

**NURSING FACILITY SERVICES****17.10 ASSETS**

A nursing care client must meet the asset test for his eligibility coverage group. The asset level for those eligible by having income equal to or less than 300% of the monthly SSI payment for an individual is the same as for an SSI-Related Medicaid eligible. When both spouses are institutionalized and apply for nursing facility services, the SSI-Related Medicaid asset limit for a couple is used to determine eligibility. An asset assessment is not completed when both spouses are institutionalized. See Chapter 11 for the asset limit of the appropriate coverage group.

Once the Worker determines the value of the assets, an Asset Assessment, described in item A below, is completed when an institutionalized person has a spouse in the community.

**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.

**A. ASSET ASSESSMENTS**

**NOTE:** A legally married individual and his spouse, although separated, are treated as a couple for the Asset Assessment, regardless of the length of the separation.

When determining eligibility for nursing facility services for an individual, institutionalized on or after 9/30/89, and who has a community spouse, the Worker must complete an assessment of the couple's combined countable assets. The assessment is completed, when requested by the client or his representative, prior to application, or at application, if not previously completed. It is completed as of the first continuous period of institutionalization and is completed one time only. The first continuous period of institutionalization is the date the client first enters the nursing facility and remains for at least 30 days or is reasonably expected to remain for 30 days at the time the individual enters the facility. The spousal limits in effect at the time the assessment is completed are used.

The assessment is completed on form IM-NL-AC-1 or in RAPIDS. See the RAPIDS User Guide. The purpose of the Asset Assessment is to allow the spouse of an institutionalized individual to retain a reasonable portion of the couple's assets and to prevent the impoverishment of the community spouse.

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When requested, the Worker must advise the individual(s) of the documentation required for the assessment. Verification of ownership and the FMV must be provided. When it is not provided, the assessment is not completed.

The Worker documents the total value of all non-excluded assets.

Nursing facilities are required to advise all new admissions and their families that an Asset Assessment is available upon request from the local office. The

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agency has developed a statement concerning the availability of asset assessments. Nursing facilities provide this "Patient's Bill of Rights" as part of their admission package. See Appendix C.

## 1. Calculation Of The Spouses' Shares

The spouses' shares are computed as follows:

- Step 1: Determine the FMV of the couple's combined countable assets, as of the beginning of the first continuous period of institutionalization.
- Step 2: Compare the amount from Step 1 to \$21,912. If the Step 1 amount is equal to or less than \$21,912, all assets are attributed to the community spouse. If not, go to Step 3.
- Step 3: Divide the Step 1 amount by 2 and compare to \$21,912. If one-half of the Step 1 amount is equal to or less than \$21,912, the community spouse is attributed \$21,912 and the remainder belongs to the institutionalized spouse. If not, go to Step 4.
- Step 4: When one-half of the Step 1 amount is greater than \$21,912, one-half of the total assets (Step 1 amount) is attributed to the community spouse, not to exceed \$109,560.
- Step 5: The amount not attributed to the community spouse is attributed to the institutionalized spouse.

If an application for nursing facility services is not made when the assessment is completed, the spouse retains the amount attributed to him at the assessment, regardless of the couple's combined assets at the time of application.

## 2. Notification Requirements

When the assessment is complete, the Worker must provide each member of the couple with a copy of the RAPIDS asset assessment or the IM-NL-AC-1. A copy of the IM-NL-AC-1 is retained in the case record. See item 7 below for the RAPIDS asset assessment.

The Worker must also notify the community spouse using form ES-NL-D or RAPIDS form AEL3 that the assessment may not be appealed until a Medicaid application is made.

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## 3. Revisions To The Asset Assessment

The asset assessment may be revised when the client, his spouse, the Hearings Officer or the Worker determine, with supporting documentation, that the initial determination was incorrect or based on incorrect information.

## 4. Additional Asset Exclusions For Institutionalized Spouses

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, when denial of Medicaid eligibility will work an undue hardship, his assets may be excluded. 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 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 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:

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- 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
- The institutionalized spouse intends to transfer the new asset(s) to the community spouse who has assets below the previously determined spousal amount. To exclude the additional asset(s), the institutionalized spouse or his representative must promptly report receipt of the new asset(s) and provide the Worker with a written statement that he intends to transfer the new asset(s) to the community spouse within 90 days.
- The assets of the community spouse may still not exceed the amount determined in the previous Asset Assessment. This criteria would come into play when another asset of equal or greater value than the additional one(s) is no longer owned.

