0384 RESOURCE TRANSFERS

0384.05 LEGAL BASIS

REV:07/2006

The Omnibus Budget Reconciliation Act (OBRA) of 1993 provides a penalty for institutionalized individuals who on or after 8/11/93, transfer or have transferred assets for less than fair market value.

Asset transfers, prior to February 8, 2006, are examined for potential penalty when the transfer took place within thirty six (36) months prior to or anytime after the date the individual was both institutionalized and applied for MA. All asset transfers made on or after February 8, 2006 shall be subject to a look back period of sixty (60) months.

Under OBRA provisions, trusts and/or portions of trusts established on or after 8/11/93 are in some cases treated as a transfer of assets and subject to a penalty. Asset transfers involving a trust are examined for potential penalty when the transfer took place within sixty (60) months prior to or anytime after the date the individual was both institutionalized and applied for MA. In the event that application of the transfer rules and the trust rules result in an individual being subject to a transfer penalty twice for actions involving the same resource, the trust rules supersede the transfer rules in determining eligibility.(See Section 0382 for detailed information about Trusts.)

The Deficit Reduction Act of 2005 (DRA) provides a penalty for institutionalized individuals who on or after February 8, 2006, transfer or have transferred assets for less then fair market value.

All asset transfers made on or after February 8, 2006 are examined for potential penalty when the transfer took place within sixty (60) months prior to or anytime after the date the individual was both institutionalized and applied for Medical Assistance.

The penalty is a period of RESTRICTED MA ELIGIBILITY during which payment for Long Term Care Services is denied. Long Term Care Services include nursing facility services, Intermediate Care Facility Services for the Mentally Retarded, administratively necessary days in a hospital, and home and community based waiver services.

The computation of the penalty period for transfers of assets made prior to February 8, 2006 and how the penalty is imposed for such transfers are determined as provided in Section 03284.20.

The computation of the penalty period for transfers of assets made on or after February 8, 2006 and how the penalty is imposed for such transfers are determined as provided in Section 0384.25.

0384.10 IND INELIG FOR NF PAYMENT

REV:07/2006

Unless exempt, transfers of assets (income and resources) made for less than fair market value by an institutionalized individual (or the community spouse - if made prior to the establishment of the applicant's MA/LTC eligibility) are subject to a penalty if the transfer was made:

A. For transfers of assets made prior to February 8, 2006 within thirty six (36) months immediately prior to or anytime after the date the individual was both institutionalized AND applied for MA; OR,

B. For transfers of assets made on or after February 8, 2006, within sixty (60) months immediately prior to or anytime after the date the individual was both institutionalized AND applied for MA; OR

C. If the transfer involves a trust, within a sixty (60) month look back period immediately prior to or anytime after the date the individual was both institutionalized AND applied for MA.

D. Since the look-back period in Paragraph B., above, is effective for transfers made on or after February 8, 2006 this look back period is being phased in during the period of February 8, 2006-February 7, 2011. The effect of this phase in is that the look back period for all transfers, except for a transfer which involves a trust (see 2. below), regardless of the date of transfer is as follows:
   - 1. The look back period (other than a transfer that involves a trust) and transfers that must be reported by applicants is:
     - i.) From February 8, 2006 - February 7, 2009, thirty-six (36) months;
     - ii.) From February 8, 2009- February 7, 2011, all transfers which occur on or after February 8, 2006
     - iii.) From February 8, 2011 and thereafter, within sixty (60) months immediately prior to or anytime after the date the individual was both institutionalized AND applied for MA;
   - 2. The look back period, if the transfer involves a trust, is the sixty (60) months immediately prior to or anytime after the date the individual was both institutionalized AND applied for MA.

If the individual has multiple periods of institutionalization and/or applications, the look back period starts with the first date on which the individual was both institutionalized and applied for MA.

The PENALTY is a period of INELIGIBILITY FOR PAYMENT OF LONG TERM CARE SERVICES for an otherwise eligible individual.

For transfers of assets prior to February 8, 2006 see Section 0384.20 for the rules as to how the penalty period is calculated and how it is imposed.

For transfers of assets on or after February 8, 2006 see Section 0384.25 for the rules as to how the penalty period is calculated and how it is imposed.

0384.15 RESOURCE TRANSFER DEFINITIONS

REV:07/2006

For purposes of evaluating transfers of assets, the following definitions apply:

1. ASSETS

All income and resources of the individual or the individual's spouse that would be countable in the determination of Medical Assistance eligibility for an SSI-related individual; and,

The home (and associated land) of an institutionalized individual.

This includes any income and resources to which the individual or his/her spouse is entitled but does not receive because of action taken by:

* the individual or his/her spouse;
* a person, including a court or administrative body, with legal authority to act in place of the individual or his/her spouse; or
* any person, including any court or administrative body, acting at the direction or upon the request of the individual or his/her spouse.

2. COMPENSATION/CONSIDERATION

All real and/or personal property (money, food, shelter, services, stocks, bonds, etc.) that is received by an applicant/recipient pursuant to a binding contract in exchange for an asset either prior to, at the time of, or after the transfer.

3. FAIR MARKET VALUE (FMV)

The amount for which the property (real and personal) can be expected to sell on the open market in the geographic area involved and under existing economic conditions at the time of transfer.

