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f. 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.

NOTE: Federal tax refunds and advance payments received January 1, 2010 through December 31, 2012 are excluded as assets for 12 months following the month of receipt of the payment. Federal tax refunds and advance payments that are placed in trusts during the exclusion period are excluded as assets**.**

g. Transferred Resources Returned

When the client reports assets transferred for less than FMV have been returned to the client, the Worker must verify this information. Any return of assets must be to the client or his representative rather than to another individual on his behalf or paid directly to the long-term-care facility. When substantiated, the Worker must recalculate the penalty period.

When all such assets have been returned to the client, no penalty is applied. If a penalty has already been applied, a retroactive adjustment back to the beginning of the penalty period is required.

If part of such assets are returned, the penalty period is adjusted accordingly, from the later months of the penalty period rather than the earlier months.

NOTE: A nursing care client must meet the asset test for his eligibility coverage group. When appropriate, the client must still be asset eligible as of the first day of the month for any months the transfer penalty period is adjusted. Return of the assets leaves the client with assets which must be counted in determining eligibility during the retroactive period.

Example: A client transferred all the money from his savings account to his son in February. The Worker calculates the transfer penalty period to be 9 months-running March through November. In June, the client's son returns all of the transferred assets. After appropriately verifying the returned assets, the transfer penalty is removed. If otherwise eligible, a retroactive adjustment back to March is made to ensure the client receives the LTC benefit beginning March. The client's contribution to care must also be determined.

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Example: A client transferred all the money from his savings account to his son in February. The Worker calculates the transfer penalty period to be 9 months-running March through November. In June, the client's son returns only part of the transferred assets. After appropriately verifying the returned assets, the transfer penalty is recalculated. The new transfer penalty is 4 months-running March through June. The transfer penalty is adjusted from the later months of the penalty period and, if otherwise eligible, the Worker must ensure the client receives the LTC benefit beginning July.

Example: Same scenario as above, except the new transfer penalty period is 4 months-running March through June-with a partial month penalty in July. If otherwise eligible, the Worker must ensure the client receives the LTC benefit beginning July. However, the amount of the partial month penalty is added to the client's contribution to care for his first month of eligibility in July.

Example: A client transferred all the money from his savings account to his son in February. The worker calculates the transfer penalty period to be 9 months-running March through November. In August, the client's son returns part of the transferred assets. After appropriately verifying the returned assets, the transfer penalty is recalculated. The new transfer penalty is 4 months-running March through June. The transfer penalty is adjusted from the later months of the penalty period. If otherwise eligible, payment is made for LTC services beginning July. This requires the Worker to retroactively adjust months July and August to ensure client receives the LTC benefit for those months. The client's contribution to care must also be determined.

EXAMPLE: A client transferred all the money from his savings account to his son in February. The Worker calculates the transfer penalty period to be 8 months – running March through October. In March, the client's son returns part of the asset - enough cash sufficient to cover the client's cost of nursing home care for one month. The client pays the nursing home before the beginning of the next month, so his assets never exceed $2,000. After appropriately verifying the returned asset, the transfer penalty is recalculated and reduced by one month.

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In April, May, and June the client returns the same amount and the client pays the nursing home with the returned asset. The client's son has returned half of the originally transferred amount, thereby reducing the client's penalty period by a total of four months. The client used this returned money to pay for his nursing home care. This results in the client's entire penalty being complete—four months served and four months reduced. Therefore, the client begins receiving Medicaid payment of the LTC services beginning July, even though only half of the assets were returned.

h. 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.

i. Transfer Was Not to Qualify for Medicaid

When a transfer of resources was exclusively for a purpose other than to qualify for Medicaid, no penalty is applied.

NOTE: A transfer is assumed to be for the purpose of qualifying for Long-Term Services. The burden of proof is the individual's to prove otherwise. The Worker and Supervisor can make this decision.

