

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
601 East 12th Street, Suite 0300
Kansas City, Missouri 64106-2898



Medicaid and CHIP Operations Group

March 26, 2021

Ms. Tara LeBlanc, Interim Medicaid Director
State of Louisiana
Department of Health
628 N 4th Street
P.O. Box 91030
Baton Rouge, LA 70821-9030

RE: TN LA 20-0016

Dear Ms. LeBlanc:

We have reviewed the State's proposed amendment to the Louisiana State Plan submitted under Transmittal Number (TN) 20-0016 dated December 30, 2020. This state plan amendment is to comply with the Louisiana regulations related to transfer of assets in the Medicaid assistance program for less than fair market value to: 1) begin the penalty date the first day of the month following the month of transfer; 2) Impose penalty when the amount of the transfer is less than the monthly cost of nursing facility care; 3) treatment of income as an asset.

Based on the information submitted, we approved the amendment on March 25, 2021, for incorporation into the official Louisiana State Plan with an effective date of October 1, 2020. A copy of the CMS-179 and approved plan pages are enclosed with this letter.

If you have any questions regarding this matter, you may contact Tobias Griffin at (214) 767-4425, or by email at tobias.griffin@cms.hhs.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "James G. Scott", is positioned above the printed name.

Digitally signed by James G.
Scott -S
Date: 2021.03.26 13:27:30
-05'00'

James G. Scott, Director
Division of Program Operations

Enclosures

cc: Billy Bob Farrell, Branch Manager
Karen Barnes, LA Department of Health

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES	1. TRANSMITTAL NUMBER 20-0016	2. STATE Louisiana
	3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	

TO: REGIONAL ADMINISTRATOR CENTERS FOR MEDICARE & MEDICAID SERVICES DEPARTMENT OF HEALTH AND HUMAN SERVICES	4. PROPOSED EFFECTIVE DATE October 31, 2020 October 1, 2020
---	--

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 Deficit Reduction Act of 2005 Section 1917 of the Social Security Act	7. FEDERAL BUDGET IMPACT a. FFY <u>2021</u> \$ <u>0</u> b. FFY <u>2022</u> \$ <u>0</u>
--	--

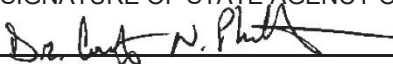
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT Attachment 2.6A, Supplement 9a, Pages 1-5 (obsolete pages) Attachment 2.6A, Supplement 9b, Pages 1-5 (rename pages)	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable) Same (TN 95-04) Same (TN 95-04 and 06-13)
--	---

10. SUBJECT OF AMENDMENT

The purpose of this SPA is to comply with the Louisiana regulations related to transfer of assets in the Medicaid assistance program for less than fair market value to: 1) begin the penalty date the first day of the month following the month of transfer; 2) Impose penalty when the amount of the transfer is less than the monthly cost of nursing facility care; 3) treatment of income as an asset.

11. GOVERNOR'S REVIEW (Check One)


GOVERNOR'S OFFICE REPORTED NO COMMENT OTHER, AS SPECIFIED
 COMMENTS OF GOVERNOR'S OFFICE ENCLOSED The Governor does not review State Plan material.
 NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

12. SIGNATURE OF STATE AGENCY OFFICIAL 	16. RETURN TO Tara A. LeBlanc, Interim Medicaid Executive Director State of Louisiana Department of Health 628 North 4th Street P.O. Box 91030 Baton Rouge, LA 70821-9030
13. TYPED NAME Dr. Courtney N. Phillips	
14. TITLE Secretary	
15. DATE SUBMITTED December 30, 2020	

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED December 30, 2020	18. DATE APPROVED March 25, 2021
--	-------------------------------------

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL October 1, 2020	20. SIGNATURE OF REGIONAL OFFICIAL  Digitally signed by James G. Scott -S Date: 2021.03.26 13:28:19 -05'00'
21. TYPED NAME James G. Scott	
22. TITLE Director, Division of Program Operations	

23. REMARKS

The State requests a pen and ink change to box 4.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: Louisiana

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 look-back 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 and 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:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: Louisiana

TRANSFER OF ASSETS

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

- the first day of a month during or after which assets have been transferred for less than fair market value;

The State uses the first day of the month in which the assets were transferred

The State uses the first day of the month after the month in which the assets were transferred
or

- the date on which the individual is eligible for medical assistance under the State plan and is receiving institutional level care services described in paragraphs 1 and 2 that, were it not for the imposition of the penalty period, would be covered by Medicaid;

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.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: Louisiana

TRANSFER OF ASSETS

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:

6. Penalty period for amounts of transfer less than cost of nursing facility care

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.

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.

(b) If one spouse is no longer subject to a penalty, the remaining penalty period must be served by the remaining spouse.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: Louisiana

TRANSFER OF ASSETS

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.

9. Imposition of a penalty would work 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 work an undue hardship. The agency will use the following criteria in making undue hardship determinations:

Application of a transfer of assets penalty would deprive the individual:

(a) Of medical care such that the individual's health or life would be endangered; or

(b) Of food, clothing, shelter, or other necessities of life.

All claims of undue hardship are to be referred by the local office to the Program Specialist and submitted to state office Program. Each referral shall contain detailed descriptions of the circumstances surrounding the transfer. All efforts to recover the transferred resources or have the transferred resource returned must be exhausted before undue hardship can be considered. In situations in which an individual claims that resources were transferred without his/her consent, the individual is required to file police reports and pursue criminal charges against the accused.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: Louisiana

TRANSFER OF ASSETS

Hardship determinations will be made by state office Program staff. The client will be notified of the decision and shall have the right to appeal.

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.

These 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).