

## APPENDIX A

## TRANSFER OF RESOURCE POLICIES

## A. TRANSFERS BY THE MEDICAID ASSISTANCE 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 AG 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

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- 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

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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 ASSISTANCE 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



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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.

### D. TRANSFERS MADE ON OR AFTER 8/11/93, BUT BEFORE 2/8/06

The following policy is used for transfers of resources made on or after 8/11/93, but before 2/8/06.

#### 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.

- 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,

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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 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.

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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 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

3. 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.

4. 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.

## 5. 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 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

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- 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.

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 OFS. Requests for consideration must be submitted in writing with details about the anticipated undue hardship.

6. 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.

Transfers of funds from the Economic Stimulus Tax Rebate for 2007 which occur after the 3-month exclusion period, are subject to penalty.

**EXAMPLE:** A client receives a \$600 Rebate in September 2008. Transfers after December 2008 are subject to a penalty.

#### 7. 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.

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.

#### 8. 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.

#### 9. 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.

(3) When Penalty Periods Would Overlap

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

(4) 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.

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.

**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 ( $\frac{1}{2}$  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.

10. 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 of \$5,087 to determine the penalty period.

#### 11. 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.