EXAMPLE: Mrs. R. has a stroke and enters the nursing home on 10/15/09. Her daughter's home was in foreclosure and the mother transferred $5,000 to her on 9/19/09 to prevent foreclosure. The Worker verifies the situation with the foreclosure notice dated 9/4/09 and the mother's withdrawal and check to the daughter on 9/19/09 for the exact amount of the foreclosure of $5,000. The Worker and Supervisor determine Mrs. R. did not transfer money to qualify for Medicaid.

EXAMPLE: Mr. G., a widowed man, has failing health and transfers $25,000 to each of his children before he enters the nursing home. The children are not disabled. The transfer is assumed to be for the purpose of qualifying for Medicaid.

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j. Denial Would Result in Undue Hardship

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

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

The DFA-UH-5 must be attached to the DFA-NL-UH-1. The DFA-UH-5 is the application that must be completed and returned to the Worker within 13 days of notice of the eligibility decision. Upon receipt, the Worker immediately forwards it via mail, electronic mail or fax to the DFA Policy Unit for distribution to the Undue Hardship Waiver Committee. The DFA-UH-5 must include a signature of the individual for whom the Waiver is filed when the LTC facility is completing the Request. It must include an explanation of any efforts made to resolve the asset issue that resulted in the LTC Services denial. Documentation that supports these attempts must be attached. Details regarding the individual's undue hardship must be explained. If the DFA-UH-5 is not returned complete and timely, no additional notice occurs and the negative eligibility decision and any penalty applied remains.

An individual that resides in a facility and requests an Undue Hardship Waiver is eligible for payment of up to 30 bed-hold days from the date the DFA-UH-5 is received by the DFA Policy Unit through when a decision is made by the Committee. The Committee has 60 days to make a decision concerning the Waiver request. Denial of payment of LTC Services due to excessive home equity is not subject to payment of bed-hold days. If the Request is not appropriate for the Committee, it is returned to the local office that made the eligibility decision. The individual is notified of the Committee's decision via form DFA-NL-UH-2. The Committee forwards the DFA-NL-UH-2 to the individual, with a copy

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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 $6,482. 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.

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, 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.

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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 $6,482 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 Transfer Penalty Section below for instructions about how to determine and apply partial month penalties.

11. 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.

12. Transfer Penalty

The transfer of resources penalty is ineligibility for:

- Nursing facility services; and

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private pay nursing facility rate of $6,482 a month, the penalty is 7 whole months, beginning July 2014 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 $4,626 is imposed for February 2015. 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 2014 and applies for Medicaid in September 2014 with a request for backdated coverage to August 2014. The individual transferred $19,000 in January 2013, $19,000 in February 2013 and $19,000 in March 2013. 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 $6,482. The penalty period is 8 whole months, beginning in August 2014, because the individual requested backdated coverage to August 2014, 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 April 2015 of $5,144 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 10-month penalty beginning July 2013 through April 2014 with a partial month's penalty of $5180 for May 2014. In October 2013, 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 $18. The new penalty begins June 2014.

EXAMPLE: An individual approved for and receiving institutional level of care services receives an inheritance of $100,000 in 2014 and gives the money to his grandson. Advance notice of the transfer penalty is sent in November and the penalty period begins December 1, 2014.

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 $216.07/day or $6,482/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 $6,482.

Step 2: Multiple the number of whole months from Step 1 by the average private pay rate of $6,482.

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
	÷ 6,482	State's average monthly nursing facility private pay rate
	3.8	Number of months for penalty period
Step 2:	$ 6,482	State's average monthly nursing facility private pay rate
	x 3	Whole months in penalty period
	$19,446	
Step 3:	$24,534	Total uncompensated transfer amount
	- 19,446	Amount for 3 whole months in penalty period
	$ 5,088	Partial month's penalty amount

If the individual applies in July and is otherwise eligible, the penalty period runs for 3 full months from July through September, with a partial month's penalty calculated for October of $5,088. The October partial month's penalty amount of $5,088 is added to the calculated October contribution for his cost of care. If the individual had a $500 monthly contribution, he is required to pay $5,588 for the cost of care in October.

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.