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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 **of $5,087.** 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.

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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 the calculated penalty periods

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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 **$19,000** in January, **$19,000** in February and **$19,000** in March. Calculated individually, based on a nursing facility cost of **$5,087** 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 **$57,000**) and dividing by the nursing facility cost (**$5,087**). 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 **$7,000** in January, **$7,000** in May and **$7,000** in October. Assuming an average private nursing facility cost of **$5,087** 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 **of $169.57/day or $5,087/month.**

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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 **of $5,087.**

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 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.

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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 divisible, the extra month in the penalty period **is assigned** 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.

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.

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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 **of $5,087** 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, 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.

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