

Title 23: Division of Medicaid

Part 103: Resources

Part 103 Chapter 1: Introduction to Resources

Rule 1.1: Modified Adjusted Gross Income (MAGI) Programs

- A. The Medicare Catastrophic Coverage Act of 1988, (P.L.100-360), added provision 1902(r)(2) to the Medicaid statute which allows the state to apply income and resource rules to certain Medicaid coverage groups that are more liberal than the most closely related cash assistance group.
- B. For the MAGI programs, the most closely related cash assistance group is the former Aid to Families with Dependent Children (AFDC) program. For the ABD programs, the most closely associated cash assistance group is the Supplemental Security Income (SSI) program.
- C. Under 1902(r)(2) and other authorization, the MAGI programs operate under liberalized resource policy and have no resource test for eligibility in any coverage group.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

History: Revised eff. 12/01/2025.

Rule 1.10: Liberalized Resource Policy Overview

- A. The following briefly describes the liberalized resource policies currently in effect. The liberalizations are described in greater detail in the discussion of each resource type:
 - 1. Spend down of resources within a month to become eligible in that month, i.e., eligibility may be established effective the first day of the month if countable resources fall below the applicable limit within the month.
 - 2. Excess resources earmarked for payment of private pay in a nursing facility in month(s) prior to Medicaid eligibility are not considered countable resources.
 - 3. Income that accumulates pending Medicaid approval that results in excess resources can be excluded if this income is obligated for Medicaid income purposes.
 - 4. Certain property and types of ownership are totally excluded, regardless of value:
 - a) Home property located in Mississippi, life estate and remainder interests in any property, sixteenth (16th) Section land leaseholds, mineral rights or timber rights that are not under production and housing on government-owned land are excluded under liberalized policy,

- b) Income producing property is excluded if it produces at least six percent (6%) of the equity value of the property,
 - c) Promissory notes, loans and property agreements are excluded if the note produces a net annual return of six percent (6%) of the principal balance,
 - d) Up to two (2) automobiles may be excluded for applicants or recipients under the age of nineteen (19),
 - e) Household goods are totally excluded and personal property up to five thousand dollars (\$5,000.00) in equity value is excluded,
 - f) The cash value of whole life insurance is excluded if the combined face value of all life insurance policies on any one individual is ten thousand dollars (\$10,000.00) or less,
 - g) Burial spaces for family members are excluded as resources, and
 - h) Burial funds set aside in a revocable arrangement are subject to a six thousand dollar (\$6,000.00) limit effective April 1, 2001.
5. The current market value of real property is established using the county tax assessed true value as shown or calculated using the appropriate county property tax assessment notice.

Source: 42 U.S.C. § 1396a; 42 C.F.R. § 435.601.

History: Revised to correspond with SPA 19-0018 (eff. 07/01/2019) eff. 12/01/2025; Revised to correspond to SPA 16-0009 (eff. 01/01/2016) eff. 01/01/2017.

Part 103 Chapter 3: Non-Countable Resources

Rule 3.2 Treatment of Retirement Funds

- A. The terms IRA and Keogh refer only to the type of retirement account and do not identify the underlying investment vehicle for the account, which may be a bank account, Certificate of Deposit, mutual fund, etc.
 - 1. If retirement benefits are being received out of such accounts, the principal is not considered a resource.
 - 2. Otherwise, IRAs and Keogh accounts are developed according to the resource policy applicable to the underlying investment vehicle.
- B. Retirement benefits are payments made at some regular interval (i.e., monthly) and result from entitlement to a retirement fund. Periodic payments must be of uniform rate, principal and

interest (principal must equal or exceed amount of interest) and are counted as unearned income.

- C. If an individual owns a retirement fund and is not eligible for periodic payments, determine whether he can make a lump sum withdrawal. If he can withdraw any of the retirement fund, the value of the fund is a resource in the month the funds become available for withdrawal.
- D. The value of the retirement fund is the amount that can currently be withdrawn. If there is a penalty for early withdrawal, the fund's value is the amount available after the penalty is deducted. However, any taxes which may be due are not deductible in determining the fund's value.
- E. A retirement fund is a resource when the individual has the option of withdrawing a lump sum, even if he is not eligible for periodic payments. When this is the case:
 - 1. If the individual applies for periodic payments and is denied, the value of the fund becomes a countable resource the month after the month periodic payments are denied.
 - 2. A delay in payment beyond the individual's control (e.g., an organization's processing time) does not mean the fund is not a resource since the individual is legally able to obtain the money.
- F. A retirement fund is not a resource when a person must terminate employment to obtain payment or when a person is eligible for and receiving periodic payments.
- G. Retirement funds owned by an ineligible spouse or parent are excluded from resources for deeming purposes.
- H. A previously unavailable retirement fund is subject to resource rules in the month after the month the funds first become available.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

History: Revised eff. 12/01/2025.

Rule 3.7: Real Property Exclusions

A. Home Property Exclusion.

- 1. An individual's home is property he has ownership interest in and is his principal place of residence; and
- 2. It may include the shelter he lives in, the land on which the shelter is located, and all buildings on the land.

- a) A principal place of residence is the dwelling that an individual considers his/her principal home. It may be:
 - 1) Real or personal property;
 - 2) Fixed or mobile;
 - 3) Located on land or water.
- b) Example: If a person owns and resides in a houseboat on a lake, the boat may qualify as home property.
- 3. If a person owns land and intends to reside on it, it may be considered home property if there is no other principal place of residence. If a person owns the land, but not the shelter, the land is considered the residence.
 - a) Example: A person owns the land he lives on, but lives in a mobile home owned by his parents. If a person owns the shelter, but not the land, the shelter is the residence.
 - b) Example: A person owns the mobile home, but rents the lot on which it is located.
- 4. Applying the home exclusion.
 - a) The home exclusion applies to:
 - 1) The shelter in which the individual lives;
 - 2) All buildings on the property;
 - 3) The land on which the shelter is located; and
 - 4) Any land adjoining it as long as it is not separated by land that neither the individual nor spouse has an ownership interest in.
 - (a) Easements and public rights of way (utility lines, roads, etc) do not separate other land from the home plot.
- 5. Home Out-Of-State.
 - a) If an applicant's home property is located out-of-state, policy governing state residency applies.
 - b) It is not permissible for the individual to intend to return to his principal place of residence out-of-state and at the same time intend to reside in Mississippi.
 - c) If the applicant intends to return home to another state, he cannot be considered a Mississippi resident for Medicaid eligibility purposes.

d) If the applicant intends to reside in Mississippi, home out-of-state cannot be excluded as his principal place of residence.

6. Treatment of Home Property Under Supplemental Security Income (SSI) Resource Policy.

a) An individual's home, regardless of value, is an excluded resource if the individual:

1) Resides in the home; or

2) Is absent and intends to return to the home.

(a) An individual is residing with her children due to an illness, but intends to go home when health permits. The intent is based on the person's desire to return home.

(b) If the individual leaves the home and does not intend to return home to it, it is no longer considered the person's principal place of residence.

(i) The home exclusion no longer applies as of the date the individual leaves with the intent not to return or the date the individual no longer intends to return.

(ii) The month after there is no intent to return, the property will be considered a countable resource unless another exclusion develops.

b) A home can be excluded without intent to return, if:

1) A spouse or dependent relative of an institutionalized individual continues to reside in the home while the individual is institutionalized;

(a) Dependency may be financial or medical;

(b) Relatives may include child, step-child, grandchild, parent, step-parent, grandparent, sibling, step-sibling, half sibling, aunt, uncle, cousin, niece, nephew, in-laws;

2) Sale of the home would cause an undue hardship to a co-owner due to loss of housing.

(a) Obtain a statement from the dependent relative or the co-owner to apply either of the above exclusions.

c) Multiple Residences.

- 1) Only one residence can be excluded as home property.
- 2) If there are multiple residences, the principal place of residence must be determined, considering such points as how much time is spent at each residence; where the individual is registered to vote; and which address the individual uses for mail and tax purposes.

7. Treatment of Home Property Under Liberalized Resource Policy.

- a) Home property can be excluded regardless of intent to return home or whether a dependent relative lives on the property.
- b) Each client is allowed one home that can be excluded regardless of its use.
- c) If more than one residence is owned, exclude the property that would be most advantageous to the client.
- d) For long term care applications filed on or after January 1, 2006, there is a disqualification period for individuals with equity interest in their home of greater than \$500,000. This provision will not prevent an individual from using a reverse mortgage or home equity loan to reduce the total equity interest in the home.
 - 1) This disqualification period means that the homeowner who is in long term care can qualify for all Medicaid services except vendor payment of nursing facility services as long as equity interest exceeds the \$500,000 limit.
 - 2) The home equity limit will increase yearly based on the percentage increase in the urban consumer price index rounded to the nearest \$1,000.
 - 3) If Medicaid eligibility is dependent upon participation in the Home and Community Based Services (HCBS) waiver, the individual is ineligible for full Medicaid services as long as equity in the home exceeds the limit; however, a Medicare Savings Program can be approved if criteria are met.
 - 4) Undue hardship can be found to exist if a lien or legal impediment exists causing the individual to be unable to access the equity.

8. Reverse Mortgages.

- a) A reverse mortgage is an agreement in which a lending company:
 - 1) Makes a lump sum (subject to being counted as a resource the month following month of receipt);
 - 2) Available line of credit (subject to being counted as a resource the month following month of receipt; or

- 3) Regular payments (treated as loan proceeds) to a homeowner during a specific period of time.
- b) The amount of payment is determined by the amount of equity the homeowner has in the home.
- c) The homeowner is allowed to remain in the home until his/her death. At that time, the home is sold and/or the lender is repaid.
- d) Reverse mortgages are available to homeowners age 62 or older who own a debt-free or nearly debt-free home.
- e) Funds received from a reverse mortgage in any form that are transferred, either in the month of receipt or subsequent months, are subject to a transfer penalty unless an allowable exception applies (such as spousal transfers).

B. Exclusion of Home Replacement Funds. If an individual sells an excluded home, the proceeds may be an excluded resource if he:

- 1. Plans to buy another excluded home; and
- 2. Buys the home within 3 full calendar months following the month the proceeds are received.

C. Exclusion of Installment Sales Contracts.

- 1. If the proceeds from the sale of an excluded home are received under an installment sales contract, the contract is excluded if the individual:
 - a) Plans to use the entire down payment and the entire principal portion of a given installment payment to buy another excluded home; and
 - b) Purchases the new home within 3 full calendar months following the month the down payment or installment payment is received.
- 2. The proceeds of the sale include the following:
 - a) Lump sum. The net amount the seller receives at closing/settlement;
 - b) Installments. Down payment and principal portion of any installment payment.
- 3. Use of Proceeds. Use of the proceeds to buy another excluded home includes payment of any costs that stem from the purchase. These include, but are not limited to:
 - a) Down payment;
 - b) Closing/settlement costs;

- c) Moving expenses;
- d) Loan processing fees and points;
- e) Necessary repairs and replacement of the new home's structures and fixtures costs, if identified and documented before the new home is occupied and stem directly from the purchase or occupancy of the new home.
 - 1) This may include: roof, heating and cooling, plumbing, built-in appliances, etc.
- f) Mortgage payments;
- g) Use of proceeds to pay other costs will warrant their exclusion if such costs are identified and documented prior to occupancy and stem directly from the purchase or occupancy of the new home.

4. Proceeds Not Re-Invested in a Timely Manner.

- a) If the home is not replaced within the allowable 3-month period, the unused proceeds are a countable resource retroactive to the month following the month of receipt as follows:
 - 1) Lump sum. The exclusion of the unused funds is revoked retroactively to the date of receipt;
 - 2) Installment contract. The exclusion of the contract itself and the unused portion of any installments received are revoked retroactively to the date the unused proceeds were received.
 - 3) The exclusion of an installment contract, once revoked, will be reinstated if the individual intends to and does use the entire principal portion of a subsequent installment payment toward the purchase of another excluded home within 3 full calendar months of receiving such installment payment.
 - (a) The exclusion does not apply to that portion of the proceed of the sale of the original home that is in excess of the costs of the purchase and occupancy of the new home.

5. Exclusion of Jointly Owned Property Whose Sale Would Cause Undue Hardship.

- a) The value of an individual's ownership interest in the jointly-owned property is an excluded resource for as long as the sale of the property would cause an undue hardship, due to loss of housing, to a co-owner.
- b) Undue hardship would result if the co-owner:

- 1) Uses the property as his principal place of residence;
 - 2) Would have to move if the property were sold;
 - 3) Has no other readily available housing.
- c) The exclusion ends when any one of the above conditions no longer exists.
- 1) Example: Mr. Allen and his son jointly own a piece of land. The son and his family live on the property and have no other place to live. Mr. Allen applies for Medicaid. The property is excluded because the sale would cause an undue hardship to his son. However, if the son owned another house nearby which was vacant and habitable, there would be other available housing. Under these circumstances, undue hardship would not exist and the value of Mr. Allen's interest would be countable.