## 7. RAPIDS System Entry

When an asset assessment is completed, the Worker must enter the results in RAPIDS. See the RAPIDS User Guide for instructions.

**NOTE:** Prior to RAPIDS conversion, asset assessments were entered in the SAS system and may be viewed in that system. No SAS entries were made after 12/19/97.

## B. TRANSFER OF RESOURCES

Four policies dealing with the transfer of assets and/or income are addressed in this Chapter. The current policy is detailed below. The others are contained in Appendix A. They are:

- Transfers made on or before June 30, 1988
- Transfers made after June 30, 1988
- Transfers made on or after July 1, 1988 when application for Medicaid eligibility for nursing facility services, ICF/MR Services or the HCB Waiver is made
- Transfers made on or after 8/11/93

The following policy is used for transfers of resources made on or after 2/8/06.

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## 1. Definitions

For purposes of this item (item B.), the following definitions apply.

- Fair Market Value (FMV): An estimate of the value of a resource, if sold at the prevailing price at the time it was actually transferred.

For a resource to be considered transferred for FMV, or to be considered transferred for valuable consideration, the compensation received for the resource must be in a tangible form, with intrinsic value. A transfer for love and consideration, for example, is not considered a transfer for FMV. Also, while relatives and family members legitimately can be paid for care they provide to the individual, it is presumed that services provided for free, at the time, were intended to be provided without compensation. Therefore, a transfer to a relative for care provided in the past normally is not a transfer of assets for FMV. However, an individual may rebut this presumption.

- For the Sole Benefit Of: A transfer is considered to be for the sole benefit of a spouse, disabled child, or a disabled individual under age 65, if the transfer is arranged in such a way that no individual, except the spouse, child or individual, can benefit from the transferred asset(s) in any way, either at the time of the transfer, or at any time in the future, except as provided below. The agreement must be in writing.

Similarly, a trust is considered to be established for the sole benefit of one of these individuals if the trust benefits no one but the individual, either at the time of the establishment of the trust, or any time in the future, except as provided below. However, the trust may provide for reasonable compensation for a trustee to manage the trust, as well as for reasonable costs associated with investing or otherwise managing the funds or property in the trust. In defining reasonable compensation, consider the amount of time and effort involved in managing a trust of the size involved, as well as the prevailing rate of compensation, if any, for managing a trust of similar size and complexity.

If a beneficiary is named to receive the funds remaining in a trust upon the individual's death, the transfer is considered made for the sole benefit of the individual if the Department is named as the

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primary beneficiary for up to the amount paid for services to the individual. The designated beneficiary receives any remaining amount.

- Institutionalized Individual: An individual who is an inpatient in a nursing facility, or who is an inpatient in a medical institution, and for whom payment is made for a level of care provided in a nursing facility, or who is a Home and Community-Based waiver participant. For purposes of this section, a medical institution includes an ICF/MR.
- Look-Back Date: The look-back date is the earliest date for which a penalty for transferring resources for less than FMV can be applied. Penalties can only be applied for transfers which take place based on the appropriate look-back date.

When an individual applies for Medicaid more than once (e.g., he applies and is denied due to excess assets and applies again later), the look-back date is based on the first date on which the individual had both applied for Medicaid and been institutionalized.

- Resources: For purposes of this item (item B.), resources includes all income and assets of the individual and of his spouse that are counted for SSI-Related Medicaid purposes. This includes some income or assets which the individual or the spouse is entitled to, but does not receive, because of any action or inaction by
  - The individual or his spouse;
  - A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or
  - Any person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

Resources to which an individual or spouse is entitled includes resources to which the individual is actually entitled, or would be entitled if action had not been taken to avoid receiving the resources.

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Examples of actions which cause income or assets not to be received are:

- Irrevocably waiving pension income
- Waiving an inheritance
- Not accepting or accessing injury settlements
- Settlements which are diverted by the defendant into a trust or similar device to be held for the benefit of the plaintiff
- Refusal to take legal action to obtain a court-ordered payment that is not being paid, such as child support or alimony

2. Effective Date

This policy does not apply to assets disposed of before February 8, 2006; and applies to payments made for institutional care on or after March 1, 2009. See Appendix A for transfers and payments prior to these dates.