4. INSTITUTIONALIZED INDIVIDUAL

An inpatient of a Nursing Facility, an inpatient of a medical institution for whom payment is based on a level of care provided in a NF, an inpatient of an ICF for the Mentally Retarded, and/or a home and community based waiver recipient.

5. FOR THE SOLE BENEFIT OF

A transfer is considered to be for the sole benefit of a spouse, blind or disabled child, or a blind or disabled individual, when the transfer is established using a written agreement that legally binds the parties and clearly expresses that the transfer is for the spouse, blind or disabled child, or blind or disabled individual only, and that no one else can benefit from the assets transferred. Without this agreement, a transfer cannot be determined to be for the sole benefit of the individual.

6. LONG TERM CARE SERVICES

Services provided to individuals in Nursing Facilities, Intermediate Care Facilities for the Mentally Retarded, as an inpatient in a medical institution for whom payment is based on a level of care provided in a NF, and under Home and Community Based Waivers and Administratively Necessary Days.

7. LOOK BACK DATE

The look back date is a date that is the appropriate number of months, as provided for in Section 038.05, before an institutionalized individual has applied for Medical Assistance.

8. LOOK BACK PERIOD

The look back period is that period of time beginning with the look back date through the date an institutionalized individual has applied for Medical Assistance.

9. PENALTY PERIOD

The period of time during which payment for Long Term Care services is denied. The number of months in a penalty period (P) is equal to the total uncompensated value (UV) of prohibited transfers made by the institutionalized individual (or spouse if made prior to establishment of individual's MA/LTC eligibility) during the thirty-six (36) or sixty (60) month period immediately prior to the date of institutionalization (or if later the date of MA application) divided by the average monthly cost of a private patient in a NF at the time of application. For transfers made on or after February 8, 2006, the penalty period begins from the date of transfer or the date that the individual would have otherwise been eligible, whichever is later.

$$P = UV/C$$

10. PROHIBITED TRANSFER

Transfer of an asset for less than fair market value by an individual (or spouse if made prior to establishment of individual's MA/LTC eligibility) which was made within thirty-six (36) months or sixty (60)months prior to or anytime after the date the individual was both institutionalized and applied for MA.

11. TRANSFER

The conveyance of right, title, or interest in either real or personal property from one person to another by sale, gift, or other process.

The gift or assignment of income from one person to another. Disposal of a lump sum payment before it can be counted as a resource can be an example of a transfer of income.

Transfers made by an individual include transfers made by:

* the individual;
* his/her spouse;
* any person, including a court or administrative body, with legal authority to act on behalf of the individual or his/her spouse; or,
* any person, including a court or administrative body, acting at the direction or upon the request of the individual or his/her spouse.

12. UNCOMPENSATED VALUE (UV)

The equity value (fair market value less any outstanding loans, mortgages or other encumbrances) minus the value of any compensation /consideration received by the applicant/recipient in exchange for the asset.

0384.20 PENALTY PERIOD FOR PAYMENT OF LTC SERVICES

REV:03/2008

The rules in this section, 0384.20, apply to transfers of assets which occurred prior to February 8, 2006.

The penalty for an otherwise eligible institutionalized individual who transfers assets for less than fair market value is a period of INELIGIBILITY FOR PAYMENT OF LONG TERM CARE SERVICES.

A. The following provisions apply in determining the penalty period for a prohibited transfer:

a. Start date of the penalty period. The penalty period begins on the first day of the month in which the transfer was made and runs continuously from the penalty date regardless of whether the individual remains in or leaves the institution (or waiver program). Thus, if an individual leaves the NF, the penalty period nevertheless continues until the end of the calculated period.

b. Calculation of the length of the penalty period

To calculate the penalty period (P) for a prohibited transfer, divide the amount of the uncompensated value (UV) of the transfer by the average monthly cost (C) for private payment in a nursing facility.

P = UV/C

Currently, the average monthly cost for private payment in a nursing facility is $7,513 per month.

When more than one prohibited transfer occurs during the same month, the uncompensated values of all prohibited transfers made during the month are totaled, then divided by the average monthly private payment for an individual in a nursing facility.

Penalty periods are imposed for full months only; penalty periods of less than one month are not imposed.

There is no maximum length to the penalty period. However, no penalty is imposed for resources transferred prior to the look back period.

O MULTIPLE TRANSFERS WITH OVERLAPPING PENALTY PERIODS

When assets have been transferred in amounts and/or frequency that make the calculated penalty periods overlap, a single penalty period is imposed. This penalty period begins on the first of the month in which the first prohibited transfer was made and is calculated as follows:

FIRST, add the total of the uncompensated value of all assets transferred;

THEN, divide the sum by the average private pay cost of NF care.

THIS PRODUCES a single penalty period that begins on the first day of the month in which the first transfer was made.

O MULTIPLE TRANSFERS WITH NO OVERLAPPING PENALTY PERIODS

When multiple prohibited transfers are made in such a way that penalty periods do not overlap, each transfer is treated as a separate event with

its own penalty period. Each separate penalty period is calculated by dividing the total amount of the uncompensated value of the transfer by the average monthly NF cost for a private patient.

Each separate penalty period begins on the first of the month in which transfer occurred.

