

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
JFK Federal Building, Government Center  
Room 2275  
Boston, Massachusetts 02203



*CENTERS for MEDICARE & MEDICAID SERVICES*

**Division of Medicaid and Children's Health Operations / Boston Regional Office**

December 16, 2010

Claudette Beaulieu, Deputy Commissioner  
Department of Social Services  
25 Sigourney Street  
Hartford, CT 06106-5033

Dear Deputy Commissioner Beaulieu:

This letter is in response to your letter of November 5, 2010, and Commissioner Starkowski's follow up letter of November 23, 2010, requesting additional clarification on the State's application of a penalty period for a disqualifying transfer of assets pursuant to §1917(c) of the Social Security Act. Specifically, you have asked whether the State is required under the State Medicaid Manual (SMM) §3528.10, for the purpose of determining eligibility, to count those fully returned assets as having been available to the individual from the date of transfer, and not from the date of return.

As noted in our October 28, 2010 letter to Commissioner Starkowski, §3528.10 of the SMM pre-dates the Deficit Reduction Act of 2005 (DRA) (Public Law 109.171). The penalty period pre-DRA (under OBRA 1993) typically began at the date of transfer, pursuant to §1917(c)(1)(D) of the Act. The DRA postponed the start date of the penalty period from the date of transfer to a later date when the individual would both be receiving long-term care services and have become eligible for Medicaid but for the imposition of the penalty period. The DRA did not address the issue of availability of the returned funds. This section of the SMM has not been revised due to the DRA, and therefore does not address the current, post-DRA circumstances. Consequently, this section of the SMM does not apply to this situation.

CMS has not developed any formal guidance on this issue post-DRA. In the absence of formal CMS guidance a State may adopt any reasonable methodology for considering the availability of returned assets for the purposes of Medicaid eligibility. We do believe that the State is not required to count the fully returned assets as having been available to the individual from the date of transfer. Section 3528.10 provided for the erasure of a penalty period under pre-DRA rules when penalties began at the time of transfer. Such is no longer the case under the DRA.

You might also note that under the notice and fair hearing regulations at 42 CFR 431, Subpart E a State agency is required to provide advance notice of any adverse action to a Medicaid

recipient. Under 42 CFR 431.211, this notice must be mailed at least ten (10) days before the date of adverse action, except as otherwise permitted in the circumstances set out in §431.213 and §431.214. Under 42 CFR 431.220, the individual generally would have a right to a hearing to challenge the proposed action. The State agency's treatment of the returned assets should factor in the need to comply with these requirements.

We hope this is helpful to you in developing your policies. If you have any questions about this letter, please contact Marie Montemagno at 617-565-1227 ([Marie.Montemagno@cms.hhs.gov](mailto:Marie.Montemagno@cms.hhs.gov)) or Julie McCarthy at 617-565-1244 ([Julie.McCarthy@cms.hhs.gov](mailto:Julie.McCarthy@cms.hhs.gov)).

Sincerely,

A handwritten signature in black ink, appearing to read "Richard R. McGreal". The signature is fluid and cursive, with the first name "Richard" and last name "McGreal" clearly distinguishable.

Richard R. McGreal  
Associate Regional Administrator

cc: Michael P. Starkowski, Commissioner, DSS  
Brenda Parella, Director, DSS, Office of Legal Counsel  
Mark Schaefer, Director, Medical Care Administration, DSS  
Marc Shok, Adult Services Program Manager, DSS  
Hugh Barber, Assistant Attorney General  
Roy Trudel, CMS – Baltimore, MD