessment if the property is located in California. (b) The value established by applying the assessment method used in the area where the property is located outside of California. (c) The value established as a result of an appraisal by a qualified real estate appraiser if the appraisal is obtained by the applicant or beneficiary and is provided to the county department.
Colorado:	Actual value on tax assessments or appraisal, if available.
Connecticut:	These sources (tax assessments, tax records, land books) and we try to find comparable sales for comparison.
Florida:	The county tax assessment of the property (minus any debts) may be used to determine the ownership and value of the property. However, because the value of the property based upon the tax assessment may be substantially lower than the property's actual fair market value, a knowledgeable source estimate of a property's FMV is required in all cases if the individual is eligible on the factor of assets using the tax assessed value of the property. Any debts on the property must be subtracted from the FMV to determine the equity value to consider an asset to the individual.
Idaho:	Tax assessments, primarily
Illinois:	Tax assessments and appraisals
Iowa:	To verify fair market value, the client is asked to provide a statement from a knowledgeable source such as a realtor of the amount the property can be sold for on the open market. Tax assessment statements are not accepted as verification of the fair market value.
Kansas:	Tax assessment

Kentucky	For Medicaid eligibility purposes, the Department for Medicaid Services (DMS) in the Commonwealth of Kentucky excludes the value of any homestead property. When determining the value of real property, homestead or non-homestead property, as it applies to any transfer of assets policy, the use of the Property Valuation Administrator's (PVA) tax assessment is applied.
Louisiana:	Current market value is used to determine real property values. CMV is verified by: 1) current assessment, only if the assessed value makes the applicant/recipient ineligible; 2) record of sale, offer of sale, mortgage, judgment or other documentary evidence less than one year old; or 3) an appraisal that is less than one year old.
Maryland	Current tax assessment or recent professional appraisal
Mississippi	Tax assessments and/or knowledgeable source
Missouri	To substantiate a claimant's estimated value, staff uses tax assessments, homeowner's insurance policies, and real estate notices about the value of similar properties in the claimant's neighborhood. If we cannot establish the fair market value by those means or there are questions, we pay for property appraisals.
Montana	Tax appraisals (not taxable value)
Nebraska:	Tax assessments
Nevada:	Fair market value
New Hampshire:	Tax assessments, realtor assessments
New Mexico	Our states uses the fair market value, which is determined by obtaining the appraised value from a real estate agent, a title company, or mortgage insurance company. An approximation of the fair market value using a calculation based on the taxed-assessed value may be appropriate in some areas of the state. Several reliable sources, such as local newspaper ads or "multiple listing" publications may be used in determining the fair market value of the home.
New York:	The preferred method of verifying market value is to obtain an independent appraisal by a licensed real estate appraiser. If this is not practical, we use the listed asking price accompanied by a market analysis or appraisal, if any. If neither is available, a full value tax assessment can be used.
North Carolina:	Medicaid policy determines the value of real property by county tax office records.
North Dakota:	Normally we use an appraisal or real estate assessment but can also use valuations by loan officers in local lending institutions or from others who are knowledgeable in real estate values. We do use tax records on occasion for houses in small towns but not for agricultural lands.
Rhode Island:	Property valuation obtained from tax records or other evidence of current fair market value.
South Dakota:	The fair market value of property must be determined by one of the following: a real estate appraiser, a Bureau of Indian Affairs realty office, an average of three estimates from individuals, other than the applicant or recipient, who are familiar with property values within the geographic area, a Farm Home Administration office, a bank or savings and loan official, an agency that specializes in discounting contractual rights using amortization schedules, current property values, or other pertinent data, or one hundred percent of the county tax valuation.
Texas:	Tax assessments with current assessment (if 100% valuation is used); appraisal from local taxing authority; or statement from a local knowledgeable source (e.g., realtor).