D. Exclusion of Real Property Due to Reasonable Efforts to Sell.

1. Real property may be excluded from resources if the owner is making reasonable efforts to sell it and those efforts have been unsuccessful.
2. The individual must maintain their efforts to sell unless good cause, i.e., circumstances beyond the individual's control prevent his taking the required actions to accomplish reasonable efforts to sell, exists.
3. In addition, the individual must accept a reasonable offer for the property. The specific requirements listed below must be met in order for this exclusion to apply:

a) Reasonable Efforts To Sell.

- 1) Reasonable efforts to sell real property consist of taking all necessary steps to sell it through media serving the geographic area in which the property is located.
- 2) Reasonable efforts specifically mean that within 30 days of signing the Agreement to Sell Property, the owner(s) must:
 - (a) List the property with an agent; or
 - (b) Begin to advertise in at least one of the appropriate local media, place "For Sale" signs on the property (if permitted),
 - (c) Begin to conduct open houses or otherwise show the property to interested parties on a continuing basis and attempt any other appropriate methods of sale; and

- (d) Except for gaps of no more than 1 week, the owner must maintain efforts the type listed above; and
- (e) The owner does not reject any reasonable offer to buy the property and accepts the burden of demonstrating to Medicaid's satisfaction that an offer was rejected because it was not reasonable.

b) Reasonable Offer To Buy.

- 1) Assume that an offer to buy the property at a particular price is reasonable if it is at least two-thirds of the estimated current market value (CMV), as evidenced by the tax receipt. If the owner disagrees with CMV as evidenced by the tax receipt, he must provide convincing evidence of a different CMV. Verification presented by the owner to support a CMV other than that evidenced by the tax receipt must be submitted to state office for review.

c) Good Cause.

- 1) Good cause exists when circumstances beyond an individual's control prevents the required action to accomplish reasonable efforts to sell. If good cause exists for failure to meet any of the criteria specified above, the exclusion can continue provided action is taken to resume efforts to sell.
- 2) Good cause includes:
 - (a) No offer to buy is received;
 - (b) A legitimate offer does not result in a sale;
 - (c) Escrow begins, but closing does not take place within the disposal period; and
 - (d) Incapacitating illness or injury, such as the individual becomes homebound or hospitalized for a prolonged period due to illness or injury and cannot take steps necessary to sell the property or to arrange for someone to sell it on his behalf.
 - (e) Example: Sandy Patterson is a Medicaid recipient whose property has been excluded due to a bona fide effort to sell. She accepted a reasonable offer for the property; however, the buyer backed out of the deal at closing. Ms. Patterson immediately started sales efforts again. Good cause exists.

d) Failure To Make Reasonable Efforts.

- 1) Unless there is good cause, failure to meet any of the criteria specified above means that:

- (a) An individual is not making reasonable efforts to sell the property and is not accepting a reasonable offer to buy;
- (b) The individual's countable resources include the value of the property beginning with the month following the month in which reasonable efforts to sell stop or the month following the month the owner failed to accept a reasonable offer to buy; and
- (c) The individual will be charged with an improper payment, if applicable.

e) Initial Verification of Efforts To Sell.

- 1) The effort to sell must be documented in the case record within the 30-day time period for applying the exclusion by requiring all proof such as:
 - (a) Copy of the listing agreement with the real estate agent in current use;
 - (b) Dated advertisement(s) indicating the property is for sale;
 - (c) Contracts with local media to advertise the property;
 - (d) A photograph of the "For Sale" sign on the property, in conjunction with other efforts; or
 - (e) Any other relevant items.

f) Effective Date of Exclusion.

- 1) If the appropriate proof is submitted, the exclusion is applied back to the first of the month in which the effort to sell as initiated.
- 2) If a reasonable effort to sell was in existence prior to the date of application, the exclusion can be applied retroactively provided the effort is documented and DOM-320A is signed.
- 3) If the effort to sell is just beginning, the exclusion applies effective with the first month DOM-320A is signed (provided it is signed within thirty (30) days). If not signed within thirty (30) days, the exclusion applies as of the first month a reasonable effort to sell is initiated.

g) Follow-Up Contacts.

- 1) Contacts must be scheduled at ninety (90) day intervals until the property is sold or the exclusion ends.

- 2) Follow-up contacts may be by telephone to determine efforts being made to accomplish the sale and to document whether there has been any offer to buy since the prior contact.
- 3) If an offer to buy has been refused, a statement must be submitted explaining the refusal.
- 4) The refusal of an offer to buy must be evaluated under the “Reasonable Offer to Buy” guidelines. If the refusal is unacceptable, the exclusion ends beginning with or retroactive to the month after the month of the refusal to sell.
- 5) If the reasonable efforts to sell are not continuing at each follow-up contact, determine if good cause exists. If good cause does not exist, the exclusion ends beginning with or retroactive to the month after the month the reasonable efforts stopped.

Source: Social Security Act §1902 (r) (2); 42 U.S.C. § 1396p(f)(1)(C); 42 CFR § 435.601(b) (Rev 1994).

History: Revised eff. 12/01/2025.

Rule 3.9: Exclusion of Personal Property

- A. Personal property includes automobiles, life insurance, household goods and personal effects and burial funds and certain burial arrangements and items, which may be subject to a full or partial exclusion. The exclusion applicable to each is discussed under this rule.
 1. Exclusion of Automobiles.
 - a) An automobile is any registered or unregistered vehicle used for transportation. Vehicles used for transportation can be motorized, animal drawn or even an animal. A vehicle not used for transportation is not an automobile, but may be a countable resource. A temporarily inoperable vehicle normally used for transportation meets the definition of an automobile.
 - b) If an exclusion cannot be developed for a vehicle the current market value (CMV) must be determined. The CMV is the average price an automobile of that particular year, make and model and condition would sell for on the open market (to a private individual) in the particular geographic area involved. The most recent NADA Official Car Guide or Older Car Guide may be used to determine the average trade-in value. If there is debt on the vehicle, determine the equity value.
 - 1) If the client states the CMV is not representative of the value of the vehicle, he must be given the opportunity to provide a value rebuttal from another knowledgeable source, such as a used car/truck dealer, automobile insurance company, classic car appraiser, etc.

c) Examples of Automobiles:

- 1) Car or truck;
- 2) Boat;
- 3) Motorcycle;
- 4) All-terrain vehicle;
- 5) Horse-drawn carriage;
- 6) Horse.

d) The following are not vehicles for purposes of this exclusion:

- 1) Permanently inoperable (junk) vehicle;
- 2) Vehicle used exclusively for recreation, such as boats, motorcycles, RVs, dirt bikes, golf carts, etc.;
- 3) Leased vehicles are not considered in the resource determination, as the individual does not own the vehicle.

e) Treatment of Vehicles Under Supplemental Security Income (SSI) Resource Policy.

- 1) Effective April 2005, one automobile may be excluded, regardless of value, if is used for transportation of the individual, spouse and/or a household member.
 - (a) Unless there is evidence to the contrary, assume the vehicle is used for transportation.
 - (b) If multiple vehicles are involved, apply the exclusion in a way that is most advantageous to the applicant/recipient. That is, apply the exclusion to the vehicle with the greater value.
 - (c) For any vehicle that cannot be excluded wholly under this provision or another provision (e.g., property essential to self-support, etc.), the equity value is countable toward the resource limit.
 - (d) The equity value of junk cars and vehicles used only for recreation is a resource. The personal effects exclusion does not apply to such vehicles.

f) Treatment of Vehicles Under Liberalized Resource Policy.

- 1) Two vehicles may be excluded, regardless of value, if used for transportation of the applicant or recipient under the age of nineteen (19).
- 2) Unless there is evidence to the contrary, assume the vehicles are used for transportation.
- 3) If multiple vehicles are involved, apply the exclusions in a way that is most advantageous to the applicant or recipient. That is, apply the exclusions to the vehicles with the greater equity value.
- 4) For any vehicle that cannot be excluded wholly under this provision or another provision (e.g., property essential to self-support, etc.), the equity value is countable toward the resource limit.
- 5) Any vehicle not used for transportation that is permanently inoperable (junk vehicle) can be totally excluded as a resource.
- 6) Recreational vehicles are treated as personal property. The personal effects exclusion does not apply to such vehicles.

2. Exclusion of Life Insurance.

- a) A life insurance policy is a contract. The purchaser (owner) pays premiums to the company (insurer). In return, the insurer agrees to pay a specified sum to a designated person(s), known as a beneficiary, upon the death of the insured individual. The owner and the insured may or may not be the same person. The policy should state the owner's name, if different from the insured.
- b) Below are some common terms associated with life insurance:
 - 1) Face Value (FV) is the amount of basic death benefit contracted for at the time the policy is purchased. The face page of the policy may show it as such or as the "amount of insurance", "the amount of this policy", "the sum insured", etc. A policy's FV does not include:
 - (a) The FV of any dividend addition, which is added after the policy is issued;
 - (b) Additional sums payable in the event of accidental death or because of other special provisions; or
 - (c) The amount(s) of term insurance, when a policy provides whole life coverage for one family member and term coverage for others.
 - 2) Cash Surrender Value (CSV) is a form of equity value that it acquires over time. The owner of the policy can obtain in its CSV only by turning the policy in for

cancellation before it matures or the insured dies. A loan against a policy reduces its CSV.

- 3) Dividends are shares of any surplus insurance company earnings, which can be applied to premiums due or paid by check or by an addition or accumulation to an existing policy.
- 4) Dividend Additions are the amount of insurance purchased with dividends added to the policy, increasing its death benefit and CSV. The table of CSVs that comes with a policy does not reflect the added CSV of any dividends.
- 5) Dividend Accumulations are dividends that the policy owner has constructively received, but left in the custody of the insurer to accumulate at interest. They are not a value of the policy; the policy owner can obtain them without affecting FV or CSV.
 - (a) Dividend accumulations cannot be excluded from resources under the life insurance exclusion, even if the policy that pays the accumulations is excluded from resources. Unless they can be excluded under another provision (e.g., as set aside for burial), they are a countable resource.

c) Verification of Life Insurance.

- 1) Documentary evidence is obtained to verify the value of life insurance when the client/spouse reports ownership of whole life insurance(s) on any individual with a total FV exceeding the appropriate program exclusion limit: \$1500 (SSI) or \$10,000 (Liberalized).
- 2) The individual or authorized representative must provide a copy of all the life insurance policies and the most recent dividend statement for each one.
- 3) After exclusions are developed, any remaining cash value must be considered in the eligibility determination. The cash surrender value of any policy that cannot be excluded is countable toward the resource limit.

d) Types of Life Insurance.

- 1) Term Life Insurance is usually in effect for a specific length of time such as 20 years or length of employment. It does not accrue cash value;
- 2) Whole Life Insurance remains in effect unless the premiums are not paid or the policy matures; and accrues cash value;
- 3) Burial Insurance contracts prevent the proceeds from being used for anything other than the burial expenses of the insured.

e) Owner versus Beneficiary.

- 1) The owner is the one who has control of the policy. An individual may own life insurance on himself or another person. The owner may take such actions as cash in a policy, take out a loan against cash value, etc. The value of life insurance policies owned must be considered in the eligibility process.
- 2) The beneficiary is the individual(s) who receive the proceeds of the policy at the insured individual's death. One person may be both the owner and the beneficiary.
 - (a) Example: Jim Jones purchases a \$10,000 life insurance policy on his mother, Jane Williams, and is the beneficiary upon her death.

f) Treatment of Life Insurance Under SSI Resource Policy.

- 1) Term life insurance policies do not have cash value and are excluded.
- 2) Burial policies are excluded.
- 3) For all other policies determine the total Face Value (FV) of the policies owned by the individual. Do not include the Face Value of any dividend additions in determining whether a policy is a countable or excluded resource.
- 4) A life insurance policy is excluded if its' Face Value and the FV of any other life insurance policies the individual owns on the same insured person total \$1,500 or less.
- 5) Even if a policy is excluded, any accumulated dividends are countable toward the resource limit unless they are excluded under another provision such as set aside for burial.
- 6) If the policy is a countable resource, the cash surrender values (CSV), dividend additions, dividend accumulations, outstanding loan amounts reducing the (CSV) of the policies must be verified and considered in the eligibility determination.
- 7) The countable cash surrender values of the policies and accumulations are countable toward the resource limit unless they can be excluded as burial assets.
- 8) The following are examples:
 - (a) Lyn Reno is the owner of four life insurance policies. Two have Face Values of \$500 and two have Face Values of \$250. The total of all FVs is \$1500 so the policies are excluded.
 - (b) Jerry Mann is the owner of three life insurance policies insuring his spouse. The Face Value of each one is \$750. The total Face Value is \$2,250. The specialist

must determine the cash values of the policies and count them toward the resource limit unless a burial exclusion is developed.

