



Minnesota Department of **Human Services**

Bulletin

NUMBER

#16-21-04C

DATE

October 4, 2016

OF INTEREST TO

County Directors

Social Services Supervisors
and Staff

AC Program Administrative
Contacts

Financial Assistance
Supervisors and Workers

Mille Lacs Tribal TANF

Tribal Chairpersons and
Tribal Health Directors

MinnesotaCare Operations
Managers, Supervisors,
and Staff

ACTION/DUE DATE

Please read information
and prepare for
implementation

EXPIRATION DATE

October 4, 2018

Corrected #16-21-04: DHS Explains Changes in the Implementation of Spousal Impoverishment Protections

TOPIC

Changes in the implementation of spousal impoverishment protections for applications filed on or after June 1, 2016.

PURPOSE

To correct the definition of "community spouse" in the original bulletin.

CONTACT

County and tribal agencies and Health Care Eligibility Operations should submit policy questions via HealthQuest.

All others should direct questions to the following:

Health Care Eligibility and Access (HCEA) Division
PO Box 64989
St. Paul, MN 55164-0989

Lead agencies should submit questions about the Alternative Care (AC) program through [PolicyQuest](#).

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

Note about corrected information: On June 9, 2016, the Minnesota Department of Human Services (DHS) issued Bulletin #16-21-04, which outlined changes to the implementation of spousal impoverishment protections for applications filed on or after June 1, 2016. In subsection II.A, Definition of LTC Spouse, the second sentence in the second paragraph stated, “A community spouse is a person who is married to an LTC spouse and does not receive LTC services in an LTCF or through the BI, CAC, CADI, DD, EW, or AC program.” However, a community spouse can receive Medical Assistance (MA) services through the Alternative Care (AC) program. In this corrected bulletin, the sentence has been corrected to read, “A community spouse is a person who is married to an LTC spouse and does not receive LTC services in an LTCF or through the BI, CAC, CADI, DD, or EW program.”

I. Background

The Affordable Care Act (ACA) requires states to use spousal impoverishment protection rules when determining Medical Assistance (MA) eligibility for home and community-based services (HCBS) waivers for five years, beginning January 1, 2014. The spousal impoverishment protection rules allow a married person to achieve financial eligibility for MA without spending all of the married couple’s income and assets, providing some financial relief to the spouse who lives in the community (the “community spouse”). Before the ACA, spousal impoverishment protection rules were a state option in determining eligibility for HCBS waivers.

In Minnesota, spousal impoverishment protection rules have long been in place for married couples that include a spouse who receives long-term care (LTC) in an LTC facility (LTCF) or receives services through the Elderly Waiver (EW) or Alternative Care (AC) program. However, Minnesota has used a different approach, called a “deeming waiver,” to protect the spouses of people receiving services under the following HCBS waiver programs:

- Brain Injury (BI)
- Community Alternative Care (CAC)
- Community Access for Disability Inclusion (CADI)
- Developmental Disabilities (DD)

With a deeming waiver, only the income and assets of the person applying for Medical Assistance for LTC (MA-LTC) count when determining financial eligibility. An applicant is able to transfer all of his or her excess assets to the applicant’s spouse, without penalty, to achieve financial eligibility.

In 2013, the Minnesota Legislature directed the Minnesota Department of Human Services (DHS) to seek a waiver of the ACA mandate described in the first paragraph above. The

waiver would have allowed DHS to continue to apply deeming waivers when determining eligibility for the BI, CAC, CADI, and DD waiver programs.

The Centers for Medicare & Medicaid Services (CMS) did not grant a waiver of the mandate. Consequently, DHS is required to implement the ACA mandate for the BI, CAC, CADI, and DD waiver programs. The Minnesota Legislature passed legislation, effective June 1, 2016, that:

- requires the use of the spousal impoverishment protection rules in the BI, CAC, CADI, and DD waiver programs;
- increases the community spouse asset allowance to the maximum amount allowed under federal law; and
- establishes additional hardship waiver criteria to allow approval of MA when a community spouse refuses to make assets available to the person requesting MA-LTC.

This bulletin discusses the changes to eligibility policy related to spousal impoverishment rules.

