

STATEMENTS OF POLICY

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CH. 178]

Mandated Update Provision of Deficit Reduction Act of 2005 on Medicaid Eligibility for Long-Term Care Services

Scope

This statement of policy applies to applicants and recipients in need of payment for the following long-term care (LTC) services: (1) nursing facility services; (2) a level of care in an institution equivalent to that of nursing facility services; and (3) home and community-based services furnished under a waiver granted by the Centers for Medicare and Medicaid Services.

Purpose

The purpose of this statement of policy is to provide the Department of Public Welfare's (Department) policy guideline and interpretation of the Department's regulations regarding eligibility for payment of LTC services.

Background

Section 6014(f) of the Deficit Reduction Act of 2005 (DRA) (42 U.S.C.A. § 1396p(f)) became law on February 8, 2006. This section of the DRA requires disqualification for payment of LTC services for individuals with substantial home equity. The Commonwealth incorporated this provision that an individual with home equity value that exceeds \$500,000 is ineligible for payment of LTC services in § 178.62a (relating to clarification of disqualification for payment of long-term care services due to substantial home equity—statement of policy), effective March 3, 2007. This ineligibility provision does not apply when there is a spouse, a child under 21 years of age or a child who is blind or permanently and totally disabled residing in the home.

Included in section 6014(f) of the DRA was the provision that the Secretary of Health and Human Services (HHS) shall establish a process to waive the application of the excess home equity provision in the case of a demonstrated hardship. The HHS, however, has not established a process. Until the Secretary of HHS establishes the demonstrated hardship process, the Department will continue to apply the DRA undue hardship provisions under §§ 178.104b and 178.174b (relating to clarification of fair consideration provisions for disposition of assets made on or after February 8, 2006—statement of policy), effective March 3, 2007. This provision makes available an undue hardship waiver request for individuals who would be denied eligibility for payment of LTC services due to excess home equity.

Discussion

Included in section 6014(f) of the DRA was the provision that the dollar amount of value of the home equity is to be increased beginning in 2011. The amount is to be increased from year to year based on the percentage increase in the Consumer Price Index for all urban consumers (all items; United States city average), rounded to the nearest \$1,000. Therefore, the corresponding sections of the statements of policy have been revised to reflect this provision.

Effective Date

This statement of policy is retroactive to January 1, 2011.

Contact Person

Questions and comments to this statement of policy should be directed to Edward J. Zogby, Director, Bureau of Policy, Office of Income Maintenance, (717) 787-4081.

GARY D. ALEXANDER,
Secretary

(*Editor's Note:* See 41 Pa.B. 5133 for a notice relating to this Statement of Policy.)

(*Editor's Note:* Title 55 of the *Pennsylvania Code* is amended by amending statements of policy in §§ 178.62a, 178.104b and 178.174b to read as set forth in Annex A.)

Fiscal Note: 14-BUL-95. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 55. PUBLIC WELFARE

PART II. PUBLIC ASSISTANCE MANUAL

Subpart D. DETERMINATION OF NEED AND AMOUNT OF ASSISTANCE

CHAPTER 178. RESOURCE PROVISIONS FOR CATEGORICALLY NMP-MA AND MNO-MA

Subchapter B. AGED, BLIND AND DISABLED CATEGORIES OF MA

ADDITIONAL RESOURCE REQUIREMENTS FOR THE AGED, BLIND AND DISABLED CATEGORIES OF MA

§ 178.62a. Clarification of disqualification for payment of long-term care services due to substantial home equity—statement of policy.

(a) Consistent with section 1917(f) of the Social Security Act (42 U.S.C.A. § 1396p(f)), regarding liens, adjustments and recoveries, and transfers of assets, effective for an application made on or after March 3, 2007, an individual with equity value in the home in excess of \$500,000 is ineligible for payment of long-term care services unless one of the following circumstances exist:

(1) The home is the residence of the community spouse.
(2) The home is the residence of a child who is under 21 years of age or a child who is blind or permanently and totally disabled as defined in section 1611(a)(3) of the Social Security Act (42 U.S.C.A. § 1382c(a)(3)), regarding definitions.

(b) Consistent with section 1917(f) of the Social Security Act, an individual determined ineligible for payment of long-term care services due to excess home equity will continue to be reviewed for eligibility for Medicaid.

(c) Consistent with section 1917(f)(4) of the Social Security Act, an individual determined ineligible for payment of long-term care services due to excess home equity and who is unable to access the excess home equity may have the ineligibility period waived in the case of a demonstrated hardship.

