

STATE OF WISCONSIN
Department of Health Services
Division of Long Term Care

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Index Title: Changes in Divestment Policy and Process

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Interim Administrator

Subject: Changes in Divestment Policy and Process

Document Summary

The purpose of this memo is to provide care managers (CM) and support and services coordinators (SSC) with information pertaining to new rules about divestments under the Deficit Reduction Act (DRA) of 2005. **Generally, the new divestment policies apply to any divestments that occur on or after January 1, 2009.** Divestments that occurred prior to January 1, 2009 are generally subject to previous asset transfer policies.

Background

Divestment rules apply to all applicants and recipients of Long Term Care Medicaid, including Nursing Home Medicaid, all Home and Community Based Waiver (HCBW) Programs and Managed Long Term Care (MLTC) Programs. Divestment rules also apply to the Community Options Program (COP - 100% GPR funded) program.

The DRA of 2005 made major changes to the Medicaid divestment laws, including:

- 1) The look-back period
- 2) The divestment penalty period begin date
- 3) New treatment for multiple divestments
- 4) New treatment of Continuing Care Retirement Community Entrance (CCRC) or Life Care Community (LCC) Fees
- 5) New treatment of Home Equity
- 6) A requirement that penalty periods include partial months
- 7) The mandate that certain types of assets transfers be considered divestments, such as.
 - Purchase of Life estates

- Purchase of promissory notes, loans or mortgages
- Annuities

IMW have the primary role in the application of these new rules for all Long-Term Care Medicaid funded cases, including all Home and Community Based Waiver funded cases. Home and Community Based Waiver cases funded with both Medicaid waiver funds and COP GPR funds are subject to Medicaid Waiver eligibility rules, so IMW will continue to also have the primary role in the application of these new rules for these cases.

CM/SSC coordinators will have the primary role in the application of these new rules for all COP (100% GPR funded cases). Currently, there are about 200 new COP cases statewide each year. As more and more counties transition to Managed Care, we expect these cases to diminish over time.

BEM/DFS Operations Memo No. 09-01, dated 01-07-2009 clarifies implementation of the new rules. It is available at: <http://dhs.wisconsin.gov/em/ops-memos/2009/pdf/09-01.pdf>.

The Division of Health Care Access and Accountability (DHCAA) has offered to hold a conference call to answer any questions that CM/SSC might have about the BEM/DFS Ops Memo. DHCAA has asked that CM/SSC provide these questions in writing to them one week prior to the conference call. Please submit your questions to: Vicki.Jessup@dhs.wisconsin.gov
You will be notified about the date and time of the conference call.

Below, we clarify the role of CM and SSC specifically as it relates to:

- a) New Referral Process to IMW for all Home and Community Based Waiver funded cases and the handling of COP (100% GPR funded) cases by CM/SSC.
- b) Additional Divestment Questions
- c) Differences in the Look-Back Period timeline

New Referral Process for all Home and Community Based Waiver funded cases to Income Maintenance Workers and how CM/SSC will handle divestment issues for COP (100% GPR funded) cases

Effective January 1, 2009 and thereafter, the divestment penalty period for HCBW or COP applicants begins on the date that they apply for HCBW or COP and would be otherwise eligible for HCBW or COP, *even if they are being placed on the long-term support waiting list*. Being otherwise eligible for HCBW or COP means that the applicant meets all the eligibility criteria (functional and financial), except for the fact that the applicant divested.

Furthermore, individuals whose name is being placed on the long-term support waiting list, must be instructed that, if there are reportable changes while they are on the waiting list, they should report them. Reportable changes are both financial and non-financial. Reportable changes include, but are not limited to, changes in income, assets, name, living arrangement, marital status, divestment, etc. Additional divestments made while the individual's name is on the waiting list should be assessed according to instructions in this memo.

Effective January 1, 2009, **all** HCBW and COP applicants should be screened for functional and financial eligibility at the time of **initial** application.

For purposes of COP, "screening" means that the CM/SSC will establish if the COP applicant meets all functional and financial eligibility criteria for COP. All **COP** applicants who otherwise meet the functional and financial eligibility tests for COP, and who answer "Yes" to any divestment question listed below, under the section entitled "New Divestment Questions," will need to be further assessed to determine if a divestment barring COP eligibility has occurred. In these cases, a penalty period will need to be

calculated and documented in the case file. **This assessment must occur PRIOR to their name being placed on the county long-term support waiting list.**

The CM/SSC will base their assessment on the instructions contained in the BEM/DFS Operations Memo No. 09-01, dated 01-07-2009.

If CM/SSC have an actual divestment case and are unable to make an assessment independently, they may contact Irene Anderson in the Bureau of Long-Term Support for assistance (Irene.Anderson@dhs.wisconsin.gov@dhs.wisconsin.gov.). Please be sure to complete and forward the divestment form F-20919-D, available at: <http://dhs.wisconsin.gov/forms1/F2/F20919D.pdf> , to receive assistance.

