Names of Commenter(s)	Summary of Comment on Retroactivity	Rule Cite	Response	Rule Change
Amy DeLaney Tiffany H. Sievers Kerry R. Peck Heather McPherson Mary Raleigh Rachel A. Rupp Joe Oettel Cathy Perkowitz Nancy Larson Jessica Bannister Duane D. Young Rick Law Kirk Riva	Change requested: The rule should be revised to apply only to transfers that occur after the effective date of the rule. Arguments: • No Retroactivity, new rules must apply only to transactions occurring after the final rule is enacted and sufficient notice provided to inform the public. • The Department has not provided advanced notice of the potential retroactivity of the rules which will affect thousands of elderly and disabled individuals. • The elderly should only be held to rules that have been published and known in advance. • Everyone will be penalized if the proposed rules are implemented retroactively. No one can change things that they have already done. • Retroactive promulgation of the DRA rules may result in litigation against the State when the statutes impair vested legal rights. • The government does not generally apply statutes retroactively if vested rights are impaired, new duties and obligations are imposed, or new legal consequences are attached to events completed prior to enactment. • When analyzing whether retroactive implementation of a statute is permissible, courts are guided by considerations of fair notice, reasonable reliance, and settled expectations. *United States v. Harley*, 315 Fed. Appx.437, 440 (3d Cir. Pa. 2009). • Wisconsin, Florida, Indiana, California, and several other states, have chosen to apply DRA rules prospectively, and the Center for Medicare and Medicaid Services has not objected.	120.388 – citation for asset transfers	The Department has reviewed the comments and determined that the rules, as originally promulgated, could be viewed as difficult to meet for those in need of long-term care services. The rule will be changed so the look-back period will begin with the date occurring three years prior to the date these rules are adopted, rather than February 8, 2006, the date cited in the original promulgated rules. With that change, the look-back period will be gradually increased from the current three-year period to the new five-year period. For example, on the effective date of the rule, the look-back period shall be three years. On the day following the effective date, the look-back period shall be three years and one day. One year following the effective date of the rule, the look-back period shall be four years. Two years following the effective date, the look-back period shall be five years and shall remain five years from that point forward.	For the purpose of determining which transfers are subject to review, HFS revised the rule to gradually phase in the extension of the look-back period from the current three years to five years . This will be accomplished by extending the look-back period by one day for each day following the effective date of the rule. See revised 120.388.

Names of Commenter(s)	Summary of Comment on Retroactivity	Rule Cite	Response	Rule Change
	• Nursing homes will be greatly impacted by the retroactive implementation of the proposed rules when coupled with the harsh nature of the proposed guidelines for undue hardship exceptions • Nursing homes will be reluctant to accept prospective residents as Medicaid pending. • Illinois is not required to make its DRA rules retroactive, and should use this discretion to implement the rules prospectively. • Unequal treatment of applicants based on two different look back periods. Individuals applying before implementation will have a 3 year look back period and those applying after implementation will have a 5 year look back period. • It is unfair and unreasonable to retroactively apply the provisions of the DRA when it has taken Illinois almost five years to implement the act.			

Names of Commenter(s)	Summary of Comment on Spousal Impoverishment	Rule Cite	Response	Rule Change
Amy DeLaney Janna Dutton Rick Law Heather McPherson Eileen R. Fitzgerald Joe Oettel Heidi Dodd Michael H. Erde Leonard Berg	Change requested: The provisions restricting spousal refusal should be removed from the proposed rule. The rule should be revised to include a more reasonable method, tied to prevailing interest rates, in determining an increased asset allowance for community spouses. Arguments: • Illinois should not abandon its long-standing history of permitting community spouses to maintain their financial privacy and protect assets held in their name only. • Requiring spousal contributions from the community spouse for the institutionalized spouse's nursing care encourages divorce. • The proposed annuity model used to determine the amount of an increased asset allowance for the community spouse is not mandated under federal law and is unduly restrictive. • The rule changes appear to eliminate spousal impoverishment for the Community Care Program • The rule appears to penalize transfers to the community spouse • Federal law allows the community spouse to receive an income allowance from the institutionalized spouse regardless of the community spouse's assets or refusal to disclose • Community spouse should be allowed to keep their income without regard to whether it is above the Community Spouse Maintenance Needs Allowance	120.379	The Department reviewed the comments and deleted the proposed changes in this section that deal with spousal refusal to divulge assets and income. The annuity model used to determine whether increases in the CSRA are warranted is the same model that appears in current rule and has been used for many years	The proposed rule change relating to spousal refusal has been deleted in its entirety., See revised 120.379(i).

