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17.10 ASSETS

A nursing care client must meet the asset test for his eligibility coverage group. The asset level for those eligible by having income equal to or less than 300% of the monthly SSI payment for an individual is the same as for an SSI-Related Medicaid eligible. When both spouses are institutionalized and apply for nursing facility services, the SSI-Related Medicaid asset limit for a couple is used to determine eligibility. An asset assessment is not completed when both spouses are institutionalized. See Chapter 11 for the asset limit of the appropriate coverage group.

Once the Worker determines the value of the assets, an Asset Assessment, described in item A below, is completed when an institutionalized person has a spouse in the community.

NOTE: Once Medicaid eligibility is established, the assets of the community spouse are not counted for the institutionalized spouse. In addition, when assets such as the home and attributed assets legally transferred to the community spouse are subsequently transferred by him, no penalty is applied to the institutionalized spouse.

A. ASSET ASSESSMENTS

NOTE: A legally married individual and his spouse, although separated, are treated as a couple for the Asset Assessment, regardless of the length of the separation.

When determining eligibility for nursing facility services for an individual, institutionalized on or after 9/30/89, and who has a community spouse, the Worker must complete an assessment of the couple's combined countable assets. The assessment is completed, when requested by the client or his representative, prior to application, or at application, if not previously completed. It is completed as of the first continuous period of institutionalization and is completed one time only. The first continuous period of institutionalization is the date the client first enters the nursing facility and remains for at least 30 days or is reasonably expected to remain for 30 days at the time the individual enters the facility. The spousal limits in effect at the time the assessment is completed are used.

NOTE: An Asset Assessment is completed when an institutionalized individual transfers to a nursing facility in WV, even if one was previously completed in the former state of residence.

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The assessment is completed on form IM-NL-AC-1 or in RAPIDS. See the RAPIDS User Guide. The purpose of the Asset Assessment is to allow the spouse of an institutionalized individual to retain a reasonable portion of the couple's assets and to prevent the impoverishment of the community spouse.

When requested, the Worker must advise the individual(s) of the documentation required for the assessment. Verification of ownership and the FMV must be provided. When it is not provided, the assessment is not completed.

The Worker documents the total value of all non-excluded assets.

Nursing facilities are required to advise all new admissions and their families that an Asset Assessment is available upon request from the local office.

NOTE: The accessible pension of a community spouse counts in the Asset Assessment, minus any penalty for early withdrawal.

EXAMPLE: An institutionalized individual's wife has a $75,000 pension through her employer from which she can withdraw without incurring a penalty. The pension is counted in the Asset Assessment as an available resource to the couple.

EXAMPLE: An institutionalized individual's husband has a $100,000 pension through his employer from which he can withdraw but incurs a ten percent early withdrawal penalty. The pension of $100,000, minus the early withdrawal penalty of $10,000, is counted in the Asset Assessment as an available resource of $90,000 to the couple.

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The agency has developed a statement concerning the availability of asset assessments. Nursing facilities provide this "Patient's Bill of Rights" as part of their admission package. See Appendix C.

1. Calculation Of The Spouses' Shares

The spouses' shares are computed as follows:

Step 1: Determine the FMV of the couple's combined countable assets, as of the beginning of the first continuous period of institutionalization.

Step 2: Compare the amount from Step 1 to $21,912. If the Step 1 amount is equal to or less than $21,912, all assets are attributed to the community spouse. If not, go to Step 3.

Step 3: Divide the Step 1 amount by 2 and compare to $21,912. If one-half of the Step 1 amount is equal to or less than $21,912, the community spouse is attributed $21,912 and the remainder belongs to the institutionalized spouse. If not, go to Step 4.

Step 4: When one-half of the Step 1 amount is greater than $21,912, one-half of the total assets (Step 1 amount) is attributed to the community spouse, not to exceed $109,560.

Step 5: The amount not attributed to the community spouse is attributed to the institutionalized spouse.

If an application for nursing facility services is not made when the assessment is completed, the spouse retains the amount attributed to him at the assessment, regardless of the couple's combined assets at the time of application.

2. Notification Requirements

When the assessment is complete, the Worker must provide each member of the couple with a copy of the RAPIDS asset assessment or the IM-NL-AC-1. A copy of the IM-NL-AC-1 is retained in the case record. See item 7 below for the RAPIDS asset assessment.

The Worker must also notify the community spouse using form ES-NL-D or RAPIDS form AEL3 that the assessment may not be appealed until a Medicaid application is made.

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3. Revisions To The Asset Assessment

The **A**sset **A**ssessment may be revised when the client, his spouse, the Hearings Officer or the Worker determine, with supporting documentation, that the initial determination was incorrect or based on incorrect information.

