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17.10 ASSETS

A nursing care client must meet the asset test for his eligibility coverage group. The asset level for those eligible by having income equal to or less than 300% SSI payment for an individual is the same as for an SSI-Related Medicaid eligible. See Chapter 11 for the appropriate coverage group.

NOTE: Once Medicaid eligibility is established, the assets of the community spouse are not counted for the institutionalized spouse. In addition, when assets such as the home and attributed assets legally transferred to the community spouse are subsequently transferred by him, no penalty is applied to the institutionalized spouse.

Once the Worker determines the value of the assets, there are additional procedures that apply to nursing facility clients.

A. ASSET ASSESSMENTS

NOTE: A legally married individual and his spouse, although separated, are treated as a couple for the asset assessment, regardless of the length of the separation.

When determining eligibility for nursing facility services for an individual, institutionalized on or after 9/30/89,
who has a community spouse, the Worker must complete an assessment of the couple's combined countable assets. The assessment is completed, when requested by the client or his representative, prior to application, or at application, if not previously completed. It is completed as of the first continuous period of institutionalization and is completed one time only.

The assessment is done on Form IM-NL-AC-1 or in RAPIDS. See the RAPIDS User Guide. The purpose of the spousal asset assessment is to allow the spouse of an institutionalized individual to retain a reasonable portion of the couple's assets.

When requested, the Worker must advise the individual(s) of the documentation required for the assessment. Verification of ownership and the FMV must be provided. When it is not provided, the assessment is not completed.

The Worker documents the total value of all non-excluded assets.

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Nursing facilities are required to advise all new admissions and their families that asset assessments are available upon request from the county office. The agency has developed a statement concerning the availability of asset assessments. Nursing facilities provide this "Patient's Bill of Rights" as part of their admission package. See Appendix C.

1. Calculation Of The Spouses' Shares

   The spouses' shares are computed as follows:

   Step 1: Determine the FMV of the couple's combined countable assets, as of the beginning of the first continuous period of institutionalization.

   Step 2: Compare the amount from Step 1 to $18,552. If the Step 1 amount is equal to or less than $18,552, all assets are attributed to the community spouse. If not, go to Step 3.

   Step 3: Divide the Step 1 amount by 2 and compare to $18,552. If one-half of the Step 1 amount is equal to or less than $18,552 the community spouse is attributed $18,552 and the remainder belongs to the institutionalized spouse. If not, go to Step 4.

   Step 4: When one-half of the Step 1 amount is greater than $18,552, one-half of the total assets (Step 1 amount) is attributed to the community spouse, not to exceed $92,760.

   Step 5: The amount not attributed to the community spouse is attributed to the institutionalized spouse.

   If an application for nursing facility services is not made when the assessment is completed, the spouse retains the amount attributed to him at the assessment, regardless of the couple's combined assets at the time of application.

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2. Notification Requirements

When the assessment is complete, the Worker must provide each member of the couple with a copy of the RAPIDS asset assessment or the IM-NL-AC-1. A copy of the IM-NL-AC-1 is retained in the case record. See item 7 below for the RAPIDS asset assessment.

The Worker must also notify the community spouse using form ES-NL-D or RAPIDS form AEL3 that the assessment may not be appealed until a Medicaid application is made.

3. Revisions To The Asset Assessment

The asset assessment may be revised when the client, his spouse, the Hearings Officer or the Worker determine, with supporting documentation, that the initial determination was incorrect or based on incorrect information.

4. Additional Asset Exclusions For Institutionalized Spouses

The institutionalized individual is not ineligible for Medicaid due to the assets determined above, if he lacks the ability to or is legally prevented from assigning the assets which would otherwise make him ineligible. In addition, when denial of Medicaid eligibility will work an undue hardship, his assets may be excluded. See Chapter 11 for the definition of undue hardship.

5. Transfers of Assets To The Community Spouse

Once initial eligibility has been established, assets that were not counted for the institutionalized spouse must be legally transferred to the community spouse. Assets cannot merely be attributed to the community spouse, but must actually be transferred to the community spouse, if they are to be excluded in determining continuing Medicaid eligibility of the institutionalized spouse. Assets legally transferred to the community spouse are not treated as uncompensated transfers of resources.

To exclude assets attributed to the community spouse, the institutionalized spouse must indicate his intent to transfer the assets to the community

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spouse, and the transfer must take place within 90 days, unless a longer period is required to take the action.

NOTE: Once Medicaid eligibility is established, the assets of the community spouse are not counted for the institutionalized spouse. In addition, when assets such as the home and attributed assets legally transferred to the community spouse are subsequently transferred by him, no penalty is applied to the institutionalized spouse.

