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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, certain asset-related denials of LTC Services are subject to Waiver due to the Undue Hardship Provision. 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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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 a denial of payment for LTC Services is due to one or more of the following asset policies, (1) excessive home equity, (2) transfer to a non-permissible trust, and/or (3) a transfer of asset penalty and results in depriving the individual of medical care to the extent that the individual's health or life would be endangered, or his food, clothing, shelter or other necessities of life are at severe risk.

When the Worker determines the individual is *otherwise* eligible for LTC Services but for one or more of the asset policies listed above to which an undue hardship provision applies, he is given at the time of the eligibility decision the DFA-FH-1 and the DFA-NL-UH-1 which provides him the opportunity to request a Waiver of the denial due to undue hardship. The individual, his representative or a nursing facility staff member with the client's permission, can apply for this Waiver.

The DFA-UH-5 must be attached to the DFA-NL-UH-1. The DFA-UH-5 is the application that must be completed and returned to the Worker within 13 days of notice of the eligibility decision. Upon receipt, the Worker immediately forwards it via mail, electronic mail or fax to the DFA Policy Unit for distribution to the Undue Hardship Waiver Committee. The DFA-UH-5 must include a signature of the individual for whom the Waiver is filed when the LTC facility is

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completing the Request. It must include an explanation of any efforts made to resolve the asset issue that resulted in the LTC Services denial. Documentation that supports these attempts must be attached. Details regarding the individual's undue hardship must be explained. If the DFA-UH-5 is not returned complete and timely, no additional notice occurs and the negative eligibility decision and any penalty applied remains.

An individual that resides in a facility and requests an Undue Hardship Waiver is eligible for payment of up to 30 bed-hold days from the date the DFA-UH-5 is received by the DFA Policy Unit through when a decision is made by the Committee. The Committee has 60 days to make a decision concerning the Waiver request. Denial of payment of LTC Services due to excessive home equity is not subject to payment of bed-hold days. If the Request is not appropriate for the Committee, it is returned to the local office that made the eligibility decision. The individual is notified of the Committee's decision via form DFA-NL-UH-2. The Committee forwards the DFA-NL-UH-2 to the individual, with a copy to the Supervisor and Worker. The decision of the Committee to deny the Request can be overturned by a State Hearings Officer, therefore a DFA-FH-1 is sent. The local office must notify the DFA Economic Services Policy Unit when a Hearing Request regarding the Committee's decision is received. The Regional Attorney is also advised. A member of the Committee will be available, via telephone to participate in a Fair Hearing regarding the denial of the DFA-UH-5, but not to discuss the ineligibility for LTC Services for reasons other than those related to excessive home equity, trust, and/or transfer issues.

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

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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.

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.

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.

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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.

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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about resource transfers and is told about the refusal of the inheritance. This is a transfer of resources. A penalty period is determined to be 12 months. Mr. J continues to serve his 10-month penalty. The other penalty period begins the month after the 10-month period ends. His second penalty lasts 6 months (½ of the 12-month period for his wife's transfer of their resource). Mrs. J receives a 6-month penalty period which begins the month she is otherwise eligible to receive an institutional level of care.

If the penalty period is not equally divisible, the extra month in the penalty period is assigned to the spouse who actually transferred the resource.

When the penalty period is divided between spouses, the total penalty period applied to both spouses must not exceed the total penalty which remained at the time the penalty was divided.

When, for any reason, one spouse is no longer subject to a penalty, such as, when the spouse no longer receives nursing facility services, or dies, the penalty period which was remaining for both spouses must be served by the remaining spouse.

a. Application of the Penalty

The only penalty for transferring resources is total ineligibility for nursing facility, ICF/MR and Home and Community Based Waiver care. The client is approved, if otherwise eligible, for any other applicable Medicaid coverage group.

C. HOMESTEAD PROPERTY EXCLUSION

A nursing facility resident is entitled to an exclusion of their homestead as a countable asset as long as he has intent to return to his homestead when/if discharged. It is not necessary that the client be medically able to return home to apply the exclusion. It is totally based on the client's intended actions not whether he has the ability. The property to which the person intends to return must be the principal place of residence in which he resided before he went into the nursing home. See Section 11.1 for the definition of Principal Place of Residence. 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. When the client does not have intent to return due to domestic abuse, see Section 11.4.

The homestead property need not be in West Virginia. The homestead exclusion applies, regardless of the state in which it is located. The client's expressed

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intent to return to the homestead property does not necessarily affect his West Virginia residency. See Chapter 8 for residency details.

When the client's spouse or dependent relative resides in the primary residence, the homestead property remains excluded, regardless of the client's intent to return. 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: child, stepchild or grandchild; parent, stepparent or grandparent; aunt, uncle, niece or nephew; brother or sister, including relations of the step or half; cousin or in-law.

When the home is rented or vacant this has no bearing on the homestead exclusion, however, when the individual places his home on the market, intent to return no longer exists and home is not excluded.

When the client is incapable of indicating his intent, his Committee, legal representative or the person handling his financial matters will make the determination. The Worker must record the client's statement or 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.

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 the current maximum allowable amount, he is ineligible for Medicaid payment for nursing home care or waiver services, unless his spouse, child under 21 or disabled adult child resides in the home. Denial of LTC Services due to excessive home equity is subject to the Undue Hardship Waiver Provision. See Chapter 11, Section 11.1 for the definition and current amount.

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,

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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 number 6 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.