ILLINOIS DEPARTMENT OF Healthcare and Family Services

Summary of Long Term Care Eligibility Rules

3/24/2010

1. **60-Month Asset Transfer Review** - Section 120.388(g), DRA

- Transfers of assets (income and resources), including failure to receive an asset, on or after February 8, 2006 made within 60 months prior to the date a person is both institutionalized and has applied for assistance, or receives DOA services, will be reviewed to determine if fair market value was received.

2. **Expanded Penalty Period** - Section 120.388(h)(i)(j)(k), DRA

- Non-allowable transfers made on or after February 8, 2006 are subject to a penalty period beginning the later of the date of the transfer or the date the person would have been eligible for institutional services but for the application of a penalty.
- Fractional parts of a penalty period will not be rounded down or disregarded. Partial transfers and multiple transfers will be cumulated and treated as a single transfer.
- A penalty period may be waived if the penalty results in an undue hardship to the institutionalized person. The Department has defined criteria to ensure equitable determinations.

3. **Hardship Waiver** - Section 120.388(r), 120.387(e)(9), 120.385(c)(3), DRA

- A hardship waiver process will be established to waive all or part of a penalty period if the penalty period will deprive an institutionalized person of medical care such that the person's health or life would be endangered, or prevent the person from residing in a facility with a spouse, or deprive the person of food, clothing, shelter or other necessities of life.
- A hardship waiver may be requested when medical assistance is approved excluding medical services for LTC, SLF, or DOA, or a specified penalty period is imposed for long term care services because:
  - A penalty period is imposed due to a non-allowable asset transfer, or
  - The equity interest in an applicant's home exceeds $500,000.

4. **Life Estate Purchase** - Section 120.388(p), DRA

- The purchase of a life estate interest in another person's home will be treated as an allowable asset transfer if the purchaser (client) resides in the home for at least 12 consecutive months after the date of transfer.

5. **Annuities** - Sections 120.347(i), 120.385(b), 120.388(n)(o), DRA

- Application/recertification forms for long term care will include a statement requiring disclosure of any interest the applicant and/or community spouse may have in an annuity. The statement will also require, as a condition for the provision of long term care, that the State becomes a remainder beneficiary under any annuity.

- Annuities that are revocable and assignable, or can be sold on the open market, shall be considered available assets.

- The purchase of an annuity is considered an asset transfer unless it is purchased with certain pension or retirement funds, irrevocable, non-assignable, actuarially sound, has no balloon payment and the State of Illinois is named as a remainder beneficiary.

6. **Income First Rule** - Section 120.379(f)(3)(A), DRA

- The maximum available income of the institutionalized spouse must be transferred to the community spouse before granting an increase in the Community Spouse Resource Allowance.

7. **Home Equity** - Section 120.385(c), DRA

- A person with equity interest in their home exceeding $500,000 is not eligible for institutional services unless the spouse or a disabled, blind or minor child lives in the home. Reverse mortgages or home equity loans may be used to reduce home equity interest.

- The equity interest provision may be waived if a hardship exists.

8. **Qualified Long Term Care Insurance Partnership** - Section 120.388(m)(5), DRA

- For persons with qualifying LTC insurance, the state disregards assets in an amount equal to insurance benefit payments made for long term care services on behalf of that person.

- The value of the disregarded assets is not included in an estate claim.

- The transfer of a disregarded asset is not subject to penalty.

9. **Purchase of a Promissory Note, Loan or Mortgage** - Section 120.388(q), DRA

- Funds used to purchase a promissory note, loan or mortgage will be treated as a nonallowable asset transfer unless there is a written transaction, the repayment term is actuarially sound, payments are made in equal amounts with no balloon payment, cancellation of the balance upon the death of the lender is prohibited and a consistent, verifiable repayment record exists.

10. **<u>Entrance Fee to a Continuing Care Retirement or Life Care Community</u>** - Section 120.380(j), DRA

- An entrance fee to a Continuing Care Retirement or Life Care Community may be considered an available asset when the:
  - entrance fee may be used to pay for care when other resources are insufficient, or
  - individual is eligible for a refund upon death, termination of the contract or leaves the community, or
  - entrance fee does not confer an ownership interest.

11. **<u>Other Related Federal Changes</u>**

- Treat total non-exempt assets of a couple as available to the institutionalized spouse. Clarify provisions relating to the treatment of trusts and spousal transfers. Sections 120.347(h), 120.379 and 120.379(c)(4)
- An institutionalized spouse has until the first redetermination of eligibility to transfer assets to the community spouse. Section 120.379(h)
- Clarifies that transfers of assets into pooled trusts after a beneficiary is age 65 shall be treated as non-allowable transfers subject to penalty. Section 120.388(m)(2)(c)
- Eligibility for the three months retroactive to the month of application will be determined for each month based on financial income and assets available to the person in each of those months. Sections 120.60(a), 120.61(b) and 120.380(d)(2)
- In determining Fair Market Value of farm property, the Department may use farmland value tables developed by the University of Illinois Farm Bureau. Section 120.388(f)(1)
- Clarifies that Personal Care Contracts must be established prior to the receipt of services. Services must be clearly identified and reimbursed consistent with the prevailing cost in the service area. Transfers for “love and affection” are not considered transfers for fair market value. Section 120.388(f)(3) and (q)(1)
- Only the full return of a non-allowable asset transfer is permissible. Section 120.388 (m)(6)

- Clarifies that determination of eligibility is a separate process from the determination of how much income a person must contribute to the cost of their long term care per federal requirements. The income standard is the same as that used for AABD community cases. 42 USC 1396a(a)(10), 42 CFR 435.725; 435.733; 435.735 and 435.832. Section 120.61

- Clarifies which medical expenses the client is allowed to deduct from income that is available to pay for long term care. Section 120.61(e) and (f):

    - Premiums for dental and vision insurance for services not covered by Title XIX are allowable deductions;

    - Medical expenses can only be deducted to the extent they were incurred within six months prior to the month of application. This rule is consistent with the state of Pennsylvania's policy regarding the use of medical expenses.

    - Medical expenses incurred during a penalty period under Section 120.388 cannot be deducted; and

    - Medical expenses provided by a terminated or barred provider cannot be deducted; and

    - Medical expenses for long term care services incurred when a facility is subject to a sanction of nonpayment for new admissions are not allowable.