Names of Commenter(s)	Summary of Comment on Homestead Property	Rule Cite	Response	Rule Change
Kristi Vetri Leonard F. Berg Rick Law	Change Requested: The rule should state that homestead property will be considered non-homestead real property, if a person without a spouse, minor or disabled children moves out with no intentions of returning. The equity value of the non-homestead property will be treated as an available resource unless the property is listed for sale with a local realtor, considered income producing, or the person owns only a fractional interest of small value in the property. However, the homestead property should be considered exempt irrespective of the person's intent to return, if there is a spouse, sibling of the institutionalized person, minor or disabled child residing in the property. Arguments: • The equity value in a person's homestead will be treated as an available asset and used in the determination of eligibility if they do not intent to return to the property. • Homestead property sold for less than fair market value may result in a penalty. • The definition of homestead listed in the proposed rule does not reference siblings of the institutionalized person who may have an equity interest in the property.	120.381(a)(1)	The proposed rule defines homestead property and codifies current policy in rule consistent with federal regulations. Existing rule, Section 120.381(a)(1), merely states that homestead property is an exempt asset, but does not define the term. The proposed rule defines "homestead' as provided for under federal regulation and is consistent with current HFS policy. HFS believes the homestead definition needs to be explicitly addressed in rule.	None

Names of Commenter(s)	Summary of Comment on Annuities	Rule Cite	Response	Rule Change
Rick Law Heather McPherson Joe Oettel Leonard F. Berg D. Jamieson Long, Jr. Katherine D. Motley	Change Requested: Annuities should not be treated as available assets in the proposed rule. The purchase of an annuity that pays out in a time period less than the life expectancy of the purchaser should be permissible and not considered a transfer. The state should not be named as a remainder beneficiary on annuities that are exempt from transfer rules. Arguments: • The proposed rules treat all annuities as available assets and disregards federal law which states certain annuities meeting the standards of the 1994 HCFA Transmittal 64 are to be treated as an income stream for Medicaid purposes. • There is no merit in the Department's assertion that an annuity is a resource because it can be sold in a secondary market. • The Pennsylvania Department of Public Welfare was taken to court over their decision to treat annuities as available resources (Weatherbee v. Richman). The court affirmed that the DRA provides no basis by which Pennsylvania may deny eligibility where the annuity complies with the law. The court stated that the states may be more liberal than the federal government regarding eligibility requirements, but not more restrictive. • An annuity with a term less than the annuitant's life expectancy is to be treated as a non allowable transfer. • Failing to limit the DRA requirement of naming the state as a remainder beneficiary to annuities that do not meet the standards of HCFA Transmittal 64 and qualified retirement accounts removes the special protection given certain annuities as defined by Congress. • The continued availability of annuities is crucial to the elderly population for it is the only means available to increase monthly income.	120.347(i)	The Department has reviewed the comments and changed the proposed rule. The Department will not consider an annuity that can be sold in a secondary market as an available resource. HFS has determined that other provisions of the proposed rule concerning annuities comply with federal law.	Sections of the proposed rule pertaining to the sale of annuities on a secondary market have been deleted. See revised 120.347(i).

