Transfer of Assets

A. For uncompensated transfers occurring on or after February 8, 2006 the agency denies Medicaid payment of long-term care services:

1. Look-back period for transfers. An applicant is denied or a recipient terminated from coverage of Medicaid long-term care services if the person or the person's spouse, or any person or entity legally authorized to act on behalf of either one, at any time during the designated look-back period immediately prior to the date the individual requests Medicaid payment of long-term care services, or at any time during the individual's receipt of Medicaid long-term care services, disposes of assets on or after February 8, 2006 for less than fair market value.

The designated look-back period is 60 months. This period will be phased in so that in February 2011 the look-back period for individuals requesting coverage of long-term care services will be a full 60 months.

Long-term care services have the meaning given them in item B below.

Allowable transfers have the meaning given them in item B below.

2. Penalty period start date. The penalty period for uncompensated transfers made on or after February 8, 2006 begins (a) for uncompensated transfers by or on behalf of individuals receiving Medicaid payment for long-term care services, the first day of the month following advance notice of the penalty period, but no later than the first day of the month that follows three full calendar months from the date of the report or discovery of the transfer; or (b) for uncompensated transfers by individuals requesting Medicaid payment of long-term care services the date on which the person is eligible for medical assistance under the State plan and would receive institutional level long-term care services but for the imposition of the penalty period; and (c) cannot begin during the running of any other period of ineligibility for uncompensated transfers.

3. Calculation of the penalty period. In determining the penalty period for an individual who has requested Medicaid payment of long-term care services, the agency uses the statewide average Medicaid rate for nursing facilities in effect at the time of filing a request for Medicaid payment of long-term care services. The statewide average figure is updated annually on July 1.

4. Transfer amounts of less than the monthly cost of nursing facility care. When the amount of an uncompensated transfer or the amount in the last month of a penalty period is less than the amount of the statewide average Medicaid rate for nursing facilities, the agency imposes a penalty for less than a full month.

The agency aggregates all uncompensated transfer amounts that are less than the statewide average Medicaid rate for nursing facilities, and calculates a single penalty period.

5. **Penalty period when both spouses request long-term care services**. The agency applies the penalty period to both spouses as described in item B below.

6. **Procedures for a waiver for undue hardship**. Individuals assessed a penalty period for uncompensated transfers are notified of the right to request a waiver for undue hardship in the notice of the penalty period. The county agency makes a decision within 30 days of the request if all necessary information has been provided, and grants an extension if more time is needed to provide information. The county agency sends the individual and the individual's representative a written notice of decision on the request for an undue hardship waiver that also advises the client of appeal rights under the fair hearing process of 42 CFR §431.200~~435.210~~ *et seq.*

The agency applies the criteria for undue hardship in item B below.

7. Bed hold waivers. The agency does not provide for payments to the nursing facility to hold the bed for an individual requesting a waiver of the penalty period based on undue hardship.

8. Non-institutionalized. The agency does not apply these provisions to non-institutionalized individuals within the meaning of §1917(c)(1)(C)(ii).

9. Uncompensated transfers. The following are treated as assets disposed of for less than fair market value for purposes of a request for Medicaid payment of long-term care services:

(a) A purchase of or transaction on an annuity that is an interest of the person or the person's spouse unless the state is named a preferred remainder beneficiary.
(b) The purchase of or transaction on an annuity interest in which the person requesting or receiving Medicaid payment of long-term care services is the annuitant, unless the annuity meets the criteria in §1917(c)(1)(G), and if required, the state is named a preferred remainder beneficiary.
(c) The purchase on or after July 1, 2006 of a note, loan or mortgage, unless the repayment term is actuarially sound, the repayment agreement provides for monthly payments in equal amounts of principal and interest with no deferral and no balloon payment and that prohibits cancellation upon the death of the lender.
(d) The purchase on or after July 1, 2006 of a life estate interest in the home of another unless the purchaser resides in the home for a continuous period of one year from the date of purchase.

