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TO: **Income Maintenance Supervisors**
Income Maintenance Lead Workers
Income Maintenance Staff
W-2 Agencies
Workforce Development Boards
Job Center Leads and Managers
Training Staff
Child Care Coordinators

FROM: Shawn Smith, Bureau Director
Bureau of Enrollment Policy & Systems
Division of Health Care Access and Accountability

BEPS/DFS OPERATIONS MEMO

No: 13-38

DATE: 11/07/2013

FS ☐	**MA** ☒	**BC+** ☐
SC ☐	**CTS** ☐	**FSET** ☐
BC+ Basic ☐	**BC+ CORE** ☐	
CC ☐	**W-2** ☐	**EA** ☐
CF ☐	**JAL** ☐	**JC** ☐
RAP ☐	**WIA** ☐	**Other** ☐* **EP**

SUBJECT: Divestment and Other Medicaid Asset Policy Changes Pursuant to the 2013-2015 Budget

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CROSS REFERENCE: WI Act 20 (AB40); JFC motion #604 on September 18, 2013; MEH sections: 17.4 (2.); 17.5.5.2; 17.5.4; 2.5.3; & 16.7.5. Wis. Stat. 49.455(5)(d); 49.45(4m)(a)3; 49.455(8)(d)2; 49.453(8)(a)1; 49.453(3)(ag); 49.455(5)(e); 49.47(4)(b)2w.

EFFECTIVE DATE: November 11, 2013

PURPOSE:

The purpose of this memo is to announce changes to Divestment policies and other policies related to asset eligibility for Elderly, Blind and Disabled (EBD) and Long Term Care (LTC) Medicaid (including Family Care, Partnership and PACE). These changes are a result of the 2013-2015 Biennial Budget.

BACKGROUND:

The Deficit Reduction Act of 2005 (DRA) made a number of changes to the Medicaid Divestment laws. Wisconsin implemented these changes in January 2009. Since implementation, the Department has become aware of a number of situations that allowed individuals to divest assets without incurring a penalty period. In order to improve program integrity, a number of changes were proposed in the 2013-2015 Biennial Budget. The following changes were approved by the Joint Finance Committee on September 18, 2013.

DIVESTMENT POLICY CHANGES:

Effective Date:

The following changes are effective November 11, 2013, for transfers occurring on or after September 18, 2013. Applications, renewals and change reports processed and confirmed prior to November 1st, under the old rules will continue with eligibility under the old rules unless there are specific instructions in the policy descriptions below to apply the new policies at a later date.

Community Spouse Divestment:

Under current policy, once an institutionalized person is determined eligible, the community spouse can divest assets without affecting the eligibility of the institutionalized spouse. (MEH 17.4 #2).

Beginning November 11, 2013, transfers made by the community spouse on or after September 18, 2013 of non-exempt property for less than fair market value (FMV), within the first five years after the institutionalized spouse is determined to be eligible, will result in a divestment penalty period for the institutionalized spouse. If the institutionalized spouse loses Medicaid eligibility, reapplies and is found eligible a new five year period starts. (Wis. Stat. 49.455(5)(d)).

Example: Marty has been eligible for Institutional Medicaid for the past 2 years. His community spouse, Joan, gave her home to her son for less than FMV. Since Joan’s divestment was within 5 years of Marty’s eligibility begin date, Marty will be subject to a penalty period based on the value of the home Joan gave away.

Penalty Begin Date-Recipients:

Under current policy, a penalty period begin date for a divestment that occurs after the member has been determined eligible is the first day of the month in which the divestment occurred. (MEH 17.5.4). Before the actual penalty can be imposed, the IM agency must provide timely and adequate notice to the recipient, advising him/her of the negative action. This requirement for timely notice has resulted in an effective shortening of the penalty period by as much as two months.

Beginning with penalty periods with a start date of November 11, 2013 or later, a member’s penalty period will now begin on the first of the month after timely notice is given, rather than beginning the first of the month the divestment occurred. This ensures that all members subject to a penalty both receive appropriate notice and also serve their entire penalty period. (Wis. Stat. 49.453(3)(ag)).

Example: Joe was determined eligible for Institutional Medicaid effective March 1st. On July 2nd he sold his home and gave the proceeds to his son. Joe reported the divestment on July 12th. The worker entered the divestment in CARES on July 16th and closed Joe’s Institutional Medicaid effective August 1st. The penalty period begin date would be August 1st, the date the worker was able to enter the divestment and give timely notice of the penalty period. If the worker had not entered the divestment in CARES until after Adverse Action in July, the penalty period begin date would be September 1st, the first day we could terminate the benefit with timely notice.

<u>PARTIAL REFUND DISCONTINUATION:</u>

Under current policy, individuals who are currently serving a divestment penalty may partially cure the divestment by receiving a partial refund of a previously transferred resource. (MEH 17.5.5.2). When part of a resource or its equivalent value is returned through a cash payment, the divested amount and the penalty period is recalculated as long as the returned resource is used to pay for medical and remedial expenses incurred during the divestment penalty period or for the cost of care previously provided to the individual during the divestment penalty period. Beginning with penalty periods with a start date of November 11, 2013 or later, the total value of the divested amount must be returned in order to 'cure' the divestment. A penalty period will no longer be re-calculated based on a partial repayment. (Wis. Stat. 49.453(8)(a)).

Example: Jerry divested cash to his daughter prior to applying for Institutional Medicaid. He has a 373 day penalty period. His daughter returned ½ of the divested amount. Jerry's penalty period remains 373 days. If Jerry's daughter returned the entire amount that was divested, the divestment would be 'cured' and Jerry would no longer have a penalty period.

