





**CONNECTICUT DEPARTMENT OF SOCIAL SERVICES  
UNIFORM POLICY MANUAL**

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<b>Date:</b> 10-1-93	<b>Transmittal:</b> UP-94-21	<b>3028.05</b>
<b>Section:</b> Technical Eligibility Requirements	<b>Type:</b>	<b>POLICY</b>
<b>Chapter:</b> Transfer of Assets	<b>Program:</b>	<b>MA</b>
<b>Subject:</b> Basic Provisions		

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3028.05 A. General Statement

There is a period established, subject to the conditions described in this chapter, during which institutionalized individuals are not eligible for certain Medicaid services when they or their spouses dispose of assets for less than fair market value on or after the look-back date specified in paragraph C. This period is called the penalty period, or period of ineligibility.

B. Individuals Affected

1. The policy contained in this chapter pertains to institutionalized individuals and to their spouses.
2. An individual is considered institutionalized if he or she is receiving:
  - a. LTCF services; or
  - b. services provided by a medical institution which are equivalent to those provided in a long-term care facility; or
  - c. home and community-based services under a Medicaid waiver (cross reference: 2540.92).

C. Look-Back Date for Transfers

1. Except as described in paragraphs 3 and 4 below, the look-back date for transfers of assets is a date that is 36 months before the first date on which both the following conditions exist:
  - a. the individual is institutionalized; and
  - b. the individual is either applying for or receiving Medicaid.
2. With respect to payments from the corpus or income generated by the corpus of an irrevocable trust which is permitted to be paid to or for the benefit of the individual, but which is instead paid other than to or for the benefit of the individual, the look-back date is the same as described in paragraph 1 (Cross Reference: 3028.11 C. 2).
3. With respect to payments from a revocable trust other than those made to or for the benefit of the individual, the look-back date is a date that is 60 months before the first date on which both the following conditions exist:
  - a. the individual is institutionalized; and

**CONNECTICUT DEPARTMENT OF SOCIAL SERVICES  
UNIFORM POLICY MANUAL**

**Date: 7-1-95**

**Transmittal: UP-95-15**

**3028.05 page 2**

**Section:**

**Technical Eligibility Requirements**

**Type:**

**POLICY**

**Chapter:**

**Transfer of Assets**

**Program: MA**

**Subject:**

**Basic Provisions**

**3028.05 C. 3. Look-Back Date for Transfers (continued)**

b. the individual is either applying for or receiving Medicaid.

(Cross Reference: 3028.11 B. 2)

4. With respect to an irrevocable trust from which, or any income generated by the corpus from which, no payment could be made to the individual under any circumstances, the look-back date is the same as described in paragraph 3 (Cross Reference: 3028.11 C. 3).

**D. Transfers Attributable to Individual or Spouse**

1. The Department considers transfers of assets made within the time limits described in paragraph C on behalf of an institutionalized individual or his or her spouse by a guardian, conservator, person having power of attorney or other person or entity so authorized by law to have been made by the individual or spouse.
2. In the case of an asset that the individual holds in common with another person or persons in joint tenancy, tenancy in common, or similar arrangement, the Department considers the asset (or affected portion of such asset) to have been transferred by the individual when the individual or any other person takes an action to reduce or eliminate the individual's ownership or control of the asset.

**E. Start of the Penalty Period**

The penalty period begins:

1. the first day of the month during which assets are transferred for less than fair market value, if this month is not part of any other period of ineligibility caused by a transfer of assets; or
2. the first day following a period of ineligibility caused by a previous transfer of assets, if the transfer under examination occurred during a period of ineligibility caused by a previous transfer of assets.

**F. Length of the Penalty Period**

1. The length of the penalty period is determined by dividing the total

**CONNECTICUT DEPARTMENT OF SOCIAL SERVICES  
UNIFORM POLICY MANUAL**

**Date: 7-1-95**

**Transmittal: UP-95-15**

**3028.05 page 3**

**Section:**

**Technical Eligibility Requirements**

**Type:**

**POLICY**

**Chapter:**

**Transfer of Assets**

**Program:**

**MA**

**Subject:**

**Basic Provisions**

**3028.05 F. 1. Length of the Penalty Period (continued)**

uncompensated value of all assets transferred on or after the look-back date described in paragraph C by the average monthly cost to a private patient for LTCF services in Connecticut.

a. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application.

b. For recipients, the average monthly cost for LTCF services is based on the figure as of:

(1) the month of institutionalization; or

(2) the month of the transfer, if the transfer involves the home improperly transferred by the spouse while the institutionalized individual is receiving Medicaid, or if a transfer is made by an institutionalized individual while receiving Medicaid.