For purposes of HCBW applicants, "screening" means that the CM/SSC will ensure that all these applicants will be tested for target group, living arrangement, need for waiver services, level of care, and the divestment questions. Individuals who pass these tests, and who respond "Yes" to any of the divestment questions will be referred to the IM Worker for a Medicaid application, **PRIOR to their name being placed on the county's long-term support waiting list.**

The IMW will test HCBW applicants for Medicaid eligibility criteria. If the HCBW applicant meets all eligibility criteria except for the divestment and available waiver funding, the IMW will establish the penalty period, if any, and the penalty clock will begin to run its course.

CM and SSC will not wait until the HCBW or COP applicant reaches the top of the long-term support waiting list to make a referral for a Medicaid application to the IMW. To do so would mean that, after waiting to reach the top of the long-term support waiting list, these applicants may have to wait further to cure a possible divestment penalty.

Note that the divestment questions must also be asked at a participant's review time, and whenever the individual answers "Yes" to one or more divestment questions, appropriate referrals must be made to the IMW.

The referral to the IMW will be made by completing Form F-20919-D, which has been revised to reflect the DRA 2005 changes. <http://dhs.wisconsin.gov/forms1/F2/F20919D.pdf>

Look-Back Period Timelines.

Under the new rules, the look-back period for transfers involving *trusts* remains 60 months for all trust transfers (i.e., for trust transfers made prior to or after January 1, 2009).

However, under previous policy, transfers *other* than trusts were subject to a 36-month look-back period. Beginning January 1, 2009, the look-back period for **all** transfers is 60 months prior to the date that an individual is both institutionalized and has applied for Long Term Care Medicaid. For institutionalized Medicaid applicants, including individuals in HCBW and MLTC, the look back period for applications is 60 months from the MEDICAID application filing date.

Because the 60-month look-back period for transfers not involving trusts is applied only to transfers that occurred on or after January 1, 2009, *the look-back period for these transfers will remain 36 months until January 1, 2012.* After January 1, 2012, the look-back period will increase by one additional month between February 2012 and December 2013, as illustrated below:

Years 2009, 2010, 2011 - Look-Back Period (LBP) in Months for Divestments Other than Trusts
36 months

Year 2012 - Look-Back Period (LBP) in Months for Divestments Other than Trusts

Month	LBP										
January	36	February	37	March	38	April	39	May	40	June	41
Month	LBP										
July	42	August	43	September	44	October	45	November	46	December	47

Year 2013 - Look-Back Period (LBP) in Months for Divestments Other than Trusts

Month	LBP										
January	48	February	49	March	50	April	51	May	52	June	53
Month	LBP										
July	54	August	55	September	56	October	57	November	58	December	59

Then, beginning January 1, 2014, the look-back period for ALL divestments will be 60 months from the date the individual has applied for HCBW or MLTC.

New Divestment Questions.

Until December 31, 2008, CM and SSC asked only two divestment questions of all applicants and participants at review time (namely questions # 1 and # 6 below).

Because the DRA 2005 includes additional prohibited transfers, there is a need for CM and SSC to ask all of the following questions as of 1/1/09:

- 1) Have you or your spouse sold, traded, transferred or given away property, land, stocks, bonds, cash, vehicles, or anything of value in the past **36 months**? (Note that beginning on February 1, 2012 you should ask if they have transferred, sold, traded, etc. since 1/1/09 since the number of months in the look-back period will increase by one additional month until the look-back period will reach 60 months in January 2014. Refer to the chart under the previous heading to insert the correct look-back period beginning in February 2012).
- 2) Have you or your spouse purchased a life estate in another individual's home?
- 3) Have you or your spouse purchased a promissory note(s), a loan(s), or a mortgage(s).
- 4) Have you or your spouse purchased an annuity?
- 5) If you or your spouse own any annuities which were purchased prior to 1/1/09, have any of the following transactions occurred after 1/1/09 to that annuity?
 - additions of principal,
 - elective withdrawals,
 - requests to change the distribution of the annuity,
 - elections to annuitize the contract,
 - a change in ownership
- 6) Have you or your spouse created a trust, or added funds to a trust **within the last five years**?

If the answer to any of the above questions is "Yes," at application or at review, complete Form F-20919-D, and make a referral to the IMW right away. <http://dhs.wisconsin.gov/forms1/F2/F20919D.pdf>

Divestment Penalty Period Begin Date, New Treatment for Multiple Divestments, and a Requirement that Penalty Periods Include Partial Months.

The above changes brought about by the DRA 2005 are explained in detail in the BEM/DFS Memo 09-01, dated 01/07/09 and available at: <http://dhs.wisconsin.gov/em/ops-memos/2009/pdf/09-01.pdf>

IMW have the primary role for implementing these changes for all Home and Community Based Waivers. CM/SSC have the primary role for implementing these changes for all COP (100% GPR funded cases).

If your HCBW clients have questions about the new divestment rules, they should be referred to the IMW. For general questions, you may refer them to the local Elderly Benefit Specialist (if the applicant is age 60 or older), or to the local Disability Benefit Specialist (if the applicant is age 60 and younger), provided a Disability Benefit Specialist is available in the particular county.

REGIONAL OFFICE CONTACT: Human Services Area Coordinators - Adult Services

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MEMO WEB SITE: http://dhfs.wisconsin.gov/dsl_info/