Utah:	For exempt properties like a person's home, we would usually request copies of the tax assessment (property tax forms) and use that value. We know that these amounts are often lower than what the fair market value may really be, but if it is an exempt property, then it does not matter much. However, for non-exempt property, we would usually ask the individual to provide us with some verification of the fair market value. This could come from a realtor, bank, or some other knowledgeable source. We would not usually require them to have an appraisal because it costs so much. In some instances, circumstances may provide evidence of the property's value. For example, a person has subdivided some property and has sold one or more individual lots. The value of the remaining parcels may be set at or near the sale price of the lots already sold (if they are fairly comparable). Or, we may request an appraisal. In any case, if the individual disputes the value we use, then the person may bring us a current appraisal, or request a fair hearing. If property has been transferred for less than fair market value (or sold for an amount that appears to be less than fair market value), we would usually ask them to verify the fair market value. Again, they could ask a local realtor, etc. We may ask that the realtor explain why the property (if sold) could not be sold at fair market value.
Vermont	Tax assessments, tax records, land books
Washington:	Our WAC (Washington Administrative Code) states that we use the "fair market value". We use tax assessments and add our own "prudent person concept" to determine FMV.
West Virginia:	Tax assessments, tax records, land books, real estate appraisals
Wisconsin:	Real estate agent's assessment of what the property could be sold for.

2) As it pertains to Medicaid eligibility determinations, is property value based on 100% of the fair market value? If no, what is the value of the property based on?

	YES	NO
Alabama	X	
Alaska	X	
Arizona	X	
Arkansas	X	
California		X The value of property is determined by the assessed value unless the applicant or beneficiary elects to have it appraised. This occurs when the applicant or beneficiary believes the assessed value if higher than the property's market value.
Colorado	X	
Connecticut	X	
Florida	X	
Idaho	X	
Illinois	X	
Iowa	X	
Kansas	X	
Kentucky	X	

Louisiana		X 100% Current Market Value (Fair market value is a term used in regard to transferred resources whereby we determine whether an individual was adequately compensated/ received fair market value in exchange for a transferred resource.)
Maryland		X Real property value is based on the applicant's ownership interest in the equity value. Equity value is the fair market value less encumbrances.
Mississippi		
Missouri	X	X Equity Value We consider the value of the client's interest minus liens or other recorded encumbrances.
Montana	X	
Nebraska		Taxable value is assumed to be the current fair market value.
Nevada		X Fair Market Value – encumbrances = equity value
New Hampshire	X	
New Mexico	X	
New York	X	
North Carolina	X	For Medicaid determinations, the tax value is used as the current market value.
North Dakota	X	
Rhode Island	X	
South Dakota	X	
Texas		X Texas uses the equity value of real property which is market value less the amount owed. For market value, we can use tax statements if 100% valuation (market value) is used.
Utah	X	
Vermont		X Usually based on the tax assessments which are from 80 to 100% of fair market value.
Washington	X	
West Virginia	X	(Note: Equity is always considered in determining the asset amount for eligibility purposes.)
Wisconsin	X	
Wyoming	X	Less any legal encumbrances

3) Is the value of property determined the same way for Medicaid eligibility determinations as it is when you are evaluating the transfer of assets?

All States responded "yes" except for West Virginia.

4) If the value is determined differently, please explain the differences.

No response from States.

5) Are there situations where other issues are taken into consideration in determining Medicaid's valuation of the property such as the property's use value?

All States, except the following, responded "No" to this question.