6. Additional Asset(s) Received/Obtained

When the institutionalized spouse obtains an additional asset(s) after the community spouse's share has been calculated and initial Medicaid eligibility is established, the additional asset(s) is excluded when one of the following conditions exist:

- The new asset(s), combined with the other assets the institutionalized spouse intends to retain, does not exceed the asset limit for one person; and/or

- The institutionalized spouse intends to transfer the new asset(s) to the community spouse who has assets below the previously determined spousal amount. To exclude the additional asset(s), the institutionalized spouse or his representative must promptly report receipt of the new asset(s) and provide the Worker with a written statement that he intends to transfer the new asset(s) to the community spouse within 90 days.

  The assets of the community spouse may still not exceed the amount determined in the previous Asset Assessment. This criteria would come into play when another asset of equal or greater value than the additional one(s) is no longer owned.

7. RAPIDS System Entry

When an asset assessment is completed, the Worker must enter the results in RAPIDS. See the RAPIDS User Guide for instructions.

NOTE: Prior to RAPIDS conversion, asset assessments were entered in the SAS system and may be viewed in that system. No SAS entries were made after 12/19/97.

B. TRANSFER OF RESOURCES

Four policies dealing with the transfer of assets and/or income are addressed in this Chapter. The current policy is detailed below. The other three are contained in Appendix A. They are:

- Transfers made by the Medicaid benefit group on or before June 30, 1988

- Transfers made by the Medicaid benefit group after June 30, 1988

- Transfers made on or after July 1, 1988 when application for Medicaid eligibility for nursing facility services, ICF/MR Services or the HCB Waiver is made

The following policy is used for transfers of resources made on or after 8/11/93.

1. Definitions

For purposes of this item (item B.), the following definitions apply.

- Fair Market Value (FMV): An estimate of the value of a resource, if sold at the prevailing price at the time it was actually transferred.

  For a resource to be considered transferred for FMV, or to be considered transferred for valuable consideration, the compensation received for the resource must be in a tangible form, with intrinsic value. A transfer for love and consideration, for example, is not considered a transfer for FMV. Also, while relatives and family members legitimately can be paid for care they provide to the individual, it is presumed that services provided for free, at the time, were intended to be provided without compensation. Therefore, a transfer to a relative for care provided in the past normally is not a transfer of assets for FMV. However, an individual may rebut this presumption.

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- For the Sole Benefit Of: A transfer is considered to be for the sole benefit of a spouse, disabled child, or a disabled individual under age 65, if the transfer is arranged in such a way that no individual, except the spouse, child or individual, can benefit from the transferred asset(s)in any way, either at the time of the transfer, or at any time in the future, except as provided below. The agreement must be in writing,

  Similarly, a trust is considered to be established for the sole benefit of one of these individuals if the trust benefits no one but the individual, either at the time of the establishment of the trust, or any time in the future, except as provided below. However, the trust may provide for reasonable compensation for a trustee to manage the trust, as well as for reasonable costs associated with investing or otherwise managing the funds or property in the trust. In defining reasonable compensation, consider the amount of time and effort involved in managing a trust of the size involved, as well as the prevailing rate of compensation, if any, for managing a trust of similar size and complexity.

  If a beneficiary is named to receive the funds remaining in a trust upon the individual's death, the transfer is considered made for the sole benefit of the individual if the Department is named as the primary beneficiary for up to the amount paid for services to the individual. The designated beneficiary receives any remaining amount.

- Institutionalized Individual: An individual who is an inpatient in a nursing facility, or who is an inpatient in a medical institution, and for whom payment is made for a level of care provided in a nursing facility, or who is a Home and Community-Based waiver participant. For purposes of this section, a medical institution includes an ICF/MR.

- Look-Back Date: The look-back date is the earliest date for which a penalty for transferring resources for less than FMV can be applied. Penalties can be applied for transfers which take place on or after the

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look-back date. Penalties cannot be applied for transfers which take place prior to the look-back date.

When an individual applies for Medicaid more than once (e.g., he applies and is denied due to excess assets and applies again later), the look-back date is based on the first date on which the individual had both applied for Medicaid and been institutionalized.

- Resources: For purposes of this item (item B.), resources includes all income and assets of the individual and of his spouse that are counted for SSI-Related Medicaid purposes. This includes some income or assets which the individual or the spouse is entitled to, but does not receive, because of any action or inaction by

  - The individual or his spouse;

  - A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

  - Any person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

  Resources to which an individual or spouse is entitled includes resources to which the individual is actually entitled, or would be entitled if action had not been taken to avoid receiving the resources.