10. **Eliminating a Penalty Period Established on or after January 1, 2011**: A penalty period cannot be shortened by a partial return of assets used in the calculation of the penalty period. A penalty period can be eliminated only if the transferors have all assets that were included in the calculation of the penalty period returned to them. An asset will not be considered returned unless the value of the asset at the time of return is no less than the asset's value on the date of the transfer. A transferee, or joint transferees, of an asset received in a form other than cash may return the value of the asset in cash if the return is made in an amount equal to the value of the asset on the date of the transfer.

B. For uncompensated transfers occurring on or after August 11, 1993:

Ineligibility for long term care services. A period of ineligibility for Medicaid payment for long term care services is provided for any institutionalized individual (including an individual receiving home and community based services under §1915(c) of the Act) who, or whose spouse or any person or entity legally authorized to act on behalf of either of them, at any time during or after the designated look-back period immediately prior to the date the individual is both an institutionalized individual and has applied for or is receiving Medicaid, disposeds of assets for less than fair market value, unless those assets were disposed of in one of the following manners:

Allowable Transfers.

- The client or the client's spouse transfers excluded assets other than a homestead or other real property.
- The client or the client's spouse transfers non-excluded assets or a homestead and provides convincing evidence of intent to receive fair market value.
- The client or the client's spouse transfers non-excluded assets or a homestead and provides convincing evidence to show the purpose of the transfer was not to obtain or maintain Medicaid. Preservation of the estate for heirs is not acceptable as "another purpose". Convincing evidence would have to show that the individual or spouse had no reason to believe that Medicaid might be needed. The sudden loss of income or assets, the sudden onset of a disabling condition or personal injury may provide convincing evidence.
- If the client entered long term care prior to October 1, 1989, the client transferred assets to a spouse in accordance with the inter-spousal transfer policies applicable to transfers occurring prior to July 1, 1988; or if the client entered long term care on or after October 1, 1989, the client transferred assets to a spouse as specified in § 1924 of the Act.
- The client or the client's spouse transferred assets to a representative of the spouse, provided the transferred assets are to be used for the sole benefit of the client's spouse.

- The client or the client's spouse transferred non-excluded assets or a homestead to his or her child of any age who is blind or permanently and totally disabled.
- The client transferred a homestead to a spouse.
- The client or the client's spouse transferred a homestead to his or her:

  (a) Child under age 21.
  (b) Child of any age who lived in the home for at least 2 years before the client entered the long term care facility and who provided verifiable care (physician's statement of needed care) that helped the client remain at home rather than in a facility.
  (c) Sibling who has equity interest in the home and who lived in the home at least 1 year immediately before the client entered the long term care facility.

  When the transfer of a homestead is exempt from penalty, it may be transferred while occupied or while vacant. It does not have to be the primary residence of the person receiving the transferred homestead.

- The client or the client's spouse transfers assets into a trust established solely for a son or a daughter of any age who is blind or disabled.
- The client or the client's spouse transfers assets into a trust established solely for any disabled person under age 65.

Long term care services defined. The term "long term care services" means nursing facility services (including those provided in a swing-bed of an inpatient hospital), ICF/MR services, and §1915(c) home and community based services.

Designated look-back period. The look-back period for transfers is 36 months, except for transfers into and from trusts which cannot be paid to or for the benefit of the Individual under any circumstances, for which the look-back period is 60 months.

Period of ineligibility. The period of ineligibility for long term care services is calculated by dividing the total uncompensated transfer amount by the statewide average monthly Medicaid rate for nursing facility (NF) services in effect on the date of filing a request for Medicaid payment of long-term care services. The average NF rate is adjusted annually on July 1 to reflect the payment rate for the previous calendar year. The period of ineligibility begins the month following the month in which the transfer occurred if no other transfers are made during the running of that penalty period. When transfers made in one or more months would result in overlapping penalty periods if the transfers were calculated separately, or if the uncompensated transfers in amounts less than the average NF rate are made during such overlapping penalty periods, the values of

all the uncompensated assets transferred are added together and an ineligibility period is recalculated. The period of ineligibility then begins in the month following the month in which the first transfer occurred.

If an uncompensated transfer made prior to August 11, 1993 results in an ineligibility period that would overlap with an ineligibility period calculated on an uncompensated transfer made on or after August 11, 1993, the ineligibility period for the transfer made on or after August 11, 1993 begins after the first ineligibility period expires.

