



| <b>Policy Memo</b>   |  |
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| <b>KDHE-DHCF POLICY NO: 2019-12-01</b>   | <b>From: Erin Kelley, Senior Manager</b>   |
| <b>Date: December 9, 2019</b>  | <b>Medical KEESM/KFMAM Reference(s): 5200 (5), 5200 (14), 5430 (26), 6410 (71), 8142 (3), 8172.4, 8243 (4), 8270.4</b> |
| <b>RE: Voluntary Contribution for Long Term Care and Resource Liquidation to Purchase Funeral Plan</b> | <b>Program(s): Elderly and Disabled Medical Programs</b>   |

This memo sets forth instructions for policy changes being implemented in January 2020. Unless otherwise indicated, the following implementation instructions are applicable to all eligibility actions taken on or after January 1, 2020. Revisions to the Medical KEESM manual will coincide with the release of this memo. Additional information related to the implementation of these changes is available through training material released to eligibility staff.

## **I. VOLUNTARY CONTRIBUTION FOR LONG TERM CARE**

### **A. BACKGROUND**

When a consumer applies for Long Term Care medical assistance and owns resources in excess of the program standards, or, when it is discovered that an ongoing recipient now owns excess resources, there are very few options available to the consumer to pursue resource eligibility without losing their application filing date or their current coverage.

#### **1. EXCESS RESOURCES IN MONTH OF APPLICATION**

It is not uncommon for an applicant for nursing home coverage to have excess resources in the month of application. When the amount of the excess resources is not enough to fully private pay for that month, the applicant is left in a difficult situation. If denied for assistance due to excess resources, he/she does not have enough funds available to private pay the facility. If the excess resources are used to pay towards the cost of care in the facility to achieve resource eligibility, coverage may be approved for that month.

However, if the agency approves coverage for that month and determines the patient liability, if the patient liability is less than what the applicant has already paid towards the cost of care, the facility will refund the difference back to the applicant. This could cause the applicant to again possess resource in excess of the allowable limit. One solution is to simply deny coverage for this month and use the unpaid portion of the nursing home cost of care as a due and owing expense to be applied beginning with the first month of coverage. But, that solution denies Medicaid coverage for the month the applicant is otherwise entitled to receive.

## **2. EXCESS RESOURCE AT REVIEW**

It is also not uncommon to discover at review (or earlier) that a long term care recipient is over the allowable resource limit. This could have occurred for several reasons, but most likely from the acquisition of resources after approval or from accumulation of monies from an exempt income source not considered in the share of cost determination.

### **a. AFTER ACQUIRED**

A recipient may have acquired additional resources after eligibility for long term care coverage has been approved. Unless promptly reported by the recipient, this may not have been discovered until the annual case review. The additional resources may have originated from an inheritance, lottery winnings, or are the proceeds from the sale of an otherwise exempt resource. Whatever the source, eligibility may not be reestablished until countable resources are again within the allowable limit. If the recipient is unable to expend the excess resources on exempt goods or services by the end of the month after the end of the review period, a gap in coverage for medical assistance may occur.

### **b. EXEMPT INCOME**

When the recipient has income that is exempted in determining the long term care share of cost, there is the potential that accumulated income, if unspent, may over time cause the countable resources to exceed the allowable limit. This is not un-common for a nursing home recipient who receives the \$90/month reduced VA payment. That income does not count in determining the monthly patient liability, and if unspent, may over time cause countable resources to exceed the allowable resource limit.

## **B. POLICY**

Effective with the issuance of this memo, applicants for nursing home coverage and long term care recipients may voluntarily contribute excess resources or ongoing exempt income towards a long term care cost of care in order to achieve and/or maintain resources within the allowable limit. This formalizes a policy that eligibility staff have previously been informally following.

## **1. WHEN TO APPLY THE VOLUNTARY CONTRIBUTION POLICY**

This policy only applies to long term care applicants and recipients who have a share of cost obligation. The Voluntary Contribution is applied to increase the calculated share of cost by the amount of the excess resources or ongoing exempt income. This policy cannot be used by independent living applicants or recipients to increase a spenddown or to inflate the amount of a premium.

### **a. APPLICANTS**

For applicants, this policy only applies to those requesting services for institutional care coverage (including institutional PACE) – it does not apply to applicants for HCBS or community PACE. In addition, only excess resources may be applied toward the share of cost as a Voluntary Contribution to achieve initial resource eligibility. Ongoing exempt income may not be applied as a Voluntary Contribution for applicants.

