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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. **Certain individuals who meet the gross income test but are ineligible for Medicaid due to being over the allowable asset limit, may be eligible for the LTCIP Asset Disregard.** 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.

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.

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.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.

Certain individuals who meet the gross income test but are ineligible for Medicaid due to being over the allowable asset limit, may be eligible for the LTCIP Asset Disregard.

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.

3. Revisions To The Asset Assessment

The Asset Assessment 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

Certain individuals who meet the gross income test but are ineligible for Medicaid due to being over the allowable asset limit, may be eligible for the LTCIP Asset Disregard.

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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:

- 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

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- 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 Qualified LTCIP Policy has paid benefits to or on behalf of the institutionalized spouse that equal or exceed the amount of the newly acquired countable asset.**

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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f. 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.

NOTE: Federal tax refunds and advance payments received January 1, 2010 through December 31, 2012 are excluded as assets for 12 months following the month of receipt of the payment. Federal tax refunds and advance payments that are placed in trusts during the exclusion period are excluded as assets.

g. Transferred Resources Returned

When the client reports assets transferred for less than FMV have been returned to the client, **the Worker must verify this information. Any return of assets must be to the client or his representative rather than to another individual on his behalf or paid directly to the long-term-care facility. When substantiated, the Worker must recalculate the penalty period.**

When all such assets have been returned to the client, no penalty is applied. If a penalty has already been applied, a retroactive adjustment back to the beginning of the penalty period is required.

If part of such assets are returned, the penalty period is adjusted accordingly**, from the later months of the penalty period rather than the earlier months, and is not applied to months of the penalty period that have expired.**

h. 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.

i. 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.

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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.

j. 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.

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.

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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.

k. Transfer of Resources Previously Disregarded by the Long-Term-Care Insurance Partnership (LTCIP) Asset Disregard

If an aged, blind or disabled individual whose income is equal to or less than 300% of the SSI payment for 1 transfers an asset that was previously disregarded by the LTCIP Asset Disregard, the transfer is not subject to a transfer penalty since the asset was previously disregarded.

Should the individual obtain an additional countable asset that causes him to exceed the allowable asset amount he must verify additional payments made to him or on his behalf by the LTCIP Policy in addition to the amount of payments that were previously used to disregard the assets that were transferred. Additionally, the amount of the individual's estate that was protected from Estate Recovery is reduced by the same amount as the value of the asset that was transferred.

NOTE: Questions about the Estate Recovery process must be referred to the current contract agency. Information about this agency is in Appendix I.

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EXAMPLE: Mr. Smalley is in a nursing facility and applies for Medicaid November 1, 2010. Mr. Smalley's income is less than 300% of the SSI payment for 1 but he has $12,000 in individual assets consisting of $5,000 in an accessible money market and $5,000 in stocks. He verifies ownership of a $100,000 Qualified LTICP Policy issued after July 1, 2010, the date WV implemented the LTCIP, and insurance payments in the amount of $10,000 paid to the nursing home after July 1, 2010. The Worker disregards his money market and stocks and Medicaid eligibility is effective November 1, 2010.

At redetermination, Mrs. Smalley reports transferring the stock to their son. The transfer is not subject to a penalty since the asset was previously disregarded. However, since insurance payments verified as paid by the LTCIP Policy on behalf of Mr. Smalley were applied to disregard the value of the stock, and resulted in Mr. Smalley being eligible and receiving Medicaid, these same insurance payments cannot be used again to disregard other assets. Should Mr. Smalley's money market increase in value or he acquires additional countable assets, he must verify additional payments by the insurance company before any other assets can be disregarded.

Mr. Smalley's amount of assets that were protected at estate recovery is also reduced from $10,000 to $5,000 since the previously disregarded stock was transferred to his son.

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 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.

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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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For purposes of the homestead exclusion only, a dependent relative is one who is dependent financially, medically or as otherwise determined dependent upon the institutionalized person. The following are considered relatives of the institutionalized person: child, stepchild or grandchild; parent, stepparent or grandparent; aunt, uncle, niece or nephew; brother or sister, including relations of step or half; cousin or in-law.

It is not necessary that the client be medically able to return home to apply the exclusion. The exclusion is based solely on the client's intended action, should he be discharged from the facility. See Section 11.4 when an individual does not have intent to return due to domestic abuse. The Worker must record the client's statement of intent in the case record. A written statement may be requested, but no action may be taken to deny or stop benefits for failure to provide a written statement when the client has expressed his intent verbally or by gesture.