For uncompensated transfers occurring on or after January 1, 1994 through April 13, 1996: A period of ineligibility, including partial months, shall be based on the total uncompensated value of the assets transferred divided by the average Medicaid rate for nursing facility services in the State in effect on the date of filing a request for Medicaid payment of long-term care services. However, the ineligibility provisions described in this section shall not apply to uncompensated transfers made in a month, not included in an existing period of ineligibility, totaling $1000 or less if the total value of uncompensated transfers in a month does not exceed $1000.

For uncompensated transfers occurring on or after April 13, 1996: The ineligibility provisions described in this section shall not apply to uncompensated transfers made in a month, not included in an existing period of ineligibility, totaling $500 or less if the total value of uncompensated transfers in a month does not exceed $500.

For uncompensated transfers occurring on or after July 1, 2002: The ineligibility provisions described in this section shall not apply to uncompensated transfers made in a month, not included in an existing period of ineligibility, totaling $200 or less if the total value of uncompensated transfers in a month does not exceed $200.

Ineligibility for community spouse transfers. A period of ineligibility will also be calculated if a community spouse transfers assets without receiving adequate compensation. The period of ineligibility is applied to the institutionalized spouse unless the community spouse is also receiving Medicaid payment for long term care services, in which case the penalty is applied only to the spouse who transferred the assets.

Penalty period when both spouses request long-term care services. When both spouses are eligible for Medicaid long-term care services the agency apportions an existing penalty period between them using the method outlined below:

When both spouses apply at the same time for Medicaid payment of long-term care, the penalty period is divided equally between them. If the community spouse applies for

Medicaid payment of long-term care services during the running of a penalty period for the institutionalized spouse, the remaining penalty period is divided equally between them from the date the community spouse is eligible.

If one spouse is no longer subject to a penalty, the remaining penalty period must be served by the spouse receiving Medicaid payment of long-term care services.

Undue hardship waivers. The penalty of restricted coverage may be waived on the basis of undue hardship due to denial of medical assistance eligibility. Undue hardship must be based on an imminent threat to the client's health and well being because no other care of the person is available.

C. For transfers occurring prior to July 1, 1988:

For uncompensated transfers of non-exempt assets occurring within 24 months preceding application or while receiving Medical Assistance, a period of ineligibility for Medical Assistance shall result. The period of ineligibility is determined by dividing the uncompensated transfer amount by the statewide average payment for skilled nursing facility services for the previous calendar year.

The result, after truncating, is the number of months of ineligibility beginning with the latter of the month of transfer or the month the transfer becomes known to the agency. The value of any transferred property is added to other assets to determine if the individual is within the MA asset limit.

No individual is ineligible as determined above if:

- A satisfactory showing is made to the agency (in accordance with any regulations of the Secretary of Health and Human Services) that the individual can reasonably be expected to be discharged from the medical institution and return to the home which was transferred for less than fair market value;

- Title to the home was transferred to the individual's spouse or child who is under age 21, or is blind or permanently and totally disabled.

- A satisfactory showing is made to the agency that the individual intended to dispose of the home either at fair market value or for other value consideration; or
- The agency determines that denial of eligibility due to transfer of the homestead would work an undue hardship.

- At the time of the initial approved application, the transfer was made by an institutionalized spouse to his or her non-institutionalized spouse if all of the following conditions are met:

(1) The non-institutionalized spouse is not a Medical Assistance applicant or recipient.

(2) Either (a) the non-institutionalized spouse has less than $10,000 in countable assets, including all assets owned singly and 50 percent of assets owned jointly by both spouse; or (b) the non-institutionalized spouse has less than 60 percent of the total value of nonexempt assets owned by both spouses.

The amount transferred, together with the amount of assets described in item 2 above, total not more than one-half of the total value of the liquid assets of the parties or $10,000, whichever if greater.

(3) The non-institutionalized spouse has verified the value of his/her assets.

(4) The transfer occurs between the first of the month before the month of application and 15 days after the local agency notified the applicant of the need to reduce excess assets to gain eligibility, or the date of the local agency decision on the application, whichever is later. Transfers occurring outside of these time limits do not qualify for this exclusion.

