

Par.1. **Material Transmitted and Purpose** – Transmitted with this Manual Letter are changes to Service Chapter 510-05 Non-ACA Medicaid Eligibility Factors. This manual letter incorporates changes made with the following IM's, if the information in the IM continues to be valid.

- IM 5334 2018 Change in ABLE Account Contributions
- IM 5355 Excluded Assets (Burial Provision) as amended
- IM 5359 Medicare Premium Assistance Program

Par. 2. **Effective Date** – Policy changes included in this manual letter are effective December 1, 2019. Policy that was incorporated with the IM's is effective based on the date listed in the IM. Items that include a change in policy are indicated in **red**.

Assets Which are Excluded for the Medicare Premium Assistance Program 510-05-60-25

(N.D.A.C. Section 75-02-02.1-28.1)

Medically needy excluded assets are excluded for SSI Buy-In based on the policy at Section 05-70-30. Medically needy excluded assets are also excluded for the Medicare Savings Programs with the following exceptions:

2. Before August 1, 2019 - The applicant or recipient may choose either the North Dakota Medicaid ~~irrevocable itemized~~ burial provision or the SSI burial provision. After August 1, 2019 – The applicant or recipient may choose either the North Dakota Medicaid irrevocable itemized burial contract provision or the SSI burial provision.

Excluded Assets 510-05-70-30

8. Before August 1, 2019 - ~~Any pre-need irrevocable funeral funds service contracts, prepayments or deposits, regardless of ownership, which total \$6000 or less, which are designated by an applicant or recipient for the applicant's or recipient's burial. When an individual moves to North Dakota from another state, North Dakota Medicaid will honor the burial plan set up in~~

~~the other state based on the other state's burial provision.~~ An applicant or recipient designates a prepayment or deposit for his or her burial by providing funds that are used for that purpose. Only those prepayments paid by members of the Medicaid unit are considered as burial prepayments.

Earnings accrued on the total amount of the ~~irrevocable~~ designated burial fund are excluded.

A burial plot for each family member (eligible or ineligible) will also be excluded. A burial plot is defined to include a grave site, crypt, or mausoleum. (Effective July 1, 1996.)

~~a) Individuals with burial funds set up prior to August 1, 2019 can change their revocable burial to an irrevocable burial. Once the burial is changed to an irrevocable burial fund it will be excluded in its entirety.~~

~~Markers, monuments, and vaults that have been pre-purchased separately from a pre-need funeral service contract are not considered part of a burial plot and are not considered as prepayments or deposits for burial. These items are countable assets for Medicaid, based on their current market value. A marker or monument that has already been engraved with some of the individual's information will likely have a reduced value. It may still have a market value; however, the value will be reduced by the cost to resurface the marker or monument. When a double marker has been purchased and one spouse has already passed away, it can be determined that there is no resale value for the marker.~~

~~a. A purchaser of a pre-need funeral service may make a certain amount of the pre-need funds irrevocable. The irrevocable amount may not exceed the amount of the burial asset exclusion at the time the contract is entered, plus the portion of the \$3,000 asset limitation the purchaser designates for funeral expenses. The value of an irrevocable burial arrangement must be considered towards the burial exclusion. 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.~~

~~The value of an irrevocable burial arrangement must be considered applied towards the burial exclusion first. Amounts that may be designated as irrevocable vary from state to state and another State's~~

law may allow more than North Dakota. When an individual moves to North Dakota from another state, North Dakota Medicaid will honor the other state's limits on these burials irrevocable burial following the irrevocable burial laws in that state.

Example: In 2013, the burial asset exclusion is \$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 \$3,000 that exceeds the burial exclusion is a countable asset. This individual may not have one cent in additional assets and be eligible for Medicaid.

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 the 5-years look back period, 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 \$7,500 with his local funeral home. The funeral home is the owner of the burial fund, and it is irrevocable. John has also designated \$2,500 in a CD for his burial. Because irrevocable burial funds must first be applied to the \$6,000 burial exclusion, \$6,000 is not a countable asset, but the excess \$1,500 is. The \$2,500 CD designated for burial is also a countable asset which makes John exceed the asset test by \$1,000 and be ineligible for Medicaid.

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. Because the irrevocable burial MUST be applied towards the \$6,000 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.

- b) Any funds, insurance or other property given to another person or entity in contemplation that its value will be used to meet the burial

needs of the applicant or recipient must be ~~in an irrevocable burial fund~~. considered towards the burial exclusion. This includes any funds set aside in a separate account or used to purchase insurance or any other burial product. Any amount in excess of the \$6000 burial exclusion is a countable asset if the fund, insurance, or other property has a cash value, fair market value, or surrender value.

Example: A Medicaid recipient with an insurance policy that is designated for burial previously transferred ownership of the policy to his daughter. The policy has a current cost basis of \$6400 and cash surrender value (CSV) of \$7500. The insurance policy is considered to be transferred in trust to meet the burial needs of the recipient. \$6000 is excluded under the burial exclusion and the additional \$400 in cost basis is a countable asset to the recipient ($\$6400 - \$6000 = \$400$). The extra \$1100 in cash surrender value is earnings and is excluded ($\$7500 \text{ CSV} - \$6400 \text{ cost basis} = \1100 earnings).

