



Minnesota Department of **Human Services**

January 7, 2015

Senator Lourey
G-12 Capitol
St. Paul, MN 55155-1606

Representative Dean
401 State Office Building
St. Paul, MN 55155-1206

Senator Rosen
139 State Office Building
St. Paul, MN 55155-1206

Representative Liebling
357 State Office Building
St. Paul, MN 55155-1206

Senator Sheran
G-12 Capitol
St. Paul, MN 55155-1606

Representative Mack
545 State Office Building
St. Paul, MN 55155-1206

Senator Benson
115 State Office Building
St. Paul, MN 55155-1206

Representative Mullery
303 State Office Building
St. Paul, MN 55155-1206

Representative Loeffler
337 State Office Building
St. Paul, MN 55155-1206

Dear Chairs and Leads of the HHS Committee:

This letter is written in response to 2014 Laws of Minnesota, chapter 291, article 10, section 10, which requires the Department to advise the 2015 Legislature regarding the application of a decision by U.S. Court of Appeals for the Eighth Circuit. The 2014 law requires the Department to analyze the effect of the Eight Circuit decision on state law governing Minnesota's Medical Assistance Program relating to the amount of income and assets that a married couple must spend on the cost of long term care services.

Federal law governing the Medicaid program protects a certain amount of income and assets for the spouse (community spouse) of a person who required long-term care (LTC) services (LTC spouse) from being counted when determining Medical Assistance (MA) eligibility for the LTC spouse. This legislation also provided that the income of the community spouse would not be available to the LTC spouse. Together these provisions have become known as "spousal impoverishment" rules. Spousal impoverishment rules allow the community spouse to keep one-half of the couple's assets, subject to minimum and maximum amounts, calculated based on the value of those assets as of the date the LTC spouse first requires LTC services. This amount is referred to as the community spouse asset allowance (CSAA). Assets in excess of the CSAA are considered available to the LTC spouse for the cost of the LTC services. The LTC spouse can become eligible for MA once those assets are spent down to the MA asset limit.

In 2002, the Minnesota legislature enacted a law that continues to count as an asset amounts converted to an income stream after the CSAA is calculated. This legislation was in response to couples converting assets available to the LTC spouse into annuities that paid out to the community spouse as a way to immediately spend down to the MA asset limit. In effect, this practice resulted in all of the couple's assets being protected for the community spouse rather than the amount intended to be protected under the spousal impoverishment rules.

In 2013, the U.S. Court of Appeals, Eighth Circuit, in the *Geston v. Anderson* decision, held unenforceable a state law that applied asset treatment to resources that had been irrevocably converted to an income stream after the CSAA has been calculated on the grounds it was more restrictive than allowed by federal Medicaid law. Subsequently, the 2014 Minnesota Legislature required the Commissioner to review the 2013 *Geston v. Anderson* decision, and provide information to the 2015 legislature regarding changes that can or must be made to state law in order to comply with the decision.

We have reviewed the Eighth Circuit decision and have come to the conclusion that state law is inconsistent with the Eighth Circuit decision. We therefore recommend the following revision to state law:

Minnesota Statutes 2013, section 256B.059, subdivision 5, is amended to read:
Subd. 5. **Asset availability.**

(a) At the time of initial determination of eligibility for medical assistance benefits following the first continuous period of institutionalization on or after October 1, 1989, assets considered available to the institutionalized spouse shall be the total value of all assets in which either spouse has an ownership interest, reduced by the following amount for the community spouse:

(1) prior to July 1, 1994, the greater of:

(i) \$14,148;

(ii) the lesser of the spousal share or \$70,740; or

(iii) the amount required by court order to be paid to the community spouse;

(2) for persons whose date of initial determination of eligibility for medical assistance following their first continuous period of institutionalization occurs on or after July 1, 1994, the greater of:

(i) \$20,000;

(ii) the lesser of the spousal share or \$70,740; or

(iii) the amount required by court order to be paid to the community spouse.

The value of assets transferred for the sole benefit of the community spouse under section 256B.0595, subdivision 4, in combination with other assets available to the community spouse under this section, cannot exceed the limit for the community spouse asset allowance determined under subdivision 3 or 4. Assets that exceed this allowance shall be considered available to the institutionalized spouse ~~whether or not converted to income~~. If the community spouse asset allowance has been increased under subdivision 4, then the assets considered available to the institutionalized spouse under this subdivision shall be further reduced by the value of additional amounts allowed under subdivision 4.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nathan Moracco".

Nathan Moracco
Assistant Commissioner