Arizona:	Arizona does not use the property's use value. However, if an individual disagrees with the amount of the current market value established using the county tax assessment, the customer can rebut the current market value by submitting at least two (2) current estimates of the value from knowledgeable sources who are acquainted with the worth of the property in the area and any additional information which shows that the value of the property is different than the value on the tax assessment.
California:	1) All property adjacent and contiguous to the principal residence (home or former home) is exempt as long as the individual, spouse, or dependent relative resides there. If absent for any reason, it continues to be exempt as long as there is intent to return. 2) All real estate used in a business or for self-employment is exempt. 3) The first $6,000 of equity on otherwise non-exempt real property is exempt if realizing a 6% annual return. 4) Property that the individual is making a bona fide effort to sell is considered unavailable. 5) Property that is co-owned by an individual outside of the budget unit who refuses to sell is considered unavailable.
Florida	The tax assessment cannot be used if it is based on a fixed rate per acre method. The term "fixed rate per acre" applies only to standard dollar per acre assessments for land based on land usage without regard to market prices; for example, agricultural, industrial, and residential.
Montana	See answer for # 6.
Nebraska	Taxable value is based on current use and zone, clarified by telephone call the taxable value is based on the assessment which is between 80% to 90% of the fair market value.
North Carolina	For example, farmland may have a tax value and a present use value established by the county tax office. We use the tax value when determining equity of income producing property for the $6,000 portion of the $6,000/6% test for categorically needy and when counting real property as a resource. We use the present use value or land use value when determining equity for the 6% net income test in all Medicaid classifications. (Note: the 6% net income test is used to determine if property, up to $6,000 equity value, can be excluded because it is essential to an individual's means of self-support.)
Utah	In the case of certain mineral rights that are producing income, we have a formula to decide value. That formula looks at the income received from the mineral rights during the year and multiplies that times 3.3 to obtain the value of the mineral rights. If the person also owned the land, the land has a separate value. For any given real property, there may be circumstances that affect what the fair market value is. The person providing an estimate of the

	fair market value can explain those circumstances that may cause the property to be less valuable than the expected fair market value. One thing that comes to mind is joint ownership that may make it difficult to actually sell the individual's portion of the property.
Washington	See answer for # 6.
Wyoming	Mineral rights.

6) If yes, how does the use value of the property affect the fair market value for Medicaid purposes?

Montana	Although "use value" is not normally considered, we do allow discounts for minority percentages of jointly owned property in some cases. In cases where the tax appraisal is determined to be inaccurate (perhaps due to date of appraisal vs. changes in market for the area), we accept two statements from knowledgeable sources in the geographical area. (Knowledgeable sources would include real estate brokers doing business in the area.)
Nebraska	Taxable value is based on current use and zone.
North Carolina	See answer to question #5.
Texas	Texas does not consider the "use value" of real property.
Utah	We do not look at "use value" to determine the fair market value.
Washington	I don't know that we explore the use value unless the financial worker knows the value in the area and disputes the client's tax statement.
Wyoming	We will use tax value if there is not a company that will value the mineral rights.

7) Please provide any additional information that describes how your state determines the value of property for determining Medicaid eligibility.

Alabama	The State of Alabama uses the Tax Assessment to obtain the Current Market Value (CMV). If the claimant/sponsor disagrees with this amount, they are given an opportunity to appeal through the Board of Education. The Tax Assessor's statement is always used to determine CMV with few exceptions.
Arkansas	When non-home real or personal property is used in a trade or business essential to self-support, the total equity value of the property can be excluded from countable resources.
Connecticut	We almost exclusively seek to establish fair market value through the identification of comparable sales.
Idaho	FMV is defined as the price for which the asset can reasonably be expected to sell on the open market in the geographic area involved.
Illinois	The equity value of non-homestead property may be excluded in establishing Medicaid eligibility if the property is producing income at a rate sufficient to justify the exclusion or the property is listed for sale with a realtor.
Kansas	A separate appraisal can be requested by either the consumer or agency if either party disagrees with the tax assessment value.
Nevada	1) A signed and dated statement from a licensed real estate broker in the area where the home or property is located listing Area Fair Market Value. If the area is depressed and homes are not saleable, or recession, or land is restricted by some clause or contract that makes it less marketable, that should all be reflected in the statement of value. 2) If the property would cost more to make saleable that the property would be worth. 3) Exempt while good faith efforts to sell.

New York	If there is no access to a parcel of real property, the property is not considered to be a countable resource for Medicaid eligibility purposes.
Vermont	Income producing property must produce at least 6% of fair market value in net income after allowable expenses related to producing the income are allowed.
Washington	We can also use professional appraisals and real estate brokers to determine FMV.
West Virginia	The West Virginia Income Maintenance Manual is on the internet at the Dept.'s website, wvdhhr.org. Then go to Family Support and the Income Maintenance Manual. Assets are in Chap. 11, and Long Term Care policy is in Chap. 17.