- (c) Roger West is the owner of two life insurance policies on his spouse. One is whole life with a Face Value of \$1,200 and the other is term life with a Face Value of \$10,000. The term life policy has no cash value and is excluded. The whole life policy is excluded because the Face Value is less than \$1,500.

g) Treatment of Life Insurance Under Liberalized Resource Policy.

- 1) Term life insurance policies do not have cash value and are excluded.
- 2) Burial policies are excluded.
- 3) For all other policies determine the total Face Value (FV) of the policies owned by the individual. Do not include the Face Value of any dividend additions in determining whether a policy is a countable or excluded resource.
- 4) A life insurance policy is excluded if its Face Value and the FV of any other life insurance policies the individual owns on the same insured person total \$10,000 or less.
- 5) Even if a policy is excluded, any accumulated dividends are countable toward the resource limit unless they are excluded under another provision such as set aside for burial.
- 6) If the policy is a countable resource, the cash surrender values (CSV, dividend additions, dividend accumulations, outstanding loan amounts reducing the CSV) of the policies must be verified and considered in the eligibility determination.
- 7) The countable cash surrender values of the policies and accumulations are countable toward the resource limit unless they can be excluded as a burial asset.
- 8) The following are examples:
 - (a) Lane Ryan is the owner of four life insurance policies. Two have Face Values of \$1,500 and two have Face Values of \$750. The total Face Value is \$4,500 so the policies are excluded.
 - (b) Jennifer Madison is the owner of three life insurance policies on her spouse, with Face Values of \$750, \$2,500 and \$12,000. The total Face Values are \$15,250. The specialist must determine the cash surrender values of the policies and count them toward the resource limit unless a burial exclusion is developed.
 - (c) Roberta Warren is the owner of two life insurance policies on her spouse. One

is whole life with a Face Value of \$8,500 and the other is term life with a Face Value of \$25,000. The term life policy has no cash surrender value and is excluded. The whole life policy is excluded because the Face Value is less than \$10,000.

h) Accelerated Life Insurance Payments.

- 1) Proceeds paid to a policyholder before death.
- 2) Plans vary from company to company; however, all involve early payout of some or all of the proceeds of the policy.
- 3) Most of the plans fall into three basic types depending on the circumstances that cause the payments to be accelerated:
 - (a) Long Term Care Model. Allows payments if the policyholder requires an extended stay in a care facility or, in some instances, healthcare services at home.
 - (b) Dread Disease or Catastrophic Illness Model. Allows payments if the policyholder suffers from a specified covered disease or illness such as cancer or AIDS.
 - (c) Terminal Illness Model. Allows payments following the diagnosis of a terminal illness where death is likely to occur within a specified timeframe.
- 4) These payments are also called “living needs” or “accelerated death” payments.
- 5) Depending on the plan, the receipt of payments may reduce the FV of the policy by the amount of the payments and may reduce the CSV in a proportionate manner. In other cases, a lien may be attached to the policy in the amount of the payments that results in a proportionate reduction in the CSV.
- 6) If an individual has a life insurance policy that allows them to receive their death benefit while living and the individual meets the requirements set by the insurance company to receive such proceeds, they are not required to file for the proceeds.
 - (a) If the individual does file and receives the benefits, the payment will be considered as follows:
 - (i) Consider as income in the month of receipt.
 - (ii) Any money remaining the following month is considered a resource.

i) Life Insurance Endowment Policies.

- 1) A life insurance policy's primary function is to pay out upon the death of the insured.
 - 2) A life insurance endowment policy does not do that; rather it serves as an investment medium with a maturity date or date certain payout, i.e., 5 years from purchase, at which time a benefit is paid to a designated beneficiary. The possible death of the "insured" individual before the maturity date is a secondary consideration.
 - 3) These policies should be treated as annuities.
3. Exclusion of Household Goods and Personal Effects.
- a) Household goods are personal property found in the home and used in connection with normal maintenance, use and residency of a home. They include:
 - 1) Furniture;
 - 2) Appliances;
 - 3) Television sets;
 - 4) Carpets;
 - 5) Cooking and eating utensils;
 - 6) Dishes.
 - b) Personal effects are personal property that is worn or carried by an individual or that have an intimate relation to him or her. They include:
 - 1) Clothing;
 - 2) Jewelry;
 - 3) Personal care items;
 - 4) Prosthetic devices;
 - 5) Educational or recreational items;
 - (a) Books;
 - (b) Musical instruments.
 - c) Treatment under SSI Resource Policy.

- 1) Household goods and personal effects as defined above, are excluded in resource determinations, regardless of their dollar value.
 - 2) Prior to April 2005, a general exclusion of up to \$2,000 applies to the total equity value of household goods and personal effects, other than those excluded regardless of value: one wedding ring, one engagement ring and prosthetic devices, wheelchairs, hospital beds, dialysis machines and other items required by a person's physical condition.
 - 3) Personal property that an individual acquires or holds because of its value or as an investment is:
 - (a) A countable resource; and
 - (b) Not considered as household goods or personal effects for purposes of exclusion.
 - 4) When ownership of other personal property is alleged and the property is not excludable as household goods or personal effects, the Current Market Value (CMV) or Equity Value (EV), as appropriate, of the item must be verified.
 - 5) Example: A recreational vehicle (RV) used for vacations and other recreational activities is classified as personal property. It does not meet criteria to be an automobile or meet the definition of household goods or personal effects for exclusion. If the CMV of the RV is \$10,000 and the payoff is \$5,000, under SSI resource policy the equity value of \$5,000 is counted as a resource.
- d) Treatment Under Liberalized Resource Policy.
- 1) Under liberalized policy, household goods and personal effects, as defined above, are excluded in resource determinations regardless of their dollar value.
 - 2) Personal property that an individual acquires or holds because of its value or as an investment:
 - (a) Is a countable resource when its equity value exceeds \$5,000; and
 - (b) Is not considered to be household goods or personal effects for purposes of exclusion.
 - 3) When ownership of other personal property is alleged and the property is not excludable as household goods or personal effects, under liberalized resource policy, up to \$5,000 in EV is excluded for other personal property.
 - 4) The Current Market Value (CMV) or Equity Value (EV), as appropriate, must be verified.

- 5) Example: A recreational vehicle (RV) used for vacations and other recreational activities is classified as personal property. The RV does not meet criteria to be an automobile, nor does it meet the definition of household goods or personal effects for exclusion. If the CMV of the RV is \$12,000 and the payoff is \$7,500, the RV can be excluded as a resource under liberalized policy since its equity value is \$5,000 or less.
4. Exclusion of Death Benefits for Last Illness and Burial Expenses.
- a) Death benefits are received because of another person's death. Examples include:
 - 1) Life insurance proceeds;
 - 2) Social Security death benefits;
 - 3) Burial benefits from the Railroad or Veterans Administration;
 - 4) Inheritances;
 - 5) Gifts from relatives, friends or the community to help with expenses.
 - b) Recurring survivor benefits from a pension or retirement plan or the Social Security Administration are not death benefits.
 - c) Last illness and burial expenses include related hospital and medical expenses; funeral, burial plot and interment expenses; and other related expenses.
 - d) Death benefits provided to an individual are income to the extent that the total amount exceeds the expenses of the deceased's last illness and burial expenses paid by the individual.
 - e) Death benefits which are not income are also not a resource for one month following the month of receipt. If retained, the second month following receipt, death benefits are resources.
 - f) If death benefits are not considered income, under both SSI and Liberalized Resource policy, treatment is as follows:
 - 1) Month of receipt. Excluded.
 - 2) Month after receipt. Excluded.
 - 3) Second Month following receipt/ Countable resource, if retained.
 - 4) Exception: If the death benefits are repayment for expenses already paid, they are

considered resources the month after receipt, if retained.

(a) Example: When her uncle passed away, Beth Smith received 4,000 as Beneficiary of his life insurance policy. She received it in July and anticipates spending the entire amount on his last illness and burial expenses. She has already received bills totaling \$900 that she paid. On August 1, she received a funeral bill for \$2,900 and a few days later received a cash gift of \$500 which she also intends to apply toward last illness and burial expenses. She pays the \$2,900 funeral bill in August and intends to use the remainder of the life insurance to pay some hospital expenses.

(i) Treatment: Neither the \$4,000 received in July nor the \$500 received in August is unearned income since it is all expected to be used for burial or last illness expenses. She used \$900 of the \$4,000 in July. As of August 1, she had \$3,100 that is not a resource for August. During August she paid the \$2,900 bill and then had \$200 left. However, the \$500 she receives in August gives her \$700 to use for hospital expenses. She must spend \$200 in August for burial or last illness expenses; otherwise, the \$200 will count as a resource September 1. Any portion of the \$500 remaining as of October 1 will be counted as a resource.

(b) Jane Smith has total countable resources of \$1,980 consisting of a \$1,000 savings account and \$980 in checking. Her brother died in late October. In November she receives \$3,000 as beneficiary of her brother's life insurance. She has last illness and burial expenses of \$2,750 to pay. There are no other bills.

(i) Treatment: Of the \$3,000 Ms. Smith received, \$250 is unearned income in November because the last illness and burial expenses are only \$2,750. The \$2,750 is not considered unearned income and will not be a resource until January 1, if she still has it at that time. Any of the \$250 remaining will be a resource for December.

5. Exclusion of Burial Spaces.

a) Burial spaces are spaces or items that are used to contain the remains of a deceased person. These include:

- 1) Cemetery plots, crypts, mausoleums, cremation niches;
- 2) Caskets, urns;
- 3) Headstones or other grave markers;
- 4) Burial containers (burial vaults or grave liners);
- 5) Expenses related to the opening and closing of the grave sites; and

6) Perpetual care expenses

b) Treatment of Burial Spaces Under SSI and Liberalized Resource Policy.

- 1) A burial space or an agreement which represents the purchase of a burial space held for the burial of the individual, his or her spouse, or a member of his or her immediate family is an excluded resource, regardless of value. The burial space exclusion is in addition to, and has no effect on, the burial funds exclusion.
- 2) Under SSI policy, burial spaces may be excluded if intended for use of the individual, spouse or immediate family, as defined.
- 3) Liberalized policy includes all of the relatives in the SSI definition and extends to family members of any degree of relationship.
- 4) To be “held for” the burial of an individual, the item must be paid for in full and if not paid for in full, the amount paid is considered a burial fund rather than a burial space.
- 5) Only one item serving the same purpose may be excluded per person. For example, exclude a casket and vault for the same person, but not a casket and an urn.
- 6) No limit exists on the value that may be excluded.
- 7) Taxes paid on burial spaces are also excluded.
- 8) If a burial space is being held by a funeral provider in accordance with a burial agreement, whether revocable or irrevocable, then the value of the burial space(s) is excluded under the burial space exclusion

6. Exclusion of Burial Funds.

a) Burial funds are items clearly designated for an individual’s burial. They include:

- 1) Revocable burial contracts;
- 2) Revocable burial trusts;
- 3) Other revocable burial arrangements (Including installment sales contracts for burial spaces);
- 4) Cash;
- 5) Financial accounts such as checking, saving or CDs;

- 6) Stocks or bonds; and
- 7) Life insurance cash value.
- b) Burial funds must be clearly designated for the eligible individual's burial, cremation or other burial-related expenses, i.e., flowers, clothing, transportation, etc.
- c) Property other than that listed above will not be considered burial funds and may not be excluded under the burial funds provision. For example, a car, real property, livestock, etc., are not burial funds.
- d) Burial funds may be designated by:
 - 1) An indication on the burial funds document, such as a revocable burial contract or the title on a bank account. Whenever burial funds are already clearly set aside as burial funds, no separate signed statement or further designation is required.
 - 2) Completion of DOM-321B, Designation of Burial Funds, provides the information required to document a burial fund, i.e., owner, value and form of funds, date set aside for burial, etc.
 - 3) Once a fund is designated, it remains a burial fund until eligibility terminates or the individual uses the funds for another purpose, in which case a penalty may apply. See discussion of Misuse of Burial Funds later in this section.
- e) The burial fund may be excluded retroactively to the date the individual originally designated the funds for burial. The individual's allegation of the date the funds were first considered set aside for burial (even prior to application) is accepted unless there is evidence the funds were used and replaced after that date.
 - 1) Example: Mr. Hoover applies on May 1 and signs DOM-321B designating a CD for burial. He set the account up two (2) years ago for his burial. He is seeking coverage for February, March and April. The exclusion may be given for those months.
- f) Burial funds cannot be commingled with other resources which are not intended for burial. The burial fund exclusion applies only if funds set aside for burial expenses are kept separate from non-burial funds. If excluded burial funds are mixed with resources not intended for burial, the exclusion will not apply to any portion of the funds.
 - 1) It is possible to have excluded and non-excluded funds commingled provided all funds are intended for burial. It is not permissible, however, to have burial and non-burial funds commingled.
 - (a) Example: Mr. Brennan has a bank account with a balance of \$2,000. He plans to use \$1,500 for burial and the remaining \$500 for other non-burial expenses.

