Today's Program…

- **Look-back period**
- **Financial eligibility**
- **Multiple transfers**
- **Penalty periods**
- **Undue hardship**
- **Annuities**
- **Life Estate interest**
- **Loans, promissory notes, mortgages**

Today's Program…

We'll also look at:

- **Treatment of substantial home equity interest**
- **Continuing care retirement and life care community contracts**

Additionally we'll examine

- **Notice requirements**

Nursing Facility Services

- **Nursing home care**
- **Alternative level of care in a hospital (usually awaiting nursing home placement)**
- **Waiver services under one of the waiver programs**
- **Hospice in a nursing home**
- **Coverage in an intermediate care facility**
- **Managed long-term care in a nursing home**

“Unchanged” Look Back Issues

- Look-back includes any transfers made by the A/R’s spouse
- No minimum amount that is okay to transfer set by the DRA or the State
- Look-back applies to an applicant who is first applying for Medicaid coverage of nursing facility services and to recipients who apply for an increase in coverage to include nursing facility services

Look- Back Change

*The purpose of the **look-back** is to determine if the applicant had transferred assets for less than fair market value. If so,a period of ineligibility may be calculated.*

60 months

36 months

Medicaid Application Date	Length of Look-Back Period	Look-Back Period
January 2009	36 months	1/09 - 2/06
February 2009	37 months	2/09 - 2/06
March 2009	38 months	3/09 - 2/06
February 2011	60 months	2/11 - 2/06
March 2011	60 months	3/11 - 3/06

Two-Step Budgeting Process

Step One

- Determine Financial Eligibility

Two-Step Budgeting Process

Step Two (Post Eligibility)

- For singles there is no community spouse monthly income allowance deduction, so they really won't be impacted.
- For spouses it's a little different because of the deductions allowed under post-eligibility that are **not** allowed under eligibility.
  For resources, regular rules apply, meaning the community spouse is given the community spouse resource allowance.
- If there are excess resources, check to see if there are medical expenses to offset any excess.

Financial Ineligibility

- **A notice of denial is sent regarding excess income, or resources, or both (notice will not address any transfer).**
- **A review of potential transfers during the look-back is not required because the applicant is not otherwise eligible for Medicaid.**
- **Districts should maintain resource documentation for later review should individual reapply at a later date**

Multiple Transfers

- **Multiple transfers of assets for less than fair market value made on or after 2/8/06 must be accumulated and treated as one transfer**
- **Districts will accumulate all uncompensated transfers of assets whether the transfers add up to the regional rate used to determine a period of ineligibility, or total less than the regional rate**
- **The total will be used to determine the period of ineligibility for nursing facility services**

Undue Hardship Options

- **Undue hardship is described in 96 ADM 8.**
- **Undue hardship exists when:**
  - **The individual applying for nursing facility services is otherwise eligible for Medicaid; AND**
  - **Despite his/her best efforts, determined by the county, the individual or the individual's spouse is unable to have the transferred asset returned or to receive fair market value for the asset; AND**
  - **Either the individual is unable to obtain appropriate medical care without Medicaid and thus is endangering his/her health or life; OR**

Undue Hardship Options

- **The transfer of assets penalty would deprive the individual of food, clothing, shelter or other necessities of life**

Undue Hardship Definition

- The definition does not change
- Districts can, however, expect an increase in the number of claims for undue hardship
- Now, the penalty will not start until the individual is otherwise eligible for Medicaid coverage of nursing facility services

Annuities

In addition to naming the State remainder beneficiary the purchase of an annuity is treated as a transfer unless:

- **The annuity is an individual retirement annuity that is non-transferable, has fixed premiums and the entire interest is non-forfeitable; or**
- **The annuity is a voluntary employee funded account established under but separate from a qualified employer plan; or**

Annuities

The annuity is purchased with the proceeds from

- An individual retirement account;
- A simplified employee pension plan; or
- A Roth IRA; or

Annuities

The annuity is:

- **Irrevocable and non-assignable;**
- **Actuarially sound; and**
- **Provides for payments in equal amounts during the term of the annuity, with no deferral or balloon payments.**
- **These qualified accounts are described in subsection (a), (c) or (p) of Section 408, Section 408(k) and Section 408A of the Internal Revenue Code.**

Equity Limitation Claim

Undue hardship can be claimed if the denial of Medicaid coverage would deprive the A/R:

- **Of medical care such that the individual's health or life would be endangered; OR**
- **Of food, clothing, shelter, or other necessities of life; AND**
- **There is a legal impediment that prevents the A/R from being able to access his or her equity interest in the property**

Community Care Community Entrance Fees

- **When the individual has the ability to use the entrance fee or the contract provides that the entrance fee may be used to pay for care should other income and resources be insufficient to pay; and**
- **The individual is eligible for a refund of any remaining fee upon death or upon termination of the contract and leaving the community; and**
- **The entrance fee does not confer an ownership interest in the community**

Loans, Promissory Notes, Mortgages

The purchase will be treated as an uncompensated transfer unless the loan, promissory note or mortgage:

- **Has a repayment schedule that is actuarially sound;**
- **Provides payments in equal amounts during the term with no deferral or balloon payments made; and**
- **Prohibits the cancellation of the outstanding upon the death of the lender**

Effective Dates

- **The changes discussed in today's program relating to transfers and annuities apply to individuals who file applications on or after August 1, 2006, where a transfer was made on or after February 8, 2006**
- **The home equity limitation applies to applications file on or after January 1, 2006 for long-term care services**
- **The rules for certain entrance fees for CCRCs are effective for applications filed on or after August 1, 2006**

Handouts

http://ocfs.state.nyenet/ohrd/distance learning/satellite/schedule.asp