

**REPORT OF THE
JOINT COMMISSION ON HEALTH CARE**

**Fiscal Impact Review: Medicaid Eligibility
and Uncompensated Asset Transfers**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



REPORT DOCUMENT NO. 104

**COMMONWEALTH OF VIRGINIA
RICHMOND
2013**

Code of Virginia § 30-168.

The Joint Commission on Health Care (the Commission) is established in the legislative branch of state government. The purpose of the Commission is to study, report and make recommendations on all areas of health care provision, regulation, insurance, liability, licensing, and delivery of services. In so doing, the Commission shall endeavor to ensure that the Commonwealth as provider, financier, and regulator adopts the most cost-effective and efficacious means of delivery of health care services so that the greatest number of Virginians receive quality health care. Further, the Commission shall encourage the development of uniform policies and services to ensure the availability of quality, affordable and accessible health services and provide a forum for continuing the review and study of programs and services.

The Commission may make recommendations and coordinate the proposals and recommendations of all commissions and agencies as to legislation affecting the provision and delivery of health care.

For the purposes of this chapter, "health care" shall include behavioral health care.

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Vice-Chairman

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The Honorable Harry B. Blevins
The Honorable Charles W. Carrico, Sr.
The Honorable L. Louise Lucas
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Preface

House Bill 1090, introduced by Delegate John M. O’Bannon in 2012, sought to address problems related to the sale or transfer of real property in determining Medicaid eligibility for long-term care services. Financial eligibility for Medicaid includes restrictions on income, resources, and assets (including stocks, bonds, vehicles, life-insurance, and non-exempt real property) as well as any uncompensated transfer of those financial “goods.” Regarding real property, an uncompensated transfer occurs when the property is sold for less than its locality-assessed property value for tax purposes. In light of the recent and significant decrease in housing values, HB 1090 only sought to provide new exceptions for when an uncompensated transfer of real property is deemed to have occurred. For example, at this time it is not unusual for a house to be worth less than its tax assessment. However, if a Medicaid applicant sold his house for less than its tax-assessed value, a penalty period could be imposed making the applicant ineligible for Medicaid payments for a period of time.

Accurately understanding the consequences of changes in Medicaid eligibility for long-term care services is very important given the potential costs involved. As an official of the Department of Medical Assistance Services (DMAS) reported in early 2013, while 18 percent of enrollees receive long-term care services those services comprise 35 percent of all Medicaid expenditures. (Long-term care services include nursing facility care, community-based waiver programs, and end-of-life care.) Considering the fiscal impact on the State budget, the substitute version of HB 1090 was referred to the House Appropriations Committee after being reported by the House Committee on Health, Welfare and Institutions. HB 1090 was left in Appropriations and Delegate O’Bannon requested a fiscal impact review by the Joint Commission on Health Care.

The JCHC study examined the impact of the proposed changes to Medicaid guidelines contained in the HB 1090 substitute. Potential implementation issues were identified including:

- Accepting private real estate appraisals could result in wide variation allowing for sale and transfer values that are beyond the bill’s intent.
- Validating that a sale or transfer actually involved an arm’s length transaction between two independent parties with no relation to each other could prove to be difficult for DMAS and social service agencies.
- Ensuring that the reason for a sale or transfer was made for reasons other than to be eligible for Medicaid assistance, could prove to be difficult for DMAS and social service agencies.

JCHC staff concurred with the likely short-term impact that HB 1090 would expand Medicaid long-term care eligibility to 58 individuals with a projected fiscal impact of slightly less than \$1 million in FY 2013 and \$3 million in FY 2014 (as described in the fiscal impact statement completed by the Department of Planning and Budget). However, JCHC staff also emphasized that the long-term fiscal impact could be higher if proceeds from real property sales are used for anything other than the medical and nursing facility care that the Commonwealth would have paid for or if individuals change their handling of real property sales to preserve assets.

Joint Commission members and staff would like to thank the individuals who assisted in this study, including representatives from: , Department of Medical Assistance Services, Department of Planning and Budget, Virginia’s elder law attorney community and the Virginia Health Care Association.

Table of Contents

EXECUTIVE SUMMARY.....	1
BACKGROUND.....	2
HB 1090 FISCAL IMPACT REVIEW.....	3
FINDINGS.....	4

ATTACHMENTS:

SEPTEMBER 18, 2012 PRESENTATION TO THE
HEALTHY LIVING AND HEALTH SERVICES
SUBCOMMITTEE

HOUSE BILL 1090 - HOUSE SUBSTITUTE (2012)

HOUSE BILL 1090 - HOUSE SUBSTITUTE: FISCAL
IMPACT STATEMENT (2012)

Fiscal Impact: Medicaid Eligibility and Uncompensated Asset Transfers House Bill 1090 (2012)

House Bill 1090, introduced by Delegate John M. O'Bannon, III in 2012, sought to address problems related to the sale or transfer of real property in determining Medicaid eligibility for long-term care services. According to Medicaid policy, an uncompensated transfer occurs when real property is sold for less than its locality-assessed property value for tax purposes. An uncompensated transfer typically affects eligibility for Medicaid payments for long-term care and given recent, significant decreases in housing values, HB 1090 sought to provide new exceptions for when an uncompensated transfer of real property is deemed to have occurred.

HB 1090 was amended as a substitute in the House Committee on Health, Welfare and Institutions and was then reported and referred to the House Appropriations Committee. HB 1090 was left in House Appropriations and Delegate O'Bannon requested a fiscal impact review by the Joint Commission on Health Care. (Subsequent references to HB 1090 will address the substitute version of the bill.)

Executive Summary

Regarding real property, an uncompensated transfer occurs when the property is sold for less than its locality-assessed property value for tax purposes. In light of the recent and significant decrease in housing values, HB 1090 sought to provide new exceptions for when an uncompensated transfer of real property is deemed to have occurred. For example, at this time it is not unusual for a house to be worth less than its tax assessment. However, if a Medicaid applicant sold his house for less than its tax-assessed value, a penalty period could be imposed making the applicant ineligible for Medicaid payments for a period of time. Accurately understanding the consequences of changes in Medicaid eligibility for long-term care services is very important given the potential costs involved. (Long-term care services include nursing facility care, community-based waiver programs, and end-of-life care.) As an official of the Department of Medical Assistance Services (DMAS) reported in early 2013, while 18 percent of enrollees receive long-term care services those services comprise 35 percent of all Medicaid expenditures.

The JCHC study examined the impact of the proposed changes to Medicaid guidelines contained in the HB 1090. Potential implementation issues were identified including:

- Accepting private real estate appraisals could result in wide variation allowing for sale and transfer values that are beyond the bill's intent.
- Validating that a sale or transfer actually involved an arm's length transaction between two independent parties with no relation to each other could prove to be difficult for DMAS and social service agencies.
- Ensuring that the reason for a sale or transfer was made for reasons other than to be eligible for Medicaid assistance, could prove to be difficult for DMAS and social service agencies.

JCHC staff concurred with the likely short-term impact that HB 1090 would expand Medicaid long-term care eligibility to 58 individuals with a projected fiscal impact of slightly less than \$1 million in FY 2013 and \$3 million in FY 2014 (as described in the fiscal impact statement completed by the Department of Planning and Budget). However, JCHC staff also emphasized that the long-term fiscal impact could be higher if proceeds from real property sales are used for

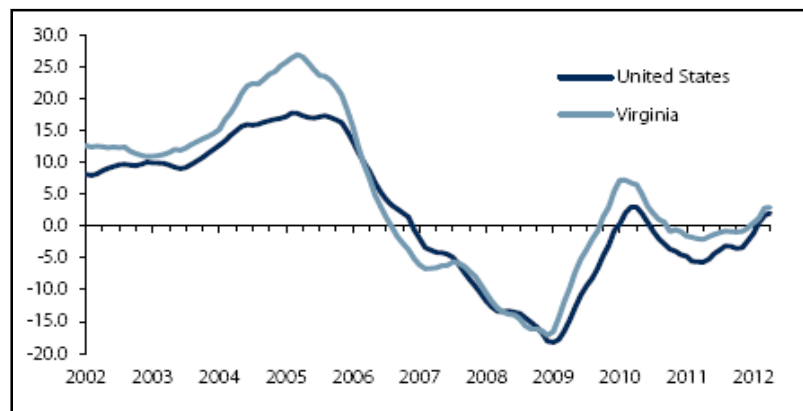
anything other than the medical and nursing facility care that the Commonwealth would have paid for or if individuals change their handling of real property sales to preserve assets.

Background

Financial eligibility for Medicaid includes restrictions on income, resources, and assets (including stocks, bonds, vehicles, life-insurance, and non-exempt real property) as well as any uncompensated transfer of those financial “goods.” An “uncompensated asset transfer (UAT) occurs when a person gives away money or other property to someone else (including family) or sells property for less than fair market value.” Medicaid eligibility includes a five-year look back period; consequently, if a UAT occurred within five years prior to the Medicaid application a “penalty period” can be imposed that would delay Medicaid payment for long-term care (LTC) services. This delay could impact an individual’s ability to afford and therefore receive nursing facility care or to receive Medicaid payment for home and community-based waiver services. UAT provisions were established to prevent individuals from giving away assets to become eligible for Medicaid LTC services.

The recent housing bubble in the United States has resulted in declines in Virginia’s housing price values (see Exhibit 1) and in some instances the current market price is less than the tax-assessed value. This is a problem in determining whether a UAT has occurred because fair market value for real property for Medicaid-eligibility purposes, is defined as the tax-assessed value.

Figure 1
Virginia House Price Index (2002-2012)
(Year-over-Year Percent Change through May 2012)



Source: SNAPSHOT: A Monthly Update of the Fifth District Economy, Federal Reserve Bank of Richmond, August 2012.

In light of the housing price declines and the potential need for future Medicaid LTC services, some Virginians chose not to sell their homes but to keep them even if they did not have sufficient funds to maintain their homes. HB 1090 would have allowed these individuals to sell their real property for less than the tax-assessed value without compromising Medicaid eligibility due to a UAT in limited circumstances. These limited circumstances involved:

“the sale or transfer of real property at a price that is lower than the assessed value of the real property shall not be considered an uncompensated transfer of assets when (i) the amount received from the sale or transfer of the property is equal to or greater than the value of the property as determined by a certified appraisal of the real property, (ii) the property is sold or transferred at a price obtained in an arm's length transaction after listing the property on a multiple listing service, (iii) the property is sold or transferred pursuant to a court order, or (iv) the sale or transfer is made for reasons exclusive of becoming or remaining eligible for medical assistance for long-term care services.”

HB 1090 Fiscal Impact Review

The following fiscal impact review will discuss two Medicaid policies used in evaluating uncompensated asset transfers and evaluate the fiscal impact statement for HB 1090 that had been prepared by Department of Planning and Budget staff for HB 1090.

Policy on Reasonable but Unsuccessful Efforts to Sell. This policy provides a process in which an individual who owns real property and is enrolled in Medicaid LTC services may sell his/her house for less than tax-assessed value without incurring a penalty-period under the following circumstances:

- Initial effort must be made to sell property
- Once individual is Medicaid-eligible the individual can renew listing agreement for no more than 100% of the tax-assessed value
- **After 1 year on the market**, a house sale less than tax-assessed value may occur without penalty when the house is sold for:
 - $\geq 75\%$ of the tax-assessed value, or
 - $<75\%$ with documentation from listing realtor that the sale price is the best price that can be expected to be considered at this time¹

Undue Hardship Review. An undue hardship review may be requested for an individual who meets all Medicaid eligibility requirements but is subject to a “penalty period.” Specifically, Medicaid applicants/recipients may claim an undue hardship when 1) UAT assets cannot be recovered, or subsequent compensation is not received and 2) imposition of a “penalty period” denying Medicaid payment for LTC services would result in the individual being removed from an institution, or becoming unable to receive life-sustaining medical care, food, clothing, shelter or other necessities of life.² The undue hardship does not override valuation determination but may result in eligibility being granted.

Fiscal Impact Statement for the HB 1090. Exhibit 1 includes an excerpt from the fiscal impact statement for the substitute version of HB 1090 (as reported by the House Committee on Health, Welfare and Institutions). Text shown in bold font for emphasis.

¹JCHC staff interview with Department of Medical Services staff August 14, 2012 and Medical Assistance Program Medicaid Manual, ABD Resources at

http://www.dss.virginia.gov/files/division/bp/medical_assistance/manual_transmittals/manual/s11.pdf

² Medical Assistance Program Medicaid Manual - ABD Resources, Department of Medical Services website at http://www.dss.virginia.gov/files/division/bp/medical_assistance/manual_transmittals/manual/s11.pdf.

Exhibit 1
Excerpt from the HB 1090 Fiscal Impact Statement

“The proposed bill would expand Medicaid coverage for certain individuals who would otherwise be ineligible for Medicaid payment for long-term care service due to an uncompensated asset transfer based on the sale of property for less than the tax assess value rather than, as the bill provides, a certified appraisal and other exceptions listed on the bill....

The proposed legislation allows for a certified appraisal to replace the county tax assessment as a potential determiner of property value. With this alternative way of determining asset value, the Department of Medical Assistance Services (DMAS) assumes more individuals will provide personally-obtained certified appraisals and thus become eligible for Medicaid and for coverage of nursing facility care or less often Medicaid community-based waiver care. Based on past “Undue Hardship” reviews that involve the transfer of real property, **DMAS estimates an additional 58 individuals would be newly eligible the first year** after the proposed legislation goes into effect. **These additional individuals are assumed to enter nursing facilities.**

In addition, the bill allows real property sold or transferred pursuant to a court order to not be considered an uncompensated transfer for the purpose of determining Medicaid eligibility for long-term care services. It is not known to what effect this provision will have, but **if it results in additional individuals qualifying for Medicaid as compared to current policy the fiscal impact to the state could be even higher than estimated.**

Nursing facility care costs on average \$29,700 per person in state fiscal year 2011 and additional acute care costs for those in nursing facilities was \$2,500 per person. The newly eligible are assumed to be enrolled gradually through the year and continue to be enrolled into subsequent years. **The number of newly eligible individuals is assumed to grow at 2.0 percent a year and nursing facility and additional acute care costs are assumed to grow at 1.5 percent.”**

Source: Department of Planning and Budget, 2012 Fiscal Impact Statement HB 1090 (substitute).

The fiscal impact statement also included the following expenditure impacts:

Fiscal Years	General Fund	Non-general Fund
2013	\$ 483,537	\$ 483,537
2014	\$1,482,185	\$1,482,185
2015	\$2,530,810	\$2,530,810
2016	\$3,125,771	\$3,125,771
2017	\$3,236,111	\$3,236,111
2018	\$3,350,346	\$3,350,346

Some proponents of HB 1090 maintained that probable cost-savings were not considered in the development of the fiscal impact statement. The thinking was that removing the UAT penalty would encourage some individuals to sell their homes at below fair market value in order to use the proceeds to pay for their medical and nursing facility care. To the extent this occurred, the Commonwealth would realize savings in the form of cost avoidance for the Medicaid program.

Findings

Exhibit 2 lists each proposed UAT exception with an implementation analysis and accompanying challenges. Exceptions 1 and 3 are relatively easy to administer; however, exceptions 2 and 4 raise additional administrative complexity for the Department of Medical Assistance Services (DMAS) and Department of Social Services (DSS). Exception 2 would place new burdens on

DMAS and DSS to determine relation of sellers and buyers of the property, which could be difficult to ascertain and exception 4 would have the agencies making determination regarding an individual’s intent to sell or transfer the property.

Exhibit 2: Implementation Analysis of UAT Proposed Exceptions

<u>Proposed Exceptions</u>	<u>Implementation Analysis</u>
1. Amount received is equal to or greater than the value of the property as determined by a certified appraisal of the real property	1. Private appraisals can have a wide variation and may allow for sales and transfers that are beyond the bill’s intent.
2. Price is obtained in an arm's-length transaction after listing the property on a multiple listing service	2. DMAS and DSS may have difficulty validating that transaction occurred between two independent parties that have no relation to each other
3. Sold or transferred pursuant to a court order	3. Unknown impact
4. Sale or transfer is made for reasons exclusive of becoming or remaining eligible for medical assistance for LTC services	4. DMAS and DSS may have difficulty determining the individual’s reason for the transaction.

Overall, projecting fiscal impact for these new UAT exceptions leads to some fiscal impact uncertainty for the following three reasons. First, the bill would expand Medicaid LTC eligibility to an unknown number of individuals that are difficult to prospectively identify. Second, the fiscal impact will be partially based on the amount individuals choose to save for LTC expenses after selling their house instead of using proceeds for another permissible purpose, such as paying for assisted-living care, purchasing a car, or going on vacation. Third, individuals will have new opportunities to alter their existing behavior and undermine the spirit or law of the UAT transfer rule, which encourages individuals to preserve assets toward paying for LTC care, if needed, and after assets are exhausted the Medicaid program pays for care.

With the aforementioned challenges, JCHC staff reviewed differing methodologies to estimate the number of individuals that would be impacted by the four proposed UAT exemptions. The best avenue to estimate the number of newly eligible cases is by review existing “hardship review” cases that met exceptions. The fiscal impact statement used this methodology and JCHC staff agrees with the fiscal impact statement estimate that an additional 58 individuals would be newly eligible the first year after the proposed legislation goes into effect. JCHC staff also agrees with the fiscal impact statement estimate of Nursing facility care costs on average \$29,700 per person and additional acute care costs, as well as the 2.0% growth in newly-eligible cases and 1.5% growth in nursing facility and acute care costs. The resulting General Funds estimates are \$997,074 in FY2013 and \$1,482,185 in FY2014.

Some HB 1090 proponents maintain that the fiscal impacts (\$997,074 in FY2013 and \$1,482,185 in FY2014) would be offset by some individuals not choosing to enroll in Medicaid because

some individuals would now choose to sell their house and use the proceeds to pay for their current or future medical and nursing facility care.³ Exhibit 3 highlights two examples in which the Commonwealth could realize fiscal offsets.

Exhibit 3: Examples in which the Commonwealth Could Realize Fiscal Offsets

A. Mr. Y is not medically in need of Medicaid LTC services and because of the new UAT exception is willing to sell his house for less than tax-assessed value. Mr. Y sells his house and two-years later subsequently uses proceeds to pay nursing facility care and never needs the Medicaid LTC program to pay for care.

B. Ms. G needs nursing facility care and is eligible for Medicaid LTC services. She chooses to immediately sell house for less than tax-assessed value (prior to the “reasonable, but unsuccessful efforts to sell” 1 year period policy was available) and uses proceeds to pay for private nursing facility care. Once Ms. S’s funds are exhausted, she qualifies for Medicaid LTC services.

(The fiscal impact statement offset would be limited to the difference between house sale allowance under the “reasonable, but unsuccessful efforts to sell” policy and the new policy, which would be the difference in what the house would sale for immediately compared to waiting 1 year.)

However, the four exceptions could also increase fiscal impact to the Commonwealth. Some individuals may alter their behavior and use these new exceptions to transfer assets to friends or family or not save property proceeds for nursing home care which would increase the fiscal impact to the Commonwealth. Exhibit 4 highlights examples in which this may occur.

While difficult to predict future outcomes, the potential cost offset does not seem likely for three main reasons. 1) Currently Medicaid LTC eligible individuals are currently allowed to sell their house after 1 year for less than the tax-assessed value. In this scenario, the maximum fiscal offset would be the difference between selling the house immediately and waiting a year. 2) The bill has no provision to assure that any property sale proceeds will be used for nursing home care. It seems unlikely that individuals will save all proceeds for nursing home care versus other day-to-day needs. 3) As nursing home care is expensive, some individuals will attempt to use the new exceptions to preserve assets from being used toward nursing home care and instead allow the Commonwealth to absorb the financial responsibility, thereby increasing the fiscal impact.

JCHC staff concurred with the likely short-term impact that HB 1090 would expand Medicaid long-term care eligibility to 58 individuals with a projected fiscal impact of slightly less than \$1 million in FY 2013 and \$3 million in FY 2014 (as described in the fiscal impact statement completed by the Department of Planning and Budget). However, JCHC staff also emphasized that the long-term fiscal impact could be higher if proceeds from real property sales are used for

³ JCHC staff email correspondence with Virginia elder law attorney, Christopher McCarthy, July 16, 2012.

anything other than the medical and nursing facility care that the Commonwealth would have paid for or if individuals change their handling of real property sales to preserve assets.

Exhibit 4: Examples in which the Fiscal Impact to the Commonwealth Could Increase

- A. Ms. R is currently not in need of Medicaid LTC services and chooses to sell house for less than the tax-assessed value. Instead of putting her resources toward future nursing home and medical care for which the State would have paid, she spends some or all of her proceeds on assisted living care, home health care, purchasing a car, utilizing legal asset preservation strategies, etc. As such, if Ms. R. is in need of future Medicaid LTC services some or all of the house sale proceeds will not be available to pay for nursing home care and the Commonwealth will be financially responsible.
- B. Mr. Q decides to sell his house to his son because his son “really likes the house and wants it so stay in his family.” However, his son can only pay 50% of the tax-assessed value of the house. One month later, Mr. Q becomes in need of and eligible for Medicaid LTC services. No UAT penalty would apply because the sale was *made exclusive of becoming eligible for LTC services*.
- C. With the new exceptions to the UAT process more DSS and DMAS staff may be needed to manage the new valuation process. The specific number would depend on how many individuals utilize additional UAT provisions and how new criteria will be evaluated and verified

JCHC Staff for this Report

Stephen W. Bowman

Senior Staff Attorney/Methodologist

Attachments

Fiscal Impact Review of HB 1090

Proposed Exceptions to Uncompensated Asset Transfer Guidelines (Medicaid LTC)

JOINT COMMISSION ON HEALTH CARE:
Healthy Living & Health Services Subcommittee

September 18, 2012

Presented by: Stephen Bowman

Agenda

- House Bill 1090
- Background: Medicaid LTC Concepts
- Key Concepts:
 - Uncompensated Asset Transfer
 - Reasonable, but Unsuccessful Effort to Sell
 - Undue Hardship Review
- HB 1090 Fiscal Impact Statement
- Conclusions
- Appendix

House Bill 1090 (O'Bannon – 2012)

HB 1090 provides 4 exceptions to current guidelines in determining whether an individual improperly (for Medicaid eligibility purposes) sold or transferred real property for less than its tax-assessed value.

- HB 1090 as a Committee Substitute was reported and referred by the House Committee on Health, Welfare, and Institutions to House Appropriations. The Committee Substitute was left in Appropriations
- The Substitute provided that the sale or transfer of real property at a price that is lower than the assessed value of the real property shall not be considered an uncompensated asset transfer when:
 1. *the amount received from the sale or transfer of the property is equal to or greater than the value of the property as determined by a certified appraisal of the real property;*
 2. *the property is sold or transferred at a price obtained in an arm's-length transaction after listing the property on a multiple listing service,*
 3. *the property is sold or transferred pursuant to a court order, or*
 4. *the sale or transfer is made for reasons exclusive of becoming or remaining eligible for medical assistance for long-term care services.*
- A fiscal impact review by JCHC was requested by Del. O'Bannon
 - Fiscal reviews do not address the merits of a bill

3

Background: Medicaid LTC Concepts

(See Appendix for Elaboration)

- Medicaid Eligibility Process *(Slide 19)*
- Resource Limit Eligibility for LTC Services *(Slide 20)*
- Excluded and Non-Countable Resources *(Slide 21)*
- Asset Preservation Strategies *(Slide 22)*

Source: JLARC, Special Report: Recent Federal Changes Affecting Asset Sheltering for Medicaid Long-Term Care (2007)

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Key Concept: Uncompensated Asset Transfer (UAT)

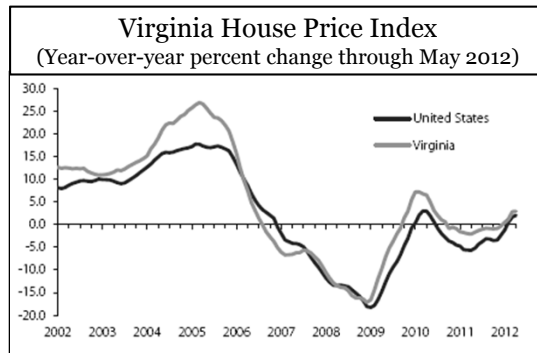
- “An uncompensated asset transfer (UAT) occurs when a person gives away money or other property to someone else (including family) or sells property for less than fair market value.”
- *Policy:* UAT provisions were established to prevent individuals from giving away assets to become eligible for Medicaid LTC services
 - When applying for Medicaid LTC services, there is a 5-year UAT look-back period
- A “penalty period” can be imposed due to a UAT that would delay Medicaid payment for LTC services and impact an individual’s ability to:
 - Enter a nursing facility, or
 - Receive Medicaid payment of home and community based waiver services.
- Fair market value for real property is currently the *tax assessed value*.

Sources: JCHC staff interview with Department of Medical Services staff August 14, 2012 and *What You Need to Know About Asset Transfers*, Montana Department of Public Health and Human Services website at <http://www.dphhs.mt.gov/sltc/programs/Medicaid/AssetTransfers.pdf>.

5

HB 1090 Addresses Instances when the Tax-Assessment of Real Property Is Above the Actual Market Value

Declines in housing prices impact the ability for some house sales to meet the tax-assessed value



Source: SNAPSHOT: A Monthly Update of the Fifth District Economy, Federal Reserve Bank of Richmond, August 2012 at http://www.richmondfed.org/research/regional_economy/reports/snapshot/pdf/snapshot_va.pdf.

6

Two Current Avenues Address when the Tax Assessment is Above the Actual Market Price

1. Reasonable, but Unsuccessful Efforts to Sell

- For individuals who own real property which makes them ineligible for Medicaid, the property “resource” can be excluded from the eligibility determination if reasonable efforts to sell the property have been made.
- Reasonable, but Unsuccessful Efforts to Sell process:
 - Initial effort must be made to sell property,
 - Once individual is Medicaid-eligible he can renew listing agreement for no more than 100% of the tax-assessed value
 - **After 1 year on the market**, a house sale less than tax-assessed value may occur without penalty when the house is sold for:
 1. *≥75% of the tax-assessed value, or*
 2. *< 75% with documentation from listing realtor that the sale price is the best price that can be expected to be considered at this time*

Sources: JCHC staff interview with Department of Medical Services staff August 14, 2012 and Medical Assistance Program Medicaid Manual , ABD Resources, at http://www.dss.virginia.gov/files/division/hp/medical_assistance/manual_transmittals/manual/s11.pdf

7

2. Undue Hardship Review

- Medicaid applicants/recipients may claim an undue hardship when:
 1. Assets cannot be recovered, or subsequent compensation is not received, and
 2. Imposition of a “penalty period” denying Medicaid payment for LTC services would result in the individual
 - being removed from an institution, or
 - becoming unable to receive life-sustaining medical care, food, clothing, shelter or other necessities of life.
- Undue hardship may only be considered for individuals who meet all Medicaid eligibility requirements but are subject to a “penalty period”
- Individuals must claim an undue hardship and provide written evidence of multiple criteria
 - *See Appendix for Asset Transfer Hardship Claim Criteria (Slide 23)*
- The review does not override valuation determination but may result in eligibility being granted

Sources: JCHC staff interview with Department of Medical Services staff August 14, 2012 and Medical Assistance Program Medicaid Manual , ABD Resources, at http://www.dss.virginia.gov/files/division/hp/medical_assistance/manual_transmittals/manual/s11.pdf

8

HB 1090 Proponents Maintain that Current Medicaid LTC Policy on Uncompensated Asset Transfer Policy Is Problematic

P O L I C Y

Current policy creates situations in which individuals do not sell their homes for fear of being ineligible for Medicaid LTC benefits, even though the condition and value of these homes may deteriorate.

- *Reasonable but unsuccessful effort to sell policy* is inadequate because people must wait to lower house sale price to reflect the market
- *Hardship policy* is inadequate because it requires a transfer that is presumed uncompensated and subject to penalty
- *No policy* allows recipients to keep funds in order to maintain a house

F I S C A L

Current policy has a negative financial impact on the Commonwealth.

- If other real property valuations were allowed when determining a UAT, more individuals would be able to sell their houses at fair market value and use such proceeds to pay medical and nursing facility care.
- The savings in Medicaid costs, which the Commonwealth would realize from these individuals paying for their medical and nursing facility care, are expected to offset the costs associated with the individuals who would become eligible for Medicaid coverage as a result of the policy change.

Source: JCHC staff email correspondence with Virginia elder law attorney, Christopher McCarthey, July 16, 2012.

9

How Would HB 1090 Change UATs?

- **Current policy:** State Medicaid regulations define valuation of real property
 - Localities' tax-assessed value are used to determine fair market value of real property
 - Uses publicly created and available property estimates
 - Initially, no alternative valuation methods are allowed
 - A UAT may occur if a house is sold for less than 100% of the tax-assessed value
- **HB 1090 makes 4 exceptions to using *tax-assessed value (TAV) of real property* when determining whether when an uncompensated asset transfer has occurred.**
 - HB 1090 proponents envision the proceeds from real property sales will be used for nursing facility and medical care
 - While not intended, the four exceptions may allow the proceeds to be used:
 1. For expenses other than nursing facility and medical care, or
 2. To preserve assets

10

HB 1090 UAT Exceptions for the Sale or Transfer of Real Property

Proposed Exceptions	JCHC Analysis
1. Amount received is equal to or greater than the value of the property as determined by a certified appraisal of the real property	1. Private appraisals can have a wide variation and may allow for sales and transfers that are beyond the bill's intent.
2. Price is obtained in an arm's-length transaction after listing the property on a multiple listing service	2. DMAS and DSS may have difficulty validating that transaction occurred between 2 independent parties that have no relation to each other
3. Sold or transferred pursuant to a court order	3. Unknown impact
4. Sale or transfer is made for reasons exclusive of becoming or remaining eligible for medical assistance for LTC services	4. DMAS and DSS may have difficulty determining the individual's reason for the transaction.

11

HB 1090: Fiscal Impact Statement (FIS)

- **Estimate of impacted individuals:**
 - 58 additional individuals would become eligible in the first year after the proposed legislation went into effect
 - Individuals are assumed to be gradually enrolled
- **Methodology:**
 - Estimate is based on review of "Undue Hardship" cases involving the transfer of real property
 - These are instances in which someone meets all Medicaid LTC eligibility requirements but are in a "penalty period" due to a UAT related to the sale of a house.

JCHC Analysis: FIS Impacted Individuals Methodology

An "undue hardship" review is the best available avenue to determine quantitatively the potential number of immediately-impacted individuals.

Sources: HB 1090 Fiscal Impact Statement, JCHC correspondence with DMAS staff August 22, 2012, and JCHC staff analysis.

12

HB 1090: Fiscal Impact Statement (cont'd)

- **Medicaid care costs:**

- Individuals are assumed to enter nursing facilities
 - Avg. nursing facility costs \$29,700 per person (2011)
 - Avg. acute care costs for those in nursing facility \$2,500 per person (2011)



- **Projections:**

- Growth in the number of newly-eligible individuals: 2.0% per year
- Growth in nursing facility and acute care costs: 1.5% per year

- **FIS Estimate:**

- FY 2013: \$997,074 (\$483,537 GF)
- FY 2014: \$2,964,370 (\$1,482,185 GF)

HB 1090: Potential Fiscal Impact Offsets

Selected Examples: Commonwealth Could Realize Fiscal Offsets	
<ol style="list-style-type: none"> 1. An individual: <ol style="list-style-type: none"> a. Is not medically in need of Medicaid LTC services, b. Sells house for less than tax-assessed value, and c. Uses proceeds to pay nursing facility care when needed in future and never applies for Medicaid LTC assistance. 	
<ol style="list-style-type: none"> 2. An individual: <ol style="list-style-type: none"> a. Is in need of nursing facility care, b. Is eligible for Medicaid LTC services, c. Chooses to immediately sell house for less than tax-assessed value (prior to reasonable, but unsuccessful efforts to sell 1 year period policy was available), d. Uses proceeds to pay for private nursing facility care, and e. Qualifies for Medicaid LTC services after funds are exhausted <ul style="list-style-type: none"> • Offset is limited to the difference between house sales allowance under the reasonable, but unsuccessful efforts to sell 1 year period policy and the new policy. • House likely in better condition as it had 1 year less deterioration. • Offset could be the difference between the house sale price from Year 1 to Year 2. 	

HB 1090: Potential Fiscal Impact Increases

Selected Examples: Fiscal Impact to the Commonwealth Would Increase

1. An individual:
 - a. Is not medically in need of Medicaid LTC services,
 - b. Sells house for less than tax-assessed value, and
 - c. Converts or spends **some or all** proceeds towards *anything other than for nursing and medical care for which the State would have paid.*
 - This includes resources put towards assisted living care, home health care, purchasing a car, utilizing legal asset preservation strategies, etc.
2. Due to more flexible standards and difficulty in determining validity of transfers, individuals could preserve more of their resources and still become eligible for Medicaid LTC services sooner.
3. More DSS and DMAS staff may be needed to manage the new valuation process
 - Depends on how many individuals utilize additional UAT provisions and how new criteria will be evaluated and verified



15

Analysis of Potential Future Impact

JCHC Analysis: While it is difficult to predict future outcomes, potential cost increases are likely to be higher than potential cost offsets.

Cost Offsets

Increased Costs



1. Individual uses resources exclusively for nursing facility and medical care

2. Increased resources from selling a less deteriorated house (Yr. 1 vs. Yr. 2 price)

1. Individual does not use resources exclusively for nursing facility and medical care

2. Market adapts to new avenues to avoid UAT and some individuals become eligible for Medicaid LTC sooner

3. Additional staff likely to be needed to administer the new policy

16

Fiscal Impact Review Conclusions

HB 1090 Fiscal Impact Components	JCHC Fiscal Impact Review
58 newly eligible based on “hardship review” of cases	<i>Agree</i>
Medical care costs	<i>Agree</i>
Population and Care Cost Growth	<i>Agree</i>
FIS estimate: FY 2013: \$997,074 (\$483,537 GF) FY 2014: \$2,964,370 (\$1,482,185 GF)	<i>Agree</i>
<p>Conclusion: JCHC concurs with HB 1090 FIS, although future fiscal impact could be higher if individuals:</p> <ol style="list-style-type: none"> 1. Use proceeds from real property sales for anything other than the medical and nursing facility care that the Commonwealth would have paid for, or 2. Change current behaviors in real property sales to preserve assets. 	

17

APPENDIX

18

Medical, Categorical and Financial Requirements Must be Met to be Eligible for LTC services

3 Step Eligibility Process for Medicaid LTC Services

1. Pre-admission Medical Screening*

- *Does applicant meet medical eligibility standards?*

2. Categorical, Non-financial, and Financial Criteria*

- *Categorical: (e.g.) Aged, blind, or disabled*
- *Non-Financial: (e.g.) Virginia resident, has a Social Security Number*
- *Financial: Meets asset transfer rules, as well as income and resource standards*

3. Post-eligibility Determination Review

- *What is the "patient pay" portion of the LTC care?*

*Applicant must meet Steps 1 & 2 to be eligible for LTC services

HB 1090 would change transfer of asset rules for real property

Source: JCHC staff interview with Department of Medical Services staff August 14, 2012.

19

Resource Limit Eligibility for LTC Services

- "In addition to income, Medicaid LTC eligibility is also determined based on other financial resources.
 - For all aged, blind or disabled individuals who have been determined to meet the medical criteria for receipt of LTC services, the resource limit is \$2,000."
- "Individuals who have countable resources that exceed the \$2,000 limit must reduce their resources prior to achieving eligibility."
- Resource examples include: cash, bank accounts, cash value of stocks, trust funds, vehicles, and *non-exempt real property*.
 - All resources are verified but not all are countable.
- 5 year look-back period regarding the value of assets transferred and the compensation received.

Source: JLARC, Special Report: Recent Federal Changes Affecting Asset Sheltering for Medicaid Long-Term Care (2007)

20

Excluded and Non-Countable Resources

- Not all assets and resources are counted toward the \$2,000 resource limit
- Some assets are not considered resources. Excluded: “assets of any kind are not resources if the individual does not have
 - any ownership interest;
 - the legal right, authority, or power to liquidate; or
 - the legal right to use the assets for his/her support and maintenance.”
 - Examples of excluded resources:
 - Certain household goods and personal effects,
 - One motor vehicle,
 - Applicant's principal residence,
 - Property used in a trade or business,
 - Certain prepaid burial arrangements, and
 - Certain term life insurance policies.

Source: Medical Assistance Program Medicaid Manual , ABD Resources, at http://www.dss.virginia.gov/files/division/hp/medical_assistance/manual_transmittals/manual/s11.pdf.

21

Asset Preservation Strategies

- There are avenues for individuals to qualify “for Medicaid assistance while preserving assets” and income for the community spouse, dependent children, disabled children or other family members.
 - *Examples: Asset Preservation Avenues*
 - Identifying and maximizing excluded resources
 - Transferring assets (both exempt and nonexempt) to the community spouse and other minor or disabled family members
 - Converting countable resources into excluded resources
 - Converting resources into income for the community spouse

Sources: Hook Law Center, Virginia Medicaid Explanation at <http://hooklawcenter.com/resources/legal-information/25-legal-information-long-term-care-planning/67-virginia-medicaid-explanation.html>.

22

Undue Hardship Criteria

Written evidence to be provided regarding:

1. Reason(s) for the transfer;
2. All attempts made to recover the asset or receive full compensation;
3. Notice of discharge from the facility, PACE, hospice, or community-based care services due to denial or cancellation of Medicaid payment for these services;
4. Physician's statement that inability to receive long-term care services would result in the applicant/recipient's inability to obtain life-sustaining medical care;
5. Documentation that individual would not be able to obtain, food, clothing or shelter;
6. List of all assets owned and verification of their value at the time of the transfer; and
7. Documents such as deeds or wills if ownership of real property is an issue.

Sources: Asset Transfer Hardship Claim Form at http://www.dss.virginia.gov/files/division/hp/medical_assistance/forms/all_other/032-03-0417-03-eng.pdf.

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HOUSE BILL NO. 1090

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on February 2, 2012)

(Patron Prior to Substitute—Delegate O'Bannon)

A *BILL to amend and reenact § 32.1-325.02 of the Code of Virginia, relating to Medicaid eligibility; determination of assets.*

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-325.02 of the Code of Virginia is amended and reenacted as follows:

§ 32.1-325.02. Determinations of assets; disclaimers of interests to be considered uncompensated transfers of assets for Medicaid eligibility purposes under certain circumstances.

A. When determining eligibility for medical assistance services, "assets" means, in regard to an individual, all income and resources of the individual and the individual's spouse, including, but not limited to, any income or resources which the individual or such individual's spouse is or becomes entitled to, but does not receive, because of any action by such individual or such individual's spouse, or by a person, including a court or administrative body, with legal authority to act in the place of or on behalf of the individual or such individual's spouse, or by any person, including any court or administrative body, acting at the direction of or upon the request of the individual or such individual's spouse.

