

TRAUMATIC BRAIN INJURY WAIVER (TBI)**17.70 ASSETS**

The determination of countable assets is the same as for SSI-Related Medicaid. See Chapter 11. The SSI-Related Medicaid asset limit for one person is used. For transfers of resources see Sections 17.9 and 17.10. See Section 17.10 for the spousal assessment of assets. Both apply to TBI applicants.

NOTE: The Worker, Supervisor and/or agency Hearing Representative are involved in any Fair Hearing for the TBI Program only when the reason for the adverse action was the determination of financial ineligibility.

A. TRANSFER OF RESOURCES PENALTY FOR AN APPLICANT

When an individual is an applicant for TBI Waiver, a penalty does not start until he is actually a recipient of an institutional level of care, nursing facility level of care or TBI Waiver that Medicaid would pay for, were it not for imposition of the transfer penalty. The penalty does not begin for the TBI Waiver applicant unless he enters a nursing facility or facility providing an institutional level of care since he cannot become Medicaid eligible for waiver services due to the penalty and the penalty period can not begin until Medicaid begins paying for waiver services.

EXAMPLE: A 70-year old lady applies for TBI Waiver Services in July 2011 but transferred \$100,000 to her daughter in January 2008. She is subject to a transfer of resources penalty for 17.3 months. Her health deteriorates and she is admitted to a nursing facility in September 2011 for several months. She cannot receive payment for TBI Waiver services from July through September 2011 due to the transfer of resources. Her penalty period cannot begin until she goes into the nursing home. Her penalty period begins in September 2011 and she will be eligible for TBI Waiver services in January 2013, if otherwise eligible, with a partial month penalty of 6 days in October 2012.

EXAMPLE: A 67-year old man applies for TBI Waiver services in August 2011, but transferred \$50,000 to his son in February 2011. He is subject to an 8-month penalty. He never begins receiving waiver services since Medicaid never begins payment for these services due to the penalty. He never entered a nursing home or equivalent institutional level of care, so the penalty period never began.

B. TRANSFER OF RESOURCES PENALTY FOR A RECIPIENT

When an individual is a recipient of TBI Waiver services and transfers resources without receiving fair compensation, a penalty is applied after proper notice. The penalty period is determined using the following procedure and lasts for the number of whole and/or partial months determined by the following calculation.

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The total amount transferred during the look-back period is divided by the State's average, monthly nursing facility private pay rate of \$191.70/day or \$5,751/month.

When the remaining 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 number of days for which the individual is ineligible for payment for TBI waiver services.

The partial month's penalty is determined as follows:

- Step 1: The total amount transferred is divided by the State's average monthly nursing facility private pay rate of \$5,751.
- Step 2: Multiply 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 used to determine the number of days the individual is ineligible for TBI waiver in the partial month of the penalty period.
- Step 4: The Step 3 amount is divided by the average daily rate of \$191.70 to determine the number of days of ineligibility in the last month of the penalty period.

EXAMPLE: An individual makes an uncompensated transfer of \$24,534 after approval for TBI Waiver services and Medicaid.

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| Step 1: | \$24,534 | Uncompensated transfer amount |
| | $\div 5,751$ | State's average monthly nursing facility pay rate |
| | 4.2 | Number of months for penalty period |
| Step 2: | \$ 5,715 | State's average monthly nursing facility private pay rate |
| | $\times 4$ | Whole months in penalty period |
| | \$23,004 | |
| Step 3: | \$24,534 | Total uncompensated transfer amount |
| | $- 23,252$ | Amount for 4 whole months in penalty period |
| | \$ 1,330 | Partial month penalty amount |

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Step 4:	\$1,282.00	
	$\div \$191.70$	Average daily rate
	= 6.68	Number of ineligible days for partial month

The partial penalty is imposed for the number of whole days only. If a recipient of TBI Waiver services transfers resources in July and advance notice is provided for August closure, the penalty period runs for 4 full months from August through November, with a partial month penalty calculated for December of 6 days. The individual becomes eligible for TBI waiver on December 7th, if he meets all other requirements.

EXAMPLE: A woman is receiving TBI Waiver services and transfers her home to her daughter without compensation in June 2011. The value of the home is \$100,000. After advance notice, the penalty period is July 2011 through November 2012 for 17 whole months. A partial month penalty is calculated for December 2012, the 18th month, based on \$2,233 remaining of the total penalty amount, $\$2,233 \div \$191.70 = 11.64$ days of ineligibility in December 2012. Any fractional days are dropped and the length of the penalty is based on the number of whole days. If otherwise eligible, TBI Waiver is approved December 7, 2012.

EXAMPLE: Mr. J. enters a nursing facility in October 2011 and applies for Long-Term Care Services. He has a transfer penalty of 1.17 months. The whole month penalty is applied for October 2011 and the partial month penalty of \$987 is added to his November 2011 contribution for his cost of care. He is approved for TBI Waiver and will return to his home on November 1, 2011. The partial month penalty is recalculated into days for November 2011. TBI Waiver is approved November 6, 2011.