The burial exclusion may not be applied to this bank account. Mr. Brennan may want to consider opening another account for the \$500. If he does so, he must provide verification and DOM-321B must be completed to document the burial exclusion.

- g) Any amount may be designated for burial; however, only the amount up to the applicable maximum exclusion may be excluded. Once the amount of the designated burial funds equals the applicable maximum, the only additions to it that can be excluded are appreciation and interest. However, until the maximum has been reached, additional amounts can be excluded if the individual designates them for burial expenses. Interest is not included in determining if the maximum has been reached.
- h) SSI policy allows up to \$1,500 in funds set aside for the burial of the individual and up to an additional \$1,500 in funds set aside for burial of the individual's eligible or ineligible spouse.
 - 1) Example: Mr. Brown designates \$1,500 in a bank account for burial. The entire amount may be excluded. Mr. Brown designates an account with a \$2,000 balance for burial. Since \$1,500 is the maximum exclusion, the remaining designated funds are not excluded and count toward the resource limit.
- i) Under liberalized policy, the maximum that can be excluded for burial of the individual is \$6,000. In addition, up to \$6,000 is allowed for burial of the eligible or ineligible spouse.
- j) The \$1,500 or \$6,000 maximum exclusion is reduced by:
 - 1) Any amount held in an irrevocable trust or burial contract or other revocable arrangement for the individual or spouse, if applicable, except to the extent it represents excludable burial spaces.
 - 2) Face Value of any excluded life insurance policy on the individual or spouse, if applicable
 - (a) Example (SSI): Greta Mann has a savings account designated for burial. It has a balance of \$2,000. She also has an irrevocable burial contract with Hartfield Funeral Home that represents burial space items worth \$2,500 and burial funds of \$1,500. The burial fund portion of the burial contract totally offsets the \$1,500 SSI burial exclusion: $\$1,500 - \$1,500 = 0$; therefore, the entire \$2,000 balance in the savings account is not excluded and counts toward the resource limit.
 - (b) Example (Liberalized): Greta Mann has an excluded life insurance policy with a Face Value of \$5,000. She also has a savings account with a balance of \$4,000 that she designates for burial. The \$6,000 burial exclusion is partially offset by the Face Value of her policy: $\$6,000 - \$5,000 = \$1,000$.

Therefore, \$1,000 of her savings may be excluded and the remaining \$3,000 in non-excluded burial funds is a countable resource.

- k) Irrevocable burial arrangements are not resources and are not subject to the \$1,500 or \$6,000 maximums; however, as indicated above, they do reduce the amount of the burial fund exclusion allowed. Burial insurance is considered an irrevocable arrangement.
- l) The value of the irrevocable burial arrangements purchased by the individual must be equal to the value of the funding source used to make the purchase, e.g., cash prepayment, life insurance or annuity irrevocably assigned to the funeral home. If the value of the burial arrangement is not equal to the value of the prepayment, a penalty may be assessed under the transfer of assets provision for institutionalized clients.
- m) The maximum amount that can be excluded when a burial fund is initially designated is \$1,500 under SSI resource rules or \$6,000 under liberalized policy. Interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements are excluded as income and resources if left to accumulate and become part of the separate burial fund.
- n) Changes in the individual's circumstances may raise or lower the amount that can be excluded for burial, such as:
 - 1) The purchase of additional life insurance with cash surrender value may change the allowable exclusion. In addition, cashing in life insurance may raise or lower the allowable exclusion.
 - 2) The face amount of life insurance may change, thereby changing the allowable exclusion.
 - 3) An irrevocable burial contract may be purchased, thereby reducing the allowable burial exclusion.
 - 4) Deposits made to bank accounts designated for burial will change the allowable exclusion.
 - 5) If the amount designated is less than the maximum exclusion, the individual may add additional funds to the burial fund to bring up the original amount to the maximum exclusion amount.
- o) The burial fund exclusion once applied must be reevaluated whenever a change becomes known that would affect the exclusion amount or at each redetermination.

- p) If the fund contains both excluded and non-excluded amounts, use the formula below to determine the excludable portion:
- 1) $\text{Original exclusion amount} \div \text{Original fund amount} \times \text{Present fund amount} = \text{Excluded Portion};$
 - 2) Example: An individual, subject to SSI rules, designated \$2000 (original fund amount) as a burial fund, \$1500 (original exclusion amount) was excluded and \$500 is non-excluded. At the most recent review, the account had grown to \$2200 (present fund amount) due to accumulated interest. The excluded amount is \$1650. $(1500 \div 2000 \times 2200 = 1650)$
- q) If funds, including interest, that were excluded under the burial fund exclusion are used for any purpose other than burial expenses for the designated individual, a penalty for misuse is imposed only if the client would have excess resources without the burial exclusion. Upon discovery of the misuse of excluded burial funds, verification must be obtained (which may be in the form of a statement from the client or representative) that all or a portion of the funds have been used for another purpose other than burial to determine the effect the misuse will have on eligibility.
- 1) If the client would have excess resources without the burial fund exclusion, the amount used inappropriately is counted as income the next possible month after the month in which the misuse is discovered.
 - 2) The misused funds will be included as income in the eligibility computation; however, misused burial funds are not counted as income in the Medicaid Income computation for the institutionalized individual unless the funds are available to the recipient.
 - 3) If the misused funds include non-excluded burial funds, assume the funds were used in this order: non-excluded interest; non-excluded designated amount; excluded interest and excluded designated amount. The penalty only applies to excluded interest and designated amounts.
 - 4) If ineligibility results, the case will be closed in accordance with ongoing policy, i.e., advance notice issued, etc.
 - 5) If the misuse of burial funds does not result in excess income because the client's resources would not exceed limit even if the burial funds were not excluded or if applicable, the funds are not available to the client to include in the Medicaid Income computation, no action is required other than documenting the case record.
 - 6) There must be a new redesignation of funds when there is a change in the amount of funds originally designated, not including accumulated interest or appreciation.

- 7) If eligibility is lost, the burial fund exclusion must be developed if the individual reapplies later.

(a) Example: Jennifer Shows originally designated \$1,500 as a burial fund. Interest accumulated and the account grew to \$1,750. In May, she withdrew \$500 to repair her car. If her other resources plus the \$1,250 burial fund, which is now non-excluded, exceed the program resource limit, the penalty applies. In addition, she must redesignate the amount of funds for burial because the amount in the account (\$1,250) is now below the original amount designated. In the alternative, she could add \$250 to the account and the original designation would be accurate; however, any penalty would still apply.

7. Exclusion of Pre-Need Burial Contracts.

- a) A pre-need burial contract is an agreement between an individual and a funeral home where the buyer pays in advance for his or another person's burial arrangements.
- b) If an applicant's resources exceed the allowable limit, he is allowed to establish a pre-need contract to reduce his resources below the limit.
- c) Many pre-need contracts include both burial space and burial fund items:
 - 1) Expenses related to the burial space include: casket, vault, opening/closing costs at the cemetery; and
 - 2) Expenses related to the burial fund include: embalming, clothing, visitation room, transportation, flowers.
- d) Payment for a contract has taken place when an applicant/recipient transfers a liquid resource to the funeral provider or when specific life insurance policies have been designated on the pre-need burial contract.
- e) A liquid resource designated, but not transferred to the funeral provider as payment for a contract, is counted as an available resource.
- f) A resource cannot be designated for future payment of a pre-need contract and that resource be excluded as a resource.
- g) There are two types of pre-need burial contracts: revocable and irrevocable.
 - 1) Revocable contracts may be sold or the money may be refunded. They are considered resources; however, a full or partial exclusion may be developed.
 - (a) Revocable Contracts That Are Paid in Full.

- (i) If the value of all the items is provided, both the burial space and the burial fund exclusion may be developed. If the value of the burial space items is not provided, only the burial fund exclusion may be developed.
- (b) Revocable Contracts That Are Not Paid In Full.
 - (i) Only the burial fund exclusion may be developed unless the contract verifies the burial space items are paid for and the burial funds items are being paid on.
- (c) Under SSI and Liberalized Resource Policy, revocable pre-need burial contracts are considered a resource; however, a burial exclusion may be developed.
- (d) If the revocable contract is paid in full:
 - (i) Any portion of the contract clearly representing burial spaces may be excluded entirely, regardless of value
 - (ii) Up to \$1,500 (SSI) or \$6,000 (Liberalized) of the remaining portion of the contract may be excluded as a burial fund
- (e) If the contract is not paid in full, it should be treated as a burial fund unless it is verified that the burial spaces themselves are paid in full and considered “held for” the individual
- (f) Example: Mr. Allen applies for Medicaid. He has just purchased a revocable contract at Land of Lakes Funeral Home. The contract verifies it is paid in full and includes the following:

\$1,500	Casket
\$1,000	Vault
\$1,000	Headstone
\$500	Opening/closing costs
\$200	Embalming
\$300	Visitation Room
\$1,000	Funeral service

Because the contract is paid in full, the first four items, which are burial space items, may be excluded under the burial space exclusion. The remaining \$1,500 may be excluded under the burial fund exclusion.

- 2) Irrevocable pre-need contracts under SSI and liberalized resource policy are not a resource since the money cannot be refunded or the contract sold without significant hardship. If the contract is irrevocable, it is not a resource retroactive to the date of purchase. The portion that represents burial funds offsets that exclusion. If the contract is not paid in full, the portion paid represents burial funds up to the maximum.

3) Life Insurance Funded Burial Contracts.

- (a) A life insurance funded burial contract involves an individual purchasing a life insurance policy on his own and then assigning, revocably or irrevocably, either the proceeds or ownership of the policy to a funeral provider. The purpose of the assignment is to fund a burial contract. Life insurance funded burial contracts are not considered burial insurance.

8. Effect of the Assignment of Ownership on Burial Exclusion.

a) Revocable Assignment.

- 1) The burial space exclusion does not apply because the items are not paid for until the death of the individual and therefore are not being “held for” the individual. The burial fund exclusion may apply.
- 2) The resource value of the burial contract is equal to the Cash Surrender Value of the life insurance, subject to the maximum burial funds exclusion amount.

b) Irrevocable Assignment.

- 1) The burial space exclusion may apply if the values of the items are provided.
- 2) The life insurance policy is not a resource because the individual no longer owns it.
- 3) The contract is not a resource because the individual no longer owns it.
- 4) The value of the burial fund items offsets the value of any other burial funds items up to the allowable maximum

9. Effect of the Assignment of Proceeds on Burial Exclusion.

- a) When life insurance proceeds are assigned, the burial space exclusion does not apply because the provider will not be paid until the death of the individual and spaces are not being “held for” the individual.
- b) The resource value of the contract is the cash surrender value of the life insurance policy.
 - 1) If the Face Value of all life insurance policies for the individual total \$1,500/\$6,000 or less, exclude the CSV under the life insurance exclusion.
 - 2) If the FVs total more the \$1,500/\$6,000, verify and count the CSV toward the resource limit. The burial fund exclusion may apply.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

History: Revised to correspond with SPA 19-0018 (eff. 07/01/2019) eff. 12/01/2025.

Rule 3.12: Exclusion of Retained Cash Payments

A. The treatment of the following types of retained cash payments is discussed below:

1. Retroactive Supplemental Security Income (SSI) and Retirement, Survivors and Disability Insurance (RSDI).

- a) The unspent portion of retroactive SSI benefits and RSDI benefits is excluded from resources for nine (9) calendar months following the month in which the individual receives the benefits.
- b) Retroactive SSI benefits are SSI benefits issued in any month after the calendar month for which they are paid.
 - 1) Benefits for January that are issued in February are retroactive.
- c) Retroactive RSDI benefits are those issued in any month that is at least two calendar months after the calendar month for which they are paid.

2. Disaster Assistance.

- a) Disaster Assistance includes assistance received from the following sources:
 - 1) The Disaster Relief and Emergency Act (PL 100-707);
 - 2) Another federal statute because of a presidentially-declared major disaster;
 - 3) A state or local government's comparable assistance; or
 - 4) A disaster assistance organization.
- b) If the disaster assistance funds are excluded from income, the unspent amount is also excluded from resources.
- c) Interest earned on funds excluded in this provision is excluded from income and resources.

3. Presidentially-Declared Major Disasters.

- a) Some catastrophes (such as hurricanes) cause such wide-spread destruction that the President of the United States declares them major disasters.
- b) The exclusion period may be extended for individuals who incurred damage or loss of excluded resources under certain circumstances.

