

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: OHIO

TRANSFER OF ASSETS

1917 (c) The agency provides for the denial of certain Medicaid services by reason of disposal of assets for less than fair market value.

1. Institutionalized individuals may be denied certain Medicaid services upon disposing of assets for less than fair market value on or after the look-back date.

The agency withholds payment to institutionalized individuals for the following services:

Payments based on a level of care in a nursing facility;

Payments based on a nursing facility level of care in a medical institution;

Home and community-based services under a 1915 waiver.

2. Non-institutionalized individuals:

_____ The agency applies these provisions to the following non-institutionalized eligibility groups. These groups can be no more restrictive than those set forth in section 1905 (a) of the Social Security Act:

The agency withholds payment to non-institutionalized individuals for the following services:

Home health services (section 1905 (a) (7));

Home and community care for functionally disabled and elderly adults (section 1905 (a) (22));

Personal care services furnished to individuals who are not inpatients in certain medical institutions, as recognized under agency law and specified in section 1905 (a) (24).

_____ The following other long-term care services for which medical assistance is otherwise under the agency plan:

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3. Penalty Date-The beginning date of each penalty period imposed for an uncompensated transfer of assets is:
- the first day of the month in which the asset was transferred;
- the first day of the month following the month of transfer.
4. Penalty Period - Institutionalized Individuals -
In determining the penalty for an institutionalized individual, the agency uses:
- the average monthly cost to a private patient of nursing facility services in the agency;
- the average monthly cost to a private patient of nursing facility services in the community in which the individual is institutionalized.
5. Penalty Period - Non-institutionalized Individuals-
The agency imposes a penalty period determined by using the same method as is used for an institutionalized individual, including the use of the average monthly cost of nursing facility services;
- imposes a shorter penalty period than would be imposed for institutionalized individuals, as outlined below:

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6. Penalty period for amounts of transfer less than cost of nursing facility care -
- a. Where the amount of the transfer is less than the *monthly* cost of nursing facility care, the agency:
- X - does not impose a penalty;
- _____ imposes a penalty for less than a full month, based on the proportion of the agency private nursing facility rate that was transferred.
- b. Where an individual makes a series of transfers, each less than the private nursing facility rate for a month, the agency:
- X does not impose a penalty;
- _____ imposes a series of penalties, each for less than a full month.
7. Transfers made so that penalty periods would overlap-
The agency:
- _____ totals the value of all assets transferred to produce a single penalty period;
- X calculates the individual penalty periods and imposes them sequentially.
8. Transfers made so that penalty periods would not overlap-
The agency:
- X assigns each transfer its own penalty period;
- _____ uses the method outlined below:

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9. Penalty periods - transfer by a spouse that results in a penalty period for the individual -

- (a) The agency apportions any existing penalty period between the spouses using the method outlined below, provided the spouse is eligible for Medicaid. A penalty can be assessed against the spouse, and some portion of the penalty against the individual remains.
- (b) If one spouse is no longer subject to a penalty, the remaining penalty period must be served by the remaining spouse.

10. Treatment of income as an asset-

When income has been transferred as a lump sum, the agency will calculate the penalty period on the lump sum value.

The agency will impose partial month penalty periods.

When a stream of income or the right to a stream of income has been transferred, the agency will impose a penalty period for each income payment.

For transfers of individual income payments, the agency will impose partial month penalty periods.

For transfers of the right to an income stream, the agency will use the actuarial value of all payments transferred.

The agency uses an alternate method to calculate penalty periods, as described below:

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11. Imposition of a penalty would work an undue hardship —

The agency does not apply the transfer of assets provisions in any case in which the agency determines that such an application would work an undue hardship. The agency will use the following procedures in making undue hardship determinations:

Undue hardship exists when the application of the transfer of asset provisions would deprive the individual of medical care such that his/her health or his/her life would be endangered.

When it is determined that an improper transfer of resources has occurred and the individual was unable to successfully rebut the presumption of an improper transfer, the individual is notified of the right to claim an undue hardship. The individual has the burden of proving that undue hardship exists:

The agency will use the following procedures to determine if undue hardship exists:

- The individual must provide a full written account of why undue hardship exists.
- The individual must submit any pertinent documentary evidence such as legal documents, third party statements and/or medical evidence to support a claim of undue hardship.
- The individual attempts to make the resources available by consulting with legal counsel and it has been determined that the resources no longer exist or that the cost of attempting to retrieve the resources exceeds the value of the resources.
- A court of competent jurisdiction has determined that the resources are unavailable.
- Individuals determined to be incompetent and who do not have another individual to act on their behalf, shall be referred to the county prosecutor or the agency's own legal staff.
- The agency will also refer the individual to the county's or agency's own legal staff if it is determined that the individual's private legal counsel is not acting in the individual's best interest.

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

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