COMMONWEALTH of VIRGINIA

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July 8, 2002

We are requesting your help in examining the Transfer of Assets rule and would appreciate your completing and returning the attached questionnaire to us by July 26, 2002.

The Virginia General Assembly has directed the Department of Medical Assistance Services, the State Medicaid agency, to examine our transfer of assets rule as it relates to land use assessments. Specifically, we have been asked to determine the feasibility of adopting a method that would allow us to consider 'use value' as the fair market value of property in relationship to transfer of assets. Virginia law allows for eligible open space, forested, and agricultural land to be taxed based on the land's value in use (use value) as opposed to the land's market value. We have been advised that all 50 states have land use programs that provide property tax relief for agricultural land and we are requesting your help in determining if there are policies or procedures in your state that allow "use value" to substitute for the fair market value of property in relationship to Medicaid eligibility and transfer of assets. Fair market value is the value of a particular piece of land in its "highest and best" use. Use value is the amount that one would expect to sell the land for if it were restricted to a pre-defined use. Use value is typically less than fair market value.

Please return completed surveys to:

Cindy Bowers
Division of Policy and Research
Department of Medical Assistance Services
600 E. Broad St., Suite 1300
Richmond, VA 23219
(804) 371-7568 – phone
(804) 786-1680 -- fax

Determining the Value of Real Property for Medicaid

1. For Medicaid eligibility purposes, what do you use to determine the value of real property, (e.g., tax assessments, tax records, land books, etc.)?

2. As it pertains to Medicaid eligibility determinations, is property value based on 100% of the fair market value? _____YES _____NO If No, what is the value of the property based on?

3. Is the value of property determined the same way for Medicaid eligibility determinations as it is when you are evaluating the transfer of assets? _____YES _____NO

4. If the value is determined differently, please explain the differences.

5. Are there situations where other issues are taken into consideration in determining Medicaid's valuation of the property, such as the property's use value? ____YES ____NO

6. If yes, how does the use value of the property affect the fair market value for Medicaid purposes?

7. Please provide any additional information that describes how your state determined the value of property for determining Medicaid eligibility.

Thank you very much for your assistance.

Name of person completing this survey:_____

Title: _____

Phone number: _____

Agency: _____State: _____

Date: _____

APPENDIX C

Response from CMS on clarification of use value assessment for fair market value assessment.

COMMONWEALTH of VIRGINIA

Department of Medical Assistance Services

PATRICK W. FINNERTY
DIRECTOR

SUITE 1300
600 EAST BROAD STREET
RICHMOND, VA 23219
804/786-7933
800/343-0634 (TDD)

May 7, 2002

Jake Hubik
Centers for Medicare and Medicaid Services
Philadelphia Regional Office
Public Ledger Building, Suite 216
150 S. Independence Mall West
Philadelphia, Pennsylvania 19106-3499

Dear Jake:

Members of our State Legislature have directed us to examine our transfer of assets rule as it relates to land-use assessments and eligibility for Medicaid. Specifically, we have been asked to identify various designs for allowing land-use assessments to be substituted for the full assessed value of property when a transfer of assets occurs.

In Virginia, our Tax Code requires that assessments of real estate be made at 100 percent of fair market value. Local Commissioners of Revenue are permitted to establish a land use value assessment for taxation purposes, however, this does not change the fair market value of the property. In localities that use the land-use value assessment, the land books must show both the fair market value and the land use value. Some localities use a land-use assessment for taxing certain types of property, such as agricultural, timberland and open space property. The land use assessments on these types of property can be as little as 10% of the true fair market value. Land-use assessments are determined at the option of the localities, as is the rate of land use assessment. For example, in some localities, only farm land is eligible for land-use assessment designation, while in other localities, the farm as well as forest land are eligible for land-use designation. Our current Medicaid policy does not address land use assessment value and requires that we use 100 percent of the tax assessed value as the fair market value of property. Some would argue that our rule has the unfortunate result of impacting property owners in localities that use land-use assessments, such as the family farmer, who would like to be able to transfer his property at the land-use assessed value to individuals who plan to continue farming the land and continue to have the taxes based on the land use assessment. They argue that our rule, in effect, encourages urban sprawl because only developers can afford to purchase the land at its fair market value, and penalizes the property owner who sells for less than the tax assessed value and later

