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- 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 others are contained in Appendix A. They are:

- Transfers made on or before June 30, 1988
- Transfers made 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
- Transfers made on or after 8/11/93

The following policy is used for transfers of resources made on or after 2/8/06.

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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 **friends** 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. **See Section 17.10,B,8 for Transfers for Payment of Personal Care Services.**

- 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

Long Term Care

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The Worker uses form DFA-NL-UH-1 when the denial of payment for Long Term Care services is due to any of these reasons.

An undue hardship exists when the denial of eligibility for Long Term Care services results in denial of necessary medical care, such that the individual's health or life would be endangered, or would result in loss of food, clothing, permanent residence and other necessities of life.

Any requests for such a determination must be submitted in writing on form DFA-UH-5 by the individual or authorized representative or by the facility on behalf of the individual, with the approval of the individual or the individual's authorized representative. The DFA-UH-5 form must be returned to the Worker within 13 days of the individual's receipt of the DFA-NL-UH-1 and notice of denial due to some aspect of the asset policy, the trust policy, a transfer of resources or excess home equity. The Worker must forward this form to the Policy Unit immediately upon receipt.

An individual that resides in a facility and requests an Undue Hardship Waiver is eligible for payment up to 30 bed hold days while a decision is pending by the **Committee**. When Undue Hardship is established, no penalty is applied. Undue **Hardship** determinations are made by the Undue Hardship Waiver Committee, which consists of BMS and DFA Policy Unit representatives, within 30 days of receipt. The individual is notified of the decision with form DFA-NL-UH-2. The **Committee** forwards the DFA-NL-UH-2 to the individual, with a copy to the Worker. **A copy of the DFA-UH-5 is forwarded to the local office Supervisor for their records.** If the Undue Hardship request is denied by the **Committee**, the individual may request a hearing before a State Hearings Officer. See Notification Requirements in Section 17.6 and Section 11.1 for the definition of Undue Hardship.

NOTE: Bed hold days related to Undue Hardship Waiver requests are days that are paid for the individual to remain in the facility during the decision-making process, not to exceed 30 days. The decision-making process begins when the Policy Unit receives a valid DFA-UH-5 form and ends when a decision is rendered.

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

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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 a penalty.

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

6. Transfers Related to a Life Estate

a. 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.

NOTE: A life estate may be excluded as a home, if the individual intends to return to it.

The value of a life estate interest is considered a transfer of resources when it is transferred or given as a gift.

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individual that changes the course of payments to be made by the annuity or the treatment of the income or principal of the annuity. These actions include but are not limited to,

- Additions of principal,
- Elective withdrawals,
- Requests to change the distribution of the annuity,
- Elections to annuitize the contract and other similar transactions.

When these transactions occur a transfer penalty is applied.

(2) Transactions Not Subject to Penalty

Annuities purchased prior to March 1, 2009 which experience routine events and automatic changes that do not require any action or decision by the individual after March 1, 2009 are not subject to a transfer penalty. Routine changes include notification of an address change, death or divorce of a remainder beneficiary and other similar circumstances. Automatic changes are based on the terms of annuity which existed prior to March 1, 2009, and which do not require a decision, election or action by the individual to take affect. Changes beyond the individual's control, such as a change in law, a change in the policies of the issuer, or a change in the terms based on other factors, such as the issuer's economic condition, are not considered transactions that result in imposition of a transfer penalty.

NOTE: Annuities and annuity-related transactions that are not subject to a penalty are still subject to applicable income and/or asset policies.

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NOTE: Multiple penalties can be applied to the same annuity under certain circumstances.

EXAMPLE: A 60-year old woman served a six month penalty period because the annuity did not provide equal monthly payments. She became eligible for LTC services payments, but 3 months later she made an elective withdrawal from the annuity. Another transfer of resources occurred and a penalty is applied.

8. Transfer to Pay For Personal Care Services**a. Non-permissible Transfer of Resources for Payment of Personal Care Services**

Personal care services provided to an individual by a relative or friend are presumed to have been provided for free, at the time rendered, when a Personal Care Contract (PCC) did not exist. Therefore, a transfer of resources from an individual to a relative or friend for payment of personal care services is an uncompensated transfer without Fair Market Value (FMV) received for the transferred resource and subject to a penalty, unless the services were provided in accordance with item (b) below. See Section 17.10,B,1 regarding FMV.

b. Permissible Transfer of Resources for Payment of Personal Care Services

A transfer of resources by an individual to a relative or friend to pay for personal care services rendered may be a permissible transfer if the personal care services were performed through an eligible PCC, personal care agreement or personal service contract. The PCC must meet all the following criteria:

(1) Requirements Regarding the Contract

- A Personal Care Contract exists between the individual or his representative and the caregiver. See Section 11.1 for the definition of a PCC; and
- The duration of the PCC is actuarially sound.

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- The terms of the PCC are in writing between the individual or his authorized representative and the caregiver; and
- The PCC is reviewed by the Worker for compliance;
- The terms of the Contract include:
 - A detailed description of the services provided to the individual in the home; and
 - The frequency and duration of the services provided. The services must be measurable and verifiable and the compensation to the caregiver paid at a reasonable amount of consideration, i.e., money or property. Payment must be clearly defined either as a set amount or an amount to be determined by an agreed-upon hourly rate that will be multiplied by the hours worked; and

NOTE: Reasonable payment is determined by comparing compensation paid by home-care agencies or other independent caregivers for similar services in the same locale at the specific time period for which services were provided.

