

APPENDIX A

TRANSFER OF RESOURCE POLICIES

A. TRANSFERS BY THE MEDICAID BENEFIT GROUP MADE ON OR BEFORE
6/30/88

NOTE: The policy discussed below in this Section applies to all applications for Medicaid including Long Term Care, ICF/MR or Home and Community Based Waiver clients when the transfer for less than fair market value occurred on or before 6/30/88.

This transfer of assets policy applies, to all Medicaid applications and redeterminations when the transfer occurred before 6/30/88.

When the client transferred a non-excluded asset on or before 6/30/88 for less than FMV, the difference between the FMV and the amount the client received for the asset must be counted as an asset for 24 months from the month the asset was transferred unless:

- The asset was transferred for less than FMV exclusively for reasons other than Medicaid eligibility; or
- The individual was legally incompetent at the time the asset was transferred and no one who is included in the benefit group with the legally incompetent individual was the party who transferred the asset for less than FMV on the individual's behalf.

EXAMPLE: Non-home real property valued at \$15,000 is transferred on June 18, 1988. No other assets are involved. Determination of the 24 month penalty period is as follows:

- Uncompensated value is counted from 6/18/88 through 6/18/90
- Assets determination:
\$15,000 non-home real property 6/88
\$15,000 uncompensated value 7/88 - 6/90
\$0 assets 7/90

1. Procedure to Determine the Value of Compensation Received

The value of compensation received is based on the agreement and expectation of the parties at the time of transfer or contract for sale. The value of compensation is the gross amount paid or agreed to be paid; the value is not reduced by expenses attributed to the sale. Compensation may be received in one or more of the forms listed below:

a. Compensation in the Form of Cash

The Worker should obtain verification of the cash received when available, e.g., the bill of sale, contract, receipts.

b. Compensation in the Form of Real or Personal Property

The value of compensation received in the form of real or personal property is determined by the FMV of the property at the time of transfer or contract for sale.

c. Compensation in the Form of Services

The value of services provided or agreed to be provided to the client in exchange for an asset is based on the FMV of such services at the time of transfer and the frequency and duration of these services. The Worker should contact an outside source that provides similar services in the same area to determine the cost of these services provided to other individuals. The Worker should obtain a copy of the agreement or a statement from the person providing the services that reflects the type of services to be provided and the frequency and duration the services are agreed to be provided in exchange for the asset.

d. Compensation in the Form of Assumption of a Legal Debt

The value of compensation in the form of assumption of a legal debt owed by the client is based on the outstanding principal. Interest payments are not considered compensation. The Worker should contact the lender to determine the

outstanding principal and verify that the individual who received the transferred asset has indeed assumed the client's debt.

2. Procedures When An Asset Has Been Transferred For Less Than FMV Within the Past 24 Months Prior To 6/30/88

When the Worker learns that the client has transferred an asset within 24 months prior to 6/30/88, he must determine if the asset was disposed of for less than FMV.

To make this determination, the Worker must:

- Inform the client that under federal law he is presumed to have transferred the asset to establish or maintain Medicaid
- Advise him that he has the right to rebut that presumption by providing proof that the asset was transferred exclusively for some other reason.

When the client chooses not to rebut the presumption, the uncompensated value of the asset is counted as an asset for a period of 24 calendar months from the month the asset was transferred. If this amount, alone or in combination with other non-excluded assets, exceeds the asset maximum, the case is ineligible beginning the first moment of the month following the month of transfer and extending 23 months thereafter.

3. Criteria For Determining If The Asset Was Transferred On Or Before 6/30/88 Exclusively For Reasons Other Than Medicaid Eligibility

a. Individuals Who Have Applied For or Received SSI Within 24 Months

(1) SSA Has Made a Determination of the Reason for the Asset Transfer

The Medicare Catastrophic Coverage Act of 1988 in July, 1988 repealed the SSI regulation that required the accounting for a transfer of assets at less than FMV when determining SSI eligibility. However, such transfers by an SSI applicant or recipient are still considered, depending upon the date

the asset was transferred, when determining that individual's eligibility for Medicaid.

When the client has applied for SSI within the past 24 months prior to 6/30/88, SSA's decision of the reason for the asset transfer is accepted. That is, if the individual did not rebut or was unsuccessful in rebutting the presumption that the asset was transferred for SSI eligibility, the Department assumes that the individual also transferred the asset for Medicaid eligibility and he is not given the opportunity to rebut that assumption. If SSA has determined that the asset was transferred exclusively for reasons other than SSI eligibility, the Department assumes the asset was also transferred exclusively for reasons other than Medicaid eligibility.