EXAMPLE 1:

As a token of her love and affection, Mrs. Jones gives $12,000 to each of her ten grandchildren in January, 2006. She enters a nursing facility in March, 2006 and applies for MA in December of the same year.

The rules in this Section, 0384.20, apply to this transfer since the transfer occurred prior to February 8, 2006, regardless that the date of institutionalization and the date of the application occurred after February 8, 2006.

Since the transfers were uncompensated and were made within 36 months prior to the date of MA application and prior to February 8, 2006 (which in this case is later than the date of institutionalization), a penalty period applies. The total uncompensated value of all prohibited transfers made in the month is $120,000.

That amount is divided by the average monthly cost of NF services, $7,513, to arrive at the length of the penalty period.

120,000/7,513 = 15.97 = 15 full months

The penalty period is fifteen (15) months.

It begins on January 1st, the first of the month in which transfer was made. It continues for a total of fifteen (15) full months.

EXAMPLE 2:

Mrs. Swanson transfers her home with a fair market value of $300,000 to her sister (who lives with her but has no equity position in the home) for no consideration on January 31, 2003.

On November 1, 2003 she enters a NF and applies for MA.

The transfer occurred prior to February 8, 2006 and within thirty-six (36) months of the date Mrs. Swanson was both institutionalized and applied for MA, and it was made for less than fair market value. The penalty period is calculated by dividing the amount of the uncompensated transfer ($300,000) by the average monthly cost of NF services (7,513).

$300,000/7,513 = 39.93 = 39 full months

The penalty period is thirty-nine (39) months.

It begins on January 1, 2003, the first of the month in which transfer was made and continues through March 31, 2006.

EXAMPLE 3:

Mr. Edwards makes an uncompensated transfer of $300,000 to his nephew on January 1, 1998. In January 2000, he is admitted to a nursing facility. On February 2, 2001 he applies for MA.

No penalty period applies. The transfer for less than fair market value was made prior to February 8, 2006 and was more than 36 months prior to the date of MA application.

EXAMPLE 4: Multiple Transfers With Overlapping Penalty Periods

Mr. Smith transfers $16,000 in January 1999 and $16,000 in March 1999, and $16,000 in October 1999 all uncompensated. In April of the same year he enters a NF and applies for MA.

Since all were uncompensated and made within 36 months prior to the date Mr. Smith was both institutionalized and applied for MA, a penalty applies for each transfer.

Calculated as separate transfers, the penalty period for the first transfer would be (16,000/7,513 = 2.12 months = 2 full months) two months, January and February. Likewise the penalty period for the second would be February and March; and for the third, March and April.

Because the penalty periods overlap when calculated separately, a single penalty period must be re-calculated by adding the uncompensated value of all three transfers ($48,000) and dividing that total by the average private pay NF cost (7,513).

48,000/7,513 = 6.38 = 6 full months

This yields a single penalty period of six (6) months, which runs from January 1st (the first of the month in which the first prohibited transfer occurred), and continues for six (6) months, through June 30th.

EXAMPLE 5: Multiple Transfers with No Overlapping Penalty Periods

Mrs. Roland transfers $8,000 in January, $15,000 in March, and $22,000 in June, all uncompensated. She enters a NF and applies for MA on July 1st of the same year.

Since all transfers were uncompensated and made within 36 months of the date Mrs. Roland was both institutionalized and applied for MA, a penalty period applies for each transfer.

Each separate penalty period is obtained by dividing the amount of the uncompensated value (UV) of the transfer by the average monthly cost of private NF care (C).

Assuming an average monthly cost of $7,513, the penalty period for the first transfer is (8,000/7,513 = 1.06 = 1) one full month. It begins on the first of the month in which transfer was made, January 1st and continues until the end of the month, January 31st.

The second penalty period is two months (15,000/7,513 = 1.99 = 1), beginning on the first of March and continuing until the end of March.

The third penalty period is three months (22,000/7,13 = 2.92 = 2), beginning on the first of June and continuing until the end of July.

Eligibility for payment of LTC services is denied for the month of July.

B. TRANSFERS BY THE SPOUSE

When a transfer by the spouse results in a penalty period for the institutionalized individual, and the spouse later becomes institutionalized and applies for MA payment of long term care services, the penalty period remaining is apportioned equally between the spouses. If both spouses are institutionalized in the same month the period of ineligibility is divided equally between them. When one spouse is no longer subject to a penalty, any remaining penalty is then imposed on the remaining institutionalized individual.

C. TRANSFERS OF INCOME

When lump sum income is transferred (e.g., a stock dividend check is given to another person in the month in which it is received by the individual), a penalty period is calculated based on the value of the lump sum payment and the date transfer was made.

When a stream of income has been transferred, a penalty period is calculated for each income payment that is periodically transferred.

When the right to a stream of income is transferred, a penalty period is calculated based on the total amount of income expected to be transferred during the individual's lifetime, based on life-expectancy tables established by the Social Security Administration's Office of the Actuary.

The rules in this section, 0384.20, apply to transfers of assets which occurred prior to February 8, 2006.

The penalty for an otherwise eligible institutionalized individual who transfers assets for less than fair market value is a period of INELIGIBILITY FOR PAYMENT OF LONG TERM CARE SERVICES.