  Examples of actions which cause income or assets not to be received are:

  - Irrevocably waiving pension income

  - Waiving an inheritance

  - Not accepting or accessing injury settlements

  - Settlements which are diverted by the defendant into a trust or similar device

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to be held for the benefit of the plaintiff

- Refusal to take legal action to obtain a court-ordered payment that is not being paid, such as child support or alimony.

2. Effective Date

This policy does not apply to assets disposed of before August 11, 1993, and applies to payments made for institutional care on or after October 1, 1993.

3. Look-Back Period

The length of time for which the Worker looks back for any resource transfers depends upon whether or not a trust fund was involved.

a. Trust Amounts Treated As Uncompensated Transfers

The look-back period is 60 months for amounts in revocable or irrevocable trusts that are considered transferred. The time period begins the month the client is both institutionalized and has applied for Medicaid. See Chapter 11.

b. Other Transfers

The look-back period is 36 months. The time period begins the month the client is both institutionalized and has applied for Medicaid.

4. Permissible Transfers

The following transfers do not result in a penalty for transferring resources.

a. Transfer of Home

When the client transfers his home as follows, no penalty is applied:

- To the client's spouse
- To the client's minor child (under age 21)
- To the client's disabled child. The SSA definition of disability is used. Therefore, any person medically approved

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for or receiving disability-based RSDI and/or disability-based SSI meets the definition, as well as persons who are determined disabled by MRT. If no disability determination has been made, the case must be submitted for a MRT decision.

- To the client's sibling who has an equity interest in the home and who resided in the home for at least one year immediately prior to the client's institutionalization.

- To the client's child who was residing in the home for at least two years immediately prior to the client's institutionalization and who provided care to the individual which allowed him to remain at home rather than being institutionalized.

b. Other Transfers

When the client transfers resources other than his home, as follows, no penalty is applied:

- To the client's spouse or to another person for the sole benefit of the client's spouse

- From the client's spouse to another person for the sole benefit of the client's spouse

- To the client's disabled child. See definition of disabled above in item a.

c. Transfer to a Trust

When the client or his spouse transfers resources to a trust that is excluded from consideration as an asset, no penalty is applied. See Chapter 11.

d. Transferred Resources Returned

When all assets transferred for less than FMV have been returned to the client, no penalty is applied. However, if a penalty has already been applied, a retroactive adjustment back to

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the beginning of the penalty period is required. The client is not necessarily asset-eligible once the resources are returned.

If part of such assets are returned, the penalty period is adjusted accordingly.

e. Client Intended Fair Market Return or Other Valuable Consideration

When the client or his spouse can demonstrate that he intended to dispose of the resource for FMV or for other valuable consideration, no penalty is applied.

f. Transfer Was Not To Qualify For Medicaid

When the resources were transferred exclusively for a purpose other than to qualify for Medicaid, no penalty is applied.

g. Denial Would Result in Undue Hardship

When it is determined that denial of eligibility would work an undue hardship on the client, no penalty is applied. Decisions about what constitutes undue hardship are made by the Director of OFS. Requests for consideration must be submitted in writing with details about the anticipated undue hardship.

5. Transfers Which Are Not Permissible

All transfers not specifically excluded from the application of a penalty result in application of a penalty. This also applies to jointly owned resources. The jointly owned resource, or the affected portion of it, is considered transferred by the client when any action is taken, either by the client or any other person, that reduces or eliminates the client's ownership or control of the resource.

6. Transfer With Retention of A Life Estate

A transfer of property with the retention of a life estate interest is treated as an uncompensated transfer.

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To determine if a penalty is assessed and the length of the penalty, the Worker must compute the value of the transferred asset and of the life estate, then calculate the difference between the two.

Step 1: To determine the value of the transferred asset, subtract any loans, mortgages or other encumbrances from the CMV of the transferred asset.

Step 2: Determine the age of the life estate holder as of his last birthday and the life estate factor for that age found in Appendix A of Chapter 11. Multiply the CMV of the transferred asset by the life estate factor. This is the value of the life estate.

Step 3: Subtract the Step 2 amount from the Step 1 amount. The result is the uncompensated value of the transfer.

Step 4: Divide the Step 3 amount by the State's average, monthly nursing facility private pay rate. The result is the length of the penalty.

7. Transfer To Purchase An Annuity

Establishment of an annuity is sometimes treated as a transfer of resources, depending on whether or not the annuity is actuarially sound. The average number of years of expected life remaining for the individual who benefits from the annuity must coincide with the life of the annuity for it to be actuarially sound and, thus, not treated as an uncompensated transfer of resources. If the individual is not reasonably expected to live longer than the guarantee period of the annuity, the individual will not receive FMV. The annuity is not, then, actuarially sound and a transfer of resources for less than FMV has taken place.