(2) Social Security Has Not Made a Determination of the Reason for the Asset Transfer

When the individual is rebutting the presumption that an asset has been transferred for SSI eligibility and SSA has not reached a decision, the agency proceeds with its own determination. However, at the point that SSA's determination is made, the agency accepts that decision and, if SSA's decision is different from that made by the agency, the Worker will take corrective action based on the determination made by SSA.

b. All Cases

When the client wishes to rebut the presumption that the asset was transferred on or before 6/30/88 at less than FMV for the purpose of Medicaid eligibility, the Worker advises the individual that it is his responsibility to provide proof that the asset was transferred exclusively for other reasons.

When necessary, the Worker assists the client in obtaining the necessary information. However, the burden of proof remains with the client. If the necessary information is not available for a

determination to be made, then the presumption stands and the uncompensated value of the transferred asset is counted as a resource for 24 months from the month of transfer provided the transfer occurred on or before 6/30/88.

(1) Information Needed to Determine the Reason for Transfer When the Client is Rebutting the Presumption

The following information must be obtained to determine the client's reason for transferring the asset:

- The client's stated purpose for transferring the asset
- The attempts made by the client to dispose of the asset at FMV
- The client's reason for accepting less than FMV for the asset
- The client's means or plans for support after disposing of the asset
- The client's relationship, if any, to the individual(s) to whom the asset was transferred
- Any supporting evidence to support the client's statements such as legal documents, realtor agreements, correspondence, etc.

(2) Conditions Which May Indicate the Transfer that Occurred On Or Before 6/30/88 was Made For Reasons Exclusive of Medicaid Eligibility

Conditions which may indicate that the asset was transferred on or before 6/30/88 exclusively for reasons other than Medicaid eligibility include but are not limited to the following:

- The traumatic onset of disability after the asset transfer occurred.

- Diagnosis of previously undetected disabling condition.
- The loss of income or other assets which could not have been anticipated and which would have precluded Medicaid eligibility if retained.
- The client's countable assets would have been below the maximum asset level during each of the preceding 24 months had the transferred asset been retained.
- The unexpected loss of income (including deemed income) which would have precluded Medicaid eligibility.
- The transfer of the asset was court-ordered.
- The assets were given to a religious order by a member of that order in accordance with a vow of poverty.

Using the above criteria, the Worker determines if the client has proven that the asset was transferred on or before 6/30/88 and was transferred exclusively for reasons other than Medicaid eligibility. The determination does not include an evaluation of the merits of the client's stated purpose for transferring the asset, but on whether the client has proven that the asset was not transferred for Medicaid eligibility. If he had some other reason for transferring the asset, but establishing or maintaining Medicaid eligibility seems to have been a factor in the decision to transfer the asset, then the presumption is not successfully rebutted and the uncompensated value of the asset is counted as an asset for 24 months from the month of transfer provided the transfer occurred on or before 6/30/88. If this amount, alone or in combination with other assets exceeds the maximum asset limit, the case is ineligible.

c. Procedure When Transferred Asset Is Returned To Client

If the transferred asset is returned to the client, the uncompensated value is no longer counted as of the date of the return. If the transferred asset is cash, the uncompensated value is reduced as of the date of return by the amount of cash that is returned. No income is counted on these returns; the returned asset is evaluated as an asset. The returned asset is evaluated as of the first moment of the following month.

If the client receives additional compensation in the form of cash for the transferred asset, the uncompensated value is reduced, as of the date the additional cash compensation is received, by the amount of the additional compensation.

B. TRANSFERS BY THE MEDICAID BENEFIT GROUP AFTER 6/30/88

NOTE: The policy discussed below in this Section does not apply to Long Term Care, ICF/MR or Home and Community Based Waiver clients.

This policy concerning transfers of countable assets applies to all Medicaid applications and redeterminations if the transfer of the asset occurred after 6/30/88.

When the applicant/recipient transfers a non-excluded asset for less than FMV any time after 6/30/88, the uncompensated value is excluded as an asset because the individual is not institutionalized in a medical institution or a nursing home. That is, the transfer of assets penalty has been eliminated by MCCA for MAO applicants/recipients who transfer countable assets anytime after 6/30/88 unless they are institutionalized in a medical institution or a nursing home.

When the Worker learns or otherwise discovers that a transfer of a countable asset occurred after 6/30/88, he must obtain from the client verification of the date of the transfer. If the verification substantiates that the date of transfer occurred after 6/30/88, the Worker must do the following:

- Process the Medicaid application/redetermination as though no transfer occurred, and

- Document the file, including in the file the verification, of the date the transfer occurred.

C. TRANSFERS MADE ON OR AFTER JULY 1, 1988

This Section is effective with applications for nursing care eligibility occurring on or after 7/1/88 and applies only to assets transferred on or after 7/1/88.

