

RESOURCES TRANSFER OF ASSETS

ALL CATEGORIES

Description: Sometimes an A/R, the A/R's spouse, or someone acting on his/her behalf, makes a voluntary assignment or transfer of non-exempt assets for less than its fair market value. Under certain circumstances, an A/R may be subject to a period of restricted Medicaid coverage or penalty period, when a transfer of assets for less than the fair market value has occurred.

Policy: Once an A/R is found financially eligible for Nursing Facility Services a review is made to determine if the A/R and/or their spouse transferred assets for less than fair market value.

For applications filed on or after August 1, 2006 for Medicaid coverage of nursing facility services and for recipients who request an increase in coverage for nursing facility services documentation of resources for the past 36 month period (60 months for transfers to or from a trust) must be provided. The 36 month period is determined from the date that the institutionalized individual is both institutionalized and requesting coverage to be established for nursing facility services.

Beginning February 1, 2009 resource documentation for the past 37 months (60 months for trusts) is required. The look-back period and resulting documentation will increase by one-month increments until February, 2011. Effective February 1, 2011, the full 60 month look-back period will be in place for ALL transfers of assets.

NOTE: In cases where the initial days of nursing facility care were covered as short-term rehabilitation under Community Coverage Without Long-Term Care, the look-back period is the period immediately preceding the month the individual started to receive the short-term rehabilitation service. Any transfer penalty for an otherwise eligible individual would also start the first month the individual started to receive the short-term rehabilitation service.

Once eligibility is established for an institutional spouse, any transfers made by the community spouse do not affect the institutionalized spouse's Medicaid eligibility.

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NOTE: If a Medicaid recipient has been on Medicaid for the past 36 months, has documented current resources at each renewal; not created or funded a trust which requires a 60-month look back; and not made a prohibited transfer, a separate resource review for the past 36 months is not required.

The transfer of assets rules do not apply to persons whose eligibility is determined without a resource test. Such persons include pregnant women and infants under age 1, and children under 19 whose household income is compared to a federal poverty level. In addition, there is no resource test for policy holders who have utilized the minimum required benefits under a total asset Partnership for Long-Term Care insurance policy.

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References:	SSL Sect.	104-a 366 366.5 366-a(2) 366-c
	Chapter Laws	109 of the Laws of 2006
	Dept. Reg.	360-1.4 360-2.3 360-4.4(b)(2) 360-4.4(c) 360-4.6 360-4.7(a)(1)
	ADMs	06 OMM/ADM-5 04 OMM/ADM-6 96 ADM-8 91 ADM-37 91 ADM-31 90 ADM-36 90 ADM-29 89 ADM-45 85 ADM-27
	GIS	07 MA/007 06 MA/016 05 MA/012

Interpretation: When an institutionalized A/R or spouse makes a prohibited transfer, but is otherwise eligible for Medicaid, a penalty period is imposed. During this penalty period, the A/R will not be eligible for nursing facility services, including home and community-based waiver services. (See **RESOURCES RESOURCE DOCUMENTATION REQUIREMENTS** for a complete list of nursing facility services.)

Exceptions:

- The transfer of exempt assets, other than a homestead, does not affect the A/R's eligibility.

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- An A/R and/or the spouse may transfer the homestead, without penalty, to his/her:

Spouse;

Child under the age of 21;

Certified blind/disabled child of any age;

Sibling who has an equity interest in the A/R's home and has resided in the home for at least one (1) year immediately prior to the A/R's most recent institutionalization; or

Adult child who resided in the A/R's home for at least 2 years, immediately prior to the A/R's most recent institutionalization, and who provided care to the A/R which permitted the A/R to reside at home rather than in a medical facility. It is presumed that the child "provided care" unless there is evidence to the contrary.

The transfer of a homestead to any other person for less than fair market value may render the A/R ineligible for Medicaid coverage of nursing facility services.