### **b. RECIPIENTS**

This policy applies to all long term care recipients – those receiving institutional care, HCBS or PACE. In addition, both excess resources and ongoing exempt income may be applied toward the share of cost as a Voluntary Contribution to retain resource eligibility.

## **2. APPLICATION OF VOLUNTARY CONTRIBUTION**

The Voluntary Contribution policy shall be applied in the following manner:

### **a. EXCESS RESOURCES**

When an applicant for institutional coverage has resources in excess of the allowable limit in the month of application, the excess amount may be applied towards the patient liability for that month. A long term care recipient with excess resources may increase the share of cost obligation in the next available month, allowing for timely notice of the increase.

#### ***i. Calculation***

The amount of the Voluntary Contribution shall be no less than the amount of the excess resources needed to make the applicant/recipient resource eligible. Therefore, the amount in excess of \$2,000 is the *minimum* Voluntary Contribution. A lesser amount will not ultimately result in resource eligibility. A greater amount may be applied (within limitation described below), subject to the amount agreed upon by the applicant/recipient. See subsection (3)(a) below.

## **ii. Application**

Once the amount of the Voluntary Contribution has been established, the share of cost obligation and countable resources shall be adjusted as follows:

### **1) Share of Cost**

The normal share of cost for the month of application for applicants, or next available month for recipients, shall be increased by the amount of the Voluntary Contribution. The amount of the Voluntary Contribution shall be entered in KEES as countable income for that month only – resulting in an increase in the patient liability by that amount. The Voluntary Contribution income record shall be end-dated no later than the month it is applied for purposes of this subsection.

Since the Voluntary Contribution is only entered into KEES administratively as income, care should be taken to ensure that this entry does not adversely affect MSP eligibility. That additional income, intended for purposes of increasing the share of cost only, should not be counted in determining MSP eligibility or towards the 300% special income limit. To accomplish that, the following action shall be taken depending on the type of long term care coverage involved:

**a) Institutional** – For institutional coverage (including institutional PACE), the Voluntary Contribution shall be entered in KEES with an income type of “Other – Exempt”. The income will then be included in the patient liability determination but excluded when determining MSP eligibility and the 300% special income limit.

This appears to be counterintuitive, but due to the post-eligibility treatment of income, all otherwise exempt income (other than that listed in Medical KEESM 8150) will be counted in determining the patient liability for an institutionalized individual. At the same time, that income will then be exempted and therefore not counted in the MSP and 300% determinations.

**b) HCBS and PACE** – For HCBS and community PACE, the Voluntary Contribution shall be entered in KEES with an income type of “Other – Countable”. The income will be correctly included in the determination of client obligation or participant obligation, but also incorrectly included in determining MSP eligibility and the 300% special income limit.

If the additional income does not adversely affect the MSP or 300% determination, then no further action is required. If the recipient is already on Medicare buy-in and the amount of the

Voluntary Contribution causes the recipient to go from LMB eligible to not LMB eligible, no further action is required since payment of the Medicare Part B premium will continue.

However, if the amount of the Voluntary Contribution causes the recipient to lose QMB coverage (regardless of whether the individual is already on buy-in), or the additional income causes total income to exceed the 300% special income limit, eligibility staff shall contact KDHE-DHCF Eligibility Policy for further guidance on how to proceed.

## **2) *Countable Resources***

Countable resources shall be reduced by the amount of the Voluntary Contribution. This reduction is effective the month of application for applicants and the month the Voluntary Contribution is applied for recipients. This shall be accomplished administratively by subtracting the amount of the Voluntary Contribution from a liquid resource, such as a checking or savings account.

If the applicant/recipient has no (or not enough) liquid resources to count towards the Voluntary Contribution needed to reduce assets below the allowable resource limit, then this process is not an option. If most or all of the applicant/recipient's countable resources are non-liquid, such as life insurance, real estate, or vehicles, those assets may have to be sold (or borrowed against) to create a cash asset which could then be used to fund a Voluntary Contribution.

**Note:** If reducing the liquid resource in this manner does not result in resource eligibility, then either the amount of the Voluntary Contribution was not enough, or the resource was reduced by an incorrect amount. Eligibility staff shall confirm that the amounts are correct.

