

Long Term Care

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- The individual disclosed to the State any interest the individual or his spouse has in any annuity;
- The State is named as the remainder beneficiary, or as the second remainder beneficiary after a community spouse or minor or disabled adult child, for an amount at least equal to the amount of Medicaid benefits provided when the annuity is purchased by an applicant or spouse;

If the annuity does not meet all stated requirements above, the full purchase value is considered the amount of the transfer.

In order for an annuity to be 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. If the individual is not reasonably expected to live longer than the guarantee period of the annuity, the individual will not receive FMV. The annuity is not, then, actuarially sound and a transfer of resources for less than FMV has taken place.

NOTE: For annuities purchased prior to 2/8/06, the penalty is considered to have occurred at the time the annuity was purchased. Only the amount that is not actuarially sound is treated as an uncompensated transfer. Period Life Tables in Appendix G of this chapter are used for annuities purchased on or after 2/8/06.

EXAMPLE: A 65-year-old man purchases a \$10,000 irrevocable, non-assignable annuity on 7/28/08 which is to be paid over 10 years in equal payment amounts and names the State of WV as the second remainder beneficiary after his disabled son. His life expectancy, according to Appendix G, is 16.05 years. The annuity is irrevocable, non-assignable, actuarially sound, provides equal payment amounts and the state is named as a secondary remainder beneficiary. No transfer of resources has taken place.

EXAMPLE: An 80-year-old man purchases a \$10,000 annuity on January 1, 2006 to be paid over 10 years. According to Appendix E, his life expectancy is only 6.98 years. Therefore, the amount which will be paid out by the annuity for 3.02 years is considered an uncompensated transfer of resources.

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EXAMPLE: A 60-year old woman purchases an annuity on 3/13/07 which is to be paid over 10 years with a balloon payment in the 10th year. The annuity **names the State as the remainder beneficiary and** is considered an uncompensated transfer of resources since it does not provide for equal monthly payments.

EXAMPLE: A 65-year old woman retired from a company on 12/31/07 with an annuity that was purchased by the employer as part of her bona fide retirement plan. The annuity is not considered an uncompensated transfer of resources since it was purchased on her behalf as part of her bona fide retirement plan.

b. Annuity-Related Transactions Other Than Purchases

(1) Transactions Subject to Penalty

Certain annuity-related transactions, which occur on or after March 1, 2009, are subject to a transfer penalty. These transactions include any action taken by the

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individual that changes the course of payments to be made by the annuity or the treatment of the income or principal of the annuity. These actions include but are not limited to,

- Additions of principal,
- Elective withdrawals,
- Requests to change the distribution of the annuity,
- Elections to annuitize the contract and other similar transactions.

When these transactions occur a transfer penalty is applied.

(2) Transactions Not Subject to Penalty

Annuities purchased prior to March 1, 2009 which experience routine events and automatic changes that do not require any action or decision by the individual after March 1, 2009 are not subject to a transfer penalty. Routine changes include notification of an address change, death or divorce of a remainder beneficiary and other similar circumstances. Automatic changes are based on the terms of annuity which existed prior to March 1, 2009, and which do not require a decision, election or action by the individual to take affect. Changes beyond the individual's control, such as a change in law, a change in the policies of the issuer, or a change in the terms based on other factors, such as the issuer's economic condition, are not considered transactions that result in imposition of a transfer penalty.

NOTE: Annuities and annuity-related transactions that are not subject to a penalty are still subject to applicable income and/or asset policies.

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NOTE: Multiple penalties can be applied to the same annuity under certain circumstances.

EXAMPLE: A 60-year old woman served a six month penalty period because the annuity did **not** provide equal monthly payments. She became eligible for LTC services payments, but 3 months later she made an elective withdrawal from the annuity. Another transfer of resources occurred and a penalty is applied.

8. Transfer To Purchase A Promissory Note, Loan Or Mortgage

Any purchase of a note, or any loan or mortgage is treated as an uncompensated transfer unless all of the following criteria are met:

- The repayment terms must be actuarially sound, based on the Period Life Table found in Appendix G; and
- Payments must be made in equal amounts during the term of the loan, with no payment deferrals or balloon payments; and
- The note, loan or mortgage must prohibit cancellation of the debt upon the death of the lender.