Transfer of assets penalties are not imposed against an A/R when an asset other than the individual's home is transferred:

- to the individual's spouse, or to another for the sole benefit of the individual's spouse;
- from the individual's spouse to another for the sole benefit of the individual's spouse;
- to the individual's child who is certified blind or certified disabled; or

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- to a trust established solely for the benefit of an individual under 65 years of age who is disabled.

Sole Benefit – A transfer is considered to be for the “sole benefit of the individual’s spouse” if the transfer is arranged in such a way that no individual or entity other than the spouse can benefit from the assets transferred in any way, whether at the time of the transfer or any time in the future. A remainder man is someone who will inherit property in the future (e.g., after a person’s death). A transfer is not for the sole benefit of the spouse if the transferred asset has a remainder person. For example, if an institutionalized spouse takes money that is in his/her name, purchases an annuity so that only the community spouse receives payments, and there is a designation of a remainder man (beneficiary other than the community spouse’s estate), this would be evaluated as an uncompensated transfer.

A transfer penalty is not imposed against an A/R when a satisfactory showing is made that:

- the A/R or the A/R’s spouse intended to dispose of the asset for its fair market value or exchange it for other consideration of similar value;
- the asset was transferred exclusively for a purpose other than to qualify for nursing facility services; or
- all of the assets transferred for less than the fair market value have been returned to the individual.

Assets Transferred to Purchase Life Estate Interest

If an A/R or the A/R’s spouse transfers assets to purchase a life estate interest in property owned by another individual on or after February 8, 2006, the purchase is to be treated as a transfer of assets for less than fair market value, unless the purchaser resides in the home for at least a continuous period of one year after the date of purchase.

The amount used to purchase the life estate interest is to be treated as the uncompensated transfer of assets amount in

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the eligibility determination. This policy applies to applications filed on or after August 1, 2006 for nursing facility services, including requests for an increase in coverage for nursing facility services.

Assets Transferred to Purchase Loans, Promissory Notes and Mortgages

Applications filed on or after August 1, 2006 for nursing facility services, including requests for an increase in coverage for nursing facility services, if and A/R or the A/R's spouse purchases a loan, promissory note or mortgage, the funds used are to be treated as a transfer for less than fair market value, unless the note, loan or mortgage:

- Has a repayment term that is actuarially sound;
- Provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments made; and
- Prohibits the cancellation of the balance upon the death of the lender.

The amount of the transfer is the outstanding balance due as of the date of the individual's application for nursing facility services.

The A/R or the A/R's spouse is allowed a minimum of twenty days to present evidence that the transfer was made exclusively for a purpose other than to qualify for Medicaid coverage of nursing facility services. An A/R's Medicaid coverage may not be restricted due to a transfer of assets without first advising the A/R and the spouse, in writing, of the right to present evidence. Some factors suggesting that the transfer was made exclusively for another purpose include:

The traumatic onset of a disability after the transfer (e.g., A/R has a heart attack shortly after the transfer and there was no previous record of heart disease); or

The unexpected loss of other resources which would have precluded Medicaid eligibility.

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If the A/R is unable to present evidence that the A/R or his/her spouse intended to dispose of the asset for the fair market value, or that the asset was transferred exclusively for a purpose other than to qualify for Medicaid, the case is evaluated to determine if the restriction of Medicaid coverage would cause the A/R "undue hardship". Undue hardship occurs when the A/R is otherwise eligible for Medicaid; is unable to obtain appropriate medical care without Medicaid coverage; and despite the best efforts of the A/R and/or the spouse, is unable to have the transferred assets returned or to receive fair market value for the assets. Best efforts include cooperating, as deemed appropriate by the local social services district, in the pursuit of the return of such assets.

NOTE: Effective February 8, 2006 to meet the definition of undue hardship, the individual must meet all of the conditions described above and be deprived of food, clothing, shelter or other necessities of life.