### **b. INCOME**

When a long term care recipient accumulates excess resources over time due to the ongoing receipt of exempt income which is not counted in determining the share of cost, he/she has the option of voluntarily applying some or all of that income towards the monthly share of cost. The share of cost would be increased in the next available month, allowing for timely notice of the increase.

**Note:** If accumulation of exempt income results in excess resources, those excess resources will also have to be spent down in some manner – either as a separate Voluntary Contribution or towards exempt goods or services for the benefit of the recipient.

***i. Calculation***

The amount of the Voluntary Contribution is entirely up to the recipient. In most instances, it will be prudent to apply the entire amount of the exempt income towards the share of cost. In other instances, a lesser amount may be sufficient to prevent resource ineligibility over time. However, the amount of the Voluntary Contribution is ultimately up to the recipient. See subsection (3)(a) below.

***ii. Application***

Once the amount of the Voluntary Contribution has been established, the share of cost obligation and otherwise exempt income shall be adjusted as follows.

***1) Share of Cost***

The normal share of cost for the next available month (allowing for timely notice) shall be increased by the amount of the Voluntary Contribution. The amount of the Voluntary Contribution shall be entered in KEES as indicated in subsection (a)(ii)(1)(a) and (b) above for that month and each month thereafter. This should correctly increase the share of cost by that amount.

As noted above, care should be taken to ensure that entry of this administrative income does not adversely affect MSP eligibility or count against the 300% special income limit. To accomplish this, eligibility staff shall follow the same procedure outlined in subsection (a)(ii)(1) above. Again, contact with KDHE-DHCF Eligibility Policy may be required.

***2) Income Record***

Even though all or part of an existing exempt income source is now being voluntarily counted in determining the long term care share of cost by adding a new income record, the exempt income record in KEES shall not be adjusted. That record shall remain in place. This will allow the agency to identify and track the income if necessary. This will also allow the pre-populated review form to accurately reflect that income.

**Note:** The Voluntary Contribution process shall not be used where the excess resources are attributed to a recipient who has failed to pay the monthly share of cost obligation. In those instances, the recipient should be instructed to make payment for all delinquent months. That should reduce countable resources below the allowable resource limit, unless other factors are involved. If the recipient refuses or fails to comply, discontinuance due to excess resources is appropriate.

### **3. ADDITIONAL REQUIREMENTS**

The following additional requirements shall be met before approving a Voluntary Contribution.

#### **a. AGREEMENT**

The applicant or recipient must agree to the Voluntary Contribution either verbally or in writing before the agency may take action to increase the long term care share of cost. If the agreement is verbal, eligibility staff must thoroughly journal that agreement. To expedite the process, eligibility staff shall attempt to contact the applicant or recipient by phone to obtain a verbal agreement to make a Voluntary Contribution of either excess resources or otherwise exempt income. For the verbal agreement to be valid, the individual must be very clear what they are agreeing to, including the amount of the Voluntary Contribution, the effective month, and the source (resources, income, or both).

In addition, it must be stressed that this action is purely optional and not mandated by the agency. As indicated above, the contact with the applicant or recipient and the terms of the agreement must be thoroughly journaled to document the agency decision to apply the Voluntary Contribution.

If eligibility staff are unable to contact the applicant or recipient by phone to establish a Voluntary Contribution agreement, eligibility shall be processed applying the normal resource counting rules. Eligibility staff have no further obligation to make contact with the individual other than by phone.

#### **b. OTHERWISE ELIGIBLE**

The applicant or recipient must otherwise be eligible for long term care coverage. If there is ineligibility for a reason other than excess resources, there is no need to pursue a Voluntary Contribution agreement since solely reducing resources will not result in eligibility. Likewise, if the applicant or recipient is not applying for or receiving long term care coverage, there is no appropriate share of cost under this policy to adjust.

#### **c. COST OF CARE**

When adding the Voluntary Contribution to the normal share of cost, the new increased share of cost cannot exceed the cost of care for the long term care services. If the increased share of cost exceeds the cost of care amount then this is not an option since there is no eligibility for long term care coverage. reduced, or excess resources must be disposed of in another manner [See subsection (d) below].

**Note:** If the amount of the excess resources is greater than that which can be applied in a single month to reduce resources within the allowable limit, this Voluntary Contribution policy cannot be used. The applicant/recipient will have to reduce resources in another method. See subsection (d) below.