In the case of an institutionalized individual who, at any time during the 30-month period immediately prior to the date of his long term care confinement, or the date the individual applies for Medicaid, disposed of any countable asset for less than FMV, the individual is ineligible beginning with the month in which the assets were transferred and extends for the lesser of:

- 30 months; or
- The total uncompensated value of the assets transferred divided by the average cost to a private patient, at the time of application, of nursing care services in the facility in which the individual is a resident.

NOTE: When individuals made multiple or incremental transfers of countable assets (two or more assets that are transferred) during the 30-month period prior to institutionalization, the ineligibility period is based on the value of all assets that were transferred, not to exceed a penalty period of 30 months.

EXAMPLE: When an application is made for nursing home care in 8/92, the Worker learns that a parcel of real property valued at \$10,000 was transferred in 5/92 to a child. In 6/92, one certificate of deposit valued at \$10,000 was given to another child. Also, in 6/92, an automobile valued at \$5,500 was given to a third child.

The period of ineligibility is determined as follows:

Step 1: \$10,000
 +10,000
 + 5,500
 \$25,500

Step 2: \$25,500 divided by \$2,200, average cost of private nursing home rate = 11.5 months

Step 3: The applicant is ineligible for the Department to pay for his nursing care from 5/92 through 3/93.

1. Transfer of Assets Which Do Not Result in Ineligibility

a. Transfers of the Home

Homestead property is excluded as an asset as long as the institutionalized intends to return there. However, there is no such concept of an excluded homestead under the Medicaid transfer of assets provisions except when the homestead is retained by the community spouse or the institutionalized individuals intends to return there.

Transfers of the homestead property of a spouse of an institutionalized individual are subject to the same treatment as transfers by the institutionalized individual. When the institutionalized individual transfers the home to his spouse there is no penalty. However, once it is transferred to the community spouse and the community spouse transfers it without receiving a FMV, the penalty for transferring an asset for less than CMV is applied to the institutionalized individual.

EXAMPLE: Mr. Smith was institutionalized on January 4, 1992. His wife remained in the home they shared prior to his nursing care placement. The home was debt-free and had a CMV of \$90,000. Mr. Smith legally transferred the homestead to Mrs. Smith on April 3, 1992. On April 5, 1992, Mrs. Smith transferred the deed to the property to their only child, James. James did not pay anything for the property.

Because the community spouse transferred the homestead for less than FMV, Mr. Smith is penalized for a transfer of assets. The cost of Mr. Smith's nursing care at the private rate is \$3,000 monthly. The penalty period is 30 months, \$90,000 divided by \$3,000 = 30, or he is ineligible for Medicaid to pay the cost of nursing care for the period April, 1992 through March 31, 1994.

If the institutionalized individual transfers his homestead property to any of the following

individuals, the transfer does not result in his ineligibility for Medicaid:

- The title to the home was transferred to the individual's spouse or child who is under age 21, or who is blind or permanently and totally disabled;
- The title to the home was transferred to the individual's sibling who has an equity interest in the home and who was residing in the individual's home for a period of at least one year immediately before the date of the individual's admission to nursing facility, a medical institution where payment is made for the individual based upon a level of care provided in a nursing facility, or to a program of home and community-based services;
- The title of the home was transferred to the individual's son or daughter (other than a child who is under age 21, or who is blind or permanently and totally disabled) who:
 - Was residing in the individual's home for a period of at least two years immediately before the date of the individual's admission to a nursing facility; and
 - Who, you have determined, provided care to the individual which permitted the individual to reside at home rather than in a medical institution or nursing facility.
- The home was transferred to or from, i.e., between the spouses, (or to another for the sole benefit of) the individual's spouse or to the individual's child who is blind or permanently and totally disabled.
- The individual makes a satisfactory showing to you that he or she intended to dispose of the home either at CMV or for other valuable consideration; or the home was transferred exclusively for a purpose other than to qualify for medical assistance; or

- You determine that denial of eligibility would result in undue hardship.

b. Transfer of Countable Assets That Cause Undue Hardship

An undue hardship exists if all of the following conditions are met:

- The client has exhausted all means, legal and otherwise, to receive a FMV for the transferred asset; and
- The client is unable to either regain the transferred asset after all means, legal and otherwise, have been pursued, or to receive a FMV for the transferred asset; and
- The client's health is in jeopardy without Medicaid coverage.

NOTE: If the asset was transferred to a family member who is not listed above, undue hardship does not exist.

2. Transfer Of Property With Retention Of A Life Estate

Property transferred by the client with retention of a life estate is treated as any other transfer to determine whether the transfer results in ineligibility.