- 1) The eighteen (18) month period (nine (9) month initial period plus the nine (9) month good cause extension) may be extended up to an additional twelve (12) months.
 - 2) Such an extension may be granted if the excluded resource is located within the geographical area of the disaster area (this area is defined in the presidential order); the individual intends to repair or replace the excluded resource or the individual presents evidence of good cause.
4. Netherland WUV Payments to Victims of Persecution.
- a) The Netherlands Act on Benefits for Victims of Persecution 1940 – 1945, WUV (Wet Uitkering Vervolgingslachtoffers) provides payments to individuals who were victims of persecution during World War I during German and Japanese occupation of the Netherlands and the Netherlands East Indies (now the Republic of Indonesia).
 - b) The unspent WUV payments made by the Dutch government are excluded from resources and the interest earned on unspent WUV payments is excluded from income.
5. German Reparation Payments.
- a) German reparations payments are made to certain survivors of the Holocaust under the:
 - 1) Federal Republic of Germany's laws for compensation of National Socialist Persecution (German Restitution Act); or
 - 2) German Reunification Act of 1990.
 - b) These payments may be made periodically or in a lump sum.
 - c) Unspent German reparations payments are excluded from income and resources. Interest earned on unspent payments is excluded from income.
6. Austrian Social Insurance Payments.
- a) The nationwide class action law suit, Bondy v. Sullivan, involved Austrian social insurance payments that were based on wage credits granted under Paragraphs 500-506 of the Austrian General Social Insurance Act.
 - b) These paragraphs grant credits to individuals who suffered a loss; that is, were imprisoned, unemployed or forced to flee Austria, during the period of March 1933 to May 1945 for political, religious or ethnic reasons.
 - c) Unspent Austrian social insurance payments based, in whole or in part, on wage credits granted under Paragraphs 500-506 of the Austrian General Social Insurance Act are

excluded from resources and the interest earned on unspent Austrian social insurance payments is excluded from income.

- d) Austrian social insurance payments not based on wage credits granted under these paragraphs are not excluded from resources under this provision.

7. Benefits Excluded from Both Income and Resources by a Federal Statute other than Title XVI.

- a) Federal statutes other than Title XVI specify many income and resources exclusions. Examples of these are discussed below:

1) Agent Orange Settlement Payments.

- (a) There is no limit to the length of time unspent Agent Orange settlement funds are excluded from resources. Interest earned on conserved payments is excluded as income.

2) Victims Compensation.

- (a) Some states establish funds to assist victims of crimes.
- (b) Unspent payments received from such a fund are excluded for nine (9) months if received for expenses incurred or losses suffered because of crime, e.g., lost wages, medical expenses incurred due to injuries, etc.
- (c) Interest earned on unspent victims' compensation payments is not excluded from income or resources.

3) Relocation assistance.

- (a) This type of assistance is sometimes provided to persons displaced by projects which acquire real property.
- (b) Relocation assistance may be provided under local, state or federal programs. Such payments may be excluded for certain lengths of time. The length of the exclusion depends on the source:
 - (i) State and Local Program Assistance – unspent funds are excluded from resources for 9 months;
 - (ii) Federal Assistance – There is no time limit on the exclusion for assistance provided under the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970
- (c) Interest earned on unspent payments is not excluded from income or resources.

8. Tax Advances, Tax Credits and Refunds.

- a) Unspent federal tax refunds and advance tax credits are excluded from resources for twelve (12) calendar months following the month the refund or payment is received.
- b) Interest earned on any unspent tax funds related to Earned Income Tax Credits (EITC) or Child Tax Credits (CTC) is not excluded as income or a resource.

9. Radiation Exposure Compensation Trust Fund Payments.

- a) The Radiation Exposure Compensation Trust Fund (RECTF) authorized the Department of Justice to make compensation payments to individuals (or their survivors) that were found to have contracted certain diseases after exposure.
- b) The payments will be made as a one-time lump sum.
- c) Unspent payments are excluded from resources. Interest earned on unspent payments is excluded income.

10. Gifts of Domestic Airline Tickets.

- a) The value of a ticket for domestic travel received by an individual (or spouse) is not a resource if the ticket is:
 - 1) Received as a gift,
 - 2) Not converted to cash, i.e., cashed in, sold, etc., and
 - 3) Excluded from income.

11. Cash and in-kind items received for the repair or replacement of lost, damaged, or stolen excluded resources are not considered resources for nine (9) months from the date or receipt, This may be extended up to nine (9) more months if the individual verifies good cause for the repair or replacement not being completed within the first nine (9) month period.

Source: Social Security Act §1902 (r) (2); 20 CFR § 416.1232; 42 CFR § 435.601(b) (Rev 1994); American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, H.R. 8, 112th Cong. (2013).

History: Revised eff. 12/01/2025.

Rule 3.14: Achieving a Better Life Experience (ABLE) Accounts

- A. An ABLE account is a type of tax-advantaged account that enables eligible individuals with disabilities to:
 - 1. Save money that is tax-exempt,
 - 2. Withdraw the funds to use for certain qualified disability expenses, and
 - 3. Experience Limited impact on eligibility for Medicaid and Supplemental Security Income (SSI).
- B. The Mississippi Department of Rehabilitation Services (MDRS) has full responsibility for administering the ABLE program, including making the assessment on whether the individual is eligible to open an ABLE account.
- C. The designated beneficiary is the eligible individual who establishes and owns the ABLE account.
- D. The designated beneficiary is the owner of an ABLE account, regardless of whether someone else has signatory authority over the account.
- E. An eligible individual can open an ABLE account through an ABLE Program in any state that has a qualified ABLE program; however, the eligible individual can be the designated beneficiary of only one ABLE account.
- F. Contributions to an ABLE account and earnings (interest, dividends, etc.) an ABLE account receives are excluded as income to the designated beneficiary. This includes income distributions from a Special Needs Trust or Pooled Trust that is deposited into an ABLE account of the SNT or pooled trust beneficiary.
- G. ABLE account balances are fully excluded as a resource for Medicaid purposes.
- H. Distributions from an ABLE account do not count as income of the designated beneficiary for ABD; instead, they are a conversion of a non-countable resource to another form of resource that is counted or excluded as follows:
 - 1. Qualified Disability Expenses (QDE's) are related to the blindness or disability of the designated beneficiary and are for the benefit of the designated beneficiary. In general, a QDE includes, but is not limited to, the types of expenses shown below:
 - a) Education,
 - b) Housing (mortgage, property insurance, property taxes, rent and utilities, i.e., heating, fuel, gas, electricity, water, sewer and garbage removal),
 - c) Transportation,

- d) Employment training and support,
 - e) Assistive technology and related services,
 - f) Health, prevention and wellness,
2. Distribution from an ABLE account are not countable as a resource for ABD purposes if used for QDEs in the month of the distribution.
 3. Distributions retained after the month of distribution are not counted as resource unless they are spent on a non-QDE.
 4. Distributions spent on a non-QDE are a resource in the month they were spent.
- I. Distributions from an ABLE account that are used for QDEs are not included in the beneficiary's taxable income for MAGI. However, the taxable portion of a distribution used for a non-QDE is countable as income for MAGI determinations.
 - J. ABL account distributions that are used for a QDE are disregarded from an individual's total income used to calculate Medicaid Income. If the distribution is not used for a QDE, it is a resource in the month the funds are misspent.
 - K. The Mississippi Division of Medicaid does not seek direct recovery of medical expenses paid for the beneficiary from an ABL account at the beneficiary's death. However, funds in an ABL account at the beneficiary's death may become part of the beneficiary's probate estate for purposes of estate recovery.

Source: Miss. Code Ann. § 43-28-1; Pub. L. 113-295.

History: New Rule eff. 12/01/2025.

Part 103 Chapter 4: Countable Resources

Rule 4.2: Checking/Savings Accounts

- A. Funds maintained in checking and savings accounts are usually payable on demand.
- B. When an individual has unrestricted access to an account, all of the funds in the account are considered as a resource to the owner of the account, regardless of who deposited the funds.
- C. A fiduciary or trustee is authorized to act on behalf of or for the benefit of another person. A fiduciary's right to withdraw funds is the same as the account owner's right to withdraw them.
- D. Bank accounts must be verified either from the client's own records (statements, print-outs, etc.) or agency verification to establish activity on the account and account balances.

1. DOM uses an asset verification system to request electronic verification of liquid assets held in financial institutions for purposes of determining Medicaid eligibility for applicants and recipients in programs with an asset test.
2. The applicant or recipient, their spouse, and any other person whose resources are required by law to be disclosed to determine eligibility, shall authorize the use of the asset verification system.
3. The responses from the asset verification system are compared to the client's attestation and the resource limit to determine if they are reasonably compatible. If they are not, the client must provide verification.
4. The person designated as the owner in the account title is assumed to own all the funds in the account.
5. Absent evidence to the contrary, the person shown as the owner in the account title is assumed to have the legal right to withdraw funds and use them for support and maintenance.
 - a) Example: An account is titled "In trust for John Jones and Mary Smith, subject to sole order of John Jones, balance at death of either to belong to survivor". Since John alone has unrestricted access, none of the funds in the account could be considered Mary's resources unless John is her fiduciary or his resources are deemed available to her.
 - b) Example: An account is titled "George Dahey, restricted Individual Indian Money Account". Mr. Dahey cannot withdraw funds from the account without the authorization of the Bureau of Indian Affairs. Therefore, the account is not his resource.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994); Miss. Code Ann. § 43-13-116.1.

History: Revised eff. 12/01/2025.

Rule 4.9: Contents of Safety Deposit Box

- A. Some or all of the contents of a safety deposit box may be countable as resources based on the appropriate policy applicable to the type of resource, i.e., stock certificated, coins, jewelry, life insurance policy, etc.
- B. If a recipient's possessions are stored in another person's safety deposit box, access to the contents must be determined. Access would be determined from the owner's statement.
- C. Contents are determined from statements of the applicant/recipient, spouse or authorized representative.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

History: Revised eff. 12/01/2025.

Rule 4.23: Virtual Currencies and other Digital Tokens

- A. Digital tokens are forms of digital assets that represent ownership of digital items. There are two types of digital token:
 - 1. Fungible Tokens – Fungible tokens are interchangeable with and exchangeable for equivalent digital tokens and are divisible into smaller units. Fungible tokens are also known as Virtual Currencies or Cryptocurrencies.
 - 2. Non-Fungible Tokens (NFTs) – NFTs are digital assets that signify ownership of a unique or scarce property that is not interchangeable with other token and cannot be divided into smaller units.
- B. The current market value of a virtual currency or other digital token is a countable resource.
- C. Virtual currencies and digital tokens that can only be exchanged for virtual goods and services within a limited virtual economy are not countable resources.

Source: 42 CFR § 435.601(b); Social Security Act § 1902 (r)(2)

History: New Rule eff. 12/01/2025.

Part 103 Chapter 5: Trust Provisions

Rule 5.12: Reviewing Trust Documents

In reviewing a trust:

- A. Trust documents, including amendments and the required number of accountings must be obtained;
- B. The type of trust, i.e., OBRA-93 Trust, Medicaid Qualifying Trust, or Standard Trust, must be determined;
- C. The trust must be determined to be revocable or irrevocable; and
- D. Establish whether any income is released from the trust; and
- E. The applicable policy and procedural requirements for clearing the trust and the treatment of the trust are applied.

Source: Miss. Code Ann. §43-13-121.1.

History: Revised eff. 12/01/2025; Revised eff. 11/01/2014.

Part 103 Chapter 7: Omnibus Budget Reconciliation Act of 1993 (OBRA-93) and Deficit Reduction Act of 2005 (DRA) Transfer Policy

Rule 7.1: OBRA-93 and DRA Transfer Policy Principles

A. General.

1. Section 13611 of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66), herein referred to as OBRA-93, amended Section 1917(c)(1) of the Social Security Act to revise transfer of assets policy previously described in the Medicare Catastrophic Coverage Act (MCCA) of 1988 (P.L. 100-360). Assets disposed of on or before the enactment of OBRA-93, which was August 10, 1993, will be evaluated under MCCA policy discussed in Miss. Admin. Code Part 103, Chapter 11. Assets disposed of on or after August 11, 1993, will be evaluated under policy mandated by OBRA-93 and revised by the Deficit Reduction Act of 2005, effective February 8, 2006.

B. Definitions Applicable to OBRA and DRA Transfers and Trusts.

1. OBRA-93 added and amended the following definitions of terms used in conjunction with transfer and trust policy:
 - a) Individual.
 - 1) As used in this instruction, the term “individual” includes the individual himself or herself, as well as:
 - (a) The individual’s spouse, where the spouse is acting in the place or on behalf of the individual;
 - (b) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual’s spouse, and
 - (c) Any person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual’s spouse.
 - b) Spouses.
 - 1) This is a person who is considered legally married to an individual under the laws of Mississippi.
 - c) Assets.