2. Except as described below, each transfer is evaluated separately and a penalty period established consisting of a number of whole months and/or a partial month based on that particular transfer.

a. If multiple transfers occur in the same month, the uncompensated values are added together and the transfers are treated as a single transfer for that month. A single penalty period is then calculated.

b. If the total uncompensated value of the assets transferred during a month prior to 7/1/95 is less than the appropriate average monthly cost for LTCF services described in paragraph 1 above, there is no penalty period based on the assets transferred that month.

c. If the penalty period associated with an asset transferred prior to 7/1/95 results in a number of whole and a partial month, the penalty is based solely upon the number of whole months.

**G. Medicaid Eligibility During the Penalty Period**

1. During the penalty period, the following Medicaid services are not covered:

a. LTCF services; and

**CONNECTICUT DEPARTMENT OF SOCIAL SERVICES  
UNIFORM POLICY MANUAL**

---

**Date: 10-1-93**

**Transmittal: UP-95-15**

**3028.05 page 4**

---

**Section:**

**Technical Eligibility Requirements**

**Type:**

**POLICY**

---

**Chapter:**

**Transfer of Assets**

**Program:**

**MA**

---

**Subject:**

**Basic Provisions**

---

**3028.05 G. Medicaid Eligibility During the Penalty Period (continued)**

- b. services provided by a medical institution which are equivalent to those provided in a long-term care facility; and
  - c. home and community-based services under a Medicaid waiver.
2. Payment is made for all other Medicaid services during a penalty period if the individual is otherwise eligible for Medicaid.

**H. Transfers Affecting Both Spouses**

1. If a transfer made by an individual results in a penalty period for the individual, the penalty period is apportioned between the individual and spouse if:
- a. the spouse either is or becomes eligible for Medicaid; and
  - b. the spouse is also institutionalized; and
  - c. some portion of the penalty against the individual remains at the time conditions a and b are met.
2. When a penalty period is apportioned between spouses as described above, the penalty period for each spouse is equal in length to one half the length remaining at the time.
3. If, for some reason, one spouse no longer is subject to his or her portion of the penalty period described in paragraph 2, the remaining portion of the penalty period applicable to both spouses is served by the remaining spouse.



**CONNECTICUT DEPARTMENT OF SOCIAL SERVICES  
UNIFORM POLICY MANUAL**

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**Date:** 7-1-02

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3028.10 page 2

---

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Technical Eligibility Requirements

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---

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Transfer of Assets

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---

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Transfers Not Resulting in a Penalty

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3028.10 B. Transfers Made to or for the Benefit of Spouses

1. Subject to the provisions in paragraph 2 below, an individual may transfer assets of any type without penalty to his or her spouse, or to a third party for the sole benefit of such spouse.
2. Subject to the provisions in subparagraphs a and b below, in or after the month of initial Medicaid eligibility, an institutionalized spouse may transfer assets without penalty to his or her community spouse, or to a third party for the sole benefit of such spouse.
  - a. The amount of the assets transferred must be no greater than that amount needed to raise the community spouse's assets up to the CSPA.
  - b. The transfer must be made as soon as practicable, allowing for such time as necessary for the community spouse to obtain a court order for support.
3. The individual's spouse may transfer assets of any type without penalty to a third party for the sole benefit of himself or herself.

C. Transfers to a Disabled Child

An institutionalized individual or his or her spouse may transfer assets of any type without penalty to:

1. his or her child who is considered to be blind or disabled under the criteria for SSI eligibility; or
2. a trust, including a trust described at 4030.80 D. 6, established for the sole benefit of his or her child who is considered to be blind or disabled under criteria for SSI eligibility.

D. Transfers to Certain Trusts

An institutionalized individual or his or her spouse may transfer assets of any type without penalty to a trust, including a trust described at 4030.80 D. 6, established for the sole benefit of an individual under age 65 who is considered to be disabled under criteria for SSI eligibility.

**CONNECTICUT DEPARTMENT OF SOCIAL SERVICES  
UNIFORM POLICY MANUAL**

**Date:** 1-1-03

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3028.10 page 3

**Section:**

**Technical Eligibility Requirements**

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**Transfer of Assets**

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**Transfers Not Resulting in a Penalty**

3028.10 E. Transfers Made Exclusively for Reasons Other than Qualifying

An institutionalized individual or his or her spouse may transfer an asset without penalty if he or she provides clear and convincing evidence that the transfer was made exclusively for a purpose other than qualifying for assistance.

F. Transferor Intended to Transfer at Fair Market Value

An institutionalized individual or his or her spouse may transfer an asset without penalty if the individual demonstrates with clear and convincing evidence that he or she intended to dispose of the asset at fair market value.

G. Transfer Made for Other Valuable Consideration

An institutionalized individual or his or her spouse may transfer an asset without penalty if it is demonstrated with clear and convincing evidence that he or she intended to dispose of the asset in return for other valuable consideration. The value of the other valuable consideration must be equal to or greater than the value of the transferred asset in order for the asset to be transferred without penalty (Cross Reference: 3028.20).