D. For uncompensated transfers occurring since July 1, 1988:

A period of ineligibility for Medicaid payment for long term care services (including nursing facility services provided in a swingbed, institution for mental diseases, ICF/MR, Christian Science sanitoria, on an Indian reservation, or home and community based waiver services) is provided for any institutionalized individual (this includes an individual receiving home and community based services under §1915(c) of the Act) who, at any time during or after the 30-month period immediately before:

- the date the individual becomes an institutionalized individual (if the individual is entitled to Medicaid on the date of institutionalization); or

- the date the individual applies for such assistance while an institutionalized individual (if the individual was not entitled to Medicaid on the date of institutionalization), disposed of assets for less than fair market value; unless those assets were disposed of in one of the following manners:
- The client or the client's spouse transfers excluded assets other than a homestead or other real property.
- The client or the client's spouse transfers non-excluded assets or a homestead and provides convincing evidence of intent to receive fair market value.
- The client or the client's spouse transfers non-excluded assets or a homestead and

provides convincing evidence to show the purpose of the transfer was not to obtain or maintain payment of long term care services for the client. Preservation of the estate for heirs is not acceptable as "another purpose". Convincing evidence would have to show that the individual had no reason to believe that long term care services might be needed. The sudden loss of income or assets, the sudden onset of a disabling condition or personal injury may provide convincing evidence.

- If the client entered long term care prior to October 1, 1989, the client transferred assets to a spouse in accordance with the inter-spousal transfer policies applicable to transfers occurring prior to July 1, 1988; or if the client entered long term care on or after October 1, 1989, the client transferred assets to a spouse as specified in § 1924 of the Act.
- The client or the client's spouse transferred assets to a representative of the spouse, provided the transferred assets are to be used for the sole benefit of the client's spouse.
- The client or the client's spouse transferred non-excluded assets or a homestead to his or her child of any age who is blind or permanently and totally disabled.
- The client transferred a homestead to a spouse or the client or the client's spouse transferred a homestead to his or her:

    - Child under age 21
    - Child of any age who lived in the home for at least 2 years before the client entered the long term care facility and who provided verifiable care (physician's statement of needed care) that helped the client remain at home rather than in a facility.
    - Sibling who has equity interest in the home and who lived in the home at least 1 year immediately before the client entered the long term care facility.

When the transfer of a homestead is exempt from penalty, it may be transferred while occupied or while vacant. It does not have to be the primary residence of the person receiving the transferred homestead.

The penalty of restricted coverage may be waived on the basis of undue hardship due to denial of medical assistance eligibility. Undue hardship must be based on an imminent threat to the client's health and well being because no other care of the person is available.

The period of ineligibility for long term care services is calculated by dividing the total uncompensated transfer amount by the statewide average Medicaid rate for skilled nursing facility (SNF) services (nursing facility services effective October 1, 1990) in effect on the date of filing a request for Medicaid payment of long-term care services or the date the transfer becomes known to the local agency. The average rate is adjusted annually on July 1, to reflect the payment rate for the previous calendar year. The period

of ineligibility begins the month the transfer occurred. The period of ineligibility cannot exceed 30 months. If the uncompensated transfer is less than the SNF rate, eligibility for long-term care services is not affected.

If the applicant or the applicant's authorized representative, at the time of filing a request for Medicaid payment of long-term care services, failed to report a transfer of assets and the local agency is reasonably certain that the applicant or the applicant's authorized representative was aware of the transfer of assets, a cause of action exists against the person who received the transferred property if medical assistance for long term care services was received during the period of ineligibility. The Medicaid agency shall collect the lesser of:

(1) the cost of medical assistance paid for long term care services during the penalty period; or

(2) the uncompensated value of transferred property.

E. For uncompensated transfers occurring since July 1, 1990:

A period of ineligibility will also be calculated if a community spouse transfers assets without receiving adequate compensation. The period of ineligibility is applied to the institutionalized spouse unless the community spouse is also receiving long term care services, in which case the penalty is applied only to the spouse who transferred the assets.