- 1) For purposes of this section, assets include all income and resources of the individual and of the individual's spouse. This includes income or resources which the individual or the individual's spouse is entitled to but does not receive because of any action taken to direct the assets elsewhere by:
 - (a) The individual or the individual's spouse;
 - (b) A person, including a court or administrative body, with legal authority to act in place or on behalf of the individual or the individual's spouse, or
 - (c) Any person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.
- d) For purposes of this section, the term "assets an individual or spouse is entitled to" includes assets to which the individual is entitled or would be entitled if action had not been taken to avoid receiving the assets. The following are examples of actions which would cause income or resources not be received:
 - 1) Irrevocably waiving pension income;
 - 2) Waiving the right to receive an inheritance;
 - 3) Not accepting or accessing injury settlements;
 - 4) Tort settlements which are diverted by the defendant into a trust or similar device to be held for the benefit of an individual who is plaintiff; and
 - 5) Refusal to take legal action to obtain a court ordered payment that is not being paid, such as child support or alimony.
 - (a) The above actions could result in an uncompensated transfer of assets. However, the specific circumstances of each case must be examined in order to determine if a transfer has occurred.
- e) Resources.
 - 1) For purposes of this section, the definition of resources is the same definition used by the Supplemental Security Income (SSI) program, except that home property loses its exclusion if home property is transferred or ownership interest is reduced for institutionalized individuals, as addressed in transfer of assets rules.
 - 2) In determining whether a transfer of assets or a trust involves an SSI-countable resource, use those resource exclusions and disregards used by the SSI program, except for the exclusion of the home for institutionalized individuals. Income, for purposes of this section, is the same definition used by the SSI program. In determining whether a transfer of assets involves SSI- countable income, take

into account those income exclusions and disregards used by the SSI program. This is discussed in more detail in the chapter on income.

f) For the Sole Benefit of.

- 1) A transfer is considered to be for the sole benefit of a spouse, blind or disabled child or a disabled individual if the transfer is arranged in such a way that no individual or entity except the spouse, blind or disabled child or disabled individual can benefit from the assets transferred in anyway, whether at the time of the transfer or at any time in the future.

g) For the Sole Benefit Of.

- 1) Similarly, a trust is considered to be established for the sole benefit of a spouse, blind or disabled child, or disabled individual if the trust benefits no one but that individual, whether at the time the trust is established or any time in the future. However, the trust may provide for reasonable compensation for a trustee or trustees to manage the trust, as well as for reasonable cost associated with investing or otherwise managing the funds or property in the trust.
 - (a) A transfer, transfer instrument, or trust that provides for funds or property to pass to a beneficiary who is not the spouse, blind or disabled child or disabled individual is not considered to be established for the sole benefit of one of these individuals
 - (b) In order for a transfer or trust to be considered to be for the sole benefit of one of these individuals, the instrument or document must provide for the spending of the funds involved for the benefit of the individual on a basis that is actuarially sound based on the life expectancy of the individual involved.
 - (c) When the instrument or document does not so provide, any potential exemption from penalty consideration for eligibility purposes is void.
 - (d) An exception to this requirement exists for trusts discussed in “Exemptions to Treatment of Trusts.” Under these exceptions, the trust instrument must provide that any funds remaining in the trust upon the death of the individual must go to the Division of Medicaid, up to the amount of Medicaid benefits paid on the individual’s behalf. When these exceptions require that the trust be for the sole benefit of an individual, the restriction discussed in the previous paragraph does not apply when the trust instrument designates the Division of Medicaid as the recipient of funds from the trust.
 - (e) Also, the trust may provide for disbursement of funds to other beneficiaries, provided the trust does not permit such disbursements until the State’s claim is satisfied.

C. Transfer Penalty Definitions.

1. General.

- a) Under the transfer of assets provisions in Section 1917(c) of the Act, as amended by OBRA 1993, coverage of certain Medicaid services to otherwise eligible institutionalized individuals who transfer (or whose spouses transfer) assets for less than fair market value must be denied. This same transfer prohibition is applicable to Home and Community Based Services (HCBS) individuals and their spouses.

2. Definitions.

- a) The following definitions apply to transfers of assets.

1) Fair Market Value.

- (a) Fair market value is an estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred. Value is based on criteria used in appraising the value of assets for the purpose of determining Medicaid eligibility.
- (b) For an asset to be considered transferred for fair market value or to be considered to be transferred for valuable consideration, the compensation received for the asset must be in a tangible form with intrinsic value.
- (c) A transfer for love and consideration, for example, is not considered a transfer for fair market value. Also, while relatives and family members legitimately can be paid for care they provide to the individual under an acceptable personal services contract, Medicaid presumes that services provided for free at the time were intended to be provided without compensation. Refer to the full discussion of personal services contracts. Thus, a transfer to a relative for care provided for free in the past is a transfer of assets for less than fair market value. However, an individual can rebut this presumption with tangible evidence that is acceptable, such as a written repayment schedule agreed to at the time services were provided.

2) Valuable Consideration.

- (a) Valuable consideration means that an individual receives in exchange for his or her right or interest in an asset some act, object, service or other benefit which has a tangible and/or intrinsic value to the individual that is roughly equivalent to or greater than the value of the transferred asset.

3) Uncompensated Value.

- (a) The uncompensated value is the difference between the fair market at the time of transfer (less any outstanding loans, mortgages, or other encumbrances on the asset) and the amount received for the asset.

4) Institutionalized Individual.

- (a) An institutionalized individual is an individual who is an inpatient in:

- (1) Aa nursing facility;
- (2) Aa medical institution for who payment is based on a level of care provided in a nursing facility; or
- (3) Anan Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) facility.

5) HCBS Individual.

- (a) A participant in a long-term care alternative program. Although not institutionalized, this individual is considered to be receiving long-term care services. The eligibility criteria for the HCBS individual are the same as those for the institutionalized person, including application of transfer policy.

D. Transfer of Asset Rules.

1. Transfer of asset rules apply to the following:

a) Resources.

- 1) Any real or personal property, annuity, liquid resource, or funds owned by the individual and his spouse that is given away, sold for less than fair market value, or used to purchase a promissory note, loan, mortgage, or life estate, waiving the right to receive any potential future resource that the individual might be entitled.

b) Income.

- 1) Any earned or unearned income (including lump sum) of the individual and his or her spouse that is transferred to another individual in the month of receipt, waiving the right to receive any potential future income that the individual might be entitled.

E. Effective Date of OBRA-93 Transfer Policy.

- 1. All transfers made on or after August 11, 1993, are treated under OBRA-93 rules with DRA amendments effective February 8, 2006.

2. Transfers made before August 11, 1993, are treated under policy in effect prior to OBRA-93.
3. While this section applies to transfers made on or after August 11, 1993, penalties for transfers for less than fair market value under OBRA-93 cannot be applied to services provided before October 1, 1993.
4. Apply pre-OBRA-1993 rules regarding transfers of assets to transfers made on or after August 11, 1993, and before October 1, 1993.
5. As indicated above, the effective date of all DRA changes is February 8, 2006. Assets disposed of on or after February 8, 2006, will be evaluated under OBRA-93 and any changes mandated by the DRA. The DRA changes are noted.

F. Individuals to Whom Transfer of Assets Applies.

1. Apply these provisions when an institutionalized individual, HCBS waiver individual or the individual's spouse disposes of assets for less than fair market value on or after the look-back date explained below.
2. For purposes of this section, assets transferred by a parent, guardian, court or administrative body, or anyone acting in place of or on behalf of or at the request or direction of the individual or spouse are considered to be transferred by the individual or spouse.

G. Verification and Documentation.

1. In addition to the initial application, look for a transfer of assets at the time of review, when a transfer is reported, or when there is a request for a change to institutional or HCBS coverage. When there has been a transfer of assets during the look-back period, the following documentation must be obtained:
 - a) A description of the asset transferred (the home, other real property, life estate, cash, lump sum, car, stocks, bank account, certificate of deposit, etc.).
 - b) The name of the person who transferred the asset (client, spouse, legal representative.)
 - c) The name of the person(s) to whom the asset was transferred.
 - d) The client's relationship to the individual to whom the asset was transferred.
 - e) The countable value of the asset at the time of the transfer and the compensation (money or other benefit) received or expected to be received from the transferred asset.
 - f) The date the asset was transferred.

- g) Whether the applicant was the sole owner of the asset at the time of the transfer if not the name of any co-owners.
- h) If applicable, documentary evidence that the individual intended to dispose of an asset at fair market value or information from knowledgeable sources to support the value (if any) at which the asset was disposed.

H. Look Back Period.

1. The Deficit Reduction Act of 2005 changed the look back period to five (5) years sixty (60) months effective for institutional applications filed on or after February 8, 2006.
2. The sixty (60) month rule applies to any type of asset transferred including assets placed in a trust. Transfers that took place during the five (5) year look back period, but prior to February 8, 2006, will be evaluated using previous transfer of assets policy and the penalty period is calculated under the rules in effect at the time of the transfer.
3. Application of the DRA transfer rules is being phased in over the sixty (60) month period starting February 8, 2006. Because the DRA implementation date will not change, the length of the look back period to evaluate transfers under DRA rules will increase each month by one month until it reaches sixty (60) months in February 2011.
4. Under OBRA-93, the look-back period for transfers other than transfers to a trust is a date that is thirty-six (36) months from the date the individual both is an institutionalized individual and has applied for Medicaid.

I. Applying the Transfer Penalty.

1. Denial of coverage or services because assets were transferred for less than Fair Market Value is known as a transfer penalty.
2. Under the DRA, the penalty period for an institutionalized applicant or HCBS begins when the individual is receiving an institutional level of care or would otherwise be receiving HCBS waiver coverage for which he/she would be eligible if not for imposition of the transfer penalty. If the individual is otherwise eligible for Medicaid, he/she may receive Medicaid for all services except:
 - a) Nursing facility services, or
 - b) Nursing facility services provided in an institution that is equivalent to that of nursing facility services.
3. If an individual or his/her spouse has a penalty as the result of a transfer, the penalty is imposed as follows:

a) Nursing Home Assistance:

- 1) Vendor payment (room and board) is denied or terminated for the duration of the penalty period; and
- 2) Medicaid is approved for all other services.

b) Home and Community Based Services:

- 1) If Medicaid eligibility is dependent on participating in the waiver, the application is denied or the case is closed for the duration of the calculated penalty period in a HCBS waiver program.
- 2) The individual can be approved in a Medicare Savings Program (QMB, SLMB, QI) if all other criteria are met.

J. Multiple Periods of Institutionalization and Multiple Applications.

1. When an individual has multiple periods of institutionalization or has made multiple applications for Medicaid (unless the application was withdrawn), the look-back date is based on a baseline date that is the first date upon which the individual has both applied for Medicaid and is institutionalized.
 - a) Each individual has only one look-back date, regardless of the number of periods of institutionalization, applications for Medicaid (the exception is a withdrawn application), or periods of eligibility or transfers of assets.

K. Calculation and Imposition of the Transfer Penalty

1. The date of the penalty will begin with the later of the first day of a month during which assets have been transferred for less than fair market value; or
2. The date on which the individual is eligible for medical assistance based on all factors of eligibility being met and is receiving institutional level of care services (based on an approved application for such services) that, were it not for the imposition of the penalty period would be covered by Medicaid.
3. Recipients are prohibited from transferring resources after approval.
 - a) For transfers discovered after approval, the penalty is imposed beginning with the month following the advance notice and rebuttal period.
4. An improper payment report will be prepared for any ineligible months before the penalty is imposed. If the penalty period has ended, the improper payment would cover all months of the penalty period.

5. For applications on or after February 8, 2006, handled under DRA rules, the penalty will begin the month that Long Term Care services are requested if the individual is otherwise eligible for Medicaid.
6. For application prior to February 8, 2006, transfers are considered under the provisions of OBRA-93. The date of the penalty period is the first day of the first month during or after which assets have been transferred for less than fair market value and which does not occur in any other periods of ineligibility under this policy.
7. The number of months of ineligibility for an institutionalized individual shall be equal to:
 - a) The total, cumulative uncompensated value (UV) of all assets transferred by the individual (or individual's spouse) on or after the look back period divided by:
 - b) The average monthly cost to a private pay patient for nursing facility services in Mississippi at the time of application for new applicants. For active recipients, the average cost to a private pay patient at the time the penalty is being calculated is used.
 - c) The average monthly cost referenced in b) above shall be calculated annually based on the average daily per diem rate from the Division of Medicaid cost reports for the previous year. Each annual calculation shall be made and distributed to Division of Medicaid staff by July 1 of each year.
8. Under the DRA, when the amount of the transfer is less than the average monthly cost of nursing facility care, a penalty is imposed for less than a full month. This is called a partial month penalty.
9. Rounding down or otherwise disregarding any fractional part of an ineligibility period when determining the penalty period is not allowed.
10. The average daily per diem applicable to the transfer is used in determining the partial month penalty period. The average daily per diem is calculated using the average daily cost to a private pay patient as described in Miss. Admin. Code, Part 103, Rule 7.1, K, 7 for the procedures used to determine the average monthly cost.