- Services expected of the caregiver, if any, during any period the individual may reside in an assisted living, skilled nursing, or other type of medical or nursing care facility on a temporary basis between stays at home.

(2) Requirements Regarding the Provision of Services

- Services paid from transferred resources must be rendered after the written agreement was executed between the individual and the caregiver; and

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- A PCC may be in place at the time of the individual's stay in a nursing facility or a similar placement; however, it is assumed, unless proven otherwise, that personal care services during this time are provided by staff rather than the caregiver named in the PCC; and
- At the time of the receipt of the services, the services must have been recommended in writing and signed by the individual's physician as necessary to prevent the transfer of the individual to residential care or nursing facility care. Such services may not include the mere providing of companionship.

(3) Requirements Regarding the Transfer

- The transfer to the relative or friend acting as caregiver must have taken place at the time the personal care services were rendered; and
- The transfer cannot be for services projected to occur in the future, but must be paid for at the time rendered; and
- FMV must be received by the caregiver in the form of payment for personal care services provided to him. The Worker must determine if reasonable payment for personal care services occurred.

NOTE: Reasonable payment is determined by comparing compensation paid by home-care agencies or other independent caregivers for similar services in the same locale at the specific time period for which services were rendered.

If the amount transferred to pay for personal care services is above FMV, the amount transferred in excess of FMV is subject to a transfer penalty.

EXAMPLE: Mr. Shore applies for Medicaid. He transferred \$5,000 to his granddaughter to pay for personal care services provided to him for the last 5

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months. The Worker reviews the PCC and contacts a community agency representative who indicates the payments made were similar to the rate paid by agencies at the same time period in the same locale. Since the payment was reasonable and the PCC meets all the criteria required in Section 17.10,B,1,b, the \$5,000 was a permissible transfer of resources for payment of personal care services and no penalty is applied.

Other examples related to a transfer of resources for payment for personal care services are listed below.

EXAMPLE: Since June, 2009, Mr. Johnson had a PCC in place that meets all the Department's requirements. On April 1, 2010, he is admitted to a Long Term Care facility with all personal care services provided. Any transfer of resources to pay for personal care services rendered after April 1, 2010 would be subject to a transfer penalty.

EXAMPLE: Mrs. Landers has a compliant Personal Care Agreement with payments stipulated to occur at the end of the month after personal care services are rendered. On February 27, 2010, Mrs. Landers transferred \$3,000 to her daughter for payment for services at \$1,000 per month for January through March 2010. Since payment for March is for projected services, \$1,000 of the payment is subject to a transfer penalty.

EXAMPLE: Mrs. Higginbotham has a compliant PCC in place but is admitted to a Long Term Care facility on a temporary basis for special treatment. The PCC remains in place; however, from the date of her admission, since personal care services are provided by the facility staff, only transportation to the facility is a service for which she can pay her caregiver if transportation is included in the terms of her PCC.

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Any purchase of a note, or any loan or mortgage is treated as an uncompensated transfer unless all of the following criteria are met:

- The repayment terms must be actuarially sound, based on the Period Life Table found in Appendix G; and
- Payments must be made in equal amounts during the term of the loan, with no payment deferrals or balloon payments; and
- The note, loan or mortgage must prohibit cancellation of the debt upon the death of the lender.

If all of the criteria listed above are not met, the loan is treated as a transfer of resources. The amount of the transfer is the entire outstanding balance due on the loan as of the month of application for Medicaid long-term care services.

See Section 11.4, items X, AA and II to determine if the loan, mortgage / land sale contract or promissory note is an asset.

10. Treatment Of The Transfer Of A Stream Of Income Or The Right To 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.

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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.

NOTE: A partial month's penalty is imposed for the transfer of an individual or single income payment that is less than the monthly nursing facility private pay rate. See Section 17.10,B,11,b for instructions about how to determine and apply partial month penalties.

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.

12. Transfer Penalty

The transfer of resources penalty is ineligibility for:

- Nursing facility services; and

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- A level of care in any institution, equivalent to that of nursing facility services.

The client may remain eligible for Medicaid, but only services not subject to a penalty are paid. This includes individuals in a nursing facility with income below 300% of the SSI level and who are otherwise Medicaid eligible.

The penalty is applied as follows.

a. Start of the Penalty

The beginning date of each penalty period imposed for any uncompensated transfer of resources is the later of:

- The date on which the individual is eligible for and is receiving an institutional level of care services that would be covered by Medicaid if not for the imposition of the penalty period;

OR

- The first day of the month after the month in which assets were transferred and advance notice expires, when the individual receives Long Term Care Medicaid;

AND

- Which does not occur during any other period of ineligibility due to a transfer of resources penalty.

(1) Penalty for Transfers During the Look-Back Period

When resources have been transferred at singular or multiple periods during the look-back period, add together the value of all resources transferred, and divide by the average cost to a private-pay patient of nursing facility services. This produces a single penalty period which begins on the earliest date that would otherwise apply, if the transfer had been made in a single lump sum.

EXAMPLE: An individual enters the nursing facility and applies for Medicaid in March 2009. The individual transferred \$50,000 in April 2007. Based on the average