

NUMBER

#18-21-08

DATE

October 12, 2018

OF INTEREST TO

County Directors

Social Services Supervisors and
Staff

Financial Assistance Supervisors
and Workers

Mille Lacs Tribal TANF

Tribal Chairpersons and Tribal
Health Directors

Health Care Eligibility
Operations (HCEO) Managers,
Supervisors, and Staff

ACTION/DUE DATE

Please read information and
prepare for implementation

EXPIRATION DATE

October 12, 2018

DHS Announces Spousal Impoverishment Protection Rules for Some HCBS Waiver Programs Will End

TOPIC

Changes to eligibility policy for applicants for some home and community-based services (HCBS) waiver programs.

PURPOSE

To announce that spousal impoverishment protection rules used to determine eligibility for certain married people who apply for some HCBS waiver programs will end on December 31, 2018.

CONTACT

Counties and tribal agencies should submit policy questions via HealthQuest.

All others should direct questions to the following:

Health Care Eligibility and Access (HCEA) Division

PO Box 64989

540 Cedar Street St. Paul, MN 55164-0989

SIGNED

NATHAN MORACCO
Assistant Commissioner
Health Care Administration

TERMINOLOGY NOTICE

The terminology used to describe people we serve has changed over time. The Minnesota Department of Human Services (DHS) supports the use of "People First" language.

I. Background

In June 2016, DHS issued [Bulletin #16-21-04C](#) announcing that effective June 1, 2016, Minnesota would begin using spousal impoverishment protection rules rather than deeming waiver rules for determining Medical Assistance (MA) eligibility for certain married people applying for home and community-based services (HCBS) waiver programs for individuals with disabilities. These programs include: Brain Injury (BI), Community Alternative Care (CAC), Community Access for Disability Inclusion (CADI), and Developmental Disabilities (DD).¹ This change was the result of a provision in the Affordable Care Act (ACA) requiring states to use spousal impoverishment protection rules when determining eligibility for HCBS waiver programs. The ACA requirement ends on December 31, 2018.

Effective January 1, 2019, Minnesota will return to the previous rules to determine eligibility for HCBS waiver programs for people with disabilities. Under these rules, only the income and assets of the person applying for Medical Assistance for long-term care services (MA-LTC) count when determining financial eligibility. A married applicant may reduce countable assets in excess of the program limits by transferring them to his or her spouse without penalty.

Spousal impoverishment protection rules continue to apply to MA eligibility determinations for the Elderly Waiver (EW), Alternative Care (AC), and long-term care facility (LTCF) residents.

II. Policy Change

A. Applicants for HCBS Waiver Programs for People with Disabilities Applying On or After January 1, 2019

MA-LTC applicants who are requesting HCBS waiver programs for people with disabilities on or after January 1, 2019, will have eligibility determined using deeming waiver rules. Spousal assets will not be counted.

B. Applicants for HCBS Waiver Programs for People with Disabilities Applying Before January 1, 2019

MA-LTC applicants who are requesting HCBS waiver programs for people with disabilities *before* the spousal impoverishment protection rules end on December 31, 2018, will be impacted in different ways.

Options for MA-LTC Applicants Requesting HCBS Waiver Programs in 2018

A married applicant in the remaining months of 2018 can decide whether to reduce assets under the spousal impoverishment protection rules or to wait to request HCBS beginning in January 2019. The decision will depend on the couple's financial circumstances and the person's level of need for HCBS waiver programs.

¹ Hereinafter referred to as "HCBS waiver programs for people with disabilities."

The applicant will be asset-eligible under both the spousal impoverishment protection rules and the deeming waiver rules if the applicant and spouse have countable assets *at or below* \$126,600. This is the maximum community spouse asset allowance (CSAA) (\$123,600) plus the MA asset limit for an individual (\$3,000).

If an applicant and spouse have countable assets *above* \$126,600, the applicant has the following two options to become asset-eligible for MA-LTC:

- Reduce assets so that both of the following are met:
 - The community spouse has countable assets at or below the maximum CSAA; and
 - The applicant has countable assets at or below the \$3,000 asset limit.
- Request that the HCBS waiver program begin in January 2019, when the spouse's income and assets will not count in the MA-LTC eligibility determination.

Coordinating the MnCHOICES Long Term Care Consultation (LTCC) and the MA-LTC Application

Local agencies may encounter applicants in the remaining months of 2018 who have already completed a long term care consultation (LTCC) assessment, but do not want to have their MA-LTC eligibility determined using the spousal impoverishment protection rules. Understanding the interaction between the LTCC assessment and the MA-LTC application is particularly important in this situation.

In cases where the MA-LTC applicant does not want his or her MA-LTC eligibility determined using the spousal impoverishment protection rules, HCBS cannot begin before January 1, 2019, which may result in the LTCC being completed more than 60 days before the date that MA-LTC eligibility is approved.

A face-to-face LTCC assessment is effective for 60 days; however, the MnCHOICES assessor can complete an eligibility update within 90 days of the face-to-face assessment to extend the assessment's effective timeframe for an additional 60 days from the eligibility update. A new face-to-face LTCC assessment is required if more than 90 days passes from the original face-to-face assessment without an eligibility update, or if more than 60 days passes after an eligibility update.

Examples of Options for MA-LTC Applicants Requesting HCBS Waiver Programs in 2018

The following examples represent several possible scenarios that local agencies may encounter in the remaining months of 2018.