- c) Normally a life insurance policy is a countable asset valued at its cash surrender value, however, when a whole life insurance policy or an annuity is ~~placed in an irrevocable~~ designated for burial, ~~fund the whole life insurance or annuity is exempt.~~ the amount considered designated for burial is the lesser of the cost basis or the face value of the insurance policy. The prepayments on the life insurance policy or annuity are the total premiums that have been paid less amounts paid for any riders and less any withdrawals of premiums paid. They are identified as the "remaining cost basis." Only those prepayments (remaining cost basis) paid by members of the Medicaid unit are considered as burial prepayments. Premium payments made by insurance dividends or disability insurance plans do not increase the remaining cost basis. Loans on life insurance affect the net cash surrender value only and do not affect remaining cost basis.

If the life insurance policy or annuity has a cash surrender value that exceeds the remaining cost basis, the excess cash surrender value is considered accrued earnings and are excluded. The following are two examples showing how remaining cost basis and cash surrender value are applied to the burial provision:

Example 1: An applicant has a life insurance policy with a face value of \$5000. The policy remaining cost basis is \$2400 and the

cash surrender value is \$2900. The \$2400 remaining cost basis is considered to be the designated burial. The excess cash surrender value of \$500 is considered accrued earnings and is excluded.

Example 2: An applicant has an annuity with a face value of \$7000. The annuity remaining cost basis is \$6200 and the surrender value is \$6500. Only \$6000 of the remaining cost basis is excluded for burial. The remaining \$200 is counted toward the asset limit. The excess surrender value of \$300 is considered accrued earnings and is excluded.

Example 3: An applicant has a life insurance policy with a face value of \$6,000. The cost basis of the policy is \$7,000 and the cash surrender value is \$7,500. Because the \$6,000 face value is less than the cost basis, if designated for burial, the prepaid burial would be \$6,000. The difference between the cash surrender value and the face value is considered accrued earnings and is excluded.

In these three examples, if the cash surrender value had been less than the remaining cost basis, there would be no earnings exclusion.

Withdrawals from life insurance policies that reduce the face value of the life insurance also reduce the remaining cost basis and cash surrender value of the policy. Some applicants may make withdrawals to reduce the value of the insurance policy in order to qualify for Medicaid. Such withdrawals do not affect the designation of the insurance for burial.

Example: An applicant has a life insurance policy with a remaining cost basis of \$7500 and a cash surrender value of \$9000. The applicant intended the policy for his burial expenses. When the applicant applied for Medicaid, he withdrew (not borrowed) \$3000 from the policy, and spent it down, so he could be asset eligible. By withdrawing \$3000, the policy's face value was reduced, the remaining cost basis was reduced to \$4500, and the cash surrender value was reduced to \$6000. The applicant's current designated burial is \$4500 with \$1500 in earnings.

- d. A fund is considered to be designated for burial ~~when it is in an irrevocable fund,~~ if identified as such on the account or by the applicant's or recipient's statement. A designated account can have

more than one owner as long as the account is designated for only one person's burial and, a burial account does not have to be in the applicant's or recipient's name. Life insurance that is designated for burial, however, must cover the life of the person for whom it is designated.

- e. The ~~irrevocable~~ burial fund must be identifiable and cannot be commingled with other funds. ~~Checking accounts are considered to be commingled.~~
- f. An applicant or recipient may designate all or a portion of the \$3000 asset limitation for funeral purposes. These additional assets designated for burials are not excluded for purposes of this provision, but any earnings accrued to these additional funds are excluded.
- g. An ~~irrevocable~~ burial fund, which is established at the time of application, can apply retroactively to the three month prior period and the period in which the application is pending, if the value of all assets is within the Medicaid limits for each of the prior months. ~~Future earnings on the newly established burial fund will be excluded.~~
- h. Prepayments or deposits ~~Irrevocable burial funds~~ cannot be ~~designated established~~ for an individual's burial after the individual's death.
- i. At the time of application, the value of a designated burial fund is determined by ~~identifying the value of the prepayments which are subject to the burial exclusion and asset limit amounts.~~

Designated burial funds, other than life insurance, which have been decreased prior to application for Medicaid will be considered redesignated as of the date of last withdrawal. The balance at that point will be considered the prepayment amount and earnings from that date forward will be disregarded.

For example: A savings account of \$5000 designated for burial has grown to \$8000. The owner withdraws \$1000 before application for Medicaid. All \$7000 is now considered to be the principal amount designated. \$6000 would be excluded for burial

and the remaining \$1000 would be applied to the \$3000 asset limit.

Reductions made in a designated burial fund, other than life insurance, after application for Medicaid will first reduce the amount of earnings.

For example: A savings account of \$3000 designated for burial has grown to \$5000. The owner withdraws \$1000 after application for Medicaid. Of the remaining \$4000, the designated burial remains at \$3000, with \$1000 considered as excluded interest.

- j. Burial funds can be moved to different accounts or financial institutions without being considered redesignated if the applicant or recipient can demonstrate the amount that was principal from that which was earnings, and these amounts are consistent in the new account or financial institution.
- k. Information regarding the burial fund of a deceased recipient must be released to funeral home personnel upon request.