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Memorandum

To: Kansas Health Policy Authority Staff
Department of Social and Rehabilitation Services Staff
Kansas Department of Aging Staff

From: Marcia J. Nielsen, Executive Director of KHPA

Don Jordan, Secretary of SRS

Kathy Greenlee, Secretary of KDOA

Date: 2/16/2007

Re: Guidelines Regarding Medicaid Planning Advice

State staffs are often confronted with questions regarding eligibility for Medicaid, particularly for persons in need of long term care. The majority of these inquiries are informational requests regarding a loved one in need of financial assistance. But, it is becoming increasingly common to receive inquiries aimed at gaining information to manipulate program requirements in order to gain eligibility while the person has sufficient resources to pay for care. This practice is commonly known as Medicaid estate planning. It is estimated that such planning, which involves using legitimate loopholes in the law, costs the Medicaid program hundreds of millions of dollars in additional expenses each year.

In 1996, SRS issued guidance to eligibility staff regarding acceptable employee practices when confronted with these inquiries. Given recent changes in Medicaid administrative responsibilities in the state, the passage of significant federal and state legislation to address the issue of Medicaid planning, and the growing trend toward this practice, updated guidance is being issued to a broader audience.

As the leaders of the state agencies tasked with administrative and operational responsibilities for the Medicaid program, it is our expectation that the guidelines and principles outlined in this memo are used when confronted with Medicaid planning issues. These same guidelines are to be followed by our contractors as well.

Medicaid is for the Needy

It cannot be overemphasized that Medicaid is the payor of last resort and is intended to only meet the needs of the truly needy. This is not a lofty goal but rather a matter of fulfilling the public trust. Because the Medicaid program is a publicly funded program we have the obligation to the taxpayers and citizens of our State as well as the country in assuring that the assistance provided is dispensed in an equitable, fair and trustworthy manner. As such, our goal is to help those individuals who either lack or have insufficient resources to meet their basic medical needs. Our goal should not be to help families maximize inheritance rights, to transfer property in order to qualify earlier, or to convert assets available for payment of medical costs to noncountable assets. To do otherwise would subject the agency not only to loss of public trust but could threaten the funding needed to serve those persons most in need of our help.

Avoid Medicaid Planning Advice

Providing advice on the disposition of a person's assets may leave the individual or family with a false impression that subsequent actions have been approved by the agency. Further, providing advice may lead to an expectation that the advice will be valid in the future, even if program rules change. Neither conclusion is true. It is important for staff to understand how information we provide may be interpreted. Medicaid eligibility is based on the circumstances of the individual at the time of application or determination. Policies and practices in place today may very well change tomorrow. This is particularly true when Congress or the State legislature mandates changes in program rules.

For this reason, staff in our Legal Divisions do not give legal or planning advice to private attorneys or to members of the general public, including any prior approval to proposed trusts or other financial or legal transactions. (The lone exception is that KHPA Legal Section will review drafts of Disability Payback Trusts (DPT's) under KEESM Section 5621 (1) or pooled trusts under KEESM Section 5621 (2)).

By the same token, other employees, including all field and central office staff, are neither trained, authorized nor expected to give legal, financial, or estate planning advice to consumers, families or representatives. Aside from specific requests for the prior authorization of certain transfers of property for applicants and recipients under KEESM 5721 (6), neither verbal nor written permission is ever given regarding prior approval of transfers or other Medicaid planning techniques.

In many circumstances there is often a fine line between informing the public about our rules and providing financial planning information. It is not our intent to have staff become uncooperative or unhelpful by refusing to provide information or answer questions. Rather, it is to make you sensitive to the issue and to provide you with guidelines regarding specifically how these requests are handled.

Appropriate Responses

As a rule of thumb, staff should respond to direct questions on any of the program requirements. Examples of direct questions include:

- General information regarding exempt and countable assets and income, such as using the cash value of a life insurance policy over \$1500 or treatment of the home property;
- Spousal impoverishment, or division of assets, rules;
- The impact of a transfer of property or income;
- Basic eligibility criteria, such as residency and disability status;
- Determination of patient liability or spenddown;

- General rules regarding treatment of specific resources. For example, a family member is trying to determine how Medicaid will treat stock a parent owns in a large company or a client is due to receive an inheritance and is asking how Medicaid will consider the money.

These are all examples where clear responses are appropriate and expected. In general, any questions regarding treatment of resources the individual currently owns must be addressed.

However, there are also questions in which caution must be exercised before responding. Particular caution should be taken in instances where there are excess resources and questions are raised concerning allowable options for use of the resources. Besides meeting basic maintenance needs, allowing for division of assets, and setting aside monies for burial, the primary message should be to use the resources to meet necessary medical expenses. Since Medicaid is a publicly funded program which provides assistance to meet medical needs and is designed to be the payor of last resort, we expect individuals to meet their own medical needs to the extent possible before qualifying for assistance.

Staff should generally refrain from answering "what if" questions, giving advice to families, consumers, or others, or engaging in any practices that are similar to estate or financial planning. Staff should refer individuals to policy manual material, state or federal regulations, or other sources if the individuals wish to research issues further. As a written decision is issued for each medical assistance application, it is appropriate to suggest the individual file a Medicaid application so a complete determination regarding the situation may be issued. If pressed for information on policies or potential eligibility circumstances, staff may always refer those inquiries to KHPA Policy Staff.

We hope this information helps clarify agency policy and provides clearer guidelines to you and your staff.