

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State: West Virginia

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:

does not impose a penalty;

imposes a penalty for less than a full month, based on the proportion of the agency's 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:

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;

calculates the individual penalty periods and imposes them sequentially.

8. Transfers made so that penalty periods would not overlap--  
The agency:

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.

The penalty period is divided equally between the spouses. If the division is not an even number of months, the extra month is assigned to the spouse who actually transferred the resource.

- (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:
- a) Recipient is notified in writing that a penalty will be imposed.
  - b) Recipient has thirteen (13) days to respond and request a waiver of the penalty due to undue hardship.
  - c) The Office of Family Support shall review the request and make a decision within 90 days of receipt of such request.
  - d) If a determination is made that undue hardship does not exist then the recipient has the right to request a hearing before a State Hearings Officer who will issue a final rule.

The following criteria will be used to determine whether the agency will not count assets transferred because the penalty would work an undue hardship:

- 1) The affected applicant/recipient has exhausted all means, legal and otherwise, to receive a fair market for the transferred assets; and
- 2) The affected applicant/recipient is unable either to regain the transferred asset after all means, legal and otherwise, have been pursued, or to receive a fair market return for the transferred asset; and
- 3) The affected applicant's (recipient's) health would be in jeopardy without the assistance of Medicaid coverage.