

**INFORMATION BRIEF**

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# Medical Assistance Treatment of Assets and Income

## For Persons Seeking Long-term Care Services

This information brief outlines the general income and asset limits in the Medical Assistance (MA) program, explains the spousal impoverishment provisions for people receiving long-term care services who have spouses that live in the community, and summarizes the prohibitions against an MA applicant or recipient transferring assets or income for less than fair market value.

**Please note:** This information brief provides general information on the spousal impoverishment provisions and transfer prohibitions under the Medical Assistance program. The House Research Department provides services to the Minnesota House of Representatives; it does not and cannot represent or provide legal services to private individuals, private entities, or other government organizations. For advice or an opinion as to what law applies in a specific situation, the person involved will need to contact his or her own attorney or advisor.

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## Executive Summary

Medical Assistance (MA) provides payment for nursing home and other long-term care services for people whose assets are at or below the limits prescribed in state law and whose income has been used to pay health service bills.

**The MA program limits the amount of income and the value of assets a recipient may have.** If an MA recipient lives in the community and is age 65 or older, the income limit is \$1,005 per month, or \$1,354 for a couple. Individuals with incomes higher than this can spend down their income to qualify for MA. MA recipients who live in a nursing home must contribute most of their income to the cost of nursing home care.

The asset limit is \$3,000 for an individual and \$6,000 for a couple. Several assets are excluded from the MA asset limit.

**The MA program specifies how the income and assets of a married couple are treated when one spouse receives long-term care services and applies for MA.** At the time of application for MA, an asset assessment is conducted. In 2017, the spouse receiving long-term care can transfer assets to the spouse who is still living in the community to bring that spouse's assets to a maximum of \$120,900.

The long-term care spouse must use nearly all of his or her income to pay for the cost of long-term care services, while the community spouse can keep all of his or her income and is not required to pay for the care of the long-term care spouse if that spouse is eligible for MA.

**The MA program places some prohibitions on the transfer of assets and income.** In general, a person seeking or receiving long-term care cannot transfer assets or income for less than fair market value, though there are several exceptions. If a person does so, he or she may lose eligibility of MA coverage of long-term care services.

## MA Program Long-term Care Coverage

**MA provides coverage for nursing home and other long-term care services to qualified persons.**

Medical Assistance (MA), Minnesota's Medicaid program, is the federal-state program that reimburses health care providers for services to persons who meet program eligibility requirements. The MA program will pay for long-term care services for individuals whose assets are at or below the limits prescribed in state law and whose income, minus certain deductions, has been contributed toward the cost of long-term care services. Minnesota's MA program also has federal approval to provide home and community-based "waived services" to certain MA

recipients who would otherwise need nursing facility or other institutional level of care.<sup>1</sup> Persons can apply for MA by contacting their local county or tribal human services agency.

## General Income and Asset Limits in the MA Program

**The MA program sets limits on the amount of income and the value of assets a recipient may have.**

**Income** is defined as net countable income after certain allowable deductions have been subtracted. **Assets** include all real and personal property owned by the recipient. When a married couple is living together and neither spouse is receiving long-term care services, all assets and income of each spouse are considered available to the other in determining eligibility for MA.

In general, an MA recipient living in the community who is age 65 or older may have income of no more than \$1,005 per month. (This limit is \$1,354 for a couple.)<sup>2</sup> However, individuals with incomes higher than these limits can still qualify for MA by “spending down” their income. Spending down means that the individual pays for medical expenses out-of-pocket that equal or exceed the amount by which the individual’s income exceeds the MA spenddown limit.<sup>3</sup>

In contrast to an MA recipient living in the community, an MA recipient living in a nursing home must contribute most of his or her income towards the costs of nursing home care (see page 5).

The MA asset limit is \$3,000 for an individual and \$6,000 for a couple. The following assets are excluded from consideration when eligibility for MA is determined:<sup>4</sup>

- The homestead (real property or personal property used as a home), subject to an equity limit of \$560,000 effective January 1, 2017 (see Appendix B for more details)
- A motor vehicle, regardless of value, if it is used for transportation of the recipient or a member of the recipient’s household
- Household goods and certain personal effects

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<sup>1</sup> For more information on home and community-based waived services, see the House Research Department publication, *Medicaid Home- and Community-Based Waivered Services*, October 2017.