If the client's homestead is a multi-unit dwelling, such as an apartment building, the entire property is excluded, not just the portion of the value which corresponds to the portion of the property in which he actually lived.

The homestead property may not be in West Virginia. The homestead exclusion applies, regardless of the state in which it is located. The client's expressed intent to return to the homestead property does not necessarily affect his West Virginia residency. See Chapter 8.

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.

D. HOME EQUITY

When the equity value of an individual's home exceeds $506,000, he is ineligible for Medicaid payment for nursing home care or HCB Waiver Services, unless his spouse, child under 21 or disabled adult child resides in the home.

E. LONG-TERM-CARE INSURANCE PARTNERSHIP (LTCIP) ASSET DISREGARD

1. Introduction and Purpose

West Virginia's participation in the Long-Term-Care Insurance Partnership (LTCIP) is established by §9, Article 4E-1 of the WV Code. The LTCIP Asset Disregard results from a combined effort between Federal Medicaid, the Department, long-term-care insurers

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and the WV Insurance Commission in accordance with Section 1917 of the Social Security Act. The Disregard provides an incentive to individuals to provide for their own long-term-care needs through the purchase of a Qualified LTCIP Policy, while protecting their assets.

2. Definitions

For purposes of the LTCIP Asset Disregard only, the following definitions apply:

OFS-LTCIP-1 – This form is given to the applicant for completion by the individual's insurance carrier or other individual who can attest to the Policy's details and benefits paid. Other sources of verification are listed in Section 4.2.

Partnership (Qualified) States – States that are participating in the LTCIP. Each Partnership State has an approved State Plan Amendment (SPA) that indicates the date the State implemented the LTCIP. West Virginia's SPA implemented the LTCIP as of July 1, 2010.

Qualified LTCIP Policy – A LTC Policy that meets certain requirements of federal and state law. These Policies are issued by Partnership (Qualified) States as of the date the State implemented the LTCIP.

Reciprocity – A reciprocal relationship exists between Partnership States that allows a resident with a Qualified LTCIP Policy in one Partnership State who later moves to another Partnership State, the same asset protection he previously had.

3. Individuals Who May Receive the Disregard

The LTCIP Asset Disregard is available to the aged, blind or disabled institutionalized individual with income equal to or less than 300% of the SSI payment level for 1 but whose individual resources exceed the asset limit.

4. Verifications Required

When an individual states he has a LTC policy that has paid insurance benefits to him or on his behalf, the Worker evaluates him for the Disregard.

a. Verification of Individual's Residency and Status of Policy-Issuing State at the Policy's Issuance.

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To be eligible for the Disregard, the Policy owner must have been a resident of a Partnership State AND the issuing State must have been a Partnership State at the time the Policy was issued.

- **When a West Virginia resident verifies ownership of a Qualified LTCIP Policy issued by a WV Insurer or another Partnership State with an issuance date as of July 1, 2010 and the individual verifies insurance payments made to him or on his behalf as of that same date, his individual resources may be disregarded dollar-for-dollar in the same amount as the insurance payments made. His resources are protected in this same amount at Estate Recovery.**

NOTE: Questions about the Estate Recovery process must be referred to the current contract agency. Information about this agency is in Appendix I.

EXAMPLE: Joan Arbuckle applies for Medicaid October 16, 2011 and states she has a WV-issued LTC policy that has been paying insurance benefits to her since her institutionalization August 2011. Her OFS-LTCIP-1 indicates her policy was purchased April 1, 2010. The applicant has a LTC policy but it is not a Qualified LTCIP Policy since WV was not a Partnership State until July 1, 2010. Joan's assets cannot be disregarded.

EXAMPLE: Troy Jacobs is a lifelong WV resident. He owns a Florida-issued Qualified LTCIP Policy purchased January 1, 2009 which is after the date Florida became a Partnership State, January 1, 2007. West Virginia became a Partnership State July 1, 2010; therefore, since Mr. Jacobs was not a resident of a Partnership State when his Policy was issued, he is ineligible for the Disregard.

EXAMPLE: Frederick Randolph is a lifelong WV resident. He purchased a Qualified LTCIP Policy from Minnesota September 1, 2010 and applied for Medicaid February 11, 2011. Since Minnesota became a Partnership State July 1, 2006, his Policy was issued by a Partnership State at the time of purchase and he was also a resident of WV, another Partnership State at that time; therefore, as long as he verifies insurance payments made after July 1, 2010, he is eligible for the Disregard to be applied to his individual resources in the amount of insurance payments made.