applies for Medicaid long-term care. If we accepted the land use assessed value as the fair market value, when property is sold at that value it would be considered a compensated transfer and no penalty would apply when the previous owners need nursing home care and apply for Medicaid.

In December 2001, we asked Roy Trudel, in an email, if a State could have two different definitions of fair market value, one for those who do not have a land use assessed property value and one for those who do. He indicated, in his email response to us, that the State would have serious comparability problems with defining fair market value in two different ways and that definitions of the term would have to apply to all aspects of the program, eligibility determination purposes as well as transfer of asset purposes.

We are requesting your assistance in providing us with an official response from the Centers for Medicare and Medicaid Services regarding the ability of states to have more than one definition of fair market value. Can we use a land use assessment value for transfers, but use fair market value for eligibility purposes? Can we use land use assessment value for both? Do we run into a comparability issue if we use land use for one group of individuals whose property is under this type of assessment and fair market value for those individuals whose property is not subject to land use assessment? If so, please explain why. We would also appreciate any assistance you could provide us in identifying various designs that would allow land use assessments to be substituted for full value assessments under the transfer of assets rule, if this is possible.

We appreciate your assistance in this matter and would appreciate a response by June 1, 2002.

Sincerely,

Pat Sykes

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Suite 216, The Public Ledger Building
150 S. Independence Mall, West
Philadelphia, PA 19106-3499

JUN 3 2002

Pat Sykes
Department of Medical Assistance Services
Suite 1300
600 East Broad Street
Richmond, VA 23219

Dear Ms. Sykes:

I am responding to your letter dated May 7, 2002, in which you asked whether land-use assessments may be substituted for the full assessed value of property for the purpose of assessing Medicaid asset transfers. In your letter, you explained that in Virginia, the tax code requires that assessments of real estate be made at 100 percent of fair market value. Local Commissioners of Revenue are permitted to establish a land use value assessment for tax purposes that is less than the fair market value.

Under the transfer of assets provisions in 1917 (c) of the Social Security Act, as amended by OBRA 1993, you must deny coverage of certain Medicaid services to otherwise eligible institutionalized individuals who transfer assets for less than fair market value. The State Medicaid Manual at 3258.1(A) defines fair market value as an estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred. Value is based on criteria you use in appraising the value of assets for the purpose of determining Medicaid eligibility.

If real estate tax assessments are made at 100 percent of fair market value, this valuation method appears reasonable. However, tax assessments at other that 100 percent of fair market value would not meet the Federal definition of fair market value, and could not be used as a proxy for fair market value for Medicaid asset transfer purposes.

I hope this letter answers your question. If you have further questions, please call me at 215-861-4181.

Sincerely,

Jake Hubik

Jake Hubik
State Representative

APPENDIX D

Section 1917 of the Social Security Act.

LIENS, ADJUSTMENTS AND RECOVERIES, AND TRANSFERS OF ASSETS

1917. *[42 U.S.C. 1396p]* (a)(1) No lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the State plan, except--

(A) pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual, or

(B) in the case of the real property of an individual--

(i) who is an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of his income required for personal needs, and

(ii) with respect to whom the State determines, after notice and opportunity for a hearing (in accordance with procedures established by the State), that he cannot reasonably be expected to be discharged from the medical institution and to return home,

except as provided in paragraph (2).

(2) No lien may be imposed under paragraph (1)(B) on such individual's home if--

(A) the spouse of such individual,

(B) such individual's child who is under age 21, or (with respect to States eligible to participate in the State program established under title XVI) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1614, or

(C) a sibling of such individual (who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date of the individual's admission to the medical institution),

is lawfully residing in such home.