<sup>2</sup> These income limits are effective July 1, 2017, and are set at 100 percent of the federal poverty guidelines. They are adjusted each July 1 to reflect changes in the federal poverty guidelines.

<sup>3</sup> See [Minnesota Statutes, section 256B.056](#), subdivision 5c. As of July 1, 2017, the spenddown limit for persons who are elderly, blind, or disabled is 80 percent of the federal poverty guidelines (\$804 per month for an individual and \$1,083 per month for a couple).

<sup>4</sup> See [Minnesota Statutes, section 256B.056](#), for a more complete explanation of asset limits in the MA program. “Personal property” means all property other than real estate.

- Prepaid burial spaces and burial space items
- Burial funds (up to \$1,500 each for the recipient and the recipient's spouse), prepaid funeral trusts (\$2,000), and life insurance or annuity-funded burial arrangements under contract
- Capital and operating assets of a business necessary to earn an income

In addition, if an applicant for MA payment of long-term care services has exhausted benefits under a long-term care insurance policy issued on or after July 1, 2006, and that policy qualifies under the state's long-term care partnership program, an amount of assets equal to the dollar amount of benefits paid out under the qualifying policy is disregarded for purposes of determining eligibility for MA payment of long-term care services. These assets are also protected against estate recovery<sup>5</sup> and are not subject to asset transfer penalties.<sup>6</sup>

## MA Program Provisions for Dividing Income and Assets

### Definition of Terms

*Long-term care services:* For purposes of spousal impoverishment provisions, "long-term care services" means care provided in a nursing facility, hospital, an intermediate care facility for persons with developmental disabilities (ICF/MR), or home care services that would be covered through the Elderly Waiver or the Alternative Care program. The other home and community-based waiver services, Community Alternative Care (CAC), Community Alternatives for Disabled Individuals (CADI), Developmental Disabilities (DD), and Traumatic Brain Injury (TBI), are also long-term care services.

*Long-term care spouse:* The spouse who is receiving long-term care services for at least 30 consecutive days and is married to a community spouse.

*Community spouse:* The spouse living in the community who is not receiving long-term care services and is married to a long-term care spouse.

### **The MA program specifies how the income and assets of a married couple are treated when one spouse receives long-term care services and applies for MA.**

When one spouse seeks MA coverage for long-term care services for a continuous period expected to last at least 30 consecutive days, the MA program uses "spousal impoverishment"

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<sup>5</sup> Federal and state law require the Department of Human Services and local county or tribal agencies to recover costs that MA paid for specified health care services through estate recovery processes. For more information, see the House Research Department publication, *Medical Assistance Estate Recovery and Liens*, November 2017.

<sup>6</sup> See [Minnesota Statutes, section 256B.0571](#), for a more complete description of the long-term care partnership program.

provisions to divide the income and assets of the married couple in order to determine how much of the couple's total assets and income will be designated for each spouse.<sup>7</sup> These provisions are intended to allow the community spouse to retain an adequate level of income and assets, while requiring the long-term care spouse to contribute most of his or her assets towards the cost of his or her care (see Appendix C for more details).

**An asset assessment is used to determine the division of marital assets.**

The division of marital assets is based upon an asset assessment that is conducted at the time an application for MA coverage of long-term care services is made. The asset assessment is based on the assets owned by one or both spouses on the date of application for MA coverage. The spousal share is calculated only once and is used for any subsequent periods during which a person may receive long-term care services.

**The division of marital assets is subject to a maximum specified in law; the long-term care spouse can transfer available assets to the community spouse to bring that spouse's assets up to the maximum.**

All assets not protected for the community spouse must be reduced to the MA asset limit of \$3,000. The assets determined to be available to the long-term care spouse must be reduced to the MA asset limit of \$3,000.