A. The following provisions apply in determining the penalty period for a prohibited transfer:
   a. Start date of the penalty period. The penalty period begins on the first day of the month in which the transfer was made and runs continuously from the penalty date regardless of whether the individual remains in or leaves the institution (or waiver program). Thus, if an individual leaves the NF, the penalty period nevertheless continues until the end of the calculated period.
   b. Calculation of the length of the penalty period

To calculate the penalty period (P) for a prohibited transfer, divide the amount of the uncompensated value (UV) of the transfer by the average monthly cost (C) for private payment in a nursing facility.

P =UV/C

Currently, the average monthly cost for private payment in a nursing facility is $7,031 per month.

When more than one prohibited transfer occurs during the same month, the uncompensated values of all prohibited transfers made during the month are totaled, then divided by the average monthly private payment for an individual in a nursing facility.

Penalty periods are imposed for full months only; penalty periods of less than one month are not imposed.

There is no maximum length to the penalty period. However, no penalty is imposed for resources transferred prior to the look back period.

O MULTIPLE TRANSFERS WITH OVERLAPPING PENALTY PERIODS

When assets have been transferred in amounts and/or frequency that make the calculated penalty periods overlap, a single penalty period is imposed. This penalty period begins on the first of the month in which the first prohibited transfer was made and is calculated as follows:

FIRST, add the total of the uncompensated value of all assets transferred;

THEN, divide the sum by the average private pay cost of NF care.

THIS PRODUCES a single penalty period that begins on the first day of the month in which the first transfer was made.

O MULTIPLE TRANSFERS WITH NO OVERLAPPING PENALTY PERIODS

When multiple prohibited transfers are made in such a way that penalty periods do not overlap, each transfer is treated as a separate event with its own penalty period. Each separate penalty period is calculated by dividing the total amount of the uncompensated value of the transfer by the average monthly NF cost for a private patient.

Each separate penalty period begins on the first of the month in which transfer occurred.

EXAMPLE 1:

As a token of her love and affection, Mrs. Jones gives $12,000 to each of her ten grandchildren in January, 2006. She enters a nursing facility in March, 2006 and applies for MA in December of the same year.

The rules in this Section, 0384.20, apply to this transfer since the transfer occurred prior to February 8, 2006, regardless that the date of institutionalization and the date of the application occurred after February 8, 2006.

Since the transfers were uncompensated and were made within 36 months prior to the date of MA application and prior to February 8, 2006 (which in this case is later than the date of institutionalization), a penalty period applies. The total uncompensated value of all prohibited transfers made in the month is $120,000.

That amount is divided by the average monthly cost of NF services, $7,031, to arrive at the length of the penalty period.

120,000/7,031 = 17.07 = 17 full months

The penalty period is seventeen (17) months.

It begins on January 1st, the first of the month in which transfer was made. It continues for a total of seventeen (17) full months.

EXAMPLE 2:

Mrs. Swanson transfers her home with a fair market value of $300,000 to her sister (who lives with her but has no equity position in the home) for no consideration on January 31, 2003.

On November 1, 2003 she enters a NF and applies for MA.

The transfer occurred prior to February 8, 2006 and within thirty six (36) months of the date Mrs. Swanson was both institutionalized and applied for MA, and it was made for less than fair market value. The penalty period is calculated by dividing the amount of the uncompensated transfer ($300,000) by the average monthly cost of NF services (7,031).

$300,000/7,031 = 42.67 = 42 full months

The penalty period is forty-two (42) months.

It begins on January 1, 2003, the first of the month in which transfer was made and continues through June 30, 2006.

EXAMPLE 3:

Mr. Edwards makes an uncompensated transfer of $300,000 to his nephew on January 1, 1998. In January 2000, he is admitted to a nursing facility. On February 2, 2001 he applies for MA.

No penalty period applies. The transfer for less than fair market value was made prior to February 8, 2006 and was more than 36 months prior to the date of MA application.

EXAMPLE 4: Multiple Transfers With Overlapping Penalty Periods

Mr. Smith transfers $16,000 in January 1999 and $16,000 in March 1999, and $16,000 in October 1999 all uncompensated. In April of the same year he enters a NF and applies for MA.

Since all were uncompensated and made within 36 months prior to the date Mr. Smith was both institutionalized and applied for MA, a penalty applies for each transfer.

Calculated as separate transfers, the penalty period for the first transfer would be (16,000/7,031 = 2.28 months = 2 full months) two months, January and February. Likewise the penalty period for the second would be February and March; and for the third, March and April.

Because the penalty periods overlap when calculated separately, a single penalty period must be re-calculated by adding the uncompensated value of all three transfers ($48,000) and dividing that total by the average private pay NF cost (7,031).

48,000/7,031 = 6.83 = 6 full months

This yields a single penalty period of six (6) months, which runs from January 1st (the first of the month in which the first prohibited transfer occurred), and continues for six (6) months, through June 30th.

EXAMPLE 5: Multiple Transfers with No Overlapping Penalty Periods

Mrs. Roland transfers $8,000 in January, $15,000 in March, and $22,000 in June, all uncompensated. She enters a NF and applies for MA on July 1st of the same year.

Since all transfers were uncompensated and made within 36 months of the date Mrs. Roland was both institutionalized and applied for MA, a penalty period applies for each transfer.