Names of Commenter(s)	Summary of Comment on Returned Resources	Rule Cite	Response	Rule Change
Amy DeLaney Tiffany H. Sievers Heather McPherson Mary Raleigh Anthony B. Ferraro Joe Oettel Kathy Nitz Michael H. Erde Leonard F. Berg D. Jamieson Long, Jr. Rick Law	Change Requested: The proposed rules should be revised to allow partial returns. Arguments: • Partial returns must be allowed. • Federal law does not require Illinois to abandon its long-standing policy of allowing credit for partial returns of gifts that result in disqualifications. • The language disallowing a partial return of gifts invokes an "all or nothing" approach and goes beyond what is required by the DRA. • Disallowing partial returns will likely discourage the return of any resources since there is nothing to be gained. • This "all or nothing" approach regarding partial returns will create great challenges and hardships for nursing facilities and the state. • Other states, such as Wisconsin, have adopted the DRA, but still permit partial returns. • The federal law (DRA) is silent as to partial returns.	120.388(m)(6)	The Department has reviewed the comments and determined that changing it as requested would preserve a loophole for passing assets to heirs. HFS has, however, decided to revise the rule to clarify policy regarding returned assets. The loophole, commonly referred to as *reverse half-a-loaf*, would allow a person to transfer assets otherwise available to pay for the person's own care. In effect, the State would subsidize the gifting of assets, usually to the adult children of the applicant. Example: Joe is a divorcee with $100,000 in assets. He requires long-term care and plans to enter a nursing facility that charges private residents $5,000/month. Prior to making application for LTC, Joe transfers the entire $100,000 to his adult children. The local office approves the application but imposes a 20-month penalty period. The children return one half of the money to Joe after he has been admitted to the nursing facility. If partial returns resulted in shortening the penalty period, the return of $50,000 would result in	The proposed rule has been changed to provide that full or partial returns made prior to imposition of a penalty will reduce the length of the penalty period. See revised 120.388(m)(6).

Names of Commenter(s)	Summary of Comment on Returned Resources	Rule Cite	Response	Rule Change
			half the penalty (10 months) being erased, during which time the Department would not pay for Joe's LTC. However, the returned $50,000 is just enough for Joe to pay the nursing home during the 10-month penalty period. At the end of the 10 months, Joe would be eligible for taxpayer funded LTC and his adult children would keep $50,000. The proposed rule has been clarified to provide that a partial return of an unallowable transfer that occurs prior to the date the penalty period is established by the state will result in a reduction in the length of the period. However, once a penalty period is imposed, it can only be shortened if all the transferred assets are returned. The resident may use the partial amount returned toward the cost of his or her long term care but when those resources are exhausted, the state will not pay until the penalty period has expired. If the individuals who received and retained the amount transferred for less than fair market value do not at that point return it to pay for the resident's care, the resident may apply to the state for a hardship waiver.	

Names of Commenter(s)	Summary of Comment on Returned Resources	Rule Cite	Response	Rule Change
			Federal CMS has stated this approach meets federal requirements.	

Names of Commenter(s)	Summary of Comment on Hardship	Rule Cite	Response	Rule Change
Amy DeLaney Wendy Cappelletto Mary Raleigh Erna Colborn Nancy Larson Leonard F. Berg D. Jamieson Long, Jr. Rick Law	Change Requested: The current rules regarding hardship waivers are flexible and should not be changed. However, the term “mental capacity” should be further defined to ensure a clear path to an exception for an individual with cognitive impairment. Arguments: • The criterion for obtaining a hardship waiver provided in the proposed rule is much more restrictive than the requirements listed in the DRA. • The process to obtain a hardship waiver and who has the legal right to be involved in the process has not been clearly defined. • Nursing homes may be fearful of problematic Medicaid applications involving hardship waivers. • Elderly individuals who have been financially exploited may fear retaliation if they report the offender based on the requirements of the hardship process. • Elderly individuals with dementia, Alzheimer’s disease or other disabling conditions may not be able to recreate past events pertaining to an improper transfer. • The elder abuse and neglect reports will increase under these new hardship waiver requirements. • The hardship waiver process should not require individuals to exhaust all legal remedies.	120.388(r)	The Department reviewed the comments and changed the rules to require issuance of a hardship waiver in situations where, among other things, good faith efforts have been made to recover transferred resources. The proposed rule has been further revised to define who may file hardship waiver requests. The proposed rule recognizes the limitations frail seniors may face in attempting to recover assets transferred for less than fair market value.	HFS has changed the proposed rule to clarify that the department “shall” rather than “may” waive the penalty period when it is determined that an undue hardship exists. HFS also changed the proposed rule to permit the person who signed the application to file any requests for hardship waivers. See revised 120.388(r).