The long-term care spouse is allowed to transfer available assets to the community spouse until the value of the assets retained by the community spouse reaches the federal maximum. The \$120,900 maximum spousal share amount is effective from January 1, 2017, to December 31, 2017. These amounts are adjusted each January 1 by the percentage change in the Consumer Price Index (CPI-U).

The long-term care spouse may be eligible for MA under a hardship waiver, even if assets in excess of the maximum amount exist (in a tax-deferred retirement account or postsecondary education savings plan, for example). A hardship waiver may be granted if the community spouse owns the assets and does not make those assets available to the long-term care spouse (the long-term care spouse cannot use those assets without the consent of the community spouse), and if any of the following circumstances exist:

- the long-term care spouse assigns the right to support from the community spouse to the commissioner of human services;
- the long-term care spouse cannot assign the right to support due to a physical or mental impairment; or
- the denial of eligibility would cause an imminent threat to the long-term care spouse's health and well-being.

When a hardship waiver is granted, the local agency makes a referral to the county attorney's office to determine if a cause of action exists against the community spouse.

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<sup>7</sup> See [Minnesota Statutes, sections 256B.058](#) and [256B.059](#).

**The long-term care spouse must apply nearly all of his or her income towards the cost of the long-term care services.**

MA permits the long-term care spouse specified deductions from income, but the person must then contribute all of his or her remaining countable income towards the cost of the long-term care services. In many cases, the only permitted deduction is a personal needs allowance of \$97 per month.<sup>8</sup> Other allowable deductions are listed in [Minnesota Statutes, section 256B.058](#).

**The community spouse can keep all of his or her income and is not required to contribute towards the cost of care of the long-term care spouse after the long-term care spouse is determined eligible for MA.**

Beginning with the first month that the long-term care spouse is determined to be eligible for MA and receives long-term care services, *none* of the community spouse's income is considered available to the long-term care spouse. The community spouse's income does not affect the long-term care spouse's eligibility once the long-term care spouse has received long-term care services under MA.

**Some income of the long-term care spouse can be used to provide a monthly income allowance to the community spouse and a monthly family allowance for certain dependent family members.**

The long-term care spouse can use his or her income to provide the community spouse with a monthly income allowance. This allowance is the amount sufficient to raise the income of the community spouse to the *lesser* of:

- the sum of 150 percent of the monthly federal poverty guideline for two (this amount is \$2,031, effective July 1, 2017<sup>9</sup>), plus an excess shelter allowance equal to the amount by which the community spouse's housing costs exceed 30 percent of this federal poverty guideline figure for two; or
- \$3,022.50.<sup>10</sup>

If the income of the long-term care spouse is not sufficient to raise the income of the community spouse to this standard, income-producing assets can also be transferred in an amount sufficient to reach the standard.

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<sup>8</sup> This personal needs allowance is adjusted for inflation each year. For a more detailed list of the permitted deductions, see [Minnesota Statutes, section 256B.0575](#).

<sup>9</sup> The \$2,031 amount became effective July 1, 2017, and will remain in effect until the federal poverty guidelines are updated. Generally, adjustments are made each July 1 to reflect changes in the federal poverty guidelines.

<sup>10</sup> The \$3,022.50 monthly maximum became effective January 1, 2017, and will remain in effect until December 31, 2017.

If the community spouse obtains a court order for support that specifies a higher monthly income allowance than the monthly maximum, the long-term care spouse can transfer to the community spouse the amount of monthly income specified by the court order.

The long-term care spouse can also provide a monthly family allowance to minor or dependent children, dependent parents, or dependent siblings residing with the community spouse, who have incomes that are less than 150 percent of the federal poverty guidelines. The family allowance is equal to one-third of the amount by which 150 percent of the monthly federal poverty guideline exceeds the monthly income for the family member who will receive the family allowance. The long-term care spouse may also allocate income to a dependent child not living with the community spouse. The family allowance in this situation is 133 percent of the federal poverty guidelines minus the dependent child's net income.