Each separate penalty period is obtained by dividing the amount of the uncompensated value (UV) of the transfer by the average monthly cost of private NF care (C). Assuming an average monthly cost of $7,031, the penalty period for the first transfer is (8,000/7,031 = 1.14 = 1) one full month. It begins on the first of the month in which transfer was made, January 1st and continues until the end of the month, January 31st. The second penalty period is two months (15,000/7,031 = 2.13 = 2), beginning on the first of March and continuing until the end of April. The third penalty period is three months (22,000/7,031 = 3.13 = 3), beginning on the first of June and continuing until the end of August.

Eligibility for payment of LTC services is denied for the months of July and August.

B. TRANSFERS BY THE SPOUSE

When a transfer by the spouse results in a penalty period for the institutionalized individual, and the spouse later becomes institutionalized and applies for MA payment of long term care services, the penalty period remaining is apportioned equally between the spouses. If both spouses are institutionalized in the same month the period of ineligibility is divided equally between them. When one spouse is no longer subject to a penalty, any remaining penalty is then imposed on the remaining institutionalized individual.

C. TRANSFERS OF INCOME

When lump sum income is transferred (e.g., a stock dividend check is given to another person in the month in which it is received by the individual), a penalty period is calculated based on the value of the lump sum payment and the date transfer was made.

When a stream of income has been transferred, a penalty period is calculated for each income payment that is periodically transferred.

When the right to a stream of income is transferred, a penalty period is calculated based on the total amount of income expected to be transferred during the individual's lifetime, based on life-expectancy tables established by the Social Security Administration's Office of the Actuary.

0384.25 Partial Month Penalty

REV:07/2006

The rules in this Section, 0384.25, apply to transfers of assets which occur on or after February 8, 2006.

The penalty for an otherwise eligible institutionalized individual who transfers assets for less than fair market value is a period of INELIGIBILITY FOR PAYMENT OF LONG TERM CARE SERVICES. The following provisions apply in determining the penalty period for a prohibited transfer:

A. The following provisions apply in determining the penalty period for a prohibited transfer:
   a. Start Date of the penalty period.

   The penalty period begins the later of:
   a. the date on which an individual is eligible for medical assistance and would otherwise be receiving institutional level of care, described in Section 0384.10, paragraph 9, based on an approved application for such care but for the application of the penalty period; or
      a. the first day of the month during or after which the assets have been transferred for less than fair market value, and which does not occur during any other period of ineligibility based on a transfer of assets.

   The provisions of 1(a) require that an application for medical assistance be filed.

0384.25.05 Calculation of Partial Month Penalty

REV:03/2008

This Section, 0384.25.05, is applicable to calculations of penalty periods as of July 1, 2006.

When more than one prohibited transfer occurs during the look back period, the uncompensated values of all prohibited transfers made during the look back period are totaled.

To calculate the penalty period (P) for a prohibited transfer(s), divide the amount of the uncompensated value(s) (UV) of the transfer(s) by the average monthly cost (C) for private payment in a nursing facility.
P+UV/C

In making these calculations, there is no "rounding down."

In making these calculations, partial month penalties are applied, if appropriate.

When calculating penalty periods, for transfer covered by this section, both the average monthly and daily rate of private nursing facility care will be utilitized. The rate is set forth in section 0384.20.

There is no maximum length to the penalty period. However, no penalty is imposed for assets transferred prior to the look back date.

In order to assess a transfer penalty period, the uncompensated transfer amount is divided by the monthly rate, and the remainder is divided by the daily rate. Individuals are responsible for paying the cost of care until their penalty period expires. Medicaid begins paying for long term care expenses on the day the penalty period expires.

EXAMPLE 1:

Mr. Burns makes an uncompensated transfer of $30,534 on April 1, 2006, the month in which he applies for Medicaid coverage of long term care services (and has an institutionalized level of care and would be otherwise eligible, but for the transfer of assets issue). The uncompensated transfer amount of $30,534 is divided by the average monthly rate. For discussion purposes, assume that the division equals 5.16 months. The full five (5) month penalty period runs from May 1, 2006, the month following the month of transfer, through September 2006 with a partial month penalty calculated for October 2006.

Step 1:	$30,534	uncompensated transfer amount
	Divided by $5921	faux monthly rate
	= 5.17	number of months for penalty
Step 2:	$5921	faux average monthly pay rate
	X 5	five month penalty period
	=29,605	penalty for five full months
Step 3:	$30,534	uncompensated transfer amount
	$29,605	penalty for five full months
	= $929	partial month penalty amount
Step 4:	$929	partial month penalty amount
	$198	faux daily rate
	=4.69	number of days for partial month penalty

For October 2006, the partial month penalty of four days would be added to the five (5) month penalty period. This means that the Medicaid program would authorize payment of long-term care expenses beginning October 5, 2006.

EXAMPLE 2:

Mr. Burns makes an uncompensated transfer of $36,252 on September 1, 2008. He enters a nursing home in October, 2008. He files an application for medical assistance long term care benefits in November, 2008. As of November 1, 2008 he is eligible for medical assistance and would otherwise be receiving institutional level care (hereinafter, "otherwise eligible"), based on the application he filed in November for such care but for the application of the penalty period.

