

RESOURCES TRANSFER OF ASSETS

ALL CATEGORIES EXCEPT S/CC

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 Medicaid coverage of nursing facility services, including requests for an increase in coverage for nursing facility services, if an 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 third bullet means that if the A/R (or A/R spouse) passes away before the outstanding balance of the loan, promissory note or mortgage is paid in full, the borrower must pay back the amount owed to the deceased's estate. If a loan, note, or mortgage does meet the above requirements, the outstanding balance due as of the date of the individual's application for nursing facility services is a transfer for less than the fair market value.

Assets Transferred for Personal Services

In situations where assets have been transferred to a family member in exchange for services to be provided by the family member for the lifetime of the applicant, the personal service contract, also known as a caregiver arrangement must be evaluated to determine if the applicant received or will receive fair market value (FMV) for the transferred resources. A personal service contract or caregiver arrangement is a formal written agreement between two or more parties in which one or more of those parties agree to provide personal and/or managerial services in exchange for compensation paid by the party receiving the services.

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A personal service contract that does not provide for the return of any prepaid monies in the event the caregiver becomes unable to fulfill his/her duties under the contract, or if the A/R dies before his/her calculated life expectancy, must be treated as a transfer of assets for less than FMV. If a personal service contract does provide for the return of funds in the event the caregiver is unable to fulfill his/her obligation under the contract or the A/R dies before his/her calculated life expectancy, a determination must still be made as to whether the A/R will receive FMV in exchange for funds transferred.

If the personal service contract provides that services will be delivered on an "as needed" basis, no determination that FMV will be received and a transfer of assets penalty must be calculated.

In calculating the transfer penalty, the value of services actually received from the time the personal service contract was signed and funded through the date of the Medicaid eligibility determination must be "credited" by reducing the transferred amount before calculating the period of ineligibility.

NOTE: Credit is not allowed for services that are provided as part of the Medicaid nursing home rate.

In assessing the value of furnished services, districts must be provided with credible documentation, such as a log with dates specific services were provided and the hour(s) each service was provided. The value of the caregiver services must be commensurate with a reasonable wage scale, based on fair market value for the actual job performed and the qualifications of the caregiver. If credible documentation is not provided, no credit is deducted in calculating the uncompensated transfer amount. When a district determines that a reasonable pay rate for a job/service is less than the amount spelled out in the personal services contract, the district must use the lesser amount in calculating the amount of compensation received for the transfer.

NOTE: Assistance in evaluating job duties and pay rates may be found in the U.S. Department of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook at: <http://www.bls.gov/oco/>. This handbook includes information on training and other qualifications needed for particular jobs.

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Rebuttable Presumption of Prohibited Transfer

If an individual transfers resources (e.g. gives them away or sells them for less than fair market value), there is a rebuttable presumption that the resources were transferred for the purpose of establishing or maintaining eligibility for Medicaid coverage of nursing facility services. The presumption is rebutted only if the individual provides convincing evidence that the resources were transferred exclusively for a purpose other than to become or remain eligible for Medicaid. If the individual had some other purpose for transferring the resource but an expectation of establishing or maintaining Medicaid eligibility was also a factor, the transfer will result in a period of ineligibility 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 to rebut the presumption that a transfer was made in order to qualify for Medicaid coverage of nursing facility services. To meet this requirement, the "Explanation of Effects of Transfer" must be given to the applicant who is applying for Medicaid coverage of nursing facility services.

The individual must provide convincing evidence (i.e. written documentation) that the transfer was exclusively for a purpose other than to qualify for Medicaid benefits. An individual's signed statement regarding the circumstances of the transfer should cover the individual's

- Purpose of transferring the resource;
- Attempts if any, to dispose of the resource at fair market value (FMV);
- Reason for accepting less than FMV for the resource;
- Means or plans for self-support after the transfer;
- Relationship, if any, to the person(s) to whom the resource was transferred;
- Belief that he/she received FMV, if applicable.

NOTE: A signed statement by the individual is not, by itself, convincing evidence. Pertinent documentary evidence includes, but is not limited to, legal documents, real estate agreements, relevant correspondence, medical reports, etc.

The following are examples of situations that while not conclusive, may indicate that the transfer was made exclusively for some

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purpose other than to qualify for Medicaid coverage of nursing facility services. After the transfer:

- There is a traumatic onset (e.g. traffic accident) of disability or blindness; or
- There is a diagnosis of a previously undetected disabling condition (e. g., heart attack when there was no previous record of heart disease), or
- There is an unexpected loss of other income or resources which would have precluded Medicaid eligibility.