

WSSA EBD COMMITTEE MINUTES

Thursday, November 20, 2008

Dane County Job Center

Attendees:

Deb Solis, Dane County, Chair
Rose Siwula, Waushara County, Secretary
Kelly Goettl, Chippewa County
Robert Bloner, Kenosha County
Mary Grell, Waukesha County
Jeff Ulanski, Policy Analyst DHFS

Jeff Ulanski, DHFS MA Policy Analyst, shared information contained in the proposed divestment and other MA asset policy changes required under the DRA. Following were the topics of discussion:

- Wisconsin Long-Term Care Insurance Partnership Program (LTCIP)
- Self-Funded Pooled Trusts for Disabled Individuals
- DRA-Preview of expected policies

WISCONSIN LONG TERM CARE INSURANCE PARTNERSHIP PROGRAM (LTCIP)

Scott Reidash and Vicki Jessup have been working very hard on this new policy. It is designed to encourage individuals to purchase qualified private long-term insurance policies purchased in Wisconsin. The payouts made on or after 1/1/09 to providers from these policies will be disregarded from the individual's assets, estate recovery and divestment. This will result in higher asset limits for MA recipients with qualified payments from these policies. This does not change the requirement for indemnity check assignment to State of Wisconsin for long term care recipients. There will be no CARES activity to calculate this new policy, so it will need to be done manually by ESS. Coding the assets as 'unavailable', suppressing notices, sending manual NOD's and making good case comments will be necessary. Refer to OM 08-57 for detailed policy/procedures on this program which is effective 1/1/09.

SELF-FUNDED POOLED TRUST FOR DISABLED

Jeff stated that the policy has been modified recently as it relates to divestment. These trusts must have a clause to repay MA. There is no age limit. The SSA states that these trusts for individuals >65 are exempt but not from divestment. CMS sent letter that it is divestment. Elder Law attorneys are objecting and think CMS is wrong. The department still needs to respond back

WisPAC Trusts

A presumptive disability can be done if they meet the criteria which would exempt the funds they put in the trust until a final disability determination is made. If they are subsequently not found disabled then they are over assets and not eligible.

Work around for coding a case when disability is pending (not presumptive). Roberta has a case which is pending disability. She stated the Call Center and MEH state to exempt the asset until disability is

determined. It opens the MA and does not pend it. Jeff will check the handbook wording and get back to us on correct procedure.

Some people want to set up pooled trusts and do not want MA. This would require an MADA. Those individuals should contact the DDB on how to proceed with their disability application since they are not applying for MA.

DEFICIT REDUCTION ACT (DRA) PROPOSED CHANGES

Jeff stated that workgroups have come up with as many possible options as they could and then let the department decide. The workgroups included members from the Bureau of Enrollment Mgmt (BEM), Nursing Home Industry and Elder Law attorneys and advocates. They made recommendations. Jeff is drafting the Op's Memo and hopes to be done before Thanksgiving for the internal group to review. It will then go to the Elder Law attorneys, then to the Division Administrator's office for final approval. The goal is for a January 1, 2009 implementation date. It is anticipated this will be the final draft, unless Elder Law finds something way off.

There will be no CARES support for any of the policy changes. The good news for processing is that they are not going back to 2/1/06. The policy applies to applicants and recipients of Long Term Medicaid. There will be two different divestment policies, one before 1/1/09 and one on or after 1/1/09 that will need to be applied. You will have to determine when the divestment occurred. If it was prior to 1/1/09 previous asset transfer policies apply. If it was on or after 1/1/09 the new policies apply. The new policy will have a 5 year (60 month) look back for all asset transfers. Trusts remain at 5 years. Penalties will begin the date of application and MA eligibility.

Intent to Divest

More clear instructions are provided than the old policy, more applied concept, but nothing has really changed. Some criteria discussed that will help determine if the divestment was intentional or not were: 1) sufficient resources were available for 5 years of LTC at time of gift, 2) can allow less than 5 years resources if catastrophic circumstances and/or age at time of event indicate it was not intentional divestment, 3) the history of transfers during the 5 year look back period and prior show pattern of gifting (15% or less than the applicant's or couple's income was considered acceptable), and 4) resources spent on qualified dependent relatives (IRS definition) is not divestment. The attempt was made to make it easier for ESS to not count all gifts providing a clearer description of gifting policy, i.e., charitable, birthday and other occasions. If divestment is determined, NH applicant can still qualify for MA card services using the NH eligibility determination. For FC/MCWW, however, it would not be a waiver calculation and applicant would have to qualify for MA thru deductible, MAP, etc.

Penalty Period Determination/Calculation

The new policy will not be rounding down months and instead will count actual days for penalty and begin and end dates (rounding down for the days only). Penalty begin date for applicant is date applied for MA, is institutionalized and otherwise eligible for MA. For example, in 1/09 \$100K was divested and application is filed in 3/09. The applicant has \$50k in assets and is over assets so is not eligible for MA. The divestment penalty would not be applied. They reapplied in 5/09 after spending down assets to \$2k. The penalty will be applied effective 5/09 as they are now eligible for MA.) A website will be provided that has a calculator to determine the number of days the divestment penalty goes. At the current monthly NH

private pay rate of \$6259, the daily rate of divestment is \$205.77 ($\6259×12 divided by $365 = \$205.77$). For recipient, penalty begins first of month transfer occurred based on federal law, but proper notice must still be given if divestment was reported timely. ESS will have to manually e-mail Laurie Teubert of divestments.

