

## Long Term Care

resources. The jointly owned resource, or the affected portion of it, is considered transferred by the client when any action is taken, either by the client or any other person that reduces or eliminates the client's ownership or control of the resource.

Transfers of funds from the Economic Stimulus Tax Rebate for 2007 which occur after the 3-month exclusion period, are subject to penalty.

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

7. 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.

8. Transfer To Purchase An Annuity

Establishment of an annuity is sometimes treated as a transfer of resources, depending on whether or not the annuity is 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 for it to be actuarially sound and, thus, not treated as an uncompensated transfer of resources. If the individual is not reasonably expected to live longer than the guarantee period of

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When a single resource is transferred, or a number of resources are transferred at the same time, the penalty period is determined by adding together the total uncompensated value of the resource(s) and dividing as shown below. When resources are transferred at different times, the following general guidelines are used.

(3) When Penalty Periods Would Overlap

When resources have been transferred in amounts and/or frequency that would make the calculated penalty periods overlap, add together the value of all resources transferred, and divide by the average cost of nursing facility services. This produces a single penalty period which begins on the first day of the month in which the first transfer was made.

**EXAMPLE:** An individual transfers \$19,000 in January, \$19,000 in February and \$19,000 in March. Calculated individually, based on a nursing facility cost of \$5,751 a month, the penalty for the first transfer is from January through March, the second is from February through April and the third is from March through May. Because these periods overlap, the Worker must calculate the penalty periods by adding the transfers together (a total of \$57,000) and dividing by the nursing facility cost (\$5,751). The penalty period of 9 months, which runs from January 1 through September 30.

(4) When Penalty Periods Would Not Overlap

When multiple transfers are made in such a way that the penalty periods for each would not overlap, the Worker must treat each transfer as a separate event, with its own penalty period.

**EXAMPLE:** An individual transfers \$7,000 in January, \$7,000 in May and \$7,000 in October. Assuming an average private nursing facility cost of \$5,751 a month, the penalty periods for the transfers are, respectively, January 1 through January 31, May 1 through May 31 and October 1 through October 31.

All penalties for resources transferred on or after 8/11/93 run consecutively.

b. Length of Penalty

The penalty period lasts for the number of whole months determined by the following calculation:

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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 cost of nursing facility, no penalty is applied until a series of transfers totals more than the average monthly nursing facility rate of \$**5,751**.

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

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.

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.

#### 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.