The penalty is considered to have occurred at the time the annuity was purchased. Only the amount that is not actuarially sound is treated as an uncompensated transfer. Life Expectancy Tables by sex are found in Appendix E.

EXAMPLE: A 65-year-old man purchases a $10,000 annuity which is to be paid over 10 years. His life expectancy, according to Appendix E, is 14.96 years.

The annuity is actuarially sound so no transfer of resources has taken place.

EXAMPLE: An 80-year-old man purchases a $10,000 annuity to be paid over 10 years. According to Appendix E, his life expectancy is only 6.98 years. Therefore, the amount which will be paid out by the annuity for 3.02 years is considered an uncompensated transfer of resources which took place at the time the annuity was purchased.

8. Transfer Penalty

The transfer of resources penalty is ineligibility for:

- Nursing facility services, and
- A level of care in any institution, equivalent to that of nursing facility services, and
- Home and Community Based Waiver services.

The penalty is applied as follows. The client may remain eligible for Medicaid; services not subject to a penalty are paid.

a. Start of the Penalty

The penalty period starts the month in which the resource is transferred, as long as that month does not occur in any other period of ineligibility due to a transfer of resources penalty. If the month the resource is transferred falls into another such penalty period, the penalty period begins the month after the previous penalty period ends.

When a single resource is transferred, or a number of resources are transferred at the same time, the penalty period is determined by adding together the total uncompensated value of the resource(s) and dividing as shown below. When resources are transferred at different times, the following general guidelines are used.

(1) When Penalty Periods Would Overlap

When resources have been transferred in amounts and/or frequency that would make

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the calculated penalty periods overlap, add together the value of all resources transferred, and divide by the average cost of nursing facility services. This produces a single penalty period which begins on the first day of the month in which the first transfer was made.

EXAMPLE: An individual transfers $13,000 in January, $13,000 in February and $13,000 in March. Calculated individually, based on a nursing facility cost of $3,380 a month, the penalty for the first transfer is from January through March, the second is from February through April and the third is from March through May. Because these periods overlap, the Worker must calculate the penalty periods by adding the transfers together (a total of $39,000) and dividing by the nursing facility cost ($3,380). The penalty period of 11 months, which runs from January 1 through November 30.

(2) When Penalty Periods Would Not Overlap

When multiple transfers are made in such a way that the penalty periods for each would not overlap, the Worker must treat each transfer as a separate event, with its own penalty period.

EXAMPLE: An individual transfers $5,000 in January, $5,000 in May and $5,000 in October. Assuming an average private nursing facility cost of $3,380 a month, the penalty periods for the transfers are, respectively, January 1 through January 31, May 1 through May 31 and October 1 through October 31.

All penalties for resources transferred on or after 8/11/93 run consecutively.

b. Length of Penalty

The penalty period lasts for the number of whole months determined by the following calculation:

Total amount transferred during the look-back period divided by the State's average, monthly nursing facility private pay rate ($112.65/day = $3,380/month).

When the amount of the transfer is less than the average monthly cost of nursing facility, no penalty is applied until a series of transfers totals more than the average monthly nursing facility rate.

The penalty runs continuously from the first day of the penalty period, whether or not the client leaves the institution.

There is no maximum or minimum number of months a penalty may be applied.

c. Who Is Affected By the Penalty

The institutionalized client is affected by any transfer described above when he or his spouse or any entity acting on their behalf or at their direction transfers an asset.

When the three following conditions are met, any remaining penalty period is divided equally between the institutionalized person and spouse:

- The spouse transferred resources which resulted in ineligibility for the institutionalized client, and
- The spouse either is eligible for or applies for Medicaid and is, then, an institutionalized individual, and
- Some portion of the penalty against the original institutionalized spouse remains when the above conditions are met.

A recording in each affected case must specifically explain the division of the penalty period.

EXAMPLE 1: Mr. A enters a nursing care facility and applies for Medicaid. Mrs. A transfers a resource that results in a 36-month penalty against Mr. A. Twelve months into the penalty period, Mrs. A enters a nursing care

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facility and becomes eligible for Medicaid. The penalty period against Mr. A still has 24 months to run. Because Mrs. A is now in a nursing care facility, and a portion of the original penalty period remains, the remaining 24 months of the penalty must be divided equally between Mr. and Mrs. A.

