

**NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES
BISMARCK, NORTH DAKOTA
August 28, 2015**

IM 5257

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

FROM: Carol Cartledge, Director, Economic Assistance Division

SUBJECT: Retirement Accounts and Irrevocable Burial Accounts

PROGRAMS: Non-ACA Medicaid

EFFECTIVE: Immediately

RETENTION: Until superseded

SECTIONS 510-05-35-90 - Application for Other Benefits
AFFECTED: 510-05-85-05 - Income Considerations
510-05-70-30 - Excluded Assets

Retirement Accounts

IM 5206 which was effective April 1, 2014, changed policy to exclude funds held in retirement plans that meet the qualified retirement criteria established by the Internal Revenue Service (IRS), 26 U.S.C., which include:

- SEP-IRA (Simplified employee pension) plans
- Employer or employee association retirement accounts
- Employer simple retirement accounts
- 401(k) retirement plans (which include independent (sole proprietorship) plans)
- 403(b) retirement plans
- 457 retirement plans
- 401(a) Employer-sponsored money-purchased retirement plan
- Individual Retirement Plans (IRA's)
- Roth Individual Retirement Plans (IRA's)

While the funds are excluded as assets, it is a condition of eligibility that all applicants and recipients 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.

Good cause under this section exists if:

- Receipt of the annuity, pension, retirement, or disability benefit would result in a loss of health insurance coverage;
- 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.

When accessing their retirement accounts, individuals will have three options:

Option #1: Purchase an annuity. If the individual chooses this option, policy at 510-05-70-45-30 applies.

Option #2: Withdraw the Funds without purchasing an Annuity
When drawing the funds out without purchasing an Annuity, the individual must:

- Receive level monthly payments AND receive the full principal and interest during or prior to the individual's life expectancy time period; or
- Withdraw the entire amount in a lump sum payment.

Individuals choosing to take a lump sum payment will have their payments considered income in the month received and an asset thereafter.

Option #3: Do nothing and continue to have the money held in the retirement account.

Individuals choosing this option will not be eligible for Medicaid as they are not meeting the eligibility requirements defined in Manual Sections 510-03-35-90 and 510-05-35-90, Application for Other Benefits.

When individuals have begun drawing their retirement benefits prior to applying, Eligibility Workers will need to assess these to determine whether the individual chose Option 1 or Option 2 above, and based on the option they selected, ensure that the individual meets the policy requirements.

Irrevocable burial Accounts.

To clarify policy on the treatment of Irrevocable Burial Accounts, the following change has been made to subsection 8 of the Excluded Assets 510-05-70-30 section of the manual.

For Medicaid, both TECS and Vision systems exclude irrevocable burial accounts in their entirety, except that the amount is still counted towards the burial exclusion which is currently \$6,000.

In North Dakota, irrevocable burials are only to be sold for a MAXIMUM of the current burial exclusion (currently \$6,000) plus up to the remaining \$3000 allowable assets exclusion. The exception is when someone from another state has moved here and had purchased their irrevocable burial following the irrevocable burial laws in that state. The value of an irrevocable burial arrangement must be considered towards the burial exclusion.

Note: When entering an irrevocable burial into the computer systems, enter the irrevocable burial amount, up to other state's limit (currently \$6000), with a 'Category' of Liquid Assets and a 'Type' of Irrevocable Burial Fund.

Amounts that may be designated as irrevocable vary from state to state. When an individual moves to North Dakota from another state, North Dakota Medicaid will honor the other state's limits on these burials.

Note: When entering an irrevocable burial that was purchased in another state into the computer systems, enter the irrevocable burial amount, up to other state's limit (currently \$6000), with a 'Category' of Liquid Assets and a 'Type' of Irrevocable Burial Fund. Any amount that exceeds the \$6000 would be entered with a 'Category' of Liquid Asset' and a 'Type' of Prepaid Burial Contract.

Example: In 2015, the burial asset exclusion was \$6,000 and, while it is not wise to do so, the individual may put the remaining \$3,000 of their asset limit into burial funds. If the individual puts \$9,000 into an irrevocable burial fund, the \$9,000 is applied to the \$6,000 burial exclusion and the \$3000 that exceeds the burial exclusion is a countable asset. In order for the systems to process this correctly, the asset must be entered into the eligibility system as 2 assets - \$6000 under the 'Category' of Liquid Assets and a 'Type' of Irrevocable Burial Fund and \$3000 'Category' of Liquid Asset' and a 'Type' of Prepaid Burial Contract.

Note #1: This individual may not have one cent in additional assets and be eligible for Medicaid.

Note #2: If the individual in the above example put \$15,000 in an irrevocable burial fund, and requires Medicaid coverage for nursing care services within 5 years of doing so, amounts exceeding the \$9,000 maximum would be a disqualifying transfer because the individual is taking available assets and making them unavailable.

Example: John Smith purchased a prepaid burial in the amount of \$7500 with his local funeral home. The funeral home is the owner of the burial fund, and it is irrevocable. John has also designated \$2500 in a CD for his burial. Because irrevocable burial funds must first be applied to the \$6000 burial exclusion, \$6000 is not a countable asset, but the excess \$1,500 is. The \$2500 CD designated for burial is also a countable asset which makes John exceed the asset test by \$1000 and be ineligible for Medicaid. In order for the systems to process this correctly, the asset must be entered into the eligibility system as 2 assets - \$6000 under the 'Category' of Liquid Assets and a 'Type' of Irrevocable Burial Fund and \$4000 'Category' of Liquid Asset' and a 'Type' of Prepaid Burial Contract.

Example: Jim Smith has an irrevocable burial account in the amount of \$4,000. He also wishes to designate his savings account of \$5,500. Since the irrevocable burial MUST be applied towards the \$6000 burial exclusion, only \$2,000 of the savings account may be excluded. The remaining \$3,500 in the savings, can still be designated for burial, but is a countable asset. If this individual is single or has other assets, he will fail the asset test. In order for the systems to process this correctly, the asset must be entered into the eligibility system as 2 assets - \$4000 under the 'Category' of Liquid Assets and a 'Type' of Irrevocable Burial Fund and \$5,500 'Category' of Liquid Asset' and a 'Type' of Prepaid Burial Contract.

If you have any questions, please contact your Regional Representative.