4. Additional Asset Exclusions For Institutionalized Spouses

The institutionalized individual is not ineligible for Medicaid due to the assets determined above, if he lacks the ability to or is legally prevented from assigning the assets which would otherwise make him ineligible. In addition, when denial of Medicaid eligibility will work an undue hardship, his assets may be excluded. See Chapter 11 for the definition of undue hardship.

5. Transfers Of Assets To The Community Spouse

Once initial eligibility has been established, assets that were not counted for the institutionalized spouse must be legally transferred to the community spouse. Assets cannot merely be attributed to the community spouse, but must actually be transferred to the community spouse, if they are to be excluded in determining continuing Medicaid eligibility of the institutionalized spouse. Assets legally transferred to the community spouse **based on the Asset Assessment** are not treated as uncompensated transfers of resources.

To exclude assets attributed to the community spouse, the institutionalized spouse must indicate his intent to transfer the assets to the community spouse, and the transfer must take place within 90 days, unless a longer period is required to take the action.

NOTE: Once Medicaid eligibility is established, the assets of the community spouse **based on the Asset Assessment** are not counted for the institutionalized spouse. In addition, when assets such as the home and attributed assets legally transferred to the community spouse are subsequently transferred by him, no penalty is applied to the institutionalized spouse.

6. Additional Asset(s) Received/Obtained

When the institutionalized spouse obtains an additional asset(s) after the community spouse's share has been calculated and initial Medicaid eligibility is established, the additional asset(s) is excluded when one of the following conditions exist:

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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 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

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a. Transfer of the 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(ren) 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 his 2007 $600 Rebate in August 2010. Transfers can occur through October 2010 without penalty.

c. Transfers from American Recovery and Reinvestment Act of 2009 (ARRA) One-Time Payments and Tax Credits/Refunds

American Recovery and Reinvestment Act of 2009 (ARRA) One Time Payments and Tax Credits/Refunds are excluded as transfers as follows:

- The one-time $250 payment issued to recipients of RSDI, SSI, Railroad Retirement and VA disability pensions and compensation is excluded as an asset for 9 months following

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- the month of receipt. No penalty is imposed for amounts transferred during the 9-month exclusion period. After that time, transfers may result in a penalty.

- Tax credits/refunds paid under Section 1001 and Section 2202 of ARRA 2009 are excluded for 2 months following the month of receipt. No penalty is imposed for amounts transferred during the 2-month exclusion period. After that time, transfers may result in a penalty.

d. 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 **not to exceed the amount determined attributable to the community spouse during the Asset Assessment.**

- From the client's spouse to another person for the sole benefit of the client's spouse **not to exceed the amount determined attributable to the community spouse during the Asset Assessment.**

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

NOTE: The transfer must be accomplished by a written instrument of transfer, such as a trust, which legally binds the parties to a specific course of action and specifies the conditions under which the transfer was made, and names those who benefit from the transfer.

e. 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.

f. 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

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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.

g. 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.

h. Transfer Was Not to Qualify for Medicaid

When **a transfer of** resources **was** exclusively for a purpose other than to qualify for Medicaid, no penalty is applied.

NOTE: A transfer is assumed to be for the purpose of qualifying for Long-Term Services. The burden of proof is the individual's to prove otherwise. The Worker and Supervisor can make this decision.

EXAMPLE: Mrs. R. has a stroke and enters the nursing home on 10/15/09. Her daughter's home was in foreclosure and the mother transferred $5,000 to her on 9/19/09 to prevent foreclosure. The Worker verifies the situation with the foreclosure notice dated 9/4/09 and the mother's withdrawal and check to the daughter on 9/19/09 for the exact amount of the foreclosure of $5,000. The Worker and Supervisor determine Mrs. R. did not transfer money to qualify for Medicaid.

EXAMPLE: Mr. G., a widowed man, has failing health and transfers $25,000 to each of his children before he enters the nursing home. The children are not disabled. The transfer is assumed to be for the purpose of qualifying for Medicaid.

i. Denial Would Result in Undue Hardship

An undue hardship may exist when application of some aspects of the asset policy, the trust policy, a transfer of resources or excess home equity result in denial of payment for Long Term Care services for an applicant or recipient.

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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 **DFA Medicaid** Policy Unit immediately upon receipt.

An individual that resides in a facility and requests an Undue Hardship Waiver **is** eligible for payment **of** 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 **Medicaid** 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 **will be** 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 **DFA Medicaid** 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.

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.