**d. OTHER OPTIONS**

While a Voluntary Contribution agreement is an option available to an applicant or recipient, in most instances, it should be offered only after consideration of all other options to reduce resources, including the following:

***i. Purchase Funeral Plan***

Applicants or recipients with excess liquid resources may purchase an exempt burial plan to reduce resources. See Medical KEESM 5430 (3) (burial spaces) and (10) (funeral agreements). In the alternative, if the individual does not already have monies set aside for burial and the amount of excess resources is relatively small, he/she may designate up to \$1,500 in a separate and identifiable account for burial. See Medical KEESM 5430 (2) (burial funds).

***ii. Pay Due and Owing Expenses***

A Voluntary Contribution should generally not be used when the applicant or recipient has due and owing medical expenses. The individual shall always be encouraged to meet his/her own medical needs to the fullest extent possible. Using excess resources to pay outstanding medical bills is always preferable to a Voluntary Contribution.

***iii. Pre-Pay Estate Recovery***

A recipient (but not an applicant) may choose to make a pre-payment against the future Estate Recovery claim. If this option is chosen, verification of the payment, including the amount, is required. The recipient should be referred to Estate Recovery at **1-800-817- 8617** or e-mail at [KSestaterecovery@hms.com](mailto:KSestaterecovery@hms.com). Estate Recovery will assess the amount of the proposed payment against the current size of the recovery claim to determine if this is an acceptable option. Estate Recovery cannot accept a payment that exceeds the current amount of the claim. The amount of the claim will be reduced by the amount of any pre-payment accepted by Estate Recovery.

See Medical KEESM 1725.7 and PM2019-06-02 (Section III.D.).

**Note:** The option to reduce resources by pre-paying Estate Recovery may also be used by non-long term care recipients who received services on or after age 55 since those claims are also subject to recovery. This would include an individual eligible under Medically Needy (MDN), but not a recipient of QMB, LMB, or QWD only as those programs are not subject to Estate Recovery.

***iv. Spend Down Assets***

An applicant or recipient may choose to reduce countable resources by paying outstanding bills, purchasing items for personal use (i.e. clothing, television, books, etc.) or any other asset that will not count against the

resource limit. There are few, if any, parameters on what may be purchased in this manner other than adequate consideration must be received for all purchases. Gifting of assets to reduce resources may be considered an uncompensated transfer affecting eligibility for long term care programs. See Medical KEESM 5720 and subsections.

**Note:** Pre-paying for care in a nursing facility to reduce resources is not an option since any amount on account held in the facility for the resident is considered an available resource and therefore will not reduce his/her countable assets. That includes creating a separate pre-paid account at the facility that will pay for the difference between a shared room and a private one.

v. ***Discontinue Eligibility***

In general, the use of the Voluntary contribution option is only available where the amount of excess resources is relatively small. There may be instances where a recipient receives a large lump sum cash asset, such as an inheritance, or proceeds from the sale of an otherwise exempt resource (i.e. home, income producing property) or substantial winnings from a lottery ticket. In that situation, there may be no reasonable option other than to close the case due to excess resources. The former recipient would then private pay for services with the option of reapplying for assistance once resources have been spent down and are again within the allowable limit.

#### **4. NOTICES**

The following notice fragments have been created for use when the share of cost has been increased due to a Voluntary Contribution and when the share of cost has been decreased due to the removal of a Voluntary Contribution. These fragments are available on the KDHE Standard Text for Copy and Paste on the E&D Specific tab.

a. **APPLICATION OF VOLUNTARY CONTRIBUTION**

The following notice fragments may be used when a Voluntary Contribution has been applied to increase the share of cost.

i. ***Excess Resources***

This notice fragment may be used where a Voluntary Contribution of excess resources are applied to increase the share of cost in a single month.

*“The normal amount of your share of cost has been increased because you agreed to a Voluntary Contribution in the amount of **\${insert amount}** to reduce your resources under the allowable limit. Your share of cost, including the amount of your Voluntary Contribution, is **\${insert amount}** effective **{insert month and year}**.”*

*This is in accordance with Medical KEESM 5200 (14), 5430 (26), 6410*

(72), 8142 (3), 8172.4, 8243 (4), 8270.4.”

**ii. Exempt Income**

This notice fragment may be used where a Voluntary Contribution of exempt income is applied to increase the share of cost on an on-going monthly basis.