II. Policy Changes

The following policy changes are effective beginning June 1, 2016:

- New applicants requesting services through a BI, CAC, CADI, or DD waiver program on or after June 1, 2016, are subject to the spousal impoverishment protection rules.
- Beginning June 1, 2016, the amount of a couple's assets that are protected for the community spouse, called the community spouse asset allowance (CSAA), is now the maximum amount under federal law for all community spouses.
- A hardship waiver may be granted when a community spouse refuses to make certain assets available to the LTC spouse. County and tribal agencies may grant hardship waivers for pending requests for LTC services processed on or after June 1, 2016.

These changes affect the policies discussed below.

A. Definition of LTC Spouse

“LTC spouse” was previously defined as follows:

A person married to a community spouse who either resides in a long-term care facility (LTCF) and has resided, or is anticipated to reside, in an LTCF for at least 30 consecutive days, or requests services through the Elderly Waiver (EW) or Alternative Care (AC) programs and has received a long-term care consultation (LTCC) that demonstrates the individual requires an institutional level of care and the

individual has received, or is anticipated to receive, EW or AC services for at least 30 consecutive days.

Effective June 1, 2016, this definition includes a married person who is requesting services through a BI, CAC, CADI, or DD waiver program and has a “community spouse.” A community spouse is a person who is married to an LTC spouse and does not receive LTC services in an LTCF or through the BI, CAC, CADI, DD, or EW program.

B. Maximum Community Spouse Asset Allowance

The CSAA was previously one-half of a couple’s countable assets subject to a minimum and maximum amount. The CSAA is now the maximum amount allowed under federal law, currently \$119,220, for all community spouses. This amount is adjusted on January 1 of each year by the percentage increase in the Consumer Price Index for All Urban Consumers (all items; United States city average).

Applications for MA-LTC for services in an LTCF or through the EW or AC program that are processed on or after June 1, 2016, are subject to the maximum CSAA in effect on the date of application. Applications for the BI, CAC, CADI, or DD program that are received on or after June 1, 2016, are subject to the maximum CSAA in effect on the date of application for MA-LTC.

The CSAA may be increased above the maximum CSAA if the community spouse does not have enough income to meet his or her monthly maintenance needs. See the [Minnesota Health Care Programs Eligibility Policy Manual \(EPM\), Section 2.4.2.1.2. Community Spouse Asset Allowance](#), for more information about which assets may be included in the CSAA.

C. Asset Assessment

Implementation of the maximum CSAA eliminates the need for a separate asset assessment form at the time a person requests MA-LTC. However, a person may request an asset assessment for planning purposes when the person anticipates needing LTC services for 30 continuous days or more. We are updating the Asset Assessment for Medical Assistance (MA) for Long-Term Care (LTC) Services (DHS-3340) so that it can be used for planning purposes.

At the time of a request for MA-LTC, the LTC spouse and community spouse must report and verify their assets. Evaluation of assets using asset assessment rules occurs with the determination of asset eligibility for the LTC spouse. The community spouse may keep up to the maximum asset allowance in effect on the date of the request (the maximum asset allowance is \$119,220 during 2016). If the couple’s assets exceed the CSAA and the MA asset limit, the LTC spouse must reduce assets before MA can be approved.

Any assets accumulated by the community spouse after the date the LTC spouse is approved for MA-LTC are not available to the LTC spouse as long as the LTC spouse

remains eligible for MA-LTC and does not have a gap in coverage of MA-LTC services of one calendar month or more.

D. Income Eligibility for LTC Spouses in the BI, CAC, CADI, and DD Waiver Programs

Income eligibility for the BI, CAC, CADI, and DD waiver programs will continue to be determined using a community budget. The community spouse income allocation is not available if the LTC spouse is receiving services through a BI, CAC, CADI, or DD waiver. However, as discussed in section II.B, if the community spouse's income is insufficient to meet his or her monthly maintenance needs, additional income-producing assets above the CSAA may be allocated to the community spouse.

E. Additional Hardship Waiver Criteria When a Community Spouse Refuses to Make Assets Available

Currently, county and tribal agencies may grant an undue hardship waiver for an LTC spouse when 1) an LTC spouse has assets in excess of the CSAA, plus the MA asset limit; 2) the community spouse refuses to make assets available; and 3) the denial of MA-LTC would cause an imminent threat to the LTC spouse's health and well-being.