OTHER POLICY CHANGES:

<u>EXPAND DEFINITION OF FINANCIAL INSTITUTIONS FOR THE ASSET VERIFICATION SYSTEM:</u>

Under current policy, the Asset Verification System (AVS), IntegriMatch, performs data matches between members eligible for EBD or LTC Medicaid and 362 Financial Institutions' (FIs'). Currently the FI's included in the data matches are limited to banks and credit unions. Life insurance companies were not required to participate.

Pursuant to Wis. Stat. 49.45(4m)(a)3, the definition of a "Financial Institution" has been expanded and additional types of FI's will now be required to participate with AVS matching. The AVS will now be able to set up Data Use Agreements and begin matching with the following types of FI's:

- insurance companies,
- safe deposit companies,
- benefit associations (an organization that may be non-profit or cooperatively run that offers insurance or other financial services to its members)
- money market mutual fund, or similar entity authorized to do business in this state.
- broker−dealers (a person, company or organization that engages in the business of trading securities for its own account or on behalf of its customers)

➢**Note:** Health Management Systems (HMS) will work to update the Wisconsin network to include these additional entities through an outreach effort. Workers will begin to see matches on these new FI's as soon as Data Sharing Agreements can be signed.

<u>MANDATORY COMMUNITY SPOUSE PARTICIPATION:</u>

Under current policy, both the institutionalized person and his or her community spouse must sign an application for LTC and Institutional Medicaid. If the community spouse refuses to sign the application, the institutionalized person's eligibility is determined as a single individual (MEH 2.5.3).

Beginning with applications dated November 11, 2013 or later, financial information and signatures are required from both the spouse applying for LTC, (including Family Care, Partnership and Pace) or Institutional Medicaid and his or her community spouse. Eligibility will be denied for an individual whose community spouse refuses to sign the application, refuses to disclose the value of assets, or refuses to provide required information on income or resources. This means that “Just say no” is no longer a viable strategy for shielding assets. (Wis. Stat. 49.455(5)(e)).

For ongoing cases where eligibility was determined without using spousal impoverishment rules, apply the spousal impoverishment rules at the next renewal. This includes completing an asset assessment and determining eligibility for the next certification period by comparing the current combined assets of the couple to the total of the Community Spouse Asset Share plus the $2000 asset limit for the institutionalized spouse.

LIFE INSURANCE FACE VALUE:

Under current policy, any cash value in a life insurance policy is only counted where the total face value of all policies owned by that individual exceeds $1500 (MEH 16.7.5). As a result, a small but growing trend has emerged in the marketing of ‘legacy policies’ with a face value of $1000 and riders up to $500,000.

Beginning with applications dated November 11, 2013 or later, the face value of riders and other attachments are included in the total ‘face value’ of the policy. If the total face value of all life insurance policies, including riders and other attachments, is more than $1,500, count the cash value of the policy as an available asset. (Wis. Stat. 49.47(4)(b)2w).

Workers should enter the total of the face value plus any riders or other attachments as the “Face Value” on the Life Insurance Assets Page.

CALCULATING AN INCREASED RESOURCE ALLOCATION:

Current law allows a community spouse to have a minimum monthly maintenance needs allowance which may be provided by an income-generating resource allowance. If either spouse establishes at a fair hearing that the resource allowance determined outside the fair hearing does not generate enough income to meet the minimum monthly maintenance needs allowance, DHS is required, under current law, to establish an amount that results in a sufficient minimum monthly maintenance needs allowance.

Pursuant to Wis. Stat. 49.455(8)(d)2, and beginning with applications dated November 11, 2013, or later, DHS must base the amount of resources to be transferred to the community spouse to raise his or her income to the level of the minimum monthly maintenance needs allowance on the cost of a single premium lifetime annuity that pays monthly amounts that, combined with other available income, raise the community spouse’s income to the minimum monthly maintenance needs allowance. The community spouse, however, is not required to actually purchase the annuity to receive the amount. This will provide more clarity and parity in resource allocation.

IM workers do not make this determination. The decision to allow a community spouse to keep a greater amount of assets is done through the Fair Hearing Process or through a court decision.

CARES:

There will be no CARES updates for these policy changes. Workers should use the following processes for implementing these changes.

COMMUNITY SPOUSE DIVESTMENT:

When the community spouse divests within 5 years of the institutionalized spouse becoming eligible, workers must enter the divestment on the Transfer/Divestment of Assets Page under the institutionalized person's name. Document in case comments that the divestment was done by the community spouse.

PENALTY BEGIN DATE-RECIPIENTS:

When a recipient divests the IM worker will have enter the date the divestment was reported as the transfer date on the Transfer/Divestment of Assets page. CARES will close the person using Adverse Action logic. The actual penalty period should be calculated based on the first day of the month of closure. Those dates should be entered in case comments to be adjusted with the monthly Divestment Report completed by the CARES Call Center.

Manual notices must be sent with the correct divestment dates.

MANDATORY COMMUNITY SPOUSE PARTICIPATION:

If the community spouse refuses to sign the application or provide required information, enter an "N-No" in the Health Care Signature field on the General Case Information page.

CONTACTS:

BEPS CARES Information & Problem Resolution Center

*Program Categories – FS – FoodShare, MA – Medicaid, BC+ – BadgerCare Plus, SC – Senior Care, CTS – Caretaker Supplement, CC – Child Care, W-2 – Wisconsin Works, FSET – FoodShare Employment and Training, BC+ Core – BadgerCare Plus Core, CF – Children First, EA – Emergency Assistance, JAL – Job Access Loan, JC - Job Center Programs, RAP – Refugee Assistance Program, WIA – Workforce Investment Act, Other EP – Other Employment Programs.

DHS/DHCAA/BEPS/FM