He is ineligible for Long Term Care benefits for 4 full months and 8 days, beginning November 1, 2008.

The uncompensated transfer amount of $36,252 is divided by the average private nursing facility monthly rate, $7,513. Division equals 4.825 months. The penalty is a full four (4) months and a partial month penalty. The full four month penalty period runs from November 1, 2008, the first day of the month in which he was otherwise eligible, through February 2009 with a partial month penalty calculated for March, 2009.

Step 1:
$36,252 uncompensated transfer amount divided by $7,513 monthly rate = 4.825 number of months for penalty.

Step 2:
$7,513 average monthly pay rate X 4 month penalty period = $30,052 penalty for four full months

Step 3:
$36,252 uncompensated transfer amount minus $30,052 penalty for four full months = $6,200 partial month penalty amount.

Step 4:
$6,200 partial month penalty amount divided by $247 daily rate = 25.10 number of days for partial month penalty for March, 2009. The partial month penalty of twenty-five days would be added to the four (4) month penalty period. This means that the Medicaid program would authorize payment of long-term care

expenses beginning March 26, 2009.

EXAMPLE 3:

Mr. Burns makes uncompensated transfer of $20,000 on July 1, 2006 and an uncompensated transfer of $12,000 on July 18, 2006. On November 13, 2006 he makes another uncompensated transfer of $12,000. He enters a nursing home in February, 2008 and he files an application for medical assistance long term care benefits in March, 2008. As of March 1, 2008 he is otherwise eligible but for the application of the penalty period.

Answer- These transfers were all made on or after February 8, 2006.

All of these transfers are totaled, regardless that two were made in one month and another was made in a different month. The total amount of the transfers is $44,000.

> The penalty period is 5.85 months, using an average monthly private pay rate of $7513.
>
> The penalty begins on March 1, 2008, the first month after the transfers that he was institutionalized, filed an application for long term care medical assistance benefits and was otherwise eligible.

EXAMPLE 4:

Mr. Burns makes an uncompensated transfer of $12,000 on September 1, 2006. He enters a nursing home in October, 2006 and files an application for medical assistance long term care benefits in November, 2006. On November 1, 2006 he has $30,000 in his checking account.

Answer- The transfer was made on or after February 8, 2006. The penalty period is 1.70 months, using an average monthly private pay rate of $7,031. However, due to the $30,000 in his checking account on November 1,2006, he is not otherwise eligible. Even though he filed an application, the penalty does not begin. The penalty period will not begin until he files a new application in a month in which he is both institutionalized and otherwise eligible.

EXAMPLE 5:

Mr. Burns makes an uncompensated transfer of $100,000 on December 25, 2005. He entered a nursing home in April, 2006. On August 12, 2006 he made an uncompensated transfer of $12,000. On September 13, 2007 he makes an uncompensated transfer of $12,000. He files an application for medical assistance long-term care benefits in December, 2006. As of

December 1, 2006 he is otherwise eligible, but for the application of the penalty period for the transfers prior to February 8, 2006 and the transfers on or after February 8, 2006.

Answer- The transfer of the $100,000 was made prior to February 8, 2006. The computation of the penalty and the way the penalty is imposed is governed by the rules applicable to transfers made prior to February 8, 2006. Since he filed an application, the penalty for the $100,000 transfer is determined to be for a period of 14.22 months, rounded down to 14 full months and begins on December 1, 2005 and ends on January 31, 2007.

The transfer of $12,000 in August, 2006 and September, 2006 occurred on or after February 8, 2006 and are governed by the rules applicable to transfers made on or after February 8, 2006. The total amount of those transfers is $24,000 which results in a penalty period of 3.41 months. Even though his is institutionalized, filed an application he is not otherwise eligible. The transfer penalty for these transfers cannot begin until February 1, 2007 since a transfer penalty for transfers made on or after February 8, 2006 cannot begin during any other period of ineligibility based on a transfer of assets. He will have to file a new application in February, 2007, be institutionalized in February, 2007 and be otherwise eligible.

EXAMPLE 6:

Mr. Burns makes an uncompensated transfer of $12,000 on August 1, 2006.

He enters a nursing home in September, 2006 and he files an application for medical assistance long term care benefits in November, 2006. On November 1, 2006 he has $4,800 in his checking account, but was otherwise eligible. He has an outstanding prescription bill in the amount of $1,200 for the months of September and October which he pays on November 10th.

Answer- The transfer was made on or after February 8, 2006. The penalty period is 1.71 months, using an average monthly private pay rate of $7,031.

By paying the $1,200 outstanding medical bill, incurred within 3 months prior to the application, he was otherwise eligible as of November 1, 2006, the month of his application. He is determined to be ineligible for long term care benefits beginning November 1, 2006 for a period of 1.71 months.

EXAMPLE 7:

Miss Stacy transfers her house on April 1, 2006. The value of the house is $200,000. Miss Stacy applies 3 years later on April 1, 2009.

The penalty period starts the day she applies and is otherwise eligible, which is April 1, 2009. The penalty period is calculated by dividing the value of the house ($200,000) by the divisor of $7,513 to calculate the penalty period.

