

BROADCAST DMAS-26

DATE: April 23, 2018

TO: Local Directors and medical assistance staff

FROM: Kelly Pauley, Eligibility and Enrollment Manager, Department of Medical Assistance Services

SUBJECT: Significant change to LTC policy regarding asset transfer penalty periods

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The following acronyms are used in this broadcast:

- CBC – Community Based Care
- CMS – Centers for Medicare & Medicaid Services
- DMAS – Department of Medical Assistance Services
- HCBS – Home and Community Based Services
- LDSS – Local Department of Social Services
- LTC – Long-term Care
- PACE – Program for All-inclusive Care for the Elderly
- SLMB – Special Low Income Medicare Beneficiaries
- SSI – Supplemental Security Income
- QI – Qualified Individuals
- QMB – Qualified Medicare Beneficiaries
- VDSS – Virginia Department of Social Services

The purpose of this broadcast is to alert LDSS staff who determine eligibility for Medicaid LTC of a significant change in LTC policy. Effective April 17, 2018, CMS changed the rule regarding the imposition of a penalty period for individuals who have been screened and approved for Medicaid HCBS (CBC waiver services, PACE or Hospice).

Background

Section 1917(c)(1)(A) of the Social Security Act requires states to apply an LTC coverage penalty to individuals if they or their spouses have transferred assets for less than fair market value within the 60 months preceding the request for LTC coverage. The coverage penalty applies to nursing facility

services, CBC and Hospice services. The length of the penalty period is calculated by dividing the total amount transferred for less than fair market value by the average monthly cost of nursing facility services in the individual's locality. The result is the number of months for which the individual is ineligible for Medicaid payment of LTC services, unless undue hardship is granted by DMAS.

Prior to April 17, 2018, if an individual needing Medicaid HCBS had a penalty period, the penalty period could not be imposed unless or until he was (1) eligible for Medicaid in a full-benefit covered group other than the 300% of SSI covered group, (2) he met a spenddown and was otherwise eligible for the Medicaid payment of LTC services, or (3) he was admitted to a nursing facility.

New Policy

Effective with decisions made on or after April 17, 2018, the penalty period begin date for an individual needing HCBS is the date the individual would otherwise be receiving HCBS coverage except for the imposition of the penalty period. "Otherwise receiving" means that **all** of the following criteria have been met:

1. The individual has been determined to meet all non-financial and financial eligibility requirements for Medicaid, other than asset transfer, in a full-benefit covered group, **including the 300% of SSI covered group.**
2. The individual has been screened and approved for CBC, PACE or Hospice care.
3. For waivers with a waiting list, an open slot has been secured for the individual. A penalty period cannot begin while an individual is on a waiting list for waiver services.

An individual needing HCBS cannot be enrolled in the 300% of SSI covered group while the penalty period is in effect because he does not meet the definition of an institutionalized individual during the penalty period. He may be enrolled in any other covered group he meets (e.g. QMB, SLMB or QI), but cannot receive Medicaid payment of LTC services during the penalty period.

As with any penalty period, an individual must be offered the chance to claim undue hardship prior to imposing the penalty period (M1450.700), and notification of the penalty period to the individual, provider and DMAS must be made (M1450.800).

This change does not apply to applications denied before April 17, 2018. However, an individual who was determined ineligible for Medicaid coverage of LTC services due to a penalty period may reapply for Medicaid and be evaluated under the new policy. An individual who has only been eligible for limited Medicaid benefits may request to be evaluated under the new policy. All of the requirements listed above must be met in order for the penalty period to begin. If an individual was previously offered the chance to claim undue hardship, he may not claim undue hardship again on the same uncompensated asset transfer unless his circumstances have changed.