## **Prohibitions on Asset and Income Transfers**

### **Definition of Terms**

*Long-term care services:* For purposes of asset transfer provisions, "long-term care services" means care provided in a nursing facility, hospital swing bed, intermediate care facility for persons with developmental disabilities (ICF/DD), or through one of the home and community-based services under MA.

*Look-back period:* A designated period of time prior to a request for MA payment of long-term care services during which transfers made by a person or the person's spouse are evaluated.

*Transfer penalty:* The calculated length of time a person requesting MA payment of long-term care services is ineligible for those payments due to an uncompensated transfer during a look-back period.

### **MA prohibits a person who is seeking or receiving long-term care services from transferring assets or income for less than fair market value.**

A person may be penalized under the MA program if the person, the person's spouse, or any other person or entity with legal authority to act on the person's or spouse's behalf, gives away or otherwise transfers assets or income for less than the fair market value. State and federal law on MA asset and income transfers<sup>11</sup> prohibit a person from making such uncompensated transfers, with the intent to obtain or retain MA, within a "look-back period," while the MA application for long-term care services is pending, or while the person is eligible for MA payment of long-term care services.

For transfers made on or after August 11, 1993, **through February 7, 2006**, the look-back period was 36 months prior to applying for MA. During this time, the look-back period was 60 months for certain transfers into trusts.

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<sup>11</sup> See [Minnesota Statutes, sections 256B.059](#) and [256B.0595](#).

The federal Deficit Reduction Act of 2005 (DRA), Pub. L. No. 109-171, expanded the look-back period for all transfers made on or after February 8, 2006, to 60 months. This expansion was phased in over a 24-month period starting in February 2009. For persons seeking payment of long-term care services on or after January 31, 2011, the full 60-month look-back period applies.

In order to comply with the DRA, the legislature classified certain transactions involving: (1) annuities; (2) promissory notes, loans, or mortgages; and (3) life estate interests in another individual's home, as transfers for less than fair market value, unless specified criteria are met. See Appendix B for a description of these changes.

Asset and income transfer prohibitions apply to single adults without children who are eligible for MA under Minnesota's Medical Assistance expansion and who receive long-term care services.<sup>12</sup>

**There are exceptions to the prohibition on asset and income transfers.**

The MA program allows for several exceptions to the prohibition on asset and income transfers. For example, a person may transfer a homestead, other assets, and income at less than fair market value to a spouse, or to a qualifying child. See Appendix A for a detailed list of the exceptions to the asset and income transfer prohibition.

**The transfer penalty for making uncompensated transfers is losing eligibility for MA coverage of long-term care services.**

The transfer penalty for making uncompensated transfers is that the person is ineligible for MA-paid services for a calculated period of time, in a nursing facility, hospital swing bed, intermediate care facility for persons with developmental disabilities (ICF/ MR), or through the applicable home and community-based waiver program. The person remains eligible for *all other MA services* during the transfer penalty.

**The length of the transfer penalty is determined by dividing the value of the uncompensated transfer by the average monthly payment rate for nursing facility services.**

The length of the transfer penalty is calculated by dividing the total value of all uncompensated transfers of assets or income made during the look-back period by the statewide average monthly payment rate for nursing facility services (SAPSNF).<sup>13</sup> This calculation results in the number of months for which a person is not eligible for long-term care services. If this calculation results in a fractional month of ineligibility, this fraction is multiplied by the statewide average monthly payment rate for nursing facility services. This is the dollar amount of long-term care services that the recipient will be financially responsible for during the last, partial month of ineligibility.

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<sup>12</sup> Minnesota's medical assistance program was expanded in 2014 to provide health coverage to adults without children who have income of less than or equal to 133 percent of the federal poverty guidelines.

<sup>13</sup> The current statewide average monthly payment rate for nursing facility services is \$7,106. This amount became effective July 1, 2017, and applies to persons who apply for MA on or after that date; it is recalculated each July 1.

