

HHS delivers guidance to state Medicaid agencies on states' freedom and flexibility to offer financial protections to same-sex couples

Today, HHS' Centers for Medicare & Medicaid Services (CMS) provided guidance to state Medicaid agencies clarifying that they are able to offer same-sex couples many of the same financial and asset protections available to opposite-sex couples when a partner is entering a nursing home or care facility. In a letter sent today, CMS advised state agencies of their ability to ensure that same-sex partners can remain in shared homes without Medicaid liens being applied. The guidance also clarifies that states have the flexibility to protect same-sex partners under estate recovery and transfer of assets rules.

“ Low-income same-sex couples are too often denied equal treatment and the protections offered to other families in their greatest times of need,” said Health and Human Services Secretary Kathleen Sebelius. “ This is now changing. Today' s guidance represents another important step toward ensuring that the rights and dignity of every American are respected by their government. ”

Millions of families each year face difficult decisions associated with placing family members in nursing home care. Medicaid, which is the largest payer of nursing home services in the country, requires individuals in need of care to have exhausted most of their personal income and assets before qualifying for this long-term care benefit. There are protections, however, that ensure that the spouse of a Medicaid nursing home resident may remain in the couple' s home. While states may place liens on the property of an individual needing care, if there is a spouse in the home, states must protect that spouse from having a lien attached to their home. For same-sex couples these protections do not always apply.

Today' s announcement clarifies that states can extend these protections when the same-sex spouse or domestic partner of the Medicaid enrollee continues to reside in their home. The letter also outlines how states can apply other protections to same-sex spouses or domestic partners, for example, by allowing individuals needing institutional care to transfer

ownership of their homes without financial penalties. States have the choice of extending these protections.

“ Medicaid gives states remarkable flexibility to set these kinds of policies,” said Cindy Mann, deputy administrator of the Centers for Medicare & Medicaid Services (CMS) who directs the Medicaid division within the agency. “ We want to assure states that they are within the law when they make the choice to extend equal financial rights and protections to all of their citizens receiving Medicaid services, regardless of sexual orientation.”

View CMS’ s letter to State Medicaid Agencies at <http://www.cms.gov/SMDL/SMD/list.asp>

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