Uncompensated Value

The uncompensated value of a transfer is the difference between the fair market value at the time of transfer (less any outstanding loans, mortgages or other encumbrances on the asset) and the amount received for the asset. If the A/R's resources are below the appropriate resource level, the amount by which the resource level exceeds the A/R's resources must be deducted from the uncompensated value of the transfer. In addition, amounts specified in regulations for burial funds (\$1,500 for SSI-related A/Rs), but not for burial space items, must be deducted, if the SSI-

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related A/R does not have an irrevocable pre-need funeral agreement with \$1,500 designated for non-burial space items or a burial fund.

Example: An SSI-related applicant makes a prohibited transfer in April, 2005 of \$20,000 and applies for Medicaid coverage of nursing home care in May, 2005. The only resource the SSI-related applicant has is \$2,000 in a bank account. To determine the uncompensated value of the prohibited transfer, subtract the SSI-related applicant's countable resources from the Medicaid Resource Level for a household of one (\$4,000 - \$2,000 = \$2,000). If there is a remainder, subtract the remainder from the prohibited transfer amount (\$20,000 - \$2,000 = \$18,000). \$18,000 is the uncompensated value of the transfer.

If the SSI-related applicant also does not have an irrevocable pre-need funeral agreement with \$1,500 designated for non-burial space items or a \$1,500 burial fund, the prohibited transfer amount is further reduced by \$1,500 (\$18,000 - \$1,500 = \$16,500). \$16,500 is the uncompensated value of the transfer.

The uncompensated value cannot be reduced by applying it to the maximum community spouse resource allowance. Penalty Period

Except as provided below concerning multiple transfers, for transfers made prior to **February 8, 2006** the penalty period begins on the first day of the month following the month in which the assets were transferred.

For transfers made on or after February 8, 2006, the penalty period starts the first day of the month after assets have been transferred for less than fair market value, OR the first day of the month the otherwise eligible institutionalized individual is receiving nursing facility services for which Medicaid would be available but for the transfer penalty, whichever is later, and which does not occur during any other period of ineligibility.

The penalty period is a period of months equal to the total uncompensated value of the transferred assets divided by the average regional rate for nursing facility services in the region

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where the individual is institutionalized. There is no cap on the length of the penalty period. The regional rates are revised annually and are based on average nursing home costs in each of the seven regions of the State. (See **REFERENCE REGIONAL RATES FOR TRANSFER OF ASSETS**)

Once a penalty period has been established for an otherwise eligible individual, the penalty period continues to run regardless of whether the individual continues to receive nursing facility services or remains eligible for Medicaid. Upon reapplication for Medicaid coverage of nursing facility services, any uncompensated transfer that still falls within the new look-back period which has already resulted in an expired penalty period, would not again be assessed a penalty. Only subsequent transfers can result in a transfer penalty period.

Partial Month Penalty Period

If the uncompensated value of the transferred assets is less than the regional rate, or the penalty period results in a partial month penalty, count the uncompensated value attributable to the partial month as part of the Net Available Monthly Income (NAMI) or, in the case of an individual receiving waiver services in the community, spenddown liability for the month.

If a portion of the transferred assets is returned after the Medicaid eligibility determination, the existing penalty period is recalculated, reducing the penalty period by the amount of assets returned. For transfers made after February 8, 2006, the recalculated penalty period cannot begin before the assets retained by the individual at the time of transfer, combined with the assets transferred, and subsequently returned to the individual, have been spent down to the applicable Medicaid resource level.

If an application is denied or a case discontinued where a transfer penalty has been imposed, the individual must file a new application. If upon reapplication the transferred assets have been returned to the applicant the original transfer penalty period is to be reduced by the returned assets.

