

Table of Contents

State/Territory Name: Hawaii

State Plan Amendment (SPA) #: 09-012

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) CMS 179 Form/Summary Form (with 179-like data)
- 3) Approved SPA Pages



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Region IX

Division of Medicaid & Children's Health Operations

90 Seventh Street, Suite 5-300 (5W)

San Francisco, CA 94103-6706

SEP 7 2010

Lillian B. Koller, Esq.
Director, Department of Human Services
P.O. Box 339
Honolulu, HI 96809-0339

Dear Ms. Koller:

Enclosed is an approved copy of Hawaii State Plan Amendment (SPA) No. 09-012, which implements the changes in the treatment of transfers of assets for less than fair market value required by the Deficit Reduction Act of 2005. This SPA is effective October 1, 2009.

If you have any questions, please contact Brian Zolynas at (415) 744-3601 or Brian.Zolynas@cms.hhs.gov.

Sincerely,


Gloria Nagle
Associate Regional Administrator
Division of Medicaid & Children's Health Operations

cc: Kenneth Fink, Med-QUEST Administrator
Michele Bowser, CMS Center for Medicaid and State Operations (two copies)
Mary Rydell, Pacific Area Representative

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: HEALTH CARE FINANCING ADMINISTRATION	1. TRANSMITTAL NUMBER: 09-012	2. STATE: HAWAII
	3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID) MEDICAL ASSISTANCE	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES	4. PROPOSED EFFECTIVE DATE: October 1, 2009	

5. TYPE OF PLAN MATERIAL (Check One):

NEW STATE PLAN
 AMENDMENT TO BE CONSIDERED AS NEW PLAN
 AMENDMENT

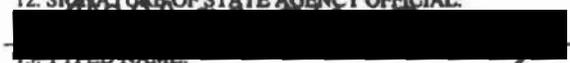
COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION: XXXXXX Section 1917(c) of the Social Security Act	7. FEDERAL BUDGET IMPACT: a. FFY 2010 XXXX -\$1,557,393.32 b. FFY 2011 XXXX -\$1,442,043.22
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Supplement 9(b) to Attachment 2.6-A, page 1 to page 5 (new)	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): XXXXXX

10. SUBJECT OF AMENDMENT:
To adhere to section 1917(c) of the Social Security Act, this applies to certain individuals who dispose of assets for less than fair market value which may be subject to a penalty.

11. GOVERNOR'S REVIEW (Check One):

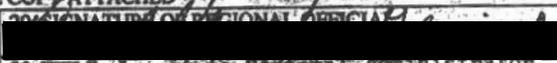
GOVERNOR'S OFFICE REPORTED NO COMMENT
 OTHER, AS SPECIFIED:
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED AS APPROVED BY GOVERNOR
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

12. SIGNATURE OF STATE AGENCY OFFICIAL:  LILLIAN B. KOLLER	16. RETURN TO:
14. TITLE: DIRECTOR	
15. DATE SUBMITTED: DEC 21 2009	

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED: DEC 30 2009	18. DATE APPROVED: SEP 7 2010
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PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL: October 1, 2009	22. TITLE: Associate Regional Administrator
21. TYPED NAME: Gloria Nable	

23. REMARKS:

Pen-and-ink changes include:

Box 6 deleted: Deficit Reduction Act of 2005 under P.L. 109-171 added Section 1917(c) of the Social Security Act

Box 7 deleted: \$0.00 for FFY 2010 and FFY 2011 added -\$1,557,393.32 for 2010 and -\$1,442,043.22 for 2011

Box 8 deleted: page 6 added page 5

Box 9 deleted: Supplement 9(b) to Attachment 2.6-A page 1 to page 6

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State HAWAII

TRANSFER OF ASSETS

1917(c)

FOR TRANSFERS OF ASSETS FOR LESS THAN FAIR MARKET VALUE MADE ON OR AFTER FEBRUARY 8, 2006, the agency provides for the denial of certain Medicaid services.

1. Institutionalized individuals are denied coverage of certain Medicaid services upon disposing of assets for less than fair market value on or after the lookback date.

The agency does not provide medical assistance coverage for institutionalized individuals for the following services:

- Nursing facility services;
- Nursing facility level of care provided in a medical institution;
- Home and community-based services under a 1915(c) or (d) waiver.

2. Non-institutionalized individuals:

_____ The agency applies these provisions to the following non-institutionalized eligibility groups. These groups can be no more restrictive than those set forth in section 1905(a) of the Social Security Act:

The agency withholds payment to non-institutionalized individuals for the following services:

- Home health services (section 1905(a)(7));
- Home & community care for functionally disabled elderly adults (section 1905(a)(22));
- Personal care services furnished to individuals who are not inpatients in certain medical institutions, as recognized under agency law and specified in section 1905(a)(24).