H. Return of Transferred Asset

1. An institutionalized individual is not penalized based on the transfer of an asset if the entire asset has been returned prior to the date on which Medicaid is requested.
2. A penalty period caused by the transfer of an asset ends as of the date that the entire asset is returned to the individual.
3. If only part of the transferred asset is returned, the penalty period is adjusted, and expires as of the later of the following dates:
  - a. the date that the partial asset is returned; or
  - b. the last day of the adjusted penalty period, as described below.
4. The adjusted penalty period described in paragraph 3 above is based on the uncompensated value of the original transfer minus the value of the part of the asset which is returned.



**CONNECTICUT DEPARTMENT OF SOCIAL SERVICES  
UNIFORM POLICY MANUAL**

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3028.11

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**Technical Eligibility Requirements**

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---

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**Transfer of Assets**

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---

**Subject:**

**Transfers Involving Trusts**

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3028.11 A. General Principles

1. The Department considers the converting of an asset into the form of a trust or similar asset to be a transfer to the extent that it is no longer available to the individual.
2. The Department considers payments made from trusts other than those made to or for the benefit of the individual to be transfers of assets.

B. Revocable Trusts

1. The Department does not consider the converting of an asset into the form of a revocable trust to be a transfer of the asset because the assets in the trust are considered available to the individual since he or she can revoke the trust.
2. The Department considers payments from a revocable trust other than those made to or for the benefit of the individual to be assets transferred by the individual as described in this chapter.

C. Irrevocable Trusts

1. The Department does not consider the converting of an asset into the form of an irrevocable trust to be a transfer to the extent that payments from the trust can be made to the individual under any circumstances, and are therefore considered available assets.
2. The Department considers payments from that portion of the corpus or income generated by the corpus of an irrevocable trust described in paragraph 1 other than those made to or for the benefit of the individual to be a transfer of assets by the individual as described in this chapter.
3. The Department considers the converting of an asset into the form of an irrevocable trust from which no payment could be made to the individual under any circumstances as a transfer of assets, as described in this chapter, effective the later of the following dates :
  - a. the date of the establishment of the trust; or
  - b. the date on which payment to the individual is made unavailable.
4. The Department considers the following as separate transfers of assets as of the date they are added to an irrevocable trust described in paragraph 3 above:

**CONNECTICUT DEPARTMENT OF SOCIAL SERVICES  
UNIFORM POLICY MANUAL**

---

**Date:** 10-1-93

**Transmittal:** UP-94-21

3028.11 page 2

---

**Section:**  
Technical Eligibility Requirements

**Type:**  
POLICY

---

**Chapter:**  
Transfer of Assets

**Program:** MA

---

**Subject:**  
Transfers Involving Trusts

---

3028.11 C. 4. Irrevocable Trusts (continued)

- a. additional funds placed into the trust by the individual, spouse, or other person or entity described at 4030.80 D, to the extent that the additional funds cannot be paid to or for the benefit of the individual under any circumstances; and
- b. income generated by the corpus of the trust, to the extent that this income cannot be paid to or for the benefit of the individual under any circumstances.

D. Exceptions

The transfer of asset penalties do not apply to the following trusts:

1. a trust containing the assets of an individual under age 65 who is disabled, under criteria for SSI eligibility, if:
  - a. the trust is established for the benefit of such individual by his or her parent, grandparent, or legal guardian, or by a court; and
  - b. the State will receive all amounts remaining in the trust upon the death of the individual, up to an amount equal to the total amount of Medicaid benefits paid on behalf of the individual.
2. a trust that meets the following conditions:
  - a. the trust is established and managed by a non-profit association; and
  - b. a separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of the funds, the trust pools these accounts; and
  - c. accounts in the trust are established solely for the benefit of individuals who are disabled, under criteria for SSI eligibility, by the individuals, their parent, grandparent or legal guardian, or by a court; and
  - d. to the extent that the amounts remaining in the individual's account upon his or her death are not retained by the trust, the trust pays to the State from such remaining amount an amount equal to the total amount of Medicaid benefits paid on behalf of the individual.



**CONNECTICUT DEPARTMENT OF SOCIAL SERVICES  
UNIFORM POLICY MANUAL**

---

<b>Date:</b> 10-1-93	<b>Transmittal:</b> UP-94-21	<b>3028.15</b>
<b>Section:</b> Technical Eligibility Requirements	<b>Type:</b>	<b>POLICY</b>
<b>Chapter:</b> Transfer of Assets	<b>Program:</b>	<b>MA</b>
<b>Subject:</b> Transfer Made Exclusively for Reasons Other Than Qualifying		

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3028.15 An institutionalized individual or the individual's spouse is considered to have transferred an asset exclusively for a purpose other than qualifying for assistance under circumstances which include, but are not limited to, the following:

A. Undue Influence

1. If the transferor is competent at the time the Department is dealing with the transfer, the individual must provide detailed information about the circumstances to the Department's satisfaction.
2. If the transferor has become incompetent since the transfer and is incompetent at the time the Department is dealing with the transfer, the transferor's conservator must provide the information.
3. The Department may pursue a legal action against the transferee if the Department determines that undue influence caused the transfer to occur.