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b. Purchase of a Life Estate

The purchase a life estate interest in another individual's home is treated as an uncompensated transfer, unless the individual who purchased the life estate interest resides in the home for at least 1 year after the purchase. The amount of the transfer is the entire amount used to purchase the life estate.

See Section 11.4, to determine the value of the life estate.

7. Transfer To Purchase An Annuity

See Section 11.4,B for annuities as an asset.

a. Annuity-Related Transfers

NOTE: This requirement does not apply to revocable or assignable annuities since these can be cancelled and funds used to purchase the annuity can be refunded.

(1) Institutional Spouse is Annuitant

Establishment of an annuity is treated as a transfer of resources, unless the annuity meets the following criteria:

- The individual disclosed to the State any interest the individual or his spouse has in any annuity;

- The State is named as the remainder beneficiary, or as the second remainder beneficiary after a community spouse or minor or disabled adult child, for an amount at least equal to the amount of Medicaid benefits provided when the annuity is purchased by an applicant/recipient or spouse;

- The annuity was purchased by or on behalf of the individual and one of the following applies.

  - The annuity is considered either:

    - An individual retirement annuity (according to Section 408 (b) of the Internal Revenue Code of 1986 (IRC); or

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- ○ A deemed Individual Retirement Account (IRA) under a qualified employer plan (according to Section 408§ of the IRC).

OR

- The annuity is purchased with proceeds from one of the following:
  - ○ A traditional IRA (IRC Section 408a); or
  - ○ Certain account or trusts which are treated as traditional IRAs (IRC Section 408§(c)); or
  - ○ A simplified retirement account (IRC Section 408 § (p)); or
  - ○ A simplified employee pension (IRC Section 408 § (k)); or
  - ○ A ROTH IRA (IRC Section 408A).

OR

- The annuity meets all of the following requirements:
  - ○ The annuity is irrevocable and non-assignable; and
  - ○ The annuity is actuarially sound; and
  - ○ The annuity provides payments in approximately equal amounts, with no deferred or balloon payments.

(2) Community Spouse Is Annuitant

Establishment of an annuity is treated as a transfer of resources, unless the annuity meets the following criteria:

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- The individual disclosed to the State any interest the individual or his spouse has in any annuity;

- The State is named as the remainder beneficiary, or as the second remainder beneficiary after a community spouse or minor or disabled adult child, for an amount at least equal to the amount of Medicaid benefits provided when the annuity is purchased by an applicant or spouse;

If the annuity does not meet all stated requirements above, the full purchase value is considered the amount of the transfer.

In order for an annuity to be 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. 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.

NOTE: For annuities purchased prior to 2/8/06, **use Periodic Life Tables found in Appendix E. T**he penalty is considered to have occurred at the time the annuity was purchased **prior to 2/8/06**. Only the amount that is not actuarially sound is treated as an uncompensated transfer.

NOTE: Period Life Tables in Appendix G of this chapter are used for annuities purchased on or after 2/8/06.

EXAMPLE: A 65-year-old man purchases a $10,000 irrevocable, non-assignable annuity on 7/28/08 which is to be paid over 10 years in equal payment amounts and names the State of WV as the second remainder beneficiary after his disabled son. His life expectancy, according to Appendix G, is 16.05 years. The annuity is irrevocable, non-assignable, actuarially sound, provides equal payment amounts and the state is named as a secondary remainder beneficiary. No transfer of resources has taken place.

EXAMPLE: An 80-year-old man purchases a $10,000 annuity on January 1, 2006 to be paid over 10 years. According to Appendix E, his life expectancy is only 6.98 years. Therefore, the amount

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which will be paid out by the annuity for 3.02 years is considered an uncompensated transfer of resources **that occurred at the time the annuity was purchased on January 1, 2006.**

EXAMPLE: A 60-year old woman purchases an annuity on 3/13/07 which is to be paid over 10 years with a balloon payment in the 10th year. The annuity names the State as the remainder beneficiary and is considered an uncompensated transfer of resources since it does not provide for equal monthly payments.

EXAMPLE: A 65-year old woman retired from a company on 12/31/07 with an annuity that was purchased by the employer as part of her bona fide retirement plan. The annuity is not considered an uncompensated transfer of resources since it was purchased on her behalf as part of her bona fide retirement plan.

b. Annuity-Related Transactions Other Than Purchases

(1) Transactions Subject to Penalty

Certain annuity-related transactions, which occur on or after March 1, 2009, are subject to a transfer penalty. These transactions include any action taken by the

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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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9. Transfer To Purchase A Promissory Note, Loan Or Mortgage

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 **include the institutionalized spouse/individual** 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 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 $5,813 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 **Transfer Penalty Section below** 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. **This does not apply to HCB Waiver.**

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