

**NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES
BISMARCK, NORTH DAKOTA
April 9, 2015**

IM 5242

TO: County Social Service Directors
Economic Assistance Policy Regional Representatives
Economic Assistance Policy Quality Control Reviewers

FROM: Maggie Anderson, Executive Director
North Dakota Department of Human Services

**SUBJECT: Policy Clarifications for Non-ACA Medicaid – IRA’s,
Asset Assessments and Community Spouse Asset
Allowance**

PROGRAMS: Non-ACA Medicaid

EFFECTIVE: Immediately

RETENTION: Until superseded

**SECTIONS
AFFECTED:** **510-05-70-30 - Excluded Assets**
510-05-35-90 - Application for Other Benefits
510-05-85-05 - Income Considerations
**510-05-70-45-30 - Annuities Purchased or Changed
on or After February 8, 2006**
510-05-65-20 - Community Spouse Asset Allowance
510-05-65-45 - Asset Assessment Requirements

IM 5206 which was effective April 1, 2014, changed policy to exclude funds held in Individual Retirement Plans (IRA’s) and Roth Individual Retirement Plans (IRA’s) provided they meet the qualified retirement criteria established by the Internal Revenue Service (IRS), 26 U.S.C., which almost all do. Based on this change in policy, we must list the IRA’s on the Asset Assessment, but exclude the value in the ‘Total Assets’ amount.

However, even though we are excluding IRA’s as a countable asset, based on policy at 510-05-35-90, Application for Other Benefits, as a condition of eligibility, applicants and recipients (including spouses and financially responsible absent parents) must take all necessary steps to obtain any annuities, pensions, retirement, and disability benefits, to which they are entitled, unless they can show good cause for not doing so. Annuities,

pensions, retirement, and disability benefits include, but are not limited to, veterans' compensation and pensions; old age, survivors, and disability insurance benefits; railroad retirement benefits; and unemployment compensation.

Individuals may have 'good cause' for not making these streams of income available such as:

- a. Receipt of the annuity, pension, retirement, or disability benefit would result in a loss of health insurance coverage; or
- b. An employed or self-employed individual who has not met their full retirement age chooses not to apply for Social Security early retirement or widows benefits.

Note: Application for needs based payments (e.g. SSI, TANF, etc.) cannot be imposed as a condition of eligibility.

If an individual does NOT have 'good cause', and reaches their full retirement age, or has a disability that precludes them from earning a living, they MUST begin drawing a stream of income from the IRA. To do this, they must roll the IRA over into an annuity. Once annuitized, it becomes an annuity and policy at 510-05-70-45, Annuities, applies, including it needs to be irrevocably annuitized to make the stream of income available to meet the annuity policy and making the Department of Human Services (DHS) the irrevocable beneficiary up to the amount of Medicaid benefits paid on behalf of either spouse.

Note: A copy of the beneficiary change form must be received back from the company holding the annuity, verifying the change in beneficiary (irrevocably to DHS), before the client can be determined eligible. If you need assistance with a tax id number or having a state representative sign the document, please forward to Medicaid Policy Division to have this completed.

If the individual chooses not to rollover their IRA into an annuity, the individual will not be eligible for non-ACA Medicaid as they have failed to meet the eligibility criteria in 510-05-35-90, Application for Other Benefits, and 510-05-85-05 (1), Income Considerations, as they are not making all income available.

Community Spouse Asset Allowance

Once the institutionalized or HCBS spouse has been determined eligible, the community spouse is no longer subject to the community spouse asset allowance. However, assets of the community spouse are subject to the disqualifying transfer provisions and may not be given away or transferred for less than fair market value without causing ineligibility for the institutionalized spouse.

In addition, should the Community Spouse require care in a medical institution, a nursing facility, a swing bed, or in the state hospital, the Spousal Impoverishment provisions no longer apply UNLESS the total length of the Community Spouses stay is anticipated to be less than a full calendar month.

Miscellaneous Policy Clarifications and Reminders

1. When completing an Asset Assessment, at the time of application, and at the time of each review:
 - a. The NDRIN and Motor Vehicle interfaces must be checked for potential countable assets.
 - b. Enter the physical or legal address of the home on the Asset Assessment. If there is a TRANSFER ON DEATH Deed (TOD) enter TOD in front of the address. A copy of the TOD deed must be attached to the Asset Assessment when sending the Asset Assessment to the State Medicaid Policy Unit.
Ex: TOD 123 Main St, Bismarck, ND 58505
2. We are changing where completed Asset Assessments are to be sent.
 - Instead of sending the Asset Assessment to the Legal Advisory Unit, please send them to State Medicaid Policy.
 - When sending in the Asset Assessment to the State Medicaid Policy Unit, please attach all verifications/deeds of the countable assets listed on the Asset Assessment.
 - After the State Medicaid Policy Unit reviews the Asset Assessment, a copy will be forwarded to the Legal Advisory Unit for future Estate Recovery purposes.
3. Upon approval of a case, the SFN 52, Spousal Asset Log MUST be completed and sent to the State Medicaid Policy Unit. Retain a copy for your case file.
4. All Asset Assessments, Annuities and IRA's where the individual IS or MUST make income available must be reviewed by the State Medicaid Policy Unit. Send them to the Medicaid Policy group mailbox box at: -Info-DHS Medicaid Policy < hccpolicy@nd.gov >.
5. Reminder, applicants and recipients should not be provided financial advice. They must pursue financial advice from individuals who work in that field.

Based on the clarifications in this IM, if you are aware of any cases that have been processed incorrectly, please review and correct.

If you have questions, please contact your Regional Representative.