

HUMAN SERVICES DEPARTMENT [441]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

The proposed amendments make several changes to the conditions of Medicaid eligibility for persons residing in a medical institution and persons treated as though they were in a medical institution for purposes of eligibility.

The amendments in Items 1 and 2 eliminate the previous personal needs allowance provision for recipients of a pension paid by the U. S. Department of Veterans Affairs (VA) which has been reduced to \$90 per month due to Medicaid paying for the person’s care. That provision is replaced with an income exemption of \$90 which is applicable to reduced VA pensions and to VA pensions received by residents of the Iowa Veterans Home, whether reduced or not. This change will reduce client participation for an estimated 150 residents of the Iowa Veterans Home. The change is made to comply with a policy clarification from the Centers for Medicare and Medicaid Services.

Item 2 allows an additional \$10 to a member’s personal needs allowance to pay for the administration fees of a medical assistance income or special needs trust. The amount may be higher than \$10 if approved by a court. Current rules provide that the Department determines eligibility according to SSI policy but do not specify how this policy is applied to trust expenses in determining a member’s client participation amount.

The amendments in Items 3 and 4 close a “loophole” in the penalty on transfer of assets at less than market value imposed under section 1917(c) of the Social Security Act. When a person has transferred assets to qualify for Medicaid, the penalty is the imposition of a period of ineligibility proportionate to the amount of resources transferred. When that period has expired, the person may become eligible for Medicaid payment for long-term care expenses. If expenses that the person incurred for long-term care during the period of ineligibility are an allowable deduction from the person’s income in determining the person’s client participation obligation, Medicaid has effectively paid those expenses, thus nullifying a portion of the penalty.

Item 5 clarifies policy on when a penalty is not applied to transfer of assets. Although the current rules exempt the transfer of a home to an applicant’s blind or disabled child, section 1917(c)(2) of the Social Security Act prohibits the application of a penalty for the transfer of any assets to a child who is blind or disabled.

The amendments in Items 6 and 7 correct the policy on when the purchase of an annuity shall be considered a transfer of assets for less than fair market value to conform to the requirements of sections 1917(c)(1)(F) and (G) of the Social Security Act [42 USC §1396p(c)(1)(F)-(G)]. Item 8 clarifies policy on when purchase of a life estate is considered a transfer of assets for less than fair market value.

These amendments do not provide for waivers in specified situations, since they are made to conform to federal and state law. However, requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before October 27, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East

Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code sections 249A.3 and 249A.4.

The following amendments are proposed.

ITEM 1. Adopt the following **new** paragraph **75.16(1)“g”**:

g. Clients receiving a VA pension. The amount of \$90 of veteran’s pension income shall be exempt from client participation if the client is a veteran or a surviving spouse of a veteran who:

- (1) Receives a reduced pension pursuant to 38 U.S.C. Section 5503(d)(2), or
- (2) Resides at the Iowa Veterans Home and does not have a spouse or minor child.

ITEM 2. Rescind subparagraph **75.16(2)“a”(1)** and adopt the following **new** subparagraph in lieu thereof:

(1) If the client has a trust described in 1917(d)(4) of the Social Security Act (including medical assistance income trusts and special needs trusts), a reasonable amount paid or set aside for necessary expenses of the trust is added to personal needs allowance. This amount shall not exceed \$10 per month except with court approval.

ITEM 3. Amend paragraph **75.16(2)“f”** as follows:

f. Client’s medical expenses. A deduction shall be allowed for the client’s incurred expenses for medical or remedial care that are not subject to payment by a third party and were not incurred for long-term care services during the imposition of a transfer of assets penalty period pursuant to rule 441—75.23(249A). This includes Medicare premiums and other health

insurance premiums, deductibles or coinsurance, and necessary medical or remedial care recognized under state law but not covered under the state Medicaid plan.

ITEM 4. Adopt the following **new** paragraph **75.23(1)“c”**:

c. Client participation after period of ineligibility. Expenses incurred for long-term care services during a transfer of assets penalty period may not be deducted as medical expenses in determining client participation pursuant to subrule 75.16(2).

ITEM 5. Amend subrule 75.23(5) as follows:

75.23(5) Exceptions. An individual shall not be ineligible for medical assistance, under this rule, to the extent that:

a. The assets transferred were a home and title to the home was transferred to either:

(1) A spouse of the individual.

(2) A child of the individual who is under the age of 21 or is blind or permanently and totally disabled as defined in 42 U.S.C. Section 1382c.

(3) and (4) No change.

b. The assets were transferred:

(1) and (2) No change.

(3) To a ~~trust established solely for the benefit of a child~~ of the individual who is blind or permanently and totally disabled as defined in 42 U.S.C. Section 1382c or to a trust established solely for the benefit of such a child.

(4) No change.

c. and d. No change.

ITEM 6. Amend paragraph **75.23(9)“a,”** introductory paragraph, as follows:

a. The entire amount used to purchase an annuity on or after February 8, 2006, shall be treated as assets transferred for less than fair market value unless the annuity meets one of the conditions described in subparagraphs (1) through ~~(4)~~ (3) of this paragraph and also meets the condition described in subparagraph (4).

ITEM 7. Amend paragraph **75.23(9)“b”** as follows:

b. Funds used to purchase an annuity for ~~less~~ more than its fair market value shall be treated as assets transferred for less than fair market value regardless of when the annuity was purchased or whether:

~~(1) The annuity was purchased before February 8, 2006; or~~

~~(2) The annuity was purchased on or after February 8, 2006, and a condition the conditions described in 75.23(9)“a”(1) to (4) was were met.~~

ITEM 8. Amend paragraph **75.23(11)“b,”** introductory paragraph, as follows:

b. Funds used to purchase a life estate in another individual’s home for ~~less~~ more than its fair market value shall be treated as assets transferred for less than fair market value regardless of whether: