

# 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

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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

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## 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>.

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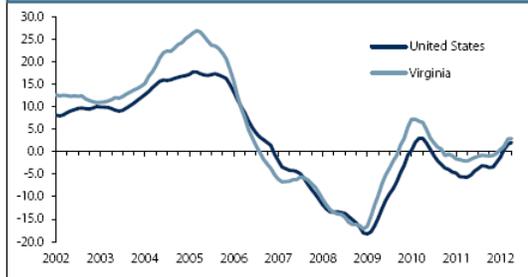
## HB 1090 Addresses Instances when the Tax-Assessment of Real Property Is Above the Actual Market Value

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



### Virginia House Price Index

(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 at [http://www.richmondfed.org/research/regional\\_economy/reports/snapshot/pdf/snapshot\\_va.pdf](http://www.richmondfed.org/research/regional_economy/reports/snapshot/pdf/snapshot_va.pdf).

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## 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.  $\geq 75\%$  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](http://www.dss.virginia.gov/files/division/hp/medical_assistance/manual_transmittals/manual/s11.pdf)

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### 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](http://www.dss.virginia.gov/files/division/hp/medical_assistance/manual_transmittals/manual/s11.pdf)

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## 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.

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## 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

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## 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.

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## 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.

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## 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)

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## HB 1090: Potential Fiscal Impact Offsets

### Selected Examples: Commonwealth Could Realize Fiscal Offsets

1. An individual:
  - 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.
2. An individual:
  - 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
    - 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.

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## 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



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## 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

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## 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>

**Conclusion:** JCHC concurs with HB 1090 FIS, although future fiscal impact could be higher if individuals:

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.

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## APPENDIX

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## 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?*

HB 1090 would change transfer of asset rules for real property

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

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

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### 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)

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## 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](http://www.dss.virginia.gov/files/division/hp/medical_assistance/manual_transmittals/manual/s11.pdf).

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## 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>.

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## 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](http://www.dss.virginia.gov/files/division/hp/medical_assistance/forms/all_other/032-03-0417-03-eng.pdf).