(3) Any lien imposed with respect to an individual pursuant to paragraph (1)(B) shall dissolve upon that individual's discharge from the medical institution and return home.

(b)(1) No adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan may be made, except that the State shall seek adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan in the case of the following individuals:

(A) In the case of an individual described in subsection (a)(1)(B), the State shall seek adjustment or recovery from the individual's estate or upon sale of the property subject to a lien imposed on account of medical assistance paid on behalf of the individual.

(B) In the case of an individual who was 55 years of age or older when the individual received such medical assistance, the State shall seek adjustment or recovery from the individual's estate, but only for medical assistance consisting of--

(i) nursing facility services, home and community-based services, and related hospital and prescription drug services, or

(ii) at the option of the State, any items or services under the State plan.

(C)(i) In the case of an individual who has received (or is entitled to receive) benefits under a long-term care insurance policy in connection with which assets or resources are disregarded in the manner described in clause (ii), except as provided in such clause, the State shall seek adjustment or recovery from the individual's estate on account of medical assistance paid on behalf of the individual for nursing facility and other long-term care services.

(ii) Clause (i) shall not apply in the case of an individual who received medical assistance under a State plan of a State which had a State plan amendment approved as of May 14, 1993, which provided for the disregard of any assets or resources--

(I) to the extent that payments are made under a long-term care insurance policy; or

(II) because an individual has received (or is entitled to receive) benefits under a long-term care insurance policy.

(2) Any adjustment or recovery under paragraph (1) may be made only after the death of the individual's surviving spouse, if any, and only at a time--

(A) when he has no surviving child who is under age 21, or (with respect to States eligible to participate in the State program established under title XVI) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1614; and

(B) in the case of a lien on an individual's home under subsection (a)(1)(B), when--

(i) no sibling of the individual (who was residing in the individual's home for a period of at least one year immediately before the date of the individual's admission to the medical institution), and

(ii) no son or daughter of the individual (who was residing in the individual's home for a period of at least two years immediately before the date of the individual's admission to the medical institution, and who establishes to the satisfaction of the State that he or she provided care to such individual which permitted such individual to reside at home rather than in an institution),

is lawfully residing in such home who has lawfully resided in such home on a continuous basis since the date of the individual's admission to the medical institution.

(3) The State agency shall establish procedures (in accordance with standards specified by the Secretary) under which the agency shall waive the application of this subsection (other than paragraph (1)(C)) if such application would work an undue hardship as determined on the basis of criteria established by the Secretary.

(4) For purposes of this subsection, the term "estate", with respect to a deceased individual--

(A) shall include all real and personal property and other assets included within the individual's estate, as defined for purposes of State probate law; and

(B) may include, at the option of the State (and shall include, in the case of an individual to whom paragraph (1)(C)(i) applies), any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.

(c)(1)(A) In order to meet the requirements of this subsection for purposes of section 1902(a)(18), the State plan must provide that if an institutionalized individual or the spouse of such an individual (or, at the option of a State, a noninstitutionalized individual or the spouse of such an individual) disposes of assets for less than fair market value on or after the look-back date specified in subparagraph (B)(i), the individual is ineligible for medical assistance for services described in subparagraph (C)(i) (or, in the case of a noninstitutionalized individual, for the services described in subparagraph (C)(ii)) during the period beginning on the date specified in subparagraph (D) and equal to the number of months specified in subparagraph (E).

(B)(i) The look-back date specified in this subparagraph is a date that is 36 months (or, in the case of payments from a trust or portions of a trust that are treated as assets disposed of by the individual pursuant to paragraph (3)(A)(iii) or (3)(B)(ii) of subsection (d), 60 months) before the date specified in clause (ii).

(ii) The date specified in this clause, with respect to--

(I) an institutionalized individual is the first date as of which the individual both is an institutionalized individual and has applied for medical assistance under the State plan, or

(II) a noninstitutionalized individual is the date on which the individual applies for medical assistance under the State plan or, if later, the date on which the individual disposes of assets for less than fair market value.