Names of Commenter(s)	Summary of Comment on Transfers of Income	Rule Cite	Response	Rule Change
Katherine D. Motley Joe Oettel Rick Law	Change Requested: The proposed transfer rules should not apply to income. Arguments: • The transfer rules have always applied to asset transfers only. • The transfer of income is not addressed in the DRA. • Applying asset transfer rules to the transfer of regular income goes far beyond the provisions of the DRA. • The new regulations regarding the transfer of income are punitive in nature and will create administrative inefficiencies for the Department and staff. • Examining every small amount spent monthly from an individual's income will create an over burdensome discovery process. • An individual should be allowed to give small amounts of income to charities, the church of their choice, and family members as gifts.	120.388	The Department has reviewed the comments and determined not to change the proposed rule. The proposed language is consistent with federal law (42 USC 1396p(h)(1)) that defines assets as including both income and resources for purposes of transfers and gifting.	None

Names of Commenter(s)	**Summary of Comment on Caretaker Child**	**Rule Cite**	**Response**	**Rule Change**
Diana M. Law Michael H. Erde Rick Law	Change Requested: The verification requirements listed in the proposed rule regarding caretaker children should be omitted. The Department should maintain the current rules regarding an allowable transfer of homestead property to a caretaker child. Arguments: • The proposed rules regarding the caretaker child are not required by the DRA, are hyper-technical, unduly harsh, and should be deleted from the regulation. • The Department seeks to prevent the transfer of the homestead to the caretaker child by creating obstacles, such as the requirement to submit detailed records for specific services provided, before the transfer is permitted. • The caretaker child's statement of care should be accepted unless there is evidence to the contrary. • The state of New York presumes the caretaker child provided care, and Florida requires acceptance of the child's statement of care, unless there is reason to question. • It will be extremely burdensome for the caretaker child to provide documents of care, especially retroactively.	120.388(m)(1)(E)	The Department reviewed the comments and revised the rule to clarify the requirements necessary to meet the transfer exemption. These requirements include the need for credible evidence that the applicant was in need of care, and that the adult child provided the care for at least two years prior to institutionalization. The Department believes the requirement for credible evidence poses no undue burden since it consists of records that are routinely available and the policy is consistent with documentation requirements otherwise applied to assure the integrity of the Medicaid program.	HFS has revised the proposed language to clarify the circumstances and documentation necessary for designation of caretaker child(ren). See revised 120.388(m).

Names of Commenter(s)	Summary of Comment on Post Eligibility Deductions	Rule Cite	Response	Rule Change
Linda M. Strohschein Joe Oettel Leonard F. Berg D. Jamieson Long, Jr. Rick Law	Change Requested: The allowable deductions for medical expenses should include all long-term care expenses. Arguments: • The Cohen Consent Decree allows the deduction of long-term care medical expenses from the Medicaid recipient's required income payments to the facility. • Disallowing outstanding long-term care expenses to be paid out of the Medicaid recipient's required income payments to the facility violates this well-established consent decree under Cohen. • The proposed language prohibits the use of non-medical expense deductions to meet spenddown. • The Department should allow the Medicaid recipient to apply their required income payment to the facility to prior long-term care expenses and other medical bills incurred more than six months prior to eligibility. • Allowing required income payments to the facility to be used to pay outstanding long-term care expenses is the primary safety net used in the state of Iowa to alleviate hardships. • The state of Maryland settled litigation regarding the Medicaid recipient's right to deduct medical expenses out of court.	120.61(f)(7)	The Department has reviewed the comments and has decided to make no changes. The particular provision at issue reduces the State's liability to pay for a person's long term care stay at a nursing home prior to the person even being found eligible for assistance—with payment made at the private pay rate. Federal CMS approved a state plan amendment for another state that, as provided in the proposed rule, limits post-eligibility medical deductions to six months prior to application for long term care services. The rule as written closes a loophole that could result in long term costs being inappropriately transferred to the state. The rule will not interfere with the state's obligation under the Cohen Consent Decree to reimburse out-of-pocket medical expenses incurred by applicants during the 3 month retroactive eligibility period.	None