- **When a West Virginia resident was a former resident of a Partnership State and purchased a Qualified LTCIP Policy issued by that state, as long as his Policy was issued as of the**

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- date of his former State's SPA that implemented the LTCIP and insurance payments occurred as of that same date, he is afforded the same asset protection he previously had prior to becoming a WV resident.

EXAMPLE: Millard Clinton was a resident of Virginia before establishing WV residency in January 2011. He purchased a LTC policy from VA on May 1, 2007 the same day VA became a Partnership State. Mr. Clinton verifies being institutionalized in VA and his $62,000 in assets were disregarded due to insurance payments paid on his behalf in 2009 and 2010 that exhausted his $75,000 Policy. His assets continue to be protected by the Disregard and he is eligible for WV Medicaid.

NOTE: The Policy's benefits need not be exhausted before the Disregard is applied.

- When an individual exchanges a Qualified LTCIP Policy issued by his former state of residence for a WV Policy, eligibility for the Disregard is evaluated based on the first State's SPA, Policy issuance date and dates of insurance payments made.

EXAMPLE: Mr. Walter Lytle was formerly an Ohio resident. He exchanges his Ohio-issued Qualified LTCIP Policy for a WV-issued Policy. He is evaluated for the Disregard based on the circumstances surrounding the first Policy's issuance. Ohio became a Partnership State September 1, 2007. His Policy was issued January 1, 2008 and insurance benefits were made after this same date; therefore as long as insurance payments made on his behalf equal or exceed his individual resources, the Disregard can be applied.

b. Verification of the Qualified LTCIP Policy

The LTCIP Asset Disregard requires that the LTC policy is a Qualified LTCIP Policy. The OFS-LTCIP-1 is used to verify information about the individual's policy. See Chapter 4, Section 4.2 for other sources of verification. When the individual provides the Worker with the Policy, the following determines if the policy is qualified for the Disregard:

- The individual was a resident of a Partnership State when his Policy was issued; AND

NOTE: When an individual exchanges his Qualified LTCIP Policy issued by his former state of residence for a WV Policy, eligibility for the Disregard is evaluated based on the first

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State's SPA date, Policy issuance date and dates of insurance payments made.

- The Policy meets the Internal Revenue's Code of 1986 requirements related to the LTCIP; AND
- The Policy's issuance date was no earlier than the effective date of the issuing Partnership State's SPA that implemented the LTCIP; AND
- The Policy meets the specific rules of the National Association of Insurance Commissioners (NAIC); AND
- The Policy includes inflation protection based on the age of the insured at the time of purchase

NOTE: Changes made to the LTCIP Policy after issuance will not affect the Disregard as long as the Policy continues to be Qualified.

NOTE: The LTCIP Asset Disregard is not revoked if a State withdraws from the Partnership.

EXAMPLE: An applicant states he has a LTC policy that has paid him $35.00 per day for each day of his institutionalization and he requests the Disregard applied to his $3,000 in excessive assets. The applicant provides the Worker with a copy of his policy. The policy does not indicate compliance with the IRS Code nor does it address inflation protection. The policy is not a Qualified LTCIP Policy and the applicant is ineligible for the Disregard.

c. Verification of Qualified LTCIP Insurance Benefits Paid

The OFS-LTCIP-1 is used to obtain information about the dates of, amount of Qualified LTCIP insurance benefits paid, and the remaining benefits available to the individual. When the individual does not complete this form, the Worker must verify the amount of insurance benefits paid to or on behalf of an individual as of July 1, 2010 when the individual is a WV resident with a WV-issued Qualified LTCIP Policy or owns a Qualified LTCIP Policy issued from another Partnership State.

NOTE: The Policy's benefits need not be exhausted before the Disregard is applied.

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5. The Amount of the Disregard

The amount of the Disregard is specific to the individual. Resources are disregarded dollar-for-dollar in the same amount as the amount paid out by the insurance company.

Resources are disregarded in part or in entirety. See item F for how the Disregard is applied in the data system and documented.

6. Applying the LTCIP Asset Disregard at Application and Redetermination

a. Applying the Disregard at Application

When there is a community spouse, the countable assets of the couple are combined and the asset assessment is completed. The Disregard is applied to the individual's assets at eligibility determination.

The amount of the Disregard is determined by the amount of payments made to the individual or on his behalf since July 1, 2010. The Policy's benefits need not be exhausted for the Disregard to be applied. The resource(s) to which the Disregard is applied may be disregarded in part or in entirety.

When a resource is disregarded in its entirety, the Worker indicates in the data system that the resource is inaccessible and details in CMCC that the LTCIP Asset Disregard was applied. The corresponding insurance payments made, date of last payment and the amount of benefits remaining in the Policy is documented to track the assets that were protected.