B. For the sole purpose of determining eligibility for medical assistance services as provided in this title, Chapter 5 (§ 63.2-500 et seq.) of Title 63.2, and the regulations of the Department of Medical Assistance Services, any disclaimer of succession pursuant to Chapter 8.1 (§ 64.1-196.1 et seq.) of Title 64.1 shall be considered an uncompensated transfer of assets equal to the value of any interest disclaimed by any person who would, by reason of the disclaimer of succession, retain Medicaid eligibility or become eligible for medical assistance within (i) 36 months of the date that the disclaimer instrument is filed with a court of competent jurisdiction when the disclaimer instrument relates to any property other than property passed through a trust or (ii) 60 months of the date that the disclaimer instrument is filed with a court of competent jurisdiction when the disclaimer instrument relates to payments from a trust or portions of a trust.

C. For the sole purpose of determining eligibility for medical assistance services as provided in this title, Chapter 5 (§ 63.2-500 et seq.) of Title 63.2, and the regulations of the Department of Medical Assistance Services, the sale or transfer of real property at a price that is lower than the assessed value of the real property for purposes of local real estate taxation shall be considered an uncompensated transfer of assets equal to the amount of the difference between the assessed value of the property and the amount received from the sale or transfer of the property. However, the sale or transfer of real property at a price that is lower than the assessed value of the real property shall not be considered an uncompensated transfer of assets when (i) the amount received from the sale or transfer of the property is equal to or greater than the value of the property as determined by a certified appraisal of the real property, (ii) the property is sold or transferred at a price obtained in an arm's-length transaction after listing the property on a multiple listing service, (iii) the property is sold or transferred pursuant to a court order, or (iv) the sale or transfer is made for reasons exclusive of becoming or remaining eligible for medical assistance for long-term care services.

HOUSE
SUBSTITUTE

HB1090H1

Department of Planning and Budget 2012 Fiscal Impact Statement

1. **Bill Number:** HB 1090

House of Origin Introduced Substitute Engrossed
 Second House In Committee Substitute Enrolled

2. **Patron:** O'Bannon

3. **Committee:** Appropriations

4. **Title:** Medicaid eligibility; determination of assets

5. **Summary:** The substitute bill provides that for the purpose of determining eligibility for Medicaid, the sale or transfer of real property at a price that is less than the assessed value of the property shall be considered an uncompensated transfer of assets equal to the amount of the difference between the assessed value of the property and the amount received from the sale or transfer. However, in the following situations a sale or transfer of less than the assessed value of the property shall not be considered an uncompensated transfer of assets: (i) if the price is equal to or greater than the value of the property as determined by a certified appraisal, (ii) at a price obtained in an arm's length transaction after listing the property on a multiple listing service, (iii) if the sale or transfer is pursuant to a court order, or (iv) if it is made for reasons exclusive of becoming or remaining eligible for long-term care services in Medicaid.

6. **Budget Amendment Necessary:** Yes, Item 307, Service Area 45610.

7. **Fiscal Impact Estimates:** Final.

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2012	-	-	-
2012	-	-	-
2013	\$483,537	-	GF
2013	\$483,537	-	NGF
2014	\$1,482,185	-	GF
2014	\$1,482,185	-	NGF
2015	\$2,530,810	-	GF
2015	\$2,530,810	-	NGF
2016	\$3,125,771	-	GF
2016	\$3,125,771	-	NGF
2017	\$3,236,111	-	GF
2017	\$3,236,111	-	NGF
2018	\$3,350,346	-	GF
2018	\$3,350,346	-	NGF

- 8. Fiscal Implications:** The proposed bill would expand Medicaid coverage for certain individuals who would otherwise be ineligible for Medicaid payment of long-term care services due to an uncompensated asset transfer based on the sale of property for less than the tax assessed value rather than, as the bill provides, a certified appraisal and other exceptions listed in the bill.

Currently, as a part of determination of eligibility for Medicaid payment of long-term care services, the eligibility worker looks back five years for transfers of assets, including real estate transfers. In the case of a real estate transfer the value of the asset is determined by the assessment at the time of the sale. County tax assessments are completed with the intention of finding the true 100 percent market value of the property and are completed, at least every three years, but generally more often. If the sales price is less than the assessment, the difference is considered an uncompensated transfer of assets. In some cases this amount prevents eligibility or delays eligibility for those entering nursing facilities or seeking to receive Medicaid payment of their home and community based waiver services. There is currently available an "Undue Hardship" review of cases, that while not overriding the valuation determination, may result in eligibility being granted.

The proposed legislation allows for a certified appraisal to replace the county tax assessment as a potential determiner of property value. With this alternative way of determining asset value, the Department of Medical Assistance Services (DMAS) assumes more individuals will provide personally-obtained certified appraisals and thus become eligible for Medicaid and for coverage of nursing facility care or less often Medicaid community based waiver care. Based on past "Undue Hardship" reviews that involve the transfer of real property, DMAS estimates an additional 58 individuals would be newly eligible the first year after the proposed legislation goes into effect. These additional individuals are assumed to enter nursing facilities.

In addition, the bill allows real property sold or transferred pursuant to a court order to not be considered an uncompensated transfer for the purposed of determining Medicaid eligibility for long-term care services. It is not known to what effect this provision will have, but if it results in additional individuals qualifying for Medicaid as compared to current policy the fiscal impact to the state could be even higher than estimated.

Nursing facility care costs on average \$29,700 per person in state fiscal year 2011 and additional acute care costs for those in nursing facilities was \$2,500 per person. The newly eligible are assumed to be enrolled gradually through the year and continue to be enrolled into subsequent years. The number of newly eligible individuals is assumed to grow at 2.0 percent a year and nursing facility and additional acute care costs are assumed to grow at 1.5 percent. DMAS estimates fiscal year 2013 costs to be \$1.0 million total funds (\$0.5 million GF) and \$3.0 million total funds (\$1.5 million GF) in fiscal year 2014.

9. Specific Agency or Political Subdivisions Affected: Department of Medical Assistance Services.

10. Technical Amendment Necessary: No.

11. Other Comments: None.

Date: 2/3/12

Document: G:\GA Sessions\2012 Session\HB1090H1.DOC

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