0384.35 EXCEPTIONS TO PERIOD OF INELIG

REV:12/2000

A penalty period is not imposed when:

- o The asset was transferred for fair market value;

- o The transferred resource was the individual's HOME and title to the home was transferred to:

  - the individual's spouse;

  - a child of the individual who is under the age of 21, or is blind, or permanently and totally disabled (as evidenced by receipt of SSI or RSDI benefits, or as defined in Section 0352.15);

  - a sibling of the individual who has an equity interest in the home and who resided in the home for at least one year immediately prior to the institutionalization of the individual;

  - a son or daughter of the individual who:

    * was residing in the home for at least two years prior to the parent's institutionalization; and,

    * can demonstrate that s/he provided care to the parent which prevented the parent from entering an institution for the two year period.

- o The asset (other than a home, see above) was transferred to:

  - the spouse, or to another for the sole benefit of the spouse, or from the spouse to another for the sole benefit of the spouse;

- the individual's child who is blind or permanently and totally disabled, or to another for the sole benefit of such child, or to a trust established for the sole benefit of such child;

- a trust established for the sole benefit of an individual who is under the age of 65 and permanently and totally disabled (as defined in Section 0352.15);

o The individual can prove his/her intention was to receive fair market value or other valuable compensation/consideration;

o The individual can prove the transfer was exclusively for some purpose other than to qualify for Medical Assistance;

o Denial of payment for LTC services would work an undue hardship;

o The asset is returned to the individual.

0384.40 RESPONSIBILITIES

REV:12/2000

Field staff responsibilities pertaining to transfer of assets are the following:

FIRST

The agency representative is responsible to explain the policy on transferred assets and how it may affect eligibility for nursing facility payment, and assist the applicant in determining what documentation is relevant and how such documentation is generally obtained.

SECOND

Exceptions to the penalty period which involve transfer of an individual's home to his/her spouse, child under 21, or blind or disabled child are referred with relevant documentation to the casework supervisor for review.

All other exceptions should be referred to the Long Term Care Administrator or his designee, who will consult with the Legal Counsel as necessary.

Any and all documents relative to the transferred resource and its fair market value, such as bills of sale, deeds, purchasing agreements, and compensation received must be provided by the applicant as a part of the application process.

THIRD

Transfers of assets for less than FMV are presumed to be for the purpose of establishing eligibility for nursing facility payment. The applicant can rebut the presumption by making a satisfactory showing that the transfer was for some other purpose.

If the applicant/recipient wishes to rebut the presumption, the agency representative shall explain that it is the applicant/recipient's responsibility to make a satisfactory showing that the assets were transferred exclusively (i.e., only) for some other reason. The information furnished by the applicant/recipient should cover, but need not be limited to, the following factors:

- The purpose for transferring the asset;
- The attempts to dispose of the asset for FMV;
- The reasons for accepting less than FMV;
- The applicant/recipient's relationship, if any, to the person(s) to whom the asset was transferred;

The applicant/recipient should be assisted in obtaining information to rebut the presumption when necessary; however, the burden of proof rests with the applicant/recipient.

FOURTH

Once the LTC Administrator determines that an asset was transferred for less than fair market value and the resultant uncompensated value, the agency representative will determine the period of ineligibility for nursing facility payment.

FIFTH

The agency representative is responsible to inform the applicant of the outcome of the review conducted by LTC Administrator, and the period of ineligibility, if any. The individual must be notified of the decisions, and his/her right to appeal.

SIXTH

If the individual is either eligible for Medical Assistance or pending spenddown, but is determined to have a period of ineligibility for payment of LTC services due to the transfer, the penalty period information is recorded on the InRHODES Transfer Panel. Eligibility or pending spenddown status for

Medical Assistance is approved, and the case is transferred to the appropriate MA unit.

The responsibilities of the LTC Administrator are:

FIRST

Determine the fair market value (FMV) of the transferred asset based on the documentation forwarded by field staff.

SECOND

Determine the uncompensated value, if any, by subtracting the value of any compensation/consideration received from the equity value.

THIRD

Evaluate the individual's rebuttal of the agency's presumption that resources were transferred in order to become eligible for nursing facility payments, and consult with the Office of Legal Counsel, as necessary.

FOURTH

Evaluate claims of undue hardship.

0384.45 REBUT OF PRESUMP OF PROH TRANS

REV:12/2000

An individual may rebut the agency's presumption that assets were transferred in order to become eligible for nursing facility payments.

The presence of one or more factors may indicate that the asset was transferred exclusively for some purpose other than establishing eligibility for nursing facility payments.

These factors are:

- o A traumatic onset (e.g. traffic accident) of disability or blindness after transfer of the resource.

  If the applicant/recipient states that AFTER the transfer s(he) experienced a traumatic onset of disability which could not have been foreseen at the time of transfer, and which resulted in the inability to provide for his/her own support, consider the applicant's/recipient's age, medical history, and medical condition at the time of transfer as well as his/her financial situation. Was the applicant/recipient in good health at the time of the transfer and spending a minimal amount on medically related costs such as insurance, routine doctor visits, etc.? Did the applicant/recipient have sufficient income and/or resources to meet his/her medical needs, as well as basic living expenses, as they existed at the time of the transfer and as they could be foreseen over the next 36 months?

The applicant/recipient may submit whatever medical documentation s(he) wishes to substantiate his/her claim.