3. Look-Back Period

The length of time for which the Worker looks back for any resource transfers is the same whether or not a trust fund was involved.

a. Trust Amounts Treated As Uncompensated Transfers

The look-back period is 60 months for amounts in revocable or irrevocable trusts that are considered transferred. The time period begins the month the client is both institutionalized and has applied for Medicaid. See Chapter 11.

b. Other Transfers

The look-back period is 60 months for transfers on or after 2/8/06. The time period begins the month the client is both institutionalized and has applied for Medicaid. See Appendix A for transfers prior to 2/8/06.

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## 4. Permissible Transfers

The following transfers do not result in a penalty for transferring resources.

## a. Transfer of the Home

When the client transfers his home as follows, no penalty is applied:

- To the client's spouse
- To the client's minor child (under age 21)
- To the client's disabled child. The SSA definition of disability is used. Therefore, any person medically approved for or receiving disability-based RSDI and/or disability-based SSI meets the definition, as well as persons who are determined disabled by MRT. If no disability determination has been made, the case must be submitted for a MRT decision.
- To the client's sibling who has an equity interest in the home and who resided in the home for at least one year immediately prior to the client's institutionalization.
- To the client's child(ren) who was residing in the home for at least two years immediately prior to the client's institutionalization and who provided care to the individual which allowed him to remain at home rather than being institutionalized.

## b. Transfer from the Economic Stimulus Tax Rebate for 2007

When the client transfers funds from this Rebate for less than fair market value during the 3-month exclusion period, there is no transfer penalty.

**EXAMPLE:** A client receives a \$600 Rebate in August 2008. Transfers can occur through October 2008 without penalty.

## c. Transfers from American Recovery and Reinvestment Act of 2009 (ARRA) One-Time Payments and Tax Credits/Refunds

American Recovery and Reinvestment Act of 2009 (ARRA) One Time Payments and Tax Credits/Refunds are excluded as transfers as follows:

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- The one-time \$250 payment issued to recipients of RSDI, SSI, Railroad Retirement and VA disability pensions and compensation is excluded as an asset for 9 months following the month of receipt. No penalty is imposed for amounts transferred during the 9-month exclusion period. After that time, transfers may result in a penalty.
- Tax credits/refunds paid under Section 1001 and Section 2202 of ARRA 2009 are excluded for 2 months following the month of receipt. No penalty is imposed for amounts transferred during the 2-month exclusion period. After that time, transfers may result in a penalty.

## d. Other Transfers

When the client transfers resources other than his home, as follows, no penalty is applied:

- To the client's spouse or to another person for the sole benefit of the client's spouse
- From the client's spouse to another person for the sole benefit of the client's spouse
- To the client's disabled child. See definition of disabled above in item a.

## e. Transfer to a Trust

When the client or his spouse transfers resources to a trust that is excluded from consideration as an asset, no penalty is applied. See Chapter 11.

## f. Transferred Resources Returned

When all assets transferred for less than FMV have been returned to the client, no penalty is applied. However, if a penalty has already been applied, a retroactive adjustment back to the beginning of the penalty period is required. The client is not necessarily asset-eligible once the resources are returned.

If part of such assets are returned, the penalty period is adjusted accordingly.

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- g. Client Intended Fair Market Return or Other Valuable Consideration
- When the client or his spouse can demonstrate that he intended to dispose of the resource for FMV or for other valuable consideration, no penalty is applied.
- h. Transfer Was Not to Qualify for Medicaid
- When the resources were transferred exclusively for a purpose other than to qualify for Medicaid, no penalty is applied.
- i. Denial Would Result in Undue Hardship
- An undue hardship may exist when application of some aspects of the asset policy, the trust policy, a transfer of resources or excess home equity result in denial of payment for Long Term Care services for an applicant or recipient.

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The Worker uses form DFA-NL-UH-1 when the denial of payment for Long Term Care services is due to any of these reasons.

An undue hardship exists when the denial of eligibility for Long Term Care services results in denial of necessary medical care, such that the individual's health or life would be endangered, or would result in loss of food, clothing, permanent residence and other necessities of life.

Any requests for such a determination must be submitted in writing on form DFA-UH-5 by the individual or authorized representative or by the facility on behalf of the individual, with the approval of the individual or the individual's authorized representative. The DFA-UH-5 form must be returned to the Worker within 13 days of the individual's receipt of the DFA-NL-UH-1 and notice of denial due to some aspect of the asset policy, the trust policy, a transfer of resources or excess home equity. The Worker must forward this form to the Policy Unit immediately upon receipt.