EXAMPLE: Peggy Lohr is eligible for the Disregard. She has a bank account with a balance of $27,000. Insurance benefits from her Qualified LTCIP Policy totaling $27,000 have been paid to her. In the data system, an account totaling $27,000 is entered on AALA and listed as inaccessible. The Worker documents the application of the Disregard, dates of payments made that resulted in her becoming eligible for Medicaid and the amount of benefits remaining under Peggy's Policy.

An asset to which the Disregard is applied in part and results in eligibility being established is entered in the data system as two assets, one inaccessible and one with the remaining value after the Disregard is applied. Documentation is detailed on CMCC.

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EXAMPLE: An individual has $12,000 in a savings account. He has a WV-issued, Qualified LTCIP Policy that was purchased August 1, 2010. The Worker verifies the Policy has paid out $10,000 on the applicant's behalf since that same date. The Worker applies the Disregard and enters a $10,000 savings account as inaccessible. The Workers enters the remaining $2,000 on a second screen and details the information on CMCC.

As long as the individual's assets remain the same, the protection of the resources that resulted in the recipients' eligibility continues throughout the recipient's Medicaid periods of eligibility. See item b below when the individual's resources increase in value or he transfers a resource for less than FMV.

NOTE: Even though an individual is eligible for the Disregard and Medicaid, a determination is necessary regarding to whom the LTCIP insurance payment is made. The Worker must determine if the payments are income to the individual or a third-party payment.

NOTE: If the individual is applying for additional benefits, the data system's asset screens are re-evaluated in accordance with each program's requirements and the absence of the LTCIP Asset Disregard.

b. Applying the Disregard at Redetermination

The Worker must track the assets of the recipient, insurance payments made to or on the recipient's behalf and assets disregarded since the previous application.

Medicaid eligibility is reevaluated when the recipient reports transferring a previously disregarded asset, obtaining an additional asset or an asset increasing in value.

NOTE: The LTCIP Asset Disregard is not revoked if a State withdraws from the Partnership.

A transfer of an asset that was previously disregarded is not subject to a transfer penalty.

If the value of the individual's assets increase or the individual obtains an additional countable asset that causes him to exceed the allowable asset amount, he will need to verify additional

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payments made on his behalf by the LTCIP Policy in addition to the amount of payments that were previously used to disregard the assets that were transferred. Additionally, the amount of the individual's estate that was protected from Estate Recovery is reduced by the same amount as the value of the asset that was transferred.

NOTE: Questions about the Estate Recovery process must be referred to the current contract agency. Information about this agency is in Appendix I.

EXAMPLE: Mr. Watts is in a nursing facility. On September 1, 2010, Mrs. Watts applied for LTC services for her husband. The couple's assets are combined at asset assessment and the spousal share is attributed to Mrs. Watts. Mr. Watt's income is less than 300% of the SSI payment for 1 but he has $12,000 in individual assets consisting of $5,000 in an accessible money market account and $5,000 in stocks. He is asset-ineligible for LTC by $10,000. He verifies ownership of a $100,000 Qualified LTICP Policy which he purchased July 12, 2010. The Worker verifies the Policy's status and that his Policy has paid for his care in July and August paying $10,000 to the nursing home. The Worker disregards his money market and stocks and Medicaid eligibility is effective September 1, 2010.

At redetermination, Ms. Watts reports transferring the stock to their son. The transfer is not subject to a penalty since the asset was previously disregarded. However, since insurance payments verified as paid by the LTCIP Policy on behalf of Mr. Watts were applied to disregard the value of the stock, and resulted in Mr. Watts being eligible for Medicaid, these same insurance payments cannot be used again to disregard other assets. Should Mr. Watt's money market increase in value or the he acquire additional countable assets, he must verify additional payments by the insurance company before any other assets can be disregarded.

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NURSING FACILITY SERVICES

Mr. Watt's amount of assets that were protected at Estate Recovery is also reduced from $10,000 to $5,000 since the previously disregarded stock was transferred to his son.

NOTE: Even though an individual is eligible for the Disregard and Medicaid, a determination is necessary regarding to whom the LTCIP insurance payment is made. The Worker must determine if the payments are income to the individual or a third-party payment.

NOTE: If the individual is no longer eligible for Medicaid under the 300% gross income test, his eligibility for other Medicaid groups is evaluated prior to closure and the data system's asset screens are re-evaluated in accordance with each program's requirements and the absence of the LTCIP Asset Disregard.