*“The normal amount of your share of cost has been increased because you agreed to a Voluntary Contribution in the amount of **#{insert amount}** from your exempt income to keep your resources under the allowable limit. We will continue to count this additional amount on your share of cost each month until you tell us to stop.*

*Your share of cost, including the amount of your Voluntary Contribution, is **#{insert amount}** effective **#{insert month and year}**.*

*This is in accordance with Medical KEESM 6410 (72), 8142 (3), 8172.4, 8243 (4), 8270.4.”*

**b. REMOVAL OF VOLUNTARY CONTRIBUTION**

The following notice fragment may be used when the Voluntary Contribution from either excess resources or ongoing exempt income has been removed to decrease the share of cost.

*“Your share of cost has been changed to **#{insert share of cost}** effective **#{insert month and year}** because your Voluntary Contribution in the amount of **#{insert amount}** to reduce resources is no longer counted.*

*This is in accordance with Medical KEESM 5200 (14), 5430 (26), 6410 (72), 8142 (3), 8172.4, 8243 (4), 8270.4.”*

## **II.RESOURCE LIQUIDATION TO PURCHASE FUNERAL PLAN**

### **A. BACKGROUND**

Normally an applicant is ineligible for medical assistance in any month until countable resources are at or below the allowable limit. However, an exception was developed to allow retroactive coverage for an applicant who was in the process of liquidating an otherwise resource-disqualifying asset in order to purchase an exempt burial fund or plan. This exception was documented in Medical KEESM 5200(5)(b).

The process is complex and difficult to administer, and in most instances, requires the application to pend beyond the 45-day timely processing threshold. To qualify under this special provision, the applicant must initiate the liquidation process within 15 days from the date of the application and complete the process within 90 days. Eligibility staff are then required to pend the application until whichever occurs first – the resource is liquidated, and a burial plan or fund is purchased, or the 90<sup>th</sup> day.

## **B. POLICY**

Effective with the issuance of this memo, this policy has been eliminated. The regular verification and resource counting rules apply to situations where a liquid resource is being accessed to fund a burial fund or plan. The liquid resource is a countable resource up until the month accessed and converted to an exempt resource – including a burial fund or plan. This means the application will no longer pend while the applicant pursues this process.

Even with this change in policy, the following provisions remain unchanged.

### **1. REDUCING COUNTABLE RESOURCES**

The agency, as a policy, shall continue to encourage applicants and recipients to reduce excess resource by providing for their own final needs in the form of funeral or burial plans. However, should the applicant choose this option of reducing countable resources, the application shall no longer pend throughout the conversion process. Assuming there are no other outstanding issues, this shall allow the application to be processed in a timely manner.

#### **a. ADDITIONAL TIME**

An applicant may request, and the agency may grant, additional time to provide information requested by the agency. However, the agency shall be under no obligation to grant additional time exclusively for an applicant to verify that he/she is liquidating or will be liquidating an otherwise resource-disqualifying asset with the funds to be used for some other purpose – including purchasing an exempt burial fund or plan.

#### **b. REACTIVATION**

A denied application or discontinued coverage due to excess resources may be reactivated in the following circumstances.

##### ***i. Application***

If the application is denied due to excess resources, the applicant may reactivate the original application by providing verification that the excess resource has been liquidated and was used to purchase an exempt burial fund or plan. The verification must be provided within 45 days from the date of application in order to reactivate the application. Otherwise, a new application is required. See Medical KEESM 1414.2(1)(b).

##### ***ii. Discontinuance***

If eligibility has been discontinued due to excess resources, coverage may be reinstated if verification that resources are within the allowable limit is provided by the end of the month after the month of discontinuance. This could include verifying that countable resources have been liquidated to purchase an exempt burial fund or plan. If verification is not provided by the end of the month after the month of discontinuance, a new application

is required. See Medical KEESM 1423.

## **2. TRANSITION**

Any current application that is pending due to the previous policy at the time the new policy was implemented shall continue to pend and be processed based on the old policy. To qualify, the process to liquidate the disqualifying resource must have been initiated within 15 days of the date of application (or report of excess resources by a recipient) with the process to purchase and verify the exempt funeral fund or plan completed within 90 days. Otherwise, this special policy does not apply.

Any new request received after issuance of this memo to pend an application based on liquidation of resources under the old policy shall be denied.

## **III. QUESTIONS**

For questions or concerns related to this document, please contact one of the KDHE Medical Policy Staff listed below.

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Questions regarding any KEES issues are directed to the KEES Help Desk at [KEES.HelpDesk@ks.gov](mailto:KEES.HelpDesk@ks.gov)