An individual that resides in a facility and requests an Undue Hardship Waiver is eligible for payment up to 30 bed hold days while a decision is pending by the committee. When Undue Hardship is established, no penalty is applied. Undue hardship determinations are made by the Undue Hardship Waiver Committee, which consists of BMS and DFA Policy Unit representatives, within 30 days of receipt. The individual is notified of the decision with form DFA-NL-UH-2. The committee forwards the DFA-NL-UH-2 to the individual, with a copy to the Worker. If the Undue Hardship request is denied by the committee, the individual may request a hearing before a State Hearings Officer. See Notification Requirements in Section 17.6 and Section 11.1 for the definition of Undue Hardship.

**NOTE:** Bed hold days related to Undue Hardship Waiver requests are days that are paid for the individual to remain in the facility during the decision-making process, not to exceed 30 days. The decision-making process begins when the Policy Unit receives a valid DFA-UH-5 form and ends when a decision is rendered.

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

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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 a penalty.

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

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 \$5,087. 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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## b. Purchase of a Life Estate

The purchase a life estate interest in another individual's home is treated as an uncompensated transfer, unless the individual who purchased the life estate interest resides in the home for at least 1 year after the purchase. The amount of the transfer is the entire amount used to purchase the life estate.

See Section 11.4,HH,4 to determine the value of the life estate.

## 7. Transfer To Purchase An Annuity

See Section 11.4,B for annuities as an asset.

## a. Annuity-Related Transfers

**NOTE:** This requirement does not apply to revocable or assignable annuities since these can be cancelled and funds used to purchase the annuity can be refunded.

## (1) Institutional Spouse is Annuitant

Establishment of an annuity is treated as a transfer of resources, unless the annuity meets the following criteria:

- 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/recipient or spouse;
- The annuity was purchased by or on behalf of the individual and one of the following applies.
  - The annuity is considered either:
    - An individual retirement annuity (according to Section 408 (b) of the Internal Revenue Code of 1986 (IRC); or

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- A deemed Individual Retirement Account (IRA) under a qualified employer plan (according to Section 408§ of the IRC).

OR

- The annuity is purchased with proceeds from one of the following:
  - A traditional IRA (IRC Section 408a); or
  - Certain account or trusts which are treated as traditional IRAs (IRC Section 408§(c)); or
  - A simplified retirement account (IRC Section 408 § (p)); or
  - A simplified employee pension (IRC Section 408 § (k)); or
  - A ROTH IRA (IRC Section 408A).

OR

- The annuity meets all of the following requirements:
  - The annuity is irrevocable and non-assignable; and
  - The annuity is actuarially sound; and
  - The annuity provides payments in approximately equal amounts, with no deferred or balloon payments.

## (2) Community Spouse Is Annuitant

Establishment of an annuity is treated as a transfer of resources, unless the annuity meets the following criteria:

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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 10<sup>th</sup> 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.

See Section 11.4, items X, AA and II to determine if the loan, mortgage / land sale contract or promissory note is an asset.

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.

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.

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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private pay nursing facility rate of \$5,087 a month, the penalty is 9 whole months, beginning March 2009 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 \$4,217 is imposed for December 2009. 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 2009 and applies for Medicaid in April 2009 with a request for backdated coverage to January 2009. The individual transferred \$19,000 in January 2009, \$19,000 in February 2009 and \$19,000 in March 2009. 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 \$5,087. The penalty period is 11 whole months, beginning in January 2009, because the individual requested backdated coverage to January 2009, 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 December 2009 of \$1,043 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 13-month penalty beginning January 2009 through January 2010 with a partial month's penalty of \$3,869 for February 2010. In October 2009, 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 \$1,413. The new penalty begins March 2010.

**EXAMPLE:** An individual approved for and receiving institutional level of care services receives an inheritance of \$100,000 in late February 2009 and gives the money to his grandson. Advance notice of the transfer penalty is sent in March and the penalty period begins April 1, 2009.

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 \$169.57/day or \$5,087/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 \$5,087.
- 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
	÷ 5,087	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
	x 4	Whole months in penalty period
	\$20,348	
Step 3:	\$24,534	Total uncompensated transfer amount
	- 20,348	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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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 ( $\frac{1}{2}$  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.

d. 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

When a nursing facility resident indicates his intention to return to his homestead property when/if discharged, the homestead property is excluded as an asset. The property to which the person intends to return must be the principal place of residence in which he resided. See definition of Principal Place of Residence in Section 11.1. If the client is incapable of indicating his intent, his Committee, legal representative or the person handling his financial matters will make the determination on his behalf. When the client's spouse or dependent relative resides there, the homestead property remains excluded, regardless of the client's intent to return.

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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.