North Carolina
Department of Health and Human Services
Division of Medical Assistance
Recipient Services MEU
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Michael F. Easley, Governor
Carmen Hooker Odom, Secretary

L. Allen Dobson, Jr., M.D., Assistant Secretary
for Health Policy and Medical Assistance

March 14, 2006

RE: Deficit Reduction Act of 2005

Dear County Director of Social Services:

On Wednesday, February 8, 2006, the President signed the Deficit Reduction Act (DRA) of 2005. There are several mandatory provisions in the law that will impact North Carolina Medicaid eligibility policy. Following is a summary of those provisions. Please understand that these descriptions of the provisions represent our initial understanding of the law. Additional review on our part or guidance from the Centers for Medicare and Medicaid services may change these understandings.

Please understand that this letter does not change current policy. Its only purpose is to provide you with information regarding changes in the federal Medicaid law, which will impact Medicaid eligibility policy. We will issue necessary policy changes in the near future. Until such time as changes are issued, continue to apply the policy found in the Medicaid Eligibility Manuals.

Transfers of Resources:

- The look-back period is extended to 5 years for all transfers.
- The beginning date of the sanction period is changed from the date of the transfer to the date the person applies for Medicaid or is institutionalized, whichever is later.
- The law provides federal standards for waiving transfer of resource penalties because they would cause the individual undue hardship. Additionally, it allows the facility, with the consent of the individual or his personal representative, to file the undue hardship application on the individual's behalf.
- States may no longer round down or otherwise disregard partial months in the sanction period.

- When a person receives a promissory note, loan or mortgage as compensation for a transfer of resources,
    - The repayment plan must be "actuarially sound." The individual transferring the resource must be expected to live long enough to receive payments of equal value to the resource he transferred;
    - Payments must be made in equal amounts, with no deferral of payments or balloon payments, and
    - The terms of the note, loan, or mortgage must prohibit cancellation upon the death of the lender.

Annuities:

- As a condition of eligibility, an individual must disclose any annuities that he owns.
- The state must be named as first remainder beneficiary (or if the community spouse or minor or disabled child is named the first remainder beneficiary, the second remainder beneficiary) of the annuity or the purchase of the annuity is considered a transfer of resources for less than fair market value. The application form must include a statement to this effect.
- When the state learns of an annuity, it must notify the issuer of the annuity of the state's right as a beneficiary of the annuity.
- The annuity must meet certain requirements of the Internal Revenue Service Code, or
    - Be irrevocable and non-assignable, and
    - Be expected to pay to the individual over his life an amount at least equal to the amount spent to purchase the annuity, and
    - Pay in equal amounts, with no deferral of payments or balloon payments.

Individuals with Substantial Home Equity:

An individual shall not be eligible for nursing facility services or other long-term care services if the equity in his home exceeds $500,000.

Continuing Care Retirement Communities and Life Care Community Admission:

If an individual who resides in a continuing care retirement community or a life care community and must pay an admission fee when admitted to the community, that admission fee is considered an available resource to the extent that:

- The fee is available to the individual to pay for care should other resources or income be insufficient to pay for such care,
- The individual is entitled to a refund of any remaining entrance fee when he dies or terminates the contract and leaves the community, and
- The entrance fee does not confer any ownership interest in the community.

It is our opinion that this means that any portion of the admission fee that the individual may obtain is a countable resource, and any portion that he can not obtain is a transferred resource which must be reviewed for a possible sanction.

Verification of U.S. Citizenship:

Individuals must provide documentation establishing U.S. Citizenship. The law lists the acceptable documentation.

There are other Medicaid provisions in the Deficit Reduction Act of 2005. However, these are the ones that we believe will have the most impact on the county departments of social services. If you would like to look at other Medicaid provisions in the DRA 2005, go to the internet to http://www.gpoaccess.gov/. Click on "Congressional Record" and search for "Deficit Reduction Act of 2005." Medicaid provisions are found in Title VI.

I hope this information is helpful to you. If you have any questions, please contact your Medicaid Program Representative.

Sincerely,

L. Allen Dobson, Jr.

LAD/acw