(d) Consistent with section 1917(f)(1)(C) of the Social Security Act, the dollar amount specified in subsection (a) shall be increased, beginning January 1, 2011, from year to year based on the percentage increase in the Consumer Price Index for all urban consumers (all items; United

States city average), rounded to the nearest \$1,000. Revisions to this amount, as required by Federal law and regulations, will be published as a notice in the *Pennsylvania Bulletin* and will be made available upon request.

DISPOSITION OF PROPERTY AND FAIR CONSIDERATION PROVISIONS FOR THE AGED, BLIND AND DISABLED CATEGORIES OF MA

§ 178.104b. Clarification of fair consideration provisions for disposition of assets made on or after February 8, 2006—statement of policy.

(a) For the purposes of this statement of policy, an undue hardship exists when application of the transfer of assets penalty provision would deprive the individual of one of the following:

(1) Medical care so that the individual's health or life would be endangered.

(2) Food, clothing, shelter or other necessities of life.

(b) Consistent with section 1917(c)(2)(D) of the Social Security Act (42 U.S.C.A. § 1396p(c)(2)(D)), regarding liens, adjustments and recoveries, and transfers of assets, effective with applications made on or after March 3, 2007, the Department will provide undue hardship waiver guidelines to an individual who is determined ineligible for payment of long-term care services due to a transfer of assets for less than fair market value made on or after February 8, 2006. The undue hardship waiver guidelines provide for the following:

(1) A notice to the individual that an undue hardship waiver exception exists.

(2) A timely process for determining whether an undue hardship waiver will be granted.

(3) A process under which an adverse determination can be appealed.

(c) Consistent with section 1917(c)(2)(D) of the Social Security Act, the undue hardship waiver request guidelines will permit the facility in which the institutionalized individual is residing to file an undue hardship waiver application on behalf of the individual with the consent of the individual or the personal representative of the individual.

(d) Until the Secretary of Health and Human Services establishes the demonstrated hardship process, the Department will apply the undue hardship process for an individual whose equity interest in the individual's home exceeds \$500,000. Consistent with section 1917(f)(1)(C) of the Social Security Act, this dollar amount shall be increased beginning January 1, 2011, from year to year based on the percentage increase in the Consumer Price Index for all urban consumers (all items; United States city average), rounded to the nearest \$1,000. Revisions to this amount, as required by Federal law and regulations, will be published as a notice in the *Pennsylvania Bulletin* and will be made available upon request.

Subchapter C. TANF-RELATED AND GA-RELATED CATEGORIES OF MA

DISPOSITION OF PROPERTY AND FAIR CONSIDERATION PROVISIONS FOR THE TANF AND GA CATEGORIES OF MA

§ 178.174b. Clarification of fair consideration provisions for disposition of assets made on or after February 8, 2006—statement of policy.

(a) For the purposes of this statement of policy, an undue hardship exists when application of the transfer of assets penalty provision would deprive the individual of one of the following:

(1) Medical care so that the individual's health or life would be endangered.

(2) Food, clothing, shelter or other necessities of life.

(b) Consistent with section 1917(c)(2)(D) of the Social Security Act (42 U.S.C.A. § 1396p(c)(2)(D)), regarding liens, adjustments and recoveries, and transfers of assets, effective with applications made on or after March 3, 2007, the Department will provide undue hardship waiver guidelines to an individual who is determined ineligible for payment of long-term care services due to a transfer of assets for less than fair market value made on or after February 8, 2006. The undue hardship waiver guidelines provide for the following:

(1) A notice to the individual that an undue hardship waiver exception exists.

(2) A timely process for determining whether an undue hardship waiver will be granted.

(3) A process under which an adverse determination can be appealed.

(c) Consistent with section 1917(c)(2)(D) of the Social Security Act, the undue hardship waiver request guidelines shall permit the facility in which the institutionalized individual is residing to file an undue hardship waiver application on behalf of the individual with the consent of the individual or the personal representative of the individual.

(d) Until the Secretary of Health and Human Services establishes the demonstrated hardship process, the Department will apply the undue hardship process for an individual whose equity interest in the individual's home exceeds \$500,000. Consistent with section 1917(f)(1)(C) of the Social Security Act, this dollar amount shall be increased beginning January 1, 2011, from year to year based on the percentage increase in the Consumer Price Index for all urban consumers (all items; United States city average), rounded to the nearest \$1,000. Revisions to this amount, as required by Federal law and regulations, will be published as a notice in the *Pennsylvania Bulletin* and will be made available upon request.

[Pa.B. Doc. No. 11-1642. Filed for public inspection September 23, 2011, 9:00 a.m.]