If all of the criteria listed above are not met, the loan is treated as a transfer of resources. The amount of the transfer is the entire outstanding balance due on the loan as of the month of application for Medicaid long-term care services.

9. Treatment Of The Transfer Of A Stream Of Income Or The Right To A Stream Of Income

When the client fails to take action necessary to receive income or transfers the right to receive income to someone else for less than CMV, the transfer of resources penalty is applied. The Worker must:

Step 1: Verify the amount of potential annual income.

Step 2: Using the client's age as of his last birthday, determine the Remainder Interest Value in Appendix B.

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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 \$5,087 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 Section 17.10,B,11,b for instructions about how to determine and apply partial month penalties.**

10. 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.

11. 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, and
- Home and Community Based Waiver services.

The client may remain eligible for Medicaid, but 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. 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 March 2009. The individual transferred \$50,000 in April 2007. Based on the average

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- Step 1: The total amount transferred is divided by the State's average monthly nursing facility private pay rate of \$5,087.
- Step 2: Multiple the number of whole months from Step 1 by the average private pay rate of \$5,087.
- 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
	<u>÷ 5,087</u>	State's average monthly nursing facility private pay rate
	4.8	Number of months for penalty period
Step 2:	\$ 5,087	State's average monthly nursing facility private pay rate
	<u>x 4</u>	Whole months in penalty period
	\$20,348	
Step 3:	\$24,534	Total uncompensated transfer amount
	<u>- 20,348</u>	Amount for 4 whole months in penalty period
	\$ 4,186	Partial month's penalty amount

If the individual applies in March and is otherwise eligible, the penalty period runs for 4 full months from March through June, with a partial month's penalty calculated for July of \$4,186. The partial month's penalty amount of \$4,186 is added to the calculated July contribution for his cost of care. If the individual had a \$500 monthly contribution, he is required to pay \$4,686 for the cost of care in July.

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.

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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.

EXAMPLE 2: Mr. J is in a nursing facility and applies for Medicaid. Two months before his application he transferred resources to become eligible for Medicaid and a 10-month penalty begins. Two months into the penalty, Mrs. J refuses an inheritance left to both of them because she is afraid it will adversely affect his future eligibility for nursing care coverage. The next month, Mrs. J becomes eligible for HCB waiver services. The Worker inquires

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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. 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 \$500,000, 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.

NURSING FACILITY SERVICES**17.11 ESTABLISHING MEDICAID CATEGORICAL RELATEDNESS AND THE MEDICAL NECESSITY FOR NURSING FACILITY CARE****A. ESTABLISHING MEDICAID CATEGORICAL RELATEDNESS**

When the applicant for nursing facility services is not a recipient of Medicaid under a full Medicaid coverage group, categorical Medicaid eligibility, as well as financial eligibility, must be established.

Incapacity, disability or blindness, when not already established by the receipt of RSDI or Railroad Retirement benefits based on disability, must be established by MRT.

All procedures in Chapter 12 for a MRT referral for the appropriate coverage group are applicable, and a presumptive approval may be made according to the guidelines in that Chapter.

NOTE: The PAS does not establish incapacity or disability. However, a copy of the PAS may be submitted to MRT as medical information.

B. ESTABLISHING MEDICAL NECESSITY, THE PAS**1. When The PAS Is Completed**

Before payment for nursing facility services can be made, medical necessity must be established. The PAS is used for this purpose. The PAS is signed by a physician and is evaluated by a medical professional of the State's contracted level of care evaluator. The PAS is valid for 60 days from the date the physician signs the form. The 60-day validity period applies, regardless of the reason for completion, i.e., new admission, transfer to a different facility. See item C below for situations when a PAS is not completed and payment for nursing facility care is requested for a prior period.

NOTE: There is no requirement that the name of the facility in which the individual resides appear on the PAS.

NOTE: The date the PAS is completed for the purpose of establishing medical necessity is the date the physician signs the form, not the date of any other determination made using the PAS.