_____ The following other long-term care services for which payment for medical assistance is otherwise made under the agency plan:

TN No. 09-012
Supersedes
TN No. NEW

Approval Date: SEP 7 2010 Effective Date: 10/01/09

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State HAWAII

TRANSFER OF ASSETS (cont.)

3. Penalty Date—The beginning date of each penalty period imposed for an uncompensated transfer of assets is:

- For individuals applying for Medicaid payment of long-term care services, the date on which the individual is eligible for medical assistance under the State plan and would otherwise be receiving institutional level of care services described in paragraph 1 that, were it not for the imposition of the penalty period, would be covered by Medicaid (based on an approved application for such care);

or

- For individuals receiving Medicaid payment for long-term care services, the first day of the month following timely advance notice of the penalty period.

and

- Which does not occur during any other period of ineligibility for services by reason of a transfer of assets penalty.

4. Penalty Period - Institutionalized Individuals

In determining the penalty for an institutionalized individual, the agency uses:

- The average monthly cost to a private patient of nursing facility services in the State at the time of application;
- The average monthly cost to a private patient of nursing facility services in the community in which the individual is institutionalized at the time of application.

5. Penalty Period - Non-institutionalized Individuals

The agency imposes a penalty period determined by using the same method as is used for an institutionalized individual, including the use of the average monthly cost of nursing facility services:

- Imposes a shorter penalty period than would be imposed for institutionalized individuals, as outlined below:

TN No. 09-012
Supersedes
TN No. NEW

Approval Date: SEP 7 2010 Effective Date: 10/01/09

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State HAWAII

TRANSFER OF ASSETS (cont.)

6. Penalty period for amounts of transfer less than cost of nursing facility care
- X Where the amount of the transfer is less than the monthly cost of nursing facility care, the agency imposes a penalty for less than a full month, based on the option selected in item 4.
- X The state adds together all transfers for less than fair market value made during the look-back period in more than one month and calculates a single period of ineligibility that begins on the earliest date that would otherwise apply if the transfer had been made in a single lump sum.
7. Penalty periods - transfer by a spouse that results in a penalty period for the individual
- (a) The agency apportions any existing penalty period between the spouses using the method outlined below, provided the spouse is eligible for Medicaid. A penalty can be assessed against the spouse, and some portion of the penalty against the individual remains.
- When both spouses are eligible for long-term care services, the State will use the following method to apportion the penalty period:
- Apportion the penalty period equally between the spouses;
 - If one spouse dies or no longer requires long-term care services prior to the expiration of their share of the penalty period, the remainder of the penalty period will be assigned to the spouse who is still receiving long-term care services;
 - The penalty months served by the institutionalized spouses shall not exceed the length of the original penalty period.
- (b) If one spouse is no longer subject to a penalty, the remaining penalty period must be served by the remaining spouse.

TN No. 09-012
Supersedes
TN No. NEW

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State HAWAII

TRANSFER OF ASSETS (cont.)

8. Treatment of a transfer of income

When income has been transferred as a lump sum, the agency will calculate the penalty period on the lump sum value.

When a stream of income or the right to a stream of income has been transferred, the agency will impose a penalty period for each income payment.

X For transfers of individual income payments, the agency will impose partial month penalty periods using the methodology selected in 6. above.

X For transfers of the right to an income stream, the agency will base the penalty period on the combined actuarial value of all payments transferred as described below.

The agency will consider the amount of income expected to be received during the individual's lifetime when the right to receive a stream of income was transferred. The total amount of income is calculated by multiplying the annual amount of income by the individual's life expectancy based on the life expectancy tables established by the Social Security Administration's Office of the Actuary.

9. Imposition of a penalty for an undue hardship

The agency does not impose a penalty for transferring assets for less than fair market value in any case in which the agency determines that such imposition would deprive the individual of:

- (a) Medical care such that the individual's health or life would be endangered; or
- (b) Food, clothing, shelter, or other necessities of life.

TN No. 09-012

Supersedes

TN No. NEW

Approval Date: SEP 7 2010 Effective Date: 10/01/09

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State HAWAII

TRANSFER OF ASSETS (cont.)

10. Procedures for Undue Hardship Waivers

The agency has established a process under which hardship waivers may be requested that provides for:

- (a) Notice to a recipient subject to a penalty that an undue hardship exception exists;
- (b) A timely process for determining whether an undue hardship waiver will be granted; and
- (c) A process, which is described in the notice, under which an adverse determination can be appealed.

The procedures shall permit the facility in which the institutionalized individual is residing to file an undue hardship waiver application on behalf of the individual with the consent of the individual or the individual's personal representative.

11. Bed Hold Waivers for Hardship Applicants

The agency provides that while an application for an undue hardship waiver is pending in the case of an individual who is a resident of a nursing facility:

_____ Payments to the nursing facility to hold the bed for the individual will be made for a period not to exceed _____ days (may not be greater than 30).

TN No. 09-012

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