For example, if an individual makes uncompensated transfers of \$15,000 in one month, the period of ineligibility is calculated by dividing \$15,000 by \$7,106,<sup>14</sup> resulting in a quotient of 2.11. The individual will be ineligible for long-term care services for two months and will be financially responsible for \$781.66 as a result of the fractional month of ineligibility ( $0.11 \times \$7,106 = \$781.66$ ).

**Periods of ineligibility due to a transfer penalty begin on the date an individual would otherwise be eligible for MA payment of long-term care services.**

For transfers made during the look-back period on or after February 8, 2006, a person's period of ineligibility begins in the month in which the individual requests MA payment of long-term care services and is otherwise eligible to receive MA payment of long-term care services but for application of the transfer penalty.

The transfer penalty period for persons who make uncompensated transfers at a time when MA is already paying for long-term care services begins the first month for which ten-day notice can be given following the uncompensated transfer.<sup>15</sup>

**Transfer penalties for transfers that result in partial months of ineligibility are combined and treated as one transfer.**

The transfer of assets valued at less than the statewide average monthly payment rate for nursing facility services made in more than one month, the total, cumulative, uncompensated value of all assets transferred is treated as one transfer, and the transfer penalty begins on the date the individual would otherwise be eligible for MA payment of long-term care services.

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<sup>14</sup> This amount, \$7,106, is the current statewide average monthly payment rate for nursing facility services in effect on the date the person requests MA payment of long-term care services.

<sup>15</sup> [Laws of Minnesota 2006, chapter 282](#), article 17, section 31, added language that authorized the penalty period to begin in this situation on the first day of the month in which advance notice can be given following the month in which assets have been transferred for less than fair market value (codified at [Minnesota Statutes, section 256B.0595](#), subdivision 2, paragraph (c)). Ten days' advance notice is required before a penalty period can begin.

## Appendix A: Exceptions to the Transfer Prohibitions

A **homestead** can be transferred for less than fair market value without penalty if:

- (a) the title is transferred to the individual $\text{\AA}$ :
  - spouse
  - child under 21
  - blind or permanently and totally disabled child
  - sibling who has equity interest in the home and who resided in the home for at least one year before the individual $\text{\AA}$  receipt of long-term care services
  - son or daughter residing in the home for at least two years before the individual received long-term care services, and who provided care that, as certified by the individual $\text{\AA}$  physician, allowed the individual to reside at home rather than in a facility
- (b) the individual demonstrates an intent to dispose of the house at fair market value;
- (c) the local agency grants a waiver because denial of eligibility would cause undue hardship (In this case, a cause of action may exist against the person(s) receiving the asset.); or
- (d) the individual or the individual $\text{\AA}$  spouse provides convincing evidence that the exclusive purpose of transferring the homestead was not to obtain or maintain MA services for the individual.

**Nonhomestead assets or income** may be transferred at less than fair market value if:

- (a) the transfer is to the spouse or to another individual for the sole benefit of the spouse. At the time of MA application for long-term care services, assets are allocated between spouses according to the spousal impoverishment provisions;
- (b) the transfer is to the transferor $\text{\AA}$  son or daughter who is blind or permanently and totally disabled, or is to a trust for an individual under age 65 who is disabled according to criteria of the federal Supplemental Security Income (SSI) program;
- (c) the local agency grants a waiver because denial of eligibility would cause undue hardship (In this case, a cause of action may exist against the person(s) receiving the asset or income.); or
- (d) the individual or the individual $\text{\AA}$  spouse provides convincing evidence that the exclusive purpose of transferring the assets or income was not to obtain or maintain MA services for the individual. Convincing evidence may include:
  - Assets owned by the individual would be below the applicable asset limit even if the transferred asset had been retained.

- The individual documents that the transfer was beyond his or her control, such as a court order.
- The individual demonstrates that the need for long-term care could not have been anticipated at the time of the transfer.
- The individual demonstrates an unexpected loss of other assets or income that would have caused ineligibility for MA.
- The individual demonstrates a well-established history of making regular contributions to a religious or charitable nonprofit organization to which he or she belongs.
- The individual provides proof of intent to receive fair market value.

