

## BROOKDALE CENTER ON AGING OF HUNTER COLLEGE/CUNY

### ANALYSIS OF GOVERNOR PATAKI'S PROPOSED CHANGES TO MEDICAID TRANSFER OF ASSET RULES

#### I. PROPOSED CHANGE: APPLY THE MEDICAID TRANSFER OF ASSET RULES TO NON- INSTITUTIONAL LONG TERM CARE CASES

**Current Law:** New York has **no** penalty period of ineligibility for transfers of “assets” (income and/or resources) by individuals who apply for Medicaid home care services. Home care services include home health services (nursing, therapy and home health aide, medical equipment and supplies used at home) and personal care (also known as home attendant) services.

**Example #1:** Mrs. Green, a 78-year-old woman in New York City, has \$50,000 and needs home care. On February 1, 2004, she transfers the \$50,000 to a niece and applies for Medicaid home care on February 20, 2004.

**Transfer Penalty Under Current Law: Mrs. Green may apply immediately for Medicaid home care without a transfer penalty period.**

In determining her eligibility for home care services, Medicaid does **not** apply the transfer of assets penalty rules because, in New York State, those rules now apply only to “institutional” services.

**Proposed Change:** Medicaid would impose a transfer of assets penalty period of ineligibility on those who transfer assets prior to an application for Medicaid coverage of **non-institutional** “long term care services” (defined as home health, personal care, Medicaid Assisted Living Programs<sup>1</sup> and other services as designated in State Department of Health regulations).

**Transfer Penalty Under Proposed Change: Mrs. Green would face a penalty period during which she would not be eligible for Medicaid home care and other non-institutional long term care services.**

Medicaid would impose a transfer penalty of ineligibility and calculate the length of the penalty period by dividing the amount transferred (\$50,000) by the Medicaid-computed monthly average private pay nursing home cost (\$8,695 in New York City for 2004) resulting in a penalty period of 5.75 months ( $\$50,000 \div \$8,695 = 5.75$  months). Mrs. Green’s period of ineligibility for **home care** would start on March 1, 2004 and end August 24, 2004.

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<sup>1</sup> An adult home or enriched housing program that contracts with a certified home health agency to provide Medicaid-funded home care services.

**New York Law:** New York law currently does **not** apply the Medicaid transfer of assets penalty period of ineligibility to non-institutional long term care services. The Governor's Budget Bill contains the necessary language to make this change in New York law.

**Federal Law:** **A change in federal law or a federal waiver is not required** to impose a transfer of assets penalty on those applying for non-institutional long term care services because federal law now gives states the **option** of applying the transfer rule to non-institutional long term care services.

**Effect of Proposed Change:** Making this change in New York law would contradict efforts to keep elderly and disabled individuals at home in their preferred, most integrated setting (as required by the United States Supreme Court *Olmstead* decision). By allowing transfers without penalty for home care services, New York Medicaid now encourages families to keep their ill spouses and parents in the community. Under the proposed change, individuals who transfer assets will have to try to get back those assets so they can pay privately for care until the penalty period ends. If they cannot obtain the transferred assets, they will have to rely on the generosity of family members or others to assist them or go without care.

This change would also adversely affect caregiving spouses and other family members who would have to provide some or total assistance to the sick Medicaid applicant. The health of spouses and other family members providing assistance could deteriorate to the point that they might need services. Isolated individuals without family members to provide assistance may deteriorate to the point of requiring hospital and/or nursing home placement, leading to more expensive care in most cases than if they had stayed at home with Medicaid non-institutional long term care services.

## **II. PROPOSED CHANGE: EXTEND THE “LOOK-BACK” PERIOD FOR OUTRIGHT TRANSFERS FROM 36 TO 60 MONTHS PRIOR TO THE DATE OF APPLICATION**

**Current Law:** New York now applies the transfer penalty rules to outright transfers<sup>2</sup> made within a **36-month look-back period** (or to trust-related transfers within a **60-month** look-back period) immediately prior to the date of Medicaid application.

**Example #2:** Mr. Howard lives alone at home in New York City and needs nursing home care. He transferred \$375,000 to a nephew on October 2, 2000 -- 40 months prior to applying for institutional Medicaid services.

**Look-back Period Under Current Law: When Mr. Howard applies for institutional Medicaid in February 2004, the \$375,000 transfer will not affect his Medicaid eligibility because he made the transfer before the 36-month look-back period.**

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<sup>2</sup> Transfers other than a trust-related transfer.

**Proposed Change:** Extend the look-back period from 36 to **60 months** for outright transfers.

**Look-back Period Under Proposed Change: Medicaid would apply the transfer rule to Mr. Howard's transfer in October 2000.**

Assume that the transfer of assets provisions do **not change** except for an increase in the look-back period for outright transfers from 36 to **60 months**. Mr. Howard will have to provide all financial documentation for 60 months prior to applying for institutional Medicaid. Mr. Howard transferred \$375,000 to his nephew on October 2, 2000. He applied for institutional Medicaid on February 3, 2004 and would face a transfer penalty starting November 1, 2000, the first day of the month **after** the month of the transfer. The penalty would be 43.12 months ( $\$375,000 \div \$8,695$ ) and would end July 4, 2004.

