

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF EMERGENCY AMENDMENTS

- 2) Payments or reimbursements for Premium Assistance for COBRA Continuous Coverage under Div. B, Title III, Sec. 3001 of P.L. 111-5.
- o) Certain payments received under the American Recovery and Reinvestment Act of 2009 are exempt as an asset the month of receipt and two months thereafter.
 - 1) Making Work Pay Credit under Div. B, Title I, Sec. 1001 of P.L. 111-5.
 - 2) Tax Credit for Certain Government Retirees under Div. B, Title II, Sec. 2202 of P.L. 111-5.
- p) Economic Recovery Payments under the American Recovery and Reinvestment Act of 2009 under Div B, Title II, Sec. 2201 of P.L. 111-5 are exempt as an asset the month of receipt and nine months thereafter.

(Source: Amended by emergency rulemaking at 36 Ill. Reg. 10253, effective July 1, 2012 through June 30, 2013)

Section 120.385 Factors Affecting Eligibility for Long Term Care Services**EMERGENCY**

- a) For purposes of this Section, the terms "institutionalized persons" and "long term care services" shall have the meanings described in Section 120.388 of this Part. The terms "institutionalized spouse" and "community spouse" shall have the meanings described in Section 120.379(a) of this Part.
- b) Disclosure of Annuity and Naming the State as Remainder Beneficiary.
 - 1) Effective January 1, 2012, an application (or redetermination related to an application) for long term care services shall include a disclosure by an institutionalized person or his or her community spouse of any interest either or both may have in any annuity or similar financial instrument purchased, regardless of whether the annuity is irrevocable or is treated as an asset. The application or recertification form shall also include a statement that the State of Illinois becomes a remainder beneficiary under such an annuity or similar financial instrument to the extent that the State has provided medical assistance to the institutionalized person.

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- 2) Failure of an institutionalized person, his or her community spouse, or his or her representative to disclose information or to name the State as a remainder beneficiary as provided for in subsection (b)(1) of this Section, or to disclose sufficient information regarding an annuity in order to establish eligibility for long term care services, shall result in denial or termination of the eligibility. Failure of an institutionalized person, his or her community spouse or his or her representative to disclose the information provided for in subsection (b)(1) of this Section, or to disclose sufficient information regarding an annuity in order to establish eligibility for medical assistance, may also result in denial or termination of eligibility for failure to cooperate under Section 120.308.
- c) Home Equity Interest.
- 1) ~~Effective January 1, 2012, a~~ person shall not be eligible for long term care services if the person's equity interest in his or her homestead exceeds the minimum home equity as allowed and increased annually under federal law, 42 U.S.C.A. § 1396p(f)(1)(C), which for calendar year 2012 is \$525,000.~~\$750,000.~~ This amount shall be increased, beginning with 2013, from year to year based on the percentage increase in the Consumer Price Index for all urban consumers (all items: United States city average), rounded to the nearest \$1000. A person's equity interest in his or her homestead shall be determined as follows:
 - A) The current market value (CMV) of the property is the going price for which it can reasonably be expected to sell on the open market in the particular geographic area involved. The CMV of the property may be established by:
 - i) an appraisal report, no more than six months old at the time of the application for long term care services, completed by an appraiser who is licensed or otherwise meets the requirements under the Real Estate Appraiser Licensing Act [225 ILCS 458]; or
 - ii) a county real estate assessor's current estimate of the market value or fair cash value of the property used in determining the assessed value of a property; or

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- iii) any other reliable and verifiable indicia of the price that a property would bring in a sale between a willing buyer and seller under arms-length conditions unaffected by undue pressures;
 - B) Equity value (EV) is the CMV of the property minus any encumbrance on it;
 - C) An encumbrance is a legally binding debt against a specific property. Such a debt reduces the value of the encumbered property but does not necessarily prevent the property owner from transferring ownership (selling) to a third party. However, if the owner of encumbered property does sell, the creditor will nearly always require debt satisfaction from the proceeds of sale. Examples of encumbrances include mortgages, reverse mortgages, home equity loans or other debt that is secured by the property;
 - D) If property is held in any form of shared ownership (e.g., joint tenancy, tenancy in common or other similar arrangement) only the fractional interest in the property shall be considered in determining the person's equity in that property.
- 2) The eligibility of a person for long term care services shall not be affected under this subsection (c) if any of the following are lawfully residing in the person's home:
 - A) the person's spouse;
 - B) the person's child who is under age 21; or
 - C) the person's adult child who is blind (as described in Section 120.313 of this Part) or disabled (as described in Section 120.314 of this Part).
- 3) A person whose eligibility for long term care services is affected under this subsection (c) may request a hardship waiver. The process and basis for requesting such a waiver shall be the same as described in Section 120.388(r) of this Part. In determining whether a waiver should be granted, the Department shall also take into account:

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- A) the amount of time the person has resided in and owned the home;
 - B) whether a substantial increase in property values in the home's geographic area occurred after the person purchased the home;
 - C) whether the home comprises a substantial portion of the person's assets (as defined in Section 120.388(d)); and
 - D) whether the person intends to return to the home after a period of institutionalization or, if the person does not intend to return, whether the home can be sold after being listed for sale or, if it cannot be sold, can produce income commensurate with similar income producing properties in the geographic area.
- 4) For purposes of this Section the words, "homestead" and "home" have the same meaning as the term "homestead" in Section 120.381(a)(1)(A) of this Part.
- d) Disclosure of Purchase of Promissory Notes, Loans and Mortgages and Assigning Interest to the State.
- 1) Effective January 1, 2012, an application (or redetermination related to an application) for long term care services shall include a disclosure by an institutionalized person or his or her community spouse of any purchase of a promissory note, loan or mortgage either or both may have made. The application or recertification form shall also include a statement that the instrument shall provide for the assignment to the State of Illinois, as of the date of death, of up to the total amount of medical assistance paid on behalf of the institutionalized person.
 - 2) Failure of an institutionalized person, his or her community spouse, or his or her representative to disclose information or to assign interest to the State as provided for in subsection (d)(1) of this Section, or to disclose sufficient information regarding a promissory note, loan or mortgage in order to establish eligibility for long term care services, shall result in denial or termination of the eligibility. Failure of an institutionalized person, his or her community spouse, or his or her representative to disclose the information provided for in subsection (d)(1) of this Section, or to disclose sufficient information regarding a promissory note, loan or mortgage in order to establish eligibility for medical assistance, may also

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result in denial or termination of eligibility for failure to cooperate under
Section 120.308.

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2012 through June 30, 2013)