NURSING FACILITY SERVICES

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

NURSING FACILITY SERVICES

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.

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 **$5,813**. 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.

NURSING FACILITY SERVICES

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 **$5,813** 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

NURSING FACILITY SERVICES

- 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 **December 2010**. The individual transferred $50,000 in April 2007. Based on the average

NURSING FACILITY SERVICES

private pay nursing facility rate of **$5,813** a month, the penalty is **8** whole months, beginning **December 2010** when the individual was otherwise eligible for and receiving an institutional level of care that would have been covered by Medicaid, if not for the imposed penalty. A partial month's penalty of **$3,496** is imposed for **August 2010**. The individual is required to pay this amount to the nursing facility, in addition to the calculated monthly contribution. See item b below.

EXAMPLE: Same situation as above but during the penalty period the Worker discovers an additional, undisclosed transfer that occurred during the look-back period. The penalty period is recalculated to include the undisclosed transfer of resources.

EXAMPLE: An individual enters a nursing facility in January **2010** and applies for Medicaid in April **2011** with a request for backdated coverage to January **2010**. The individual transferred $19,000 in January **2010**, $19,000 in February **2010** and $19,000 in March **2010**. The Worker must calculate the penalty period by adding the transfers together. The total of $57,000 is divided by the nursing facility cost of **$5,813**. The penalty period is **9** whole months, beginning in January **2010**, because the individual requested backdated coverage to January **2010**, and was otherwise eligible for and receiving institutional level of care that would have been covered by Medicaid, if not for the imposed penalty. A partial month's penalty for **October 2010** of **$4,683** is also imposed. The individual is required to pay this to the nursing facility, in addition to his calculated monthly contribution. See item b below for partial month penalties.

EXAMPLE: Same situation as above but after the penalty period ends and the client is receiving Medicaid the Worker discovers an undisclosed transfer occurred during the look-back period. A penalty is assessed and advance notice of an additional transfer penalty is sent to the individual.

NURSING FACILITY SERVICES

(2) Transfers During a Penalty Period

When an individual is in a penalty period and transfers additional resources during the penalty, a new penalty period begins as soon as the previous penalty ends.

EXAMPLE: An individual transfers $70,000 and is serving a **12**-month penalty beginning January **2011** through **December 2011** with a partial month's penalty of **$244** for **January 2012**. In October **2011**, the individual receives an inheritance of $6,500 which he gives to a nephew. There is an assessed penalty of 1 whole month and a partial month's penalty of **$687**. The new penalty begins **February 2012**.

EXAMPLE: An individual approved for and receiving institutional level of care services receives an inheritance of $100,000 in late February **2011** and gives the money to his grandson. Advance notice of the transfer penalty is sent in March and the penalty period begins April 1, **2011**.

All penalties for resources transferred on or after March 1, 2009 run consecutively.

b. Length of Penalty

The penalty period lasts for the number of whole and/or partial 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 **$193.76**/day or **$5,813**/month.

When the amount of the transfer is less than the average monthly private pay cost of nursing facility care, the agency imposes a penalty for less than a full month. The partial month's penalty is converted to a dollar amount and added to the individual's calculated contribution to his cost of nursing facility care for his first month of eligibility.

The partial month's penalty is determined as follows:

NURSING FACILITY SERVICES

Step 1: The total amount transferred is divided by the State's average monthly nursing facility private pay rate of **$5,813**.

Step 2: Multiple the number of whole months from Step 1 by the average private pay rate of **$5,813**.

Step 3: Subtract the amount in Step 2 from the total amount of all transfers. The remainder is the amount which is added to the individual's calculated contribution.

EXAMPLE: An individual makes an uncompensated transfer of $24,534 in the month of application for Medicaid coverage of nursing facility services.

Step 1:	$24,534	Uncompensated transfer amount
	÷ **5,813**	State's average monthly nursing facility private pay rate
	4.2	Number of months for penalty period
Step 2:	**$ 5,813**	State's average monthly nursing facility private pay rate
	x 4	Whole months in penalty period
	$23,252	
Step 3:	$24,534	Total uncompensated transfer amount
	- **23,252**	Amount for 4 whole months in penalty period
	$ **1,282**	Partial month's penalty amount

If the individual applies in March and is otherwise eligible, the penalty period runs for 4 full months from March through June, with a partial month's penalty calculated for July of **$1,282**. The partial month's penalty amount of **$1,282** is added to the calculated July contribution for his cost of care. If the individual had a $500 monthly contribution, he is required to pay $**1,782** for the cost of care in July.

NOTE: The penalty or extra payment is only applied in the last / partial month of the penalty period.

The penalty runs continuously from the first day of the penalty period, whether or not the client leaves the institution.

NURSING FACILITY SERVICES

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