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Example: An applicant in the Northern Metropolitan region makes an uncompensated transfer of \$29,162 in April, 2005. The uncompensated transfer amount of \$29,162, divided by \$8,332 (the 2005 Medicaid monthly regional rate for the Northern Metropolitan region), equals 3.5 months. The 3-month penalty period runs from May, 2005, the month following the month of transfer, through July, 2005, with a partial month penalty calculated for August, 2005. The calculations follow:

\$ 8,332	Medicaid monthly regional rate (for Northern Metropolitan region)
<u>X 3</u>	three-month penalty period
\$24,996	penalty period amount for three full months
\$29,162	uncompensated transfer amount
<u>-24,996</u>	penalty period amount for three full months
\$ 4,166	partial month penalty amount

For August, 2005, the partial month penalty amount of \$4,166 would be added to the institutionalized person's NAMI.

Multiple Transfers

For multiple transfers during the look-back period, where assets have been transferred in amounts and/or frequency that would make the calculated penalty periods overlap, add together the uncompensated values of all the assets transferred, and divide by the Medicaid regional rate. The period of ineligibility begins with the first day of the month following the month in which that first transfer occurred.

Multiple transfers of assets for less than fair market value made on or after February 8, 2006, must be accumulated and treated as one transfer. The penalty period starts the first day of the month after assets have been transferred for less than fair market value, OR the first day of the month the otherwise eligible institutionalized individual is receiving nursing facility services for which Medicaid would be available but for the transfer penalty, whichever is later, and which does not occur during any other period of ineligibility.

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Apportioning Penalty Periods Between Spouses

When an institutionalized spouse applies for Medicaid and either spouse has made a prohibited transfer and if the institutionalized spouse is otherwise eligible, he/she is authorized with restricted coverage for a penalty period based on the full uncompensated value of the transferred resources.

If the other member of the couple subsequently applies for Medicaid as an institutionalized individual (both spouses are institutionalized), prior to the expiration of the penalty period the penalty period is apportioned equally between the spouses. If one spouse is no longer subject to a penalty (e.g., one spouse dies), the remaining penalty period for both spouses is applied to the remaining spouse.

An institutionalized A/R who is being penalized for making a prohibited transfer may receive Medicaid coverage for ancillary services, not included in the per diem rate, if otherwise eligible. The A/R is budgeted by deducting the SSI-related disregards, the Medically Needy Income level for a household of one (See **REFERENCE MEDICALLY NEEDED INCOME LEVELS and FEDERAL POVERTY LEVELS**) and the **MEDICAID RESOURCE LEVEL**). An institutionalized spouse is budgeted as if s/he was in his/her first month of permanent absence from the community. Only those resources in excess of the community spouse resource allowance (See **REFERENCE MINIMUM/MAXIMUM COMMUNITY SPOUSE ALLOWANCE**) are considered.

It is essential that the local district carefully document the actual date of any transfer. When an A/R or spouse deeds property to another person, the effective date of the transfer is the date the deed is delivered to and accepted by the transferee/purchaser. The deed need not be recorded to complete the transfer. When a person promises to transfer a gift or resource to another person, the date the promise is made is not significant. The date of transfer is the date the resource changed ownership.

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- When to Verify Status:**
- (a) When the A/R or spouse indicates that someone else pays the mortgage or property tax;
 - (b) When the A/R or spouse indicates that s/he is provided with a home at no cost;
 - (c) When previous records indicate resources that are no longer claimed;
 - (d) When the A/R's or spouse's financial institution accounts indicate substantial withdrawals;
 - (e) When the A/R or spouse declares resources in the name of another person.

- Verification Process:**
- (a) Obtaining an appraisal by a real estate broker;
 - (b) Seeing property tax statements;
 - (c) Seeing mortgage statements;
 - (d) Seeing financial institution account statements;
 - (e) Seeing court records.

Disposition: When the local social services district becomes aware that a transfer of resources was made by an A/R **or his/her spouse**, the local district determines the date on which the resources were transferred. The A/R is notified and given a reasonable amount of time to present evidence that the transfer was not made for the purpose of qualifying for **Medicaid**. When a penalty period is imposed, an adequate and timely notice is sent to the A/R.