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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 $**5,751**. 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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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 $**5,751** 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 **July 2011**. The individual transferred $50,000 in April 200**8**. Based on the average

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private pay nursing facility rate of $**5,751** a month, the penalty is 8 whole months, beginning **July 2011** 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 $**3,992** is imposed for **March 2012**. 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 201**1** and applies for Medicaid in **September** 2011 with a request for backdated coverage to **August 2011**. 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 $**5,751**. The penalty period is 9 whole months, beginning in **August** 201**1**, because the individual requested backdated coverage to **August** 201**1,** 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 **May 2012** of $**5,241** 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.

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(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 **July** 2011 through **June 2012** with a partial month's penalty of $**988** for **July 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 $**749**. The new penalty begins **August** 2012.

EXAMPLE: An individual approved for and receiving institutional level of care services receives an inheritance of $100,000 in 2011 and gives the money to his grandson. Advance notice of the transfer penalty is sent in **November** and the penalty period begins **December** 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 $**191.70**/day or $**5,751**/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:

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Step 1: The total amount transferred is divided by the State's average monthly nursing facility private pay rate of $**5,751**.

Step 2: Multiple the number of whole months from Step 1 by the average private pay rate of $**5,751**.

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
	÷ **5,751**	State's average monthly nursing facility private pay rate
	4.2	Number of months for penalty period
Step 2:	$ **5,751**	State's average monthly nursing facility private pay rate
	x 4	Whole months in penalty period
	$**23,004**	
Step 3:	$24,534	Total uncompensated transfer amount
	- 23,**004**	Amount for 4 whole months in penalty period
	$ **1,530**	Partial month's penalty amount

If the individual applies in **July** and is otherwise eligible, the penalty period runs for 4 full months from **July** through **October**, with a partial month's penalty calculated for **November** of $**1,530**. The partial month's penalty amount of $**1,530** is added to the calculated **November** contribution for his cost of care. If the individual had a $500 monthly contribution, he is required to pay $**2,030** for the cost of care in **November**.

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.