**New York Law:** New York law currently follows federal law and would have to be changed.

**Federal Law:** Federal law now requires a 36-month look-back period for outright transfers. **A change in federal law or a federal waiver is required to make this change.**

**Effect of Proposed Change:** Extending the look-back period for outright transfers to 60 months will make the application process more complicated and slower because all applicants for institutional Medicaid services will be required to provide **five** years of look-back documentation. Not only will this information be difficult for clients to gather (and expensive if financial institutions have to produce copies for applicants who have not retained their own records), but the volume of documents to be reviewed by Medicaid workers will increase dramatically and further complicate and delay an already lengthy application process. In addition, administrative costs for local counties will increase.

Extending the look-back period will force potential applicants to engage in Medicaid planning transfers two years earlier than they currently do. Individuals with larger amounts of resources or income will easily be able to plan earlier in advance. Individuals with fewer resources and less access to professional planners will suffer disproportionately because they may be unaware of the extended look-back period and may have unknowingly made transfers that will prevent their obtaining care. In addition, less healthy individuals may not have kept records going back that far, and Medicaid will **deny** eligibility because they cannot provide the required documentation. The harshest impact of this proposal will be on applicants with dementia who may not even be able to assist others in locating their assets or documentation for the 60-month period.

**III. PROPOSED CHANGE: CHANGE THE BEGINNING DATE FOR THE PENALTY PERIOD OF INELIGIBILITY FROM THE DATE OF THE TRANSFER TO THE FIRST DAY THE INDIVIDUAL IS RECEIVING SERVICES FOR WHICH MEDICAID WOULD HAVE PAID IF NO TRANSFER HAD OCCURRED**

**Current Law:** New York begins the transfer penalty period on the first day of the month **following** the month of the transfer.

**Example #3:** Mr. Cox, a New York City resident, transferred \$75,000 to a cousin on February 1, 2003 and needs nursing home care on February 1, 2004.

**Beginning Date Under Current Law: Mr. Cox's penalty period begins on the first day of the month following the month of the transfer and would expire before he needs institutional services.**

Medicaid calculates the penalty period by dividing the amount transferred (\$75,000) by a Medicaid-computed monthly average private pay nursing home cost (\$8,695 in New York City for 2004). This results in a penalty period of 8.6 months from the first day of the month following the month of the transfer. Since Mr. Cox transferred the assets in February 2003, the penalty period begins March 1, 2003 and **expires** in mid-November 2003, **before** he needs institutional services. Assuming he meets all other eligibility requirements, he will be eligible for institutional services when he applies in February 2004.

**Proposed Change:** The beginning date of the penalty period would change to the **first day** Mr. Cox receives services for which Medicaid would have paid if no transfer had occurred.

**Beginning Date Under Proposed Change: Mr. Cox would face a penalty period of 8.6 months beginning February 1, 2004 and would not be eligible for Medicaid until October 18, 2004.**

Mr. Cox would have to retrieve the transferred funds, if possible, to pay privately for 8.6 months of institutional care. If he could not retrieve the transferred funds, he would not be able to receive Medicaid-funded institutional care and would have to receive care at home from family members or others.

**New York Law:** New York law currently begins the transfer penalty period on the first day of the month **after** the month of the transfer and would have to be changed.

**Federal Law:** Federal law now requires transfer penalty periods to start on the first day of the month during or after which assets have been transferred. **A change in federal law or a federal waiver is required to make the proposed change.**

**Effect of Proposed Change:** Individuals who transferred assets will **not** be eligible for Medicaid until their penalty periods expire. They will have to try to get their transferred

assets back so that they can pay privately for care. If they cannot obtain the transferred assets, they will have to rely on the generosity of family members or others to assist them or go without care.

Nursing homes will become more wary of accepting patients who may have transferred any assets, and such individuals may remain in more expensive hospital settings or, after their health deteriorates at home, have to enter hospitals. This proposal will have more of an impact on older and disabled individuals of modest means than those with substantial wealth because they have less access to professional planners and may learn of this change only after they seek admission to a nursing home.

For more information, contact:

Ellen P. Rosenzweig, Director  
Samuel Sadin Institute on Law of the  
Brookdale Center on Aging of Hunter College  
(212) 481-3923  
[erosenzw@hunter.cuny.edu](mailto:erosenzw@hunter.cuny.edu)

or

Andrew Koski  
Deputy Director for Public Policy  
Samuel Sadin Institute on Law of the  
Brookdale Center on Aging of Hunter College  
(518) 433-9011  
[a.koski@att.net](mailto:a.koski@att.net)

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