L. Determining the Penalty When Penalty Periods Overlap.

1. All countable transfers occurring during the look-back period are totaled and the penalty period determined by dividing the total UV by the average private pay rate.
 - a) The first month of the transfer penalty period is the month in which the first countable transfer occurred.
2. Transfers that occur after a penalty period is in effect are added in full to the end of the penalty period currently in effect.

3. There is no limit on the number of months a transfer penalty can be imposed.
4. The penalty period is always determined by the total UV calculated during the look back period.

M. Determining the Penalty When Penalty Periods Do Not Overlap

1. When multiple transfers are made so that the penalty periods for each do not overlap, treat each transfer as a separate event with its own penalty period.
2. An exception is consecutive transfers that occur on a regular basis must be calculated together.

N. Types of Transfer of Assets

1. Transfer of Income.

- a) Income, in addition to resources, is considered to be an asset for transfer (and trust) purposes.

- 1) When an individual's income is given or assigned in some manner to another person, such a gift or assignment can be considered a transfer of assets for less than fair market value.
- 2) There must be a determination as to whether amounts of regularly scheduled income or lump sum payments, which the individual received or would otherwise have received, have been transferred.
- 3) When a single lump sum payment is transferred, the penalty period is calculated on the basis of the value of the lump sum payment.
- 4) When a stream of income, (i.e., income received in a regular basis, such as a pension) is transferred over multiple months, calculate the penalty period by adding the income payments together and begin the penalty period on the earliest date that would otherwise apply if the transfer had been made in a single lump sum.
- 5) When the transfer involves a right to income (such as when a private pension is placed in a trust) determine of the total amount of income expected to be transferred during the individual's life, based on an actuarial projection of the individual's life expectancy, and calculate the penalty on the basis of the projected total income.

2. Conveyance for Less than Fair Market Value.

- a) Giving away or conveying an asset for less than fair market value within the look back period for an institutionalized or HCBS individual may be considered a transfer of assets.
- 3. Waiving an Inheritance or Other Entitled Benefit.
 - a) Refusal to accept an inheritance or refusal to take legal action to obtain benefits an individual is entitled to receive may be considered a transfer of assets.
- 4. Annuities When Expected Returns Are less than Cost of Annuity.
 - a) Establishing or purchasing annuities in which anticipated payments based on life expectancy of the individual are less than the cost of the annuity. The policy on annuities is explained in detail in Miss. Admin. Code Part 103, Chapter 6.
- 5. Irrevocable Burial Contracts Under Certain Circumstances.
 - a) An irrevocable burial contract or similar device established by the funeral home/director is considered a transfer of assets if the cost to the individual or spouse exceeds the value of the merchandise and/or services.
 - b) An itemized statement must be obtained to assist in determining whether the costs are commensurate with the value of the merchandise and/or services.
- 6. Transfers by a Spouse. Transfers made by the Community Spouse (CS) will create a penalty for the Institutionalized Spouse (IS).
 - a) Transfers by the CS after the IS has been determined eligible will also create a penalty for the IS.
 - b) If the CS becomes institutionalized and applies for Medicaid during the penalty period, the penalty must be apportioned between both spouses.
 - c) If the IS has already served the penalty in full, it will not be applied a second time.
 - d) If one member of the couple should leave the facility or die, the remaining portion of the penalty must be served by the remaining institutionalized spouse.
- 7. Transfers of Jointly-Held Assets
 - a) In the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person that reduces or eliminates such individual's ownership or control of such asset.

- b) If placing another person's name on the account or asset actually limits the individual's right to sell or otherwise dispose of the asset (e.g., the addition of another person's name requires that the person agree to the sale or disposal of the asset where no such agreement was necessary before), such placement constitutes a transfer of assets.
- c) Regular Medicaid rules are used to determine what portion of a jointly held asset is presumed to belong to an applicant or recipient. This portion is subject to a transfer penalty if it is withdrawn by a joint owner.

8. Personal Service Contracts.

- a) A personal service contract should be a written contract between the recipient/applicant and the personal services provider.
- b) The contract should be executed prior to the date any payments have been made to the provider.
- c) If payments have been made prior to the date of the contract these payments should be considered as transfers.
- d) Once an individual begins receipt of Medicaid Long Term Care (LTC) services, the individual's personal and medical needs are considered to be met by the LTC provider.
- e) Payments to other individuals for services received after the individual enters LTC are considered an uncompensated transfer for Medicaid purposes.
- f) The contract should be very specific as to services to be provided and the payment to be paid for the services.
- g) Each service/duty should be listed with the number of hours for each service with the amount charged for each service.
- h) If the contract calls for a payment of a specific amount per hour, this amount should be reasonable.
 - 1) Example: Nursing charges will not be allowed for non-nurses and CPA charges will not be allowed for persons who are not CPA's. Documentation of the services performed and the number of hours for each service should be submitted.
 - 2) All charges will be evaluated based on usual and customary charges for services in the community.
 - 3) The contract must not provide for payment of compensation for future services. All payments should be made only as the services are actually rendered.

- 4) Any payments made for future service should be considered as transfers. Contracts indicating a prior date but no payments have ever been made should be questioned as to why the payments for services were not made when the services were performed.
- 5) This type of arrangement indicates services were provided for free. Services provided for free are not under obligation to be paid at a future unknown date.

9. Purchase of a Life Estate in Another Individual's Home

The purchase of a life estate interest in another individual's home is considered a transfer of assets unless the purchaser resides in the home for a period of at least one (1) year after the date of purchase.

10. Promissory Notes, Loans or Mortgages

The term "assets" includes funds used to purchase a promissory note, loan or mortgage unless such note, loan or mortgage is determined to be actuarially sound, provides for payments to be made in equal amounts during the term of the loan, with no deferral or balloon payments, and prohibits the cancellation of the balance upon the death of the lender. A note, loan or mortgage not meeting these requirements is a transfer of assets in the amount of the outstanding balance due as of the date of the individual's application.

O. Exceptions

1. Home Property

- a) The transfer penalty will not apply to the transfer of home property by an institutionalized individual to the following family members of such individual:
 - 1) The individual's spouse or child under age twenty-one (21) or a disabled or blind adult child (Disability must be established and age verified); or
 - 2) A sibling who is part owner of the home who lived in the home for one (1) year prior to the individual entering a nursing facility; or
 - 3) A child who lived in the home for two (2) years before the individual entered a nursing facility and provided care to the individual which permitted the individual to remain at home.
- (a) Sufficient documentary information must be provided to make a determination that:
 - (1) The child resided in the home for the required length of time. (This may include statements from knowledgeable individuals when other verification is not available.)

(2) Whether the child provided care which enabled the parent to remain at home.

(3) If the child was employed outside the home, the arrangements for care while the child was away must be determined.

2. Non-Home Property

a) The transfer penalty will not apply to the transfer of any type of non-home asset in the following situations:

1) Assets transferred to the individual's spouse or to another for the sole benefit of the individual's spouse.

2) Assets transferred from the individual's spouse to another for the sole benefit of the individual's spouse;

3) Assets transferred to the individual's child under age twenty-one (21) or a disabled adult child or the individual's spouse; or blind adult child. If the disabled adult child is not receiving a social security disability payment, a disability determination is required;

4) Assets transferred to a Special Needs Trust established solely for the benefit of a disabled applicant less than sixty-five (65) years of age.

5) The resource was excluded under ongoing policy at the time of transfer.

b) In determining whether an asset was transferred for the sole benefit of a spouse, child, or disabled individual, ensure that the transfer was accomplished via a written instrument of transfer (e.g., a trust document) which legally binds the parties to a specified course of action and which clearly sets out the conditions under which the transfer was made, as well as who can benefit from the transfer.

1) A transfer without such a document cannot be said to have been made for the sole benefit of the spouse, child, or disabled individual, since there is no way to establish, without a document, that only the specified individuals will benefit from the transfer.

3. An individual shall not be ineligible for medical assistance if an acceptable rebuttal is submitted and a satisfactory showing is made to the Division of Medicaid that:

a) The individual intended to dispose of the assets either at fair market value or for other valuable consideration;

- b) The assets were transferred exclusively for a purpose other than to qualify for medical assistance;
- c) All assets transferred for less than fair market value have been returned to the individual; or
- d) The Division of Medicaid determines that denial of eligibility would work an undue hardship on the individual.
 - 1) The transfer penalty will not apply if undue hardship exists. Undue hardship exists when:
 - (a) Application of the transfer penalty would deprive the individual of medical care such that his/her health or his/her life would be endangered.
 - (b) Application of the transfer penalty would deprive the individual of food, clothing shelter, or other necessities of life and cause severe deprivation.
 - (c) The applicant or spouse or representative has exhausted all legal action to have the transferred assets that caused the penalty returned.
- e) Undue hardship does not exist when:
 - 1) Application of the application of the transfer of assets provision merely causes the individual inconvenience or when such application might restrict his or her lifestyle but would not put him her at risk of serious deprivation.
 - 2) The assets were transferred to community spouse and the community spouse refuses to cooperate in making the resource available to the institutional spouse.
 - 3) The resource was transferred to a person (spouse, child, or other person who was handling the financial affairs of the client or to the spouse or children of a person handling the financial affairs of the client unless it is established that the transferred funds cannot be recovered even through exhaustive legal measures.
- f) Each case situation must be reviewed individually to determine if Undue Hardship exists. Generally, this provision is limited to financially and medically needy individuals with no possible means of recovering the transferred assets.
- g) A hardship waiver may be requested by a facility. Effective February 8, 2006, an undue hardship waiver may be requested by the facility in which the person resides on behalf of the individual if the facility has the individual's consent, or their person representative's consent.
 - 1) The hardship waiver is for the recipient, not the hardship of the facility.

- 2) The agency provides that, while an application for an undue hardship waiver is pending in the case of an individual, who is a resident of a nursing facility, payments to the nursing facility to hold the bed for the individual will be made for a period not to exceed thirty (30) days.
4. Exception for Transfers to Community Spouse or Third Party.
 - a) Section 1924 of the Act sets forth the requirements for treatment of income and resources where there is an individual in a medical institution with a spouse still living in the community.
 - b) This section of the Act provides for apportioning income and resources between the institutional spouse and the community spouse so that the community spouse does not become impoverished because the individual is in a medical institution.
 - c) The exceptions to the transfer of assets penalties regarding inter-spousal transfers and transfers to a third party for the sole benefit of a spouse apply even under the spousal impoverishment provisions.
 - d) The institutional spouse can transfer unlimited assets to the community when transfers between spouses are involved.
 - e) The unlimited transfer exception should have little effect on the eligibility determination, primarily because resources belonging to both spouses are combined in determining eligibility for the institutionalized spouse.
 - f) Resources transferred to a community spouse are still considered available to the institutionalized spouse for eligibility purposes.
 - g) The exception for transfers to a third party for the sole benefit of the spouse may have greater impact on eligibility because resources may potentially be placed beyond the reach of either spouse and thus cannot be counted for eligibility purposes.
 - h) For the exception to be applicable, the definition of what is for the sole benefit of the spouse must be fully met.
 - i) This definition is fairly restrictive, in that it requires that any transferred funds spent for the benefit of the spouse within a time-frame actuarially commensurate with the spouse's life expectancy.
 - j) If this requirement is not met, this exemption is void, and a transfer to a third party may then be subject to a transfer penalty.

P. Transfer of Assets Notification

1. The applicant/client will be notified regarding countable transfers and the penalty period.

2. The transfer and the penalty must be clearly indicated.
3. The notice should allow the client or representative time to present evidence to show that the transfer should not count.
 - a) Evidence should include a written rebuttal plus any pertinent documentary evidence.
 - b) If no rebuttal is offered, the penalty will be applied and the appropriate adverse action notice.
4. Individuals in nursing homes remain eligible for all other Medicaid services if the transfer penalty is the only factor of ineligibility; therefore, payment of nursing home services only will be denied or terminated.
5. If the individual is ineligible on other factors as well as the transfer, the application or case must be denied or terminated.
6. If Medicaid eligibility is dependent on participating in the HCBS waiver program, the application is denied or the case is closed until the transfer penalty period expires ;
 - a) These individuals can be approved in a Medicare Savings Program (QMB, SLMB, QI) if all other criteria are met.

Q. Rebuttal Process

1. Written rebuttals require State Office review and approval of the action to be taken.

R. Return of a Transferred Resource

1. If a transferred resource is returned to, or if compensation is received by, the institutionalized individual, the UV is no longer an issue or is reduced as of the date of the return.
2. The resource or compensation is evaluated according to normal resource rules in the month of return. Any portion of a transferred resource that is not returned continues to count as UV which means the penalty period must be re-evaluated.