The penalty period for a community waivers applicant would start when the applicant meets waiver medical and financial requirements. Slot availability and placement on waiting list is not considered. Jeff stated they would be including a statement that if the divestment penalty was served, the individual won't have to serve it again when they reapply if it is after the penalty ended.

Recalculation of Penalty Period

If an applicant/recipient returns the divestment resource or its equivalent value, it nullifies the divestment. You must then re-determine MA eligibility retroactively as there is no penalty. When a partial return is made it must be paid back to LTC or med/remedial services provided during the divestment period to get credit for the reduced penalty by the end of the month of penalty. Exceptions are house, car and tangibles. Repayment can't be on burial or otherwise exempt asset.

Community Care Retirement Community (CCRC) or Life Care Community (LCC) Entrance Fees

These facilities are ones which there is an entrance fee to move in. This policy will apply to all MA applications, not just LTC. There are three criteria which must all be met before the entrance fee will be considered a countable asset. They are: 1) must be available to use the fee if person has insufficient funds to pay for their care, 2) eligible for a refund at death or termination of contract and 3) the fee doesn't confer an ownership interest in the facility. If all these criteria are not met, the asset is considered unavailable.

Life Estates

When purchasing a life estate in another person's home, the purchaser must live in the home for 12 consecutive months and pay FMV for life estate to not incur divestment. If they paid more than FMV then there is a penalty for that. Temporary absences of <30 days are acceptable. Absences for medical reasons of over 30 days will not break the 12 month chain, but stop the clock and it will restart when they return. Absences for vacations, moving to Florida for winter, etc. of over 30 days, break the chain and the 12 month clock starts over. Mid-month moves in or out give credit for the month as lived in the residence. Obtain collateral verification. The divestment penalty remains in effect until the penalty period ends or the person lives in the home 12 months whichever occurs first.

Home Equity Value

For institutional MA applicants only, new policy is home value can't exceed \$750K, unless they have a spouse or disabled child living in the home (then there is no limit). The home value can be reduced by home equity loans, reverse mortgages, etc.

Undue Hardship

The policy is basically the same with ESS making determination that without medical care health would be endangered or deprived of food, clothing, shelter or necessities of life. New under the DRA is that the facility can make the request to the IM agency. While the decision is being made, the state will allow 30 bed hold days payable by MA. Hardship is more realistically for waiver/community residents. Kelly requested clarification of discharge guidelines of RCAC's, CBRF's and Nursing homes for undue hardship cases.

Purchase of Promissory Notes, Loans, or Mortgages

The purchase of such a note is considered divestment unless it meets all of the following criteria: 1) the repayment terms are actuarially sound (there are enough years to pay off in applicants life expectancy), 2) payments are in equal amounts with no balloon or deferral, and 3) must prohibit cancellation of note upon death of lender (this clause can be added later when they apply and no divestment will be incurred). Jeff stated there will be a website provided to calculate if the note is actuarially sound.

Annuities

The new policy will apply to annuities purchased on or after 1/1/09 or any purchased before that a change (payment or principal) to the annuity was made on or after 1/1/09. There are three issues: 1) Disclosure - MA applicants/recipients must disclose information for eligibility determination or re-determination. Forms will be available. 2) Remainder Beneficiary - The State of Wisconsin must be designated as the remainder beneficiary in first position (or second position if community spouse, disabled child, etc.). Jeff was going to check if the community spouse can do anything with the annuity after the first year or if they still need to report the annuities and assign them or not. Jeff also said he checked with legal counsel pertaining to what happens if after penalty period is met, the applicant still hasn't assigned the annuity to the State. The answer he received was that it is an eligibility requirement that the State be named as 1st or 2nd remaining beneficiary. 3) Additional Treatment for Unavailable Annuities - The policy does not apply to annuities considered unavailable. Some examples of unavailable annuities are: retirement annuities, annuities which IRA or retirement accounts were used to set up the annuity, or are irrevocable and non-assignable, are actuarially sound and provide equal payments with no balloon or deferral.

Intent to Return Home

The policy is relaxed in that even if a person is incompetent and has a guardian that states he will return home, the home is considered an exempt asset due to 'intent'. A lien will need to be placed on the home unless a doctor's statement is provided to confirm the expectation to return.

Next Bi-Monthly/WSSA EBD Committee Meetings April 29/30, 2009 at Dane County Job Center.

Stay tuned for possible February meeting to cover the DRA if policy is approved and we can schedule speakers.

Minutes will be posted at the WSSA website at <http://www.wssa.ws>

Please send any additions/corrections to Rose Siwula at roses.parkstreet@co.waushara.wi.us