Names of Commenter(s)	Summary of Comment on Three-Month Retroactivity	Rule Cite	Response	Rule Change
Heather McPherson Eileen R. Fitzgerald Mary Raleigh Kathryn C. Casey Joe Oettel Leonard F. Berg D. Jamieson Long, Jr. Katherine D. Motley Rick Law	Change Requested: The proposed rule should be revised to continue the current policy regarding eligibility for the three-month medical backdate period. Under current processes eligibility for medical backdating is determined by reviewing assets held on the date of decision. Arguments: • The Medicaid application process imposed by the Department is so burdensome and time consuming that the three-months of retroactive eligibility is essential to provide coverage to both the qualified applicant and the health care provider. • The current medical backdating policy is a lifesaver for cash-strapped long-term care facilities and should be preserved regardless of whether the applicant qualifies for Medicaid in the prior months or not. • Current policy allows the elderly person the ability to pay for or eliminate certain expenditures, such as pre-existing debt, repairs and improvements to the martial residence, payments for guardianship petitions, or prepaid funeral arrangements. • The proposed rule goes beyond what the DRA requires and is not in the best interest of the elderly who may be trying to settle their affairs. • Mandating two separate asset determination dates before allowing coverage of medical expenses prior to the date of decision is another restrictive measure to limit eligibility.	120.61(b)	The Department has reviewed the comments and has decided to make no changes. The proposed rule brings the Department's policy into compliance with federal law (42 CFR 435.914), which requires eligibility to be determined separately for each month of retroactive coverage. The proposed rule does not eliminate the possibility that an individual may be found retroactively eligible for up to three months prior to the month of application. Rather, the proposed rule properly establishes that in determining eligibility for each of those months, the state must consider each of the prior months separately, and consider the assets that were available to the person during each of those prior months rather than the assets remaining on the date of disposition.	None

Names of Commenter(s)	Summary of Comment on Transfers of Nominal Value and Charitable Contributions	Rule Cite	Response	Rule Change
Amy DeLaney Katherine D. Motley Jessica Bannister Heather McPherson Sandra S. Hakanson Michael H. Erde	Change Requested: The rule should clarify that transfers of nominal value and charitable contributions are exempted from the non-allowable transfer provision. Arguments: • Imposing a penalty for ordinary charitable, educational, family and church gifts, under vague standards and onerous procedures would undermine the long-term care system. • Illinois should not punish a person or couple for being an active contributing part of their family, church, and community. • Small gifts totaling less than $500 per month should be exempt from transfer penalty rules. • Applicants that can prove that a gift was not given solely to qualify for Medicaid should not be penalized for uncompensated transfers. • What constitutes a non-allowable transfer should specifically be defined in the rules.	120.388(f) and (m)(4)	The Department has reviewed the comments and agrees that penalties should not be imposed for ordinary charitable contributions and gifts of nominal value. It was never the Department's intent to apply the rule language to this kind of giving. The Department has changed the proposed rule to take into account the circumstances surrounding the transfer.	HFS has changed the proposed rule to provide that incidental gifts and other transfers of nominal value can be shown as transfers for reasons other than to qualify for assistance, which is an exception to transfers subject to penalty. See revised 120.388(m)(4).