S. Recalculation of a Penalty Period

1. A penalty period must be recalculated from the month a portion of the resource is returned or additional compensation is received. If the resource is returned, normal resource rules apply in determining Medicaid eligibility.

T. Transfer Penalty Involving SSI Months

1. The transfer penalty can be imposed during months that an individual receives SSI or is SSI eligible in a nursing home.
2. Notices for SSI eligibles must not be sent verifying eligibility for nursing facility services until the possibility of any transfers have been developed.

Source: Miss. Code Ann. § 43-13-121.1; Social Security Act §1917(c); Medicare Catastrophic Coverage Act (MCCA) of 1988 (P.L. 100-360); Omnibus Reconciliation Act (OBRA-93) of 1993 §13611 (Rev. 1993); Deficit Reduction Act of 2005 §6011 and §6016 (Rev. 2006).

History: Revised eff. 12/01/2025; Revised eff. 11/01/2014.

Part 103 Chapter 9: Standard Trusts

Rule 9.1: Treatment of Standard Trusts

- A. Standard trust policy is applicable to trusts or conservatorships established prior to March 1, 1987, and/or trusts that do not meet the criteria of OBRA-93 or MQT trusts, regardless of the date established. Testamentary trusts where the Medicaid client is the beneficiary are also standard trusts.
- B. In all situations discussed under this rule, a copy of the trust agreement or court documents must be obtained for review.
- C. Whether the trust is counted as a resource depends on the client's role as beneficiary or trustee and the specific terms of the trust.
 1. Treatment When the Medicaid Client is Trustee.
 - a) Generally, a person appointed as a trustee cannot use any of the funds in the trust for his/her own benefit.
 - b) Thus, an individual can be a trustee of a valuable trust and not be able to receive money from the trust since he/she has no access to the funds for personal use.
 - c) When the trustee has no access to the funds for personal use, the trust is not a resource to the client who is the trustee.
 - d) However, under certain circumstances the trust is a countable resource to the client who is the trustee. Count the trust as a resource, regardless of whose funds were originally deposited into the trust, if the client:
 - 1) Is the trustee, and
 - 2) Has the legal ability to revoke the trust and

- 3) Use the money for his own benefit.
 - e) Also, consider the trust a resource to the client if either the client or living-with spouse (eligible or ineligible) is the person who created the trust and has the right to dissolve it and use the funds for his own benefit.
 - f) Where trust principal is considered a resource to the trustee, count the total value of the trust and count any interest or distributions as a resource the month following the month of receipt.
 - g) Do not count as income any withdrawals made from the trust by the trustee since the funds have already been counted as a resource.
2. Treatment When Medicaid Client is Beneficiary.
- a) Any payments made to, or on behalf of, the client are counted as income unless the trustee states the client has unrestricted access to use of the trust funds; in which case, the funds are a countable resource.
 - 1) Restricted Access to Principal.
 - (a) If the client is the beneficiary of the trust and the client's access to the trust principal is restricted, meaning only the trustee or the court can invade the principal, the principal of the trust does not count as a resource to the client. Count all payments made to, or on behalf of, the client from a restricted trust as income.
 - 2) Unrestricted Access to Principal.
 - (a) Count the trust as a resource if the client is trust beneficiary and has unrestricted access to the principal of the trust. In this situation payments from the trust to the beneficiary are not counted as income since the funds have already been counted as a resource. The payments from the trust are conversion of a resource.
3. Authority for Discretion by Trustee.
- a) The authority for discretion by the trustee in the use of trust funds, including invasion of the principal for support and maintenance of the beneficiary, does not mean that the principal is available to the client and, as such, it should not be counted as a resource. Only the income or resource(s) that is available to the client via the trustee's discretion count for purposes of determining eligibility.

- 1) In cases where the trustee has “full discretion” in the use of trust funds, the trustee must specify, by way of a written and signed statement for the case record, what arrangements exist or will be made to release funds or resources for the client’s use.

Source: 42 CFR § 435.601(b) (Rev 1994); CMS Transmittal 64, State Medicaid Manual §3257-3259.

History: Revised eff. 12/01/2025.

Part 103 Chapter 11: Medicare Catastrophic Coverage Act Transfer Policy

Rule 11.1: Treatment of Medicare Catastrophic Coverage Act Transfer Policy

- A. The Medicare Catastrophic Coverage Act of 1988 (MCAA) repealed the transfer of resources penalty for non-institutionalized individuals.
 - 1 New transfer of resources policy created under the MCAA applies only to institutionalized individuals as defined below, who transfer resources on or after July 1, 1988 through August 10, 1993.
 2. Transfers that occur after August 10, 1993, are evaluated under OBRA-93 transfer policy.
- B. Under this rule, an institutionalized individual is defined as an individual who is:
 1. A nursing facility inpatient,
 2. An inpatient at a medical institution receiving a nursing facility level of care, or
 3. A recipient of home and community-based waiver services.
 - a) Intermediate care facility for individuals with intellectual disabilities (ICF/IID) residents are not included in this definition.
 - b) The transfer penalty resulting in ineligibility, as defined below, applies to nursing facility services and medical institution services where the level of care provided is equivalent to nursing facility care.
 - c) An institutionalized individual remains eligible for all other Medicaid services while a transfer penalty is in effect, provided eligibility is met on all other factors.
- C. An institutionalized individual, who, at any time during the thirty (30) month period immediately before the individual’s application for medical assistance, disposed of resources for less than fair market value shall be ineligible for nursing facility services beginning with the month in which resources were transferred.

1. An institutionalized individual is also prohibited from transferring resources during the period of institutionalization, unless an exception applies.
2. Effective October 1, 1989, the transfer penalty also applies to a community spouse who transfers resources within the thirty (30) month period preceding application and/or during the time his-her spouse remains institutionalized.
 - a) A transfer of resources by a community spouse to another individual will result in a transfer penalty applying to the institutionalized spouse.

D. The following describes the period of ineligibility and application of the transfer penalty:

1. The transfer penalty is equal to thirty (30) months, or
 - a) The thirty (30) month period is calculated using the month of a transfer as the first month continuing through the thirtieth (30th) consecutive month, provided the transfer occurred on or after July 1, 1988.
 - b) The thirty (30) month period of ineligibility is imposed unless the uncompensated value/private-pay calculation results in a period of ineligibility less than 30 months.
2. The transfer penalty is the number of months required to deplete the uncompensated value (UV) based on the total UV of the transferred resources divided by the average monthly cost of nursing facility services to a private pay patient if less than thirty (30) months.
 - a) The private pay calculation is based on a statewide average private pay cost of \$1,456.00 per month.
 - b) In calculating the period of ineligibility, divide the UV by \$1,456.00 to determine the number of month that an individual will be ineligible for nursing home services.
 - c) All calculations are rounded down to the nearest whole dollar.
 - 1) Example: If the total UV is \$20,000, then $\$20,000 \div \$1,456 = \$13.73$. Rounding down, the period of ineligibility would be thirteen (13) months, which is less than the thirty (30) month penalty.
3. In determining the penalty period, the month of the transfer is always “month one” of the period of ineligibility. As a result, the penalty period may be expired or near expiration as of the month of the application.
 - a) Example: A transfer with UV of \$5,000 occurs July 5, 1988. Using the private pay calculation, the period of ineligibility for nursing facility services is three (3) months, July through September. If the application is filed on or after October 1, 1988, the penalty period will have expired, although eligibility for all other Medicaid services is

possible in the retroactive period. If the UV does not result in ineligibility for at least one month, the transfer will not count.

- b) Example: If the transfer is for \$1,000, which is less than the average private pay rate, no penalty applies for the month of the transfer. Each transfer is evaluated based on the month the transfer occurred. If more than one transfer occurs in the same month, the UV is combined and the penalty period calculated on total UV for a particular month. If transfers crossover into different months, each transfer is evaluated separately and UV is not combined. The possible results would be overlapping penalty periods.
- 4) The transfer penalty will not apply to the transfer of home property by an institutionalized individual to the following family members:
- a) The individual's spouse or child under age twenty-one (21) or a disabled or blind adult child; or
 - b) A sibling who is part owner of the home who lived in the home for one (1) year before the individual entered the nursing facility; or
 - c) A child who lived in the home for up to two (2) years before the individual entered a nursing facility and provided care to the individual which permitted the individual to remain at home.
- 5) The transfer penalty will not apply to the transfer of any type of resource in the following situations:
- a) Resources are transferred to or from the individual's spouse.
 - 1) Effective October 1, 1989, a transfer of assets from a community spouse to another individual will result in a penalty charged to the institutionalized spouse.
 - b) Resources are transferred to the institutionalized individual's child who is disabled or blind.
 - c) Satisfactory evidence is required to show that the individual intended to dispose of the resource(s) either at fair market value or for other valuable consideration, or, that resource(s) were transferred exclusively for a purpose other than to qualify for Medicaid.
 - d) Denial of eligibility would result in undue hardship.
 - e) The resource was excluded under ongoing policy at the time for the transfer.
 - f) The resource was transferred by an individual other than the institutionalized applicant/recipient and that person had no legal authorization to act in the applicant's or recipient's behalf at the time of the transfer.

E. Notification of Transfer Penalty and Rebuttal.

1. The client will be notified of countable transfers and the penalty period.
2. The client or representative is allowed ten (10) days to present evidence to show that the transfer should not count.
 - a) Evidence should include a written rebuttal plus any pertinent documentary evidence.
 - b) If no rebuttal is offered, the penalty will be applied and the appropriate adverse action notice issued to deny or terminate payment of nursing home services only.
 - c) The individual remains eligible for all other Medicaid services if the transfer penalty is the only factor of ineligibility.
 - d) If the individual is ineligible on other factors as well as the transfer, the application or case must be denied or terminated.
3. Factors which may indicate that a transfer was made for some purpose other than establishing Medicaid eligibility are listed below. The presence of one or more of the following factors may result in an acceptable rebuttal:
 - a) The occurrence after a transfer of resources of one or more of the following:
 - 1) Traumatic onset (e.g., traffic accident of disability or blindness);
 - 2) Diagnosis of previously undetected disabling condition;
 - 3) Unexpected loss of other resources which would have precluded Medicaid eligibility;
 - 4) Unexpected loss of income (including deemed income) which would have precluded Medicaid eligibility.
 - 5) In general, if the client was healthy and/or financially secure at the time of the transfer, with no expectation of future Medicaid need, then an acceptable rebuttal may be established.
 - 6) 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;
 - 7) Court-ordered transfer;

- 8) Resource(s) sold at less than current market value in order to obtain cash quickly to meet expenses or repay a legal debt.
- F. The transfer penalty can be waived if a period of ineligibility would result in undue hardship for the institutionalized individual.
1. Undue hardship exists if a Medicaid denial of nursing home care would result in the individual's inability to obtain medical care.
 2. Each case situation must be reviewed individually to determine if undue hardship exists but the provision is geared toward financially and medically needy individuals with no possible means of recovering their transferred resource(s).
- G. If a transferred resource is returned to or if compensation is received by the institutionalized individual, the UV is no longer an issue or is reduced as of the date of return.
1. The resource of compensation is evaluated according to normal resource rules in the month of the return.
 2. Any portion of a transferred resource that is not returned continues to count as UV which means the penalty period must be re-evaluated.
 3. A penalty period must be recalculated from the month a portion of the resource is returned or additional compensation is received.
 - a) Example: A transfer of \$10,000 occurred in October 1988 resulting in a six (6) month penalty period, or October 1988 – March 1989. In January 1989, \$5,000 is returned to the institutionalized client. The penalty period is then recalculated using UV of \$5,000 transferred in October 1988 which results in a revised period of ineligibility of three (3) months or October 1988 – December 1988. If the full resource is returned, normal resource rules apply the month of the transfer.
- H. The transfer penalty can be imposed during months that an individual receives SSA or is SSI-eligible in a nursing home.
1. Example, an ABD application is filed in December 1988 and a transfer is discovered during the application process. The applicant had entered the nursing home in October 1988 as an SSI eligible and SSI eligibility continued until December 31, 1988. The transfer results in a four (4) month penalty period. The penalty can be imposed for October 1988 – January 1989 even though SSI eligibility existed October 1988 – December 1988.
 - a) This would mean no vendor payment would be authorized for the four (4) month penalty period; and
 - b) As a result, notices regarding ABD eligibility based on SSI will be postponed until eligibility for ABD is determined which excludes any transfers for the SSI months.

Source: Social Security Act §1917(c); Medicare Catastrophic Coverage Act (MCCA) of 1988 (P.L. 100-360); Omnibus Reconciliation Act of 1993 (OBRA-93) §13611 (Rev. 1993); Miss. Code Ann. §43-13-121.1 (Rev. 2005).

History: Revised eff. 12/01/2025.