

**NURSING FACILITY SERVICES****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 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.** Transfer from the Economic Stimulus Tax Rebate for 2007

When the client transfers funds from this Rebate for less than fair market value during the 3-month exclusion period, there is no transfer penalty.

**EXAMPLE:** A client receives a \$600 Rebate in August 2008. Transfers can occur through October 2008 without penalty.

**c.** 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

**NURSING FACILITY SERVICES**

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

**d. 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.

**e. 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 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.

**f. 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.

**g. 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.

**h. 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 **DFA**. 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

**NURSING FACILITY SERVICES**

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

**See Section 11.4,B for annuities as an asset.**

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.

**NURSING FACILITY SERVICES**

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