<table>
<tr><th>Names of Commenter(s)</th><th>Summary of Comment on Maximum Value of Home Equity</th><th>Rule Cite</th><th>Response</th><th>Rule Change</th></tr>
<tr><td>Leonard F. Berg

William Siebers

Katherine D. Motley

Rick Law</td><td>Change Requested: The home equity limit should be the maximum allowable under the DRA.

Arguments:

• Federal law permits Illinois to adopt the $750,000 limit.
• States, such as New York, New Jersey, California, New Mexico and Wisconsin, have adopted the $750,000 limit.
• Reverse mortgages and home equity loans are not the solution for Illinois seniors to reduce the equity value of homestead property under the proposed rule.
• Adopting the $750,000 cap will preserve hope for the Illinois senior to return to their homestead property while simplifying the administrative burden on the Department.
• The proposed $500,000 homestead equity limit impacts not only the urban areas of Chicago but also the rural family farm homesteads so prevalent throughout the rest of the state.</td><td>120.385(c)</td><td>The Department has reviewed the comments and has decided to increase the allowable equity value of the homestead property to the maximum allowed under federal law.</td><td>HFS has changed the proposed rule to increase the equity value of homestead property to $750,000.

See revised 120.385.</td></tr>
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Names of Commenter(s)	Summary of Comment on Farm Valuation	Rule Cite	Response	Rule Change
Michael H. Erde William Siebers Bruce J. Sherrick Rick Law	Change Requested: The farm valuation source based on the University of Illinois Farm Bureau data should be omitted and an alternative depicting true fair market farmland values used. Arguments: • The farm valuation table based on the University of Illinois Farm Bureau data is not a reliable means for determining fair market value because the data is based on statewide averages of farm sales. • True fair market farmland values are determined by soil type, productivity, location and other variables unique to the tract. • Farmland appraisal is a complicated and unique activity that can only be validated by sales results in markets whose conditions have strong temporal variability. • In farm appraisal work, the income approach is the standard and most reliable method to establish a fair value without requiring a sale.	120.388(f)(1)	The Department has reviewed the comments and has identified a resource at the University of Illinois who is developing a methodology that may be used in assessing the fair market value of farmland.	HFS has revised the proposed rule to provide that in determining FMV of farm land, the Department may take into account market values determined under methodologies developed by the U of I College of Agricultural, Consumer and Environmental Sciences. See revised 120.388(f)(1).

Names of Commenter(s)	Summary of Comment on Maintenance of Effort (MOE) Requirements	Rule Cite	Response	Rule Change
Heather McPherson Kay Peppersack Julie Arndt Amy DeLaney Leonard F. Berg D. Jamieson Long, Jr. Rick Law	Change Requested: Illinois should not impose more restrictive eligibility standards than were in effect on July 1, 2008 and March 23, 2010 due to the American Recovery and Reinvestment Act (ARRA) and the Patient Protection and Affordable Care Act (PPACA) mandates. Arguments: • The Social Security Act mandates that a state program's eligibility standards cannot be more restrictive than the rules governing the Supplemental Security Income program. • Recently, the Social Security Act added more penalties under PPACA to states enacting new Medicaid restrictions after March 23, 2010.		The Department has reviewed the comments and has decided that no change is required. The proposed rules are necessary to bring Illinois policy into full compliance with federal law. Preexisting federal law pertaining to these requirements was not overturned by the Patient Protection and Affordable Care Act. The proposed rules do not change any eligibility standards. The preponderance of the changes go to the question of how much an individual has available to contribute to the cost of their long term care and do not affect basic Medicaid eligibility requirements. For example, an individual upon whom the Department has imposed a penalty period under 120.388 will be enrolled in medical assistance and the Department will cover all medical services other than long term care required by the individual during the penalty period. This is because the penalty period is assessed as a post eligibility determination related solely to how much the individual should have had	None

Names of Commenter(s)	Summary of Comment on Maintenance of Effort (MOE) Requirements	Rule Cite	Response	Rule Change
			available to contribute to the cost of his or her long term care.	