- o Inability to dispose of the asset for fair market value.

  The applicant/recipient must provide evidence of attempts to dispose of the asset for fair market value, as well as evidence to support the value at which the asset was disposed.

- o Diagnosis of previously undetected disabling condition;
- o Unexpected loss of other resources (including deemed resources) which would have precluded MA eligibility;
- o Unexpected loss of income (including deemed income) which would have precluded MA eligibility;
- o Total countable resources that would have been below the resource limit at all times from the month of transfer through the present month even if the transferred resource had been retained;
- o Court-ordered transfer.

0384.45.05 Claims of Undue Hardship

REV:07/2006

A.Standards for Granting an Undue Hardship Waiver

A transfer penalty shall be waived if imposition of the penalty would cause the individual undue hardship. The entire penalty period or a portion of the penalty period shall be waived when:

1) Imposition of the penalty period would deprive the individual of medical care to the extent that his/her life or health would be endangered or would deprive the individual of food, shelter, clothing or other necessities of life; AND

2) All appropriate attempts to retrieve the transferred asset have been exhausted; AND

3) The nursing facility has notified the individual of its intent to initiate discharge or the agency providing essential services under a home and community based waiver has notified the individual of its intent to discontinue such services for reasons of non-payment;

AND

4) No less costly non-institutional alternative is available to meet the individual's needs.

Undue hardship does not exist when application of the transfer provisions merely causes inconvenience or restricts lifestyle but would not put him/her at risk of serious deprivation.

A. Availability of Undue Hardship Waivers
When eligibility for payment of long term care services has been denied due to imposition of a transfer of assets penalty, DHS shall notify the applicant in writing that an undue hardship exceptions exists. The individual may claim undue hardship. The facility in which the institutionalized individual is residing may file an undue hardship waiver application on behalf of the individual if done with the consent of the individual or the personal representative of the individual.

B .Process for Undue Hardship Waiver
The individual and/or facility must submit a written request and any supporting documentation within 30 days of a denial from DHS. A request for consideration of undue hardship does not limit the individual's right to appeal a denial of eligibility for reasons other than hardship.

Claims of undue hardship are forwarded to the Long Term Care Administrator or his/her designee for evaluation. The LTC Administrator or his/her designee may instruct the agency representative to obtain documentation from the individual which can include but is not be limited to the following:

- A statement from the attorney, if one was involved;
- Verification of medical insurance coverage and statements from medical providers relative to usage not covered by said insurance;
- A statement from the transferee relative to his/her financial position;
- Resource documents such as a deed, bank book, etc. to verify the existence and structure of the resource;
- If jointly held, a statement from the other owner(s) of the jointly held resource relative to the reason for and circumstances of the transfer.

The LTC Administrator or his/her designee, in consultation with the Office of Legal Counsel, determines whether undue hardship applies.

Written notification of the Department's decision regarding undue hardship, along with appeal rights, is provided to the individual within sixty (60) days of the Department's receipt of the request.

0384.45.05.05 DRA Claims of Undue Hardship

REV:07/2006

DHS may waive the penalty period if the transfer penalty being imposed is the direct result of an action taken on or after February 8, 2006 and before May 8, 2006, which would not have caused ineligibility prior to that date, but resulted in ineligibility because of the changes in policy due to the federal deficit reduction act, 42 U.S.C.

1396p(e). The requestor must show that he/she (and his/her legal counsel, if applicable) was unaware of the provisions of the deficit reduction act. The process shall follow 0384.45.05.

0384.45.10 Example of Rebuttal

REV:06/1994

Edward Johnson owned a farm free and clear. Mr. Johnson and his son had farmed the property for a number of years. Age 58 and healthy, Mr. Johnson decided to seek another line of work. He transferred one-half interest in the farm to his son in October 1989. The Fair Market Value at the time of the one-half interest was $120,000. In April of 1990, Mr. Johnson was injured in an auto accident, and became institutionalized.

He applied for Medical Assistance, and was found eligible, but ineligible for payment of the institutional care services. He submitted evidence substantiating the circumstances. Upon review of the rebuttal material, it was established that the resource transfer was exclusively for a purpose other than to qualify for Medical Assistance. He became eligible for payment of his institutional care.

0384.50 SSI RECIPIENTS

REV:06/1994

Resource transfers do not impact Medical Assistance or SSI eligibility determinations. Individuals may be eligible for Medical Assistance-only or SSI and Medical Assistance while at home or while in an institution, without regard to resource transfers.

However, once institutionalized, all Medical Assistance recipients are subject to the policies contained in this section regarding resource transfers.

The Social Security Administration (SSA) questions SSI recipients regarding transferred resources at the time of application and redetermination for SSI benefits. SSA maintains a record of those SSI recipients who have transferred resources which is transmitted to the Long Term Care Unit at Central Office on a regular basis.

This LTC Unit in turn sends the information to the appropriate LTC field office.

Prior to authorizing a vendor payment to a nursing facility, the Long Term Care field office screens the list of alleged transferrers to ascertain that the individual in question has not disclosed a resource transfer to SSA. In the event that this screening indicates that the applicant has transferred a resource, the case is referred to the LTC/AS district office for review and evaluation of the impact of the transfer on eligibility for nursing facility payment.