1. A married MA-LTC applicant is in need of HCBS. The applicant has a face-to-face LTCC assessment on November 6, 2018. The applicant submits an application for MA-LTC on November 12. The applicant submits all required verifications and the financial eligibility worker completes the asset evaluation on November 20. The applicant and spouse's combined assets are over the maximum CSAA, plus \$3,000.

Options:

- A. The applicant needs HCBS immediately; spousal impoverishment protection rules apply.
- B. The applicant can request that waiver services begin on or after January 1, 2019, at which point the spouse's assets are not counted in the MA-LTC eligibility determination. The applicant may transfer excess assets to the spouse without penalty. No further assessment or eligibility update is required

by the MnCHOICES assessor so long as the financial eligibility worker processes the MA-LTC application within 60 days of the LTCC assessment.

2. A married MA-LTC applicant is in need of HCBS. The applicant has a face-to-face LTCC assessment on September 17, 2018. The applicant submits an application for MA-LTC on October 29. The MnCHOICES assessor completes an eligibility update on November 9 to extend the assessment's effective timeframe. The applicant submits all required verifications and the financial eligibility worker completes the asset evaluation on November 19. The applicant and spouse's combined assets are over the maximum CSAA, plus \$3,000.

Options:

- A. The applicant needs HCBS immediately; spousal impoverishment protection rules apply.
 - B. The applicant can request that waiver services begin on or after January 1, 2019, at which point the spouse's assets are not counted in the MA-LTC eligibility determination. The applicant may transfer excess assets to the spouse without penalty. Because the eligibility update expires after 60 days (January 8), the MnCHOICES assessor may need to complete a second face-to-face LTCC assessment.
3. A married MA-LTC applicant is in need of HCBS. The applicant applies for MA-LTC and also has a face-to-face LTCC assessment on October 1, 2018. The applicant submits all required verifications and the financial eligibility worker completes the asset evaluation on October 20. The couple's combined assets are over the maximum CSAA, plus \$3,000.

Options:

- A. The applicant needs HCBS immediately; spousal impoverishment protection rules apply.
 - B. The applicant can request that waiver services begin on or after January 1, 2019, at which point the spouse's assets are not counted in the MA-LTC eligibility determination. The applicant may transfer excess assets to the spouse without penalty. Additionally, the MnCHOICES assessor will need to complete an eligibility update within 90 days of the face-to-face LTCC assessment to extend the assessment's effective timeframe.
4. A married person already enrolled in MA for people who are age 65 or older and people who are blind or have a disability (MA-ABD) is in need of HCBS. The enrollee applies and has a face-to-face LTCC assessment on November 13. Because the MA-ABD enrollee already meets the MA asset limits, the person qualifies for HCBS as part of his or her MA benefit and the couple has no need to reduce assets.

C. Impact on Current Enrollees of HCBS Waiver Programs for People with Disabilities

Minnesota's return to deeming waiver rules will have no impact on people currently enrolled in HCBS waiver programs for people with disabilities.

III. Action Required

This section is addressed to MnCHOICES assessors and financial eligibility workers. Take the following actions to process applications and determine eligibility for certain married MA-LTC applicants requesting HCBS waiver programs for people with disabilities before January 1, 2019.

MnCHOICES Assessors

If the MnCHOICES assessor has the first contact with a married applicant who is requesting HCBS for people with disabilities, inform the applicant of the following:

- If the applicant and spouse have assets (excluding the home) that may be worth more than the maximum CSAA plus the individual asset limit (a total of \$126,600), the applicant can choose to:
 - Complete and submit the application for MA-LTC and request that waiver services begin immediately; or
 - Request that HCBS begin on or after January 1, 2019, when more favorable financial rules will be in effect.
- If the applicant requests that HCBS begin on or after January 1, 2019, and if excess assets owned by the applicant are transferred to the spouse, the couple will not need to reduce assets for the applicant to receive HCBS, when all other eligibility criteria for the waiver program are met.
- The MnCHOICES assessor may need to complete an eligibility update as applicable.

Refer the applicant to a financial eligibility worker to provide additional details about MA-LTC eligibility rules.

Financial Eligibility Workers

If the financial eligibility worker has the first contact with a married MA-LTC applicant requesting HCBS for people with disabilities in the remaining months of 2018, determine whether the applicant and the spouse's countable assets exceed the maximum CSAA, plus the individual asset limit (a total of \$126,600).

- If the combined assets exceed \$126,600, inform the applicant that he or she can request HCBS beginning on January 1, 2019, to have eligibility determined under more favorable financial eligibility rules going into effect on that date.
 - If the applicant needs HCBS to begin immediately, inform the applicant of the spousal impoverishment rules and reduction of assets.
 - If the applicant decides to request that HCBS begin in January, note the request on the "Lead Agency Assessor/Case Manager/Worker LTC Communication Form" (DHS-5181) and promptly send the form to the LTCC assessor so the assessor can coordinate an eligibility update, if needed.
- If the couple's assets do not exceed \$126,600, process the application under current spousal impoverishment protection rules.

Applications Received On or After January 1, 2019

For applications received on or after January 1, 2019, determine eligibility for MA-LTC applicants requesting HCBS waiver programs for people with disabilities using deeming waiver rules. Do not count the spouse's assets toward the applicant's asset limits.

IV. Legal Authority

United States Code, title 42, section 1396r-5 note

Minnesota Statutes, section 256B.059

Minnesota Statutes, section 256B.0911

Americans with Disabilities Act (ADA) Advisory

This information is available in accessible formats for people with disabilities by calling toll free at 800-657-3739 or by using your preferred relay service. For other information on disability rights and protections, contact the agency's ADA coordinator.