

## RESOURCES TRANSFER OF ASSETS

### ALL CATEGORIES EXCEPT S/CC

**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:** At the initial application and at all subsequent recertifications, A/Rs are evaluated to determine if they and/or their spouse transferred assets for less than fair market value, unless the A/R has opted for **Community Coverage without Long-Term Care or Community Coverage with Community-Based Long-Term Care (see page 303.4)**.

A voluntary transfer of assets for less than fair market value made within, or after, the 36 month period (60 month period for **transfers to or from** trusts) prior to the date of the A/R's application or the date of his/her institutionalization, whichever is later, may render the A/R ineligible for Medicaid coverage of: nursing facility services; level of care equivalent to that of nursing facility services provided in a hospital; or care, services or supplies for which a waiver has been obtained under Section 1915 (c) or (d) of the Social Security Act.

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

**NOTE: If a Medicaid recipient has: been on Medicaid for the past 36 months and 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 applicants for the Family Planning Benefit Program, Breast and Cervical Cancer Treatment Program, the Qualified Individual Program and policy holders who have utilized the minimum required benefits under a Partnership for Long-Term Care insurance policy.

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<b>References:</b>	SSL Sect.	104-a 366.5
	Dept. Reg.	360-1.4 <b>360-2.3</b> 360-4.4(b)(2) 360-4.4(c) 360-4.7(a)(1)
	ADMs	<b>04 OMM/ADM-6</b> 96 ADM-8 91 ADM-37 91 ADM-31 90 ADM-36 90 ADM-29 89 ADM-45 85 ADM-27

**Interpretation:**

When an 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 page 303.9 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.

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;

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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

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 remainderman 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 remainderman (beneficiary other than the community**

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**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.

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.

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

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such assets.

#### 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-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 resources 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.

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#### Penalty Period

**Except as provided below concerning multiple transfers**, the penalty period begins **on** the first **day** of the month following the month in which the assets were transferred. 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 where the individual is institutionalized. **The regional rates are revised annually and are based on average nursing home costs in each of the seven regions of the State.** (See page 360 for the county listing by region for the current regional rate.)

When the A/R is residing in the community, use the rate for the region where the A/R is currently residing. If the A/R enters an institution at a later date, **the district must first determine if the transfer was made within the 36-month look-back period. If it was**, the period is recalculated using the rate in effect for the year and region in which the A/R is institutionalized. **There is no cap on the length of the 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, local districts 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.

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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)
X     3	three-month penalty period
<u>\$24,996</u>	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.

**Apportioning Penalty Periods Between Spouses**

When a non-institutionalized couple applies for Medicaid and either spouse has made a prohibited transfer, both individuals, if otherwise eligible, are authorized with restricted coverage for a penalty period based on the full uncompensated value of the transferred resources.

If one member of the couple subsequently becomes institutionalized prior to the expiration of the penalty period, and undue hardship under transfer provisions does not exist for the institutionalized spouse, the remainder of the penalty period is

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applied to the institutionalized spouse only. The community spouse is no longer restricted. If otherwise eligible, s/he is authorized for Medicaid coverage.

If the other member of the couple subsequently applies for Medicaid as an institutionalized individual (both spouses are institutionalized), 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.

If the institutionalized spouse is authorized for full Medicaid coverage because restricted eligibility would result in undue hardship, the community spouse continues to be restricted for the duration of the penalty period. If the community spouse becomes institutionalized, undue hardship would be evaluated to determine whether or not full coverage could be provided.

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 page 114) and the medically needy resource level for a household of one (see page 311). 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 page 334) 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.

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