## Appendix B: DRA 2005 Changes

The 2006 Legislature enacted legislation to comply with the federal Deficit Reduction Act of 2005 (DRA), Pub. L. No. 109-171. These provisions were contained in [Laws of Minnesota 2006, chapter 282](#), article 17 and are summarized below. All provisions became effective July 1, 2006.

### Eligibility

**Homestead equity limit for institutionalized persons.** For recipients who continuously received MA payment of long-term care services and applied for payment of long-term care services on or after January 1, 2006, homestead equity was limited to \$500,000, unless the homestead is the lawful residence of the individual's spouse or child who is under age 21, blind, or disabled.

Beginning in 2011, this amount was increased annually by the change in the Consumer Price Index, rounded to the nearest \$1,000. In 2017, the homestead equity limit is \$560,000. This provision can be waived in the case of demonstrated hardship by a process determined by the federal Secretary of Health and Human Services. [[Sec. 256B.056](#), subd. 2]

**Treatment of entrance fees.** An entrance fee paid to a continuing care retirement or life care community is treated as an available asset to the extent that:

- (1) the individual has the ability to use the fee, or the contract allows the fee to be used, to pay for care should other resources or income be insufficient;
- (2) the individual is eligible for a refund of remaining fees when the individual dies or terminates the contract; and
- (3) the entrance fee does not confer an ownership interest.

[[Sec. 256B.056](#), subd. 2]

**Nursing facility admission contracts.** Admission contracts for nursing facilities that are part of a continuing care community may require, as a condition of admission, residents to remain in private pay status for a specified period of time. [[Sec. 144.6501](#), subd. 6]

**Disclosure of annuities.** Individuals applying for or seeking recertification of eligibility for MA payment of long-term care services must provide to the department a complete description of any interest either the individual or the individual's spouse has in annuities, using disclosure forms provided by DHS. The disclosure form must include a statement that DHS becomes the remainder beneficiary under the annuity or similar financial instrument by virtue of receipt of MA. The individual and the individual's spouse must execute separate disclosure forms for each annuity or similar instrument.

The issuer of an annuity must confirm that this designation has been made and notify the county agency when there is a change in the amount of income or principal being withdrawn. The county agency must provide the issuer with contact information. [[Sec. 256B.056](#), subd. 11]

## Long-Term Care Partnership Program

The Long-Term Care Partnership Program is a state option under the DRA that allows MA applicants to exclude assets upon MA application, and protect assets from MA recoveries, in an amount equal to the benefits paid out by a qualified long-term care insurance policy. In order to qualify for the program, applicants must have exhausted all of the benefits under the insurance policy and benefits under the policy must not have been paid out prior to July 1, 2006.

Provisions passed in 2006:

- allow beneficiaries to exchange existing long-term care insurance policies or add necessary riders, in order for those policies to meet federal standards for partnership policies. The exchange of policies and addition of riders is allowed unless the policy is already paying benefits on the date the policy is exchanged or the rider is added;
- exempt assets designated as protected from asset transfer penalties; and
- specify inflation protection requirements and eliminate provisions related to offering of an elimination period, meeting implementation requirements, provision of total asset protection policies, and minimum daily benefits.

[[Minn. Stat. ch. 62S](#), and [Sec. 256B.0571](#)]

## Asset Transfer Prohibitions

**Treatment of annuities.** The purchase of an annuity on or after February 8, 2006, by or for an individual who has applied for or is receiving long-term care services, or the individual's spouse, is treated as a disposal of an asset for less than fair market value unless DHS is named as a preferred remainder beneficiary and the annuity meets specified Internal Revenue Code and other standards.