(C)(i) The services described in this subparagraph with respect to an institutionalized individual are the following:

(I) Nursing facility services.

(II) A level of care in any institution equivalent to that of nursing facility services.

(III) Home or community-based services furnished under a waiver granted under subsection (c) or (d) of section 1915.

(ii) The services described in this subparagraph with respect to a noninstitutionalized individual are services (not including any services described in clause (i)) that are described in paragraph (7), (22), or (24) of section 1905(a), and, at the option of a State, other long-term care services for which medical assistance is otherwise available under the State plan to individuals requiring long-term care.

(D) The date specified in this subparagraph is the first day of the first month during or after which assets have been transferred for less than fair market value and which does not occur in any other periods of ineligibility under this subsection.

(E)(i) With respect to an institutionalized individual, the number of months of ineligibility under this subparagraph for an individual shall be equal to--

(I) the total, cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) on or after the look-back date specified in subparagraph (B)(i), divided by

(II) the average monthly cost to a private patient of nursing facility services in the State (or, at the option of the State, in the community in which the individual is institutionalized) at the time of application.

(ii) With respect to a noninstitutionalized individual, the number of months of ineligibility under this subparagraph for an individual shall not be greater than a number equal to--

(I) the total, cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) on or after the look-back date specified in subparagraph (B)(i), divided by

(II) the average monthly cost to a private patient of nursing facility services in the State (or, at the option of the State, in the community in which the individual is institutionalized) at the time of application.

(iii) The number of months of ineligibility otherwise determined under clause (i) or (ii) with respect to the disposal of an asset shall be reduced--

(I) in the case of periods of ineligibility determined under clause (i), by the number of months of ineligibility applicable to the individual under clause (ii) as a result of such disposal, and

(II) in the case of periods of ineligibility determined under clause (ii), by the number of months of ineligibility applicable to the individual under clause (i) as a result of such disposal.

(2) An individual shall not be ineligible for medical assistance by reason of paragraph (1) to the extent that--

(A) the assets transferred were a home and title to the home was transferred to--

(i) the spouse of such individual;

(ii) a child of such individual who (I) is under age 21, or (II) (with respect to States eligible to participate in the State program established under title XVI) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1614;

(iii) a sibling of such individual who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date the individual becomes an institutionalized individual; or

(iv) a son or daughter of such individual (other than a child described in clause (ii)) who was residing in such individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual, and who (as determined by the State) provided care to such individual which permitted such individual to reside at home rather than in such an institution or facility;

(B) the assets--

(i) were transferred to the individual's spouse or to another for the sole benefit of the individual's spouse,

(ii) were transferred from the individual's spouse to another for the sole benefit of the individual's spouse,

(iii) were transferred to, or to a trust (including a trust described in subsection (d)(4)) established solely for the benefit of, the individual's child described in subparagraph (A)(ii)(II), or

(iv) were transferred to a trust (including a trust described in subsection (d)(4)) established solely for the benefit of an individual under 65 years of age who is disabled (as defined in section 1614(a)(3));

(C) a satisfactory showing is made to the State (in accordance with regulations promulgated by the Secretary) that (i) the individual intended to dispose of the assets either at fair market value, or for other valuable consideration, (ii) the assets were transferred exclusively for a purpose other than to qualify for medical assistance, or (iii) all assets transferred for less than fair market value have been returned to the individual; or

(D) the State determines, under procedures established by the State (in accordance with standards specified by the Secretary), that the denial of eligibility would work an undue hardship as determined on the basis of criteria established by the Secretary;

(3) For purposes of this subsection, in the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset.

(4) A State (including a State which has elected treatment under section 1902(f)) may not provide for any period of ineligibility for an individual due to transfer of resources for less than fair market value except in accordance with this subsection. In the case of a transfer by the spouse of an individual which results in a period of ineligibility for medical assistance under a State plan for such individual, a State shall, using a reasonable methodology (as specified by the Secretary), apportion such period of ineligibility (or any portion of such period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State plan.