EXAMPLE 2: Mr. J is in a nursing facility and applies for Medicaid. Two months before his application he transferred resources to become eligible for Medicaid and a 10-month penalty begins. Two months into the penalty, Mrs. J refuses an inheritance left to both of them because she is afraid it will adversely affect his future eligibility for nursing care coverage. The next month, Mrs. J becomes eligible for HCB waiver services. The Worker inquires about resource transfers and is told about the refusal of the inheritance. This is a transfer of resources.

A penalty period is determined to be 12 months. Mr. J continues to serve his 10-month penalty the other penalty period begins the month after the 10-month period ends. His second penalty lasts 6 months (½ of the 12-month period for his wife's transfer of their resource). Mrs. J receives a 6-month penalty period which begins the month of application of Medicaid.

If the penalty period is not equally divisable, assign the extra month in the penalty period to the spouse who actually transferred the resource.

When the penalty period is divided between spouses, the total penalty period applied to both spouses must not exceed the total penalty which remained at the time the penalty was divided.

When, for any reason, one spouse is no longer subject to a penalty, such as, when the spouse no longer receives nursing facility services, or dies, the penalty period which was remaining for both spouses must be served by the remaining spouse.

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d. Application of the Penalty

The only penalty for transferring resources is total ineligibility for nursing facility, ICF/MR and Home and Community Based Waiver care. The client is approved, if otherwise eligible, for any other applicable Medicaid coverage group.

9. Treatment Of The Transfer Of A Stream Of Income

When the client fails to take action necessary to receive income or transfers the right to receive income to someone else for less than CMV, the transfer of resources penalty is applied. The Worker must:

Step 1: Verify the amount of potential annual income.

Step 2: Using the client's age as of his last birthday, determine the Remainder Interest Value in Appendix B.

Step 3: Multiply the Step 2 amount by the Step 1 amount to determine the uncompensated value.

Step 4: The result from Step 3 is divided by the average monthly nursing facility private pay rate for the State to determine the penalty period.

10. Treatment Of Jointly Owned Resources

Jointly owned resources include resources held by an individual in common with at least one other person by joint tenancy, tenancy in common, joint ownership or any similar arrangement. Such a resource is considered to be transferred by the individual when any action is taken, either by the individual or any other person, that reduces or eliminates the individual's ownership or control of the asset.

Under this policy, merely placing another person's name on an account or resource as a joint owner might not constitute a transfer of resources,

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depending upon the specific circumstances involved. In such a situation, the client may still possess ownership rights to the account or resource and, thus, have the right to withdraw all of the funds at any time. The account, then, still belongs to the client. However, actual withdrawal of funds from the account, or removal of all or part of the resource by another person, removes the funds or property from the control of the client, and, thus, is a transfer of resources. In addition, if placing another person's name on the account or resource actually limits the client's right to sell or otherwise dispose of it, the addition of the name constitutes a transfer of resources.

If either the client or the other person proves that the funds withdrawn were the sole property of the other person, the withdrawal does not result in a penalty.

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C. HOMESTEAD PROPERTY EXCLUSION

When a nursing facility resident indicates his intention of returning to his homestead property when/if discharged, the homestead property is excluded as an asset. If the client is incapable of indicating his intent, his Committee, legal representative or the person handling his financial matters will make the determination on his behalf. When the client's spouse or dependent relative resides there, the homestead property remains excluded, regardless of the client's intent to return.

For purposes of the homestead exclusion only, a dependent relative is one who is dependent financially, medically or as otherwise determined upon the institutionalized person. The following are considered relatives of the institutionalized person: child, stepchild or grandchild; parent, stepparent or grandparent; aunt, uncle, niece or nephew; brother or sister, including relations of step or half; cousin or in-law.

It is not necessary that the client be medically able to return home to apply the exclusion. The exclusion is based solely on the client's intended action, should he be discharged from the facility. The Worker must record the client's statement of intent in the case record. A written statement may be requested, but no action may be taken to deny or stop benefits for failure to provide a written statement when the client has expressed his intent verbally or by gesture.

If the client's homestead is a multi-unit dwelling, such as an apartment building, the entire property is excluded, not just the portion of the value which corresponds to the portion of the property in which he actually lived.

The homestead property may not be in West Virginia. The homestead exclusion applies, regardless of the state in which it is located. The client's expressed intent to return to the homestead property does not necessarily affect his West Virginia residency. See Chapter 8.

NOTE: Once Medicaid eligibility is established, the assets of the community spouse are not counted for the institutionalized spouse. In addition, when assets such as the home and attributed assets legally transferred to the community spouse are subsequently transferred by him, no penalty is applied to the institutionalized spouse.