Beginning June 1, 2016, a county or tribal agency may also grant a hardship waiver when an LTC spouse has assets in excess of the CSAA, plus the MA asset limit, and the agency determines a hardship exists because:

- the community spouse refuses to make the assets available to the LTC spouse and
- the assets are owned and held by the community spouse in:
 - a tax-deferred retirement account from which funds cannot be withdrawn without incurring a penalty or
 - a plan designated under section 529 of the Internal Revenue Code on behalf of a child of either or both spouses who is under the age of 25.

A person whose request for a hardship waiver is denied can appeal the denial. When a hardship waiver is granted under the new provision, the state or county does not have a cause of action against the community spouse.

Refer to the [EPM, Section 2.4.2.1, Asset Eligibility for a Long-Term Care Spouse](#), for more information.

F. Impact to Current BI, CAC, CADI, and DD Program Enrollees

Separate policy will be issued for LTC spouses who were approved for the BI, CAC, CADI, or DD waiver program before June 1, 2016. Since March 1, 2016, we have notified BI, CAC, CADI, and DD program enrollees who have a community spouse that potential

legislative changes may affect their eligibility. We will contact these same BI, CAC, CADI, and DD program enrollees in June 2016 to update them on the changes passed by the legislature and provide more information about whether and how the changes described in this bulletin may affect their MA-LTC eligibility. We also provided information to county and tribal workers at the June 8, 2016, Health Care Eligibility Partner Information Exchange (HCE-PIX) meeting.

III. Action Required

This section is addressed to financial eligibility workers, except where otherwise indicated.

Take the following actions to implement the new policies discussed in Section II.

A. Applications for MA-LTC Filed on or after June 1, 2016

If a person applies for MA-LTC, either in an LTC facility or through an HCBS waiver program or the AC program, on or after June 1, 2016, and the person has a community spouse, you must evaluate assets as discussed in Sections II.B and II.C.

Continue to process an asset assessment when a married couple asks for one for planning purposes because one spouse anticipates needing LTC services for 30 continuous days or more. We are updating the Asset Assessment for Medical Assistance (MA) Payment of Long-Term Care (LTC) Services (DHS-3340) so that it can be used for planning purposes.

For applications for MA-LTC for the BI, CAC, CADI, or DD waiver program received before June 1, 2016, continue to use the “deeming waiver” rules in effect before June 1, 2016. People who applied before June 1, 2016, and are approved for MA-LTC for the BI, CAC, CADI, or DD waiver program may become subject to the new rules, as discussed in Section II.F.

B. Hardship Waiver Requested on or after June 1, 2016

Grant a hardship waiver when the LTC spouse has assets in excess of the CSAA, plus the MA asset limit, and you determine a hardship exists because:

- the community spouse refuses to make the assets available to the LTC spouse and
- the assets are owned and held by the community spouse in:
 - a tax-deferred retirement account from which funds cannot be withdrawn without incurring a penalty or
 - a plan designated under section 529 of the Internal Revenue Code on behalf of a child of either or both spouses who is under the age of 25.

Do not refer the matter of the community spouse refusal to the county attorney.

C. Applications for AC Filed on or after June 1, 2016

Case managers: Enter the amount of the CSAA, as explained in Section II, on the [Alternative Care Program Eligibility Worksheet for a Married Person Who Has a Community Spouse \(DHS-2630A\)](#). The remaining assets are the gross assets of the AC program applicant. Enter this amount on the eligibility worksheet. We are updating the eligibility worksheet to reflect the changes described in this bulletin.

Financial eligibility workers: Continue to evaluate the assets of AC applicants with a community spouse.

IV. Legal Authority

Laws of Minnesota 2016, Chapter 189, Article 19, Sections 4–8

Minnesota Statutes, section 256B.0913, subdivision 12

V. Americans with Disabilities Act (ADA) Advisory



For accessible formats of this publication or assistance with additional equal access to human services, write to DHS.info@state.mn.us, call 800-657-3739, or use your preferred relay service. (ADA1 [9-15])