A change in the designation of DHS as remainder beneficiary results in the annuity being treated as a disposal of assets for less than fair market value. The DRA requires issuers of annuities to notify county agencies when there is a change in the amount of the income or principal being withdrawn from the annuity. A change in the amount of income or principal withdrawn may be treated as a disposal of assets for less than fair market value. [[Sec. 256B.0595](#), subd. 1, para. (f)]

When a payment becomes due under an annuity that names DHS a remainder beneficiary, the issuer must request and DHS must provide a written statement of the total amount of MA paid. The issuer must pay DHS an amount equal to the lesser of the amount due the department under the annuity or the total amount of MA paid on behalf of the individual or individual's spouse. Any amounts remaining are payable according to the terms of the annuity. [[Sec 256B.0594](#)]

**Extension of look-back period.** The look-back period for any disposal of assets made on or after February 8, 2006, was extended from 36 to 60 months. This extension was phased in, and reached 60 months on February 1, 2011. [[Sec. 256B.0595](#), subd. 1, para. (b)]

**Promissory notes, loans, and mortgages.** The prohibition on transfers for less than fair market value applies to funds used to purchase a promissory note, loan, or mortgage, unless the instrument purchased has a repayment term that is actuarially sound, provides for payments to be made in equal amounts with no deferral or balloon payments, and prohibits cancellation of the balance upon the death of the lender. [Sec. 256B.0595, subd. 1, para. (i)]

**Life estates.** The purchase of a life estate in another individual's home constitutes a transfer for less than fair market value, unless the purchaser resides in the home for a period of at least 12 consecutive months after the date of purchase. [Sec. 256B.0595, subd. 1, para. (j)]

**Change in start date for period of ineligibility.** For uncompensated transfers made on or after February 8, 2006, the period of ineligibility begins in the month in which the individual requests MA payment of long-term care services and is otherwise eligible to receive MA payment of long-term care services but for application of the penalty period. [Sec. 256B.0595, subd. 2, para. (c)]

**Undue hardship waiver requests by facility.** A long-term care facility, with the written consent of a resident or the resident's personal representative, may file an undue hardship waiver request on behalf of a resident who is denied eligibility for MA payment of long-term care services. When a waiver is granted, a cause of action exists against the person to whom an asset was transferred. The local agency, in evaluating the waiver request for nonhomestead transfers, must take into account whether the individual has taken any action to prevent designation of DHS as a remainder beneficiary on an annuity. [Sec. 256B.0595, subs. 3 and 4]

## Appendix C: 2016 Spousal Impoverishment Changes

The Affordable Care Act (ACA) requires states to apply spousal impoverishment provisions for home and community-based waiver services for a five-year period beginning January 1, 2014, and ending December 31, 2018. Prior to the ACA, applying spousal impoverishment provisions in home and community-based waiver programs was optional and Minnesota exempted persons receiving disability-based waiver services. Minnesota continued to exempt persons receiving these services, and in 2016 the Centers for Medicare and Medicaid Services rejected Minnesota's request to continue this exemption and required the state to take corrective action by June 1, 2016. As a result, changes were made to state law during the 2016 legislative session to bring Minnesota into compliance with federal law and to increase the spousal impoverishment asset limit to the federal maximum for all married MA recipients receiving long-term care services.

[Laws 2016, chapter 189](#), the omnibus supplemental budget bill, enacted various provisions to bring Minnesota into compliance with federal law and to increase the spousal impoverishment asset limit to the federal maximum.

**Assessment of marital assets.** Effective July 1, 2016, the assessment of marital assets occurs *at the time of application* for long-term care services. Previously, this assessment was conducted following first continuous period of institutionalization. [[Sec. 256B.059](#), subd. 2.]

**Increase community spouse asset allowance.** Effective July 1, 2016, the community spouse asset allowance was increased to the federal maximum (\$120,900 as of January 1, 2017). [[Sec. 256B.059](#), subds. 3 and 5).]

**Waiver services; federal compliance.** Federal spousal impoverishment provisions for the balance of the required five-year period will be applied as follows:

- on June 1, 2016, for individuals applying for disability-based waiver services on or after that date
- on March 1, 2017, for individuals enrolled in disability-based waiver services prior to June 1, 2016
- on June 1, 2016, for individuals applying for Community First Services and Supports, a program awaiting federal approval

[[Sec. 256B.059](#), subd. 6]

*For more information about Medical Assistance, visit the health and human services area of our website, [www.house.mn/hrd/](http://www.house.mn/hrd/).*