B. Foreseeable Needs Met

The Department considers a transferor to have met his or her foreseeable needs if, at the time of the transfer, he or she retained other income and assets to cover basic living expenses and medical costs as they could have reasonably been expected to exist for the next 36 months, or, in the case of transfers to trusts or similar devices, the next 36 or 60 months, as described at 3028.05 C.

C. Transfer to or by Legal Owner

The Department considers a transfer to have been made to return the asset to its legal owner if:

1. the individual proves with clear and convincing evidence that the transferee had entrusted the asset to him or her with the intent of retaining beneficial interest; or
2. the individual who receives the asset or who actually makes the transfer:
  - a. holds the asset jointly with the assistance unit at the time of the transfer; and
  - b. is a legal owner of the asset (Cross Reference: 4010).

CONNECTICUT DEPARTMENT OF SOCIAL SERVICES  
UNIFORM POLICY MANUAL

---

Date: 10-1-93

Transmittal: UP-94-21

3028.15 page 2

---

Section:  
Technical Eligibility Requirements

Type:  
POLICY

---

Chapter:  
Transfer of Assets

Program: MA

---

Subject:  
Transfer Made Exclusively for Reasons Other Than Qualifying

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3028.15 D. Transferred Asset Would Not Affect Eligibility if Retained

The Department considers a transfer to be made for purposes other than to qualify when:

1. the institutionalized individual would have been eligible if the transferor had retained the asset; and
2. the transferred asset was not the institutionalized individual's or the spouse's home.

E. Post Eligibility Transfers Made by the Institutionalized Individual's Spouse

The Department considers a transfer to be made for purposes other than to qualify when:

1. the spouse transferred the asset after the first month of eligibility for the institutionalized individual has passed; and
2. the transferred asset was not the institutionalized individual's or the spouse's home.

**CONNECTICUT DEPARTMENT OF SOCIAL SERVICES  
UNIFORM POLICY MANUAL**

---

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Technical Eligibility Requirements

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---

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**Subject:**  
Transfers Made in Return for Other Valuable Consideration

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3028.20 A. General Principles

1. Other valuable consideration may be received either prior to or subsequent to the transfer.
2. If the transfer occurred on or after July 1, 2001, the value of the other valuable consideration, computed as described in subparagraph 3 below, must be equal to or greater than the value of the transferred asset in order for the asset to be transferred without penalty.
3. The value of the other valuable consideration, as described in paragraph B, is equal to the average monthly cost to a private patient for long-term care services in Connecticut, multiplied by the number of months the transferee avoided the need for the transferor to be institutionalized.

(Cross Reference: P-3028.30)

B. Criteria for Other Valuable Consideration

Other valuable consideration must be in the form of services or payment for services which meet all of the following conditions:

1. the services rendered are of the type provided by a homemaker or a home health aide; and
2. the services are essential to avoid institutionalization of the transferor for a period of at least two years; and
3. the services are either:
  - a. provided by the transferee while sharing the home of the transferor; or
  - b. paid for by the transferee.

**CONNECTICUT DEPARTMENT OF SOCIAL SERVICES  
UNIFORM POLICY MANUAL**

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<b>Section:</b> <b>Technical Eligibility Requirements</b>	<b>Type:</b>	<b>POLICY</b>
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<b>Subject:</b> <b>Undue Hardship</b>		

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3028.25   A.   General Statement

An institutionalized individual is not penalized based on a transfer of assets made by the individual or his or her spouse if denial or discontinuance of payment for services would create an undue hardship.

B.   Undue Hardship Conditions

When an individual would be in danger of losing payment for LTCF or equivalent services described at 3028.05 B solely because of the imposition of a penalty period, the Department does not impose such penalty under the following conditions:

1.   a.   The long-term care facility or medical institution has threatened the individual with eviction due to non-payment and the individual has exhausted all legal methods to prevent the eviction; or
- b.   The medical provider has threatened to terminate home and community-based services being provided under a Medicaid waiver; and
2.   The transferor establishes that the transferee is no longer in possession of the transferred asset and the transferee has no other assets of comparable value with which to pay the cost of care; and
3.   There is no family member or other individual or organization able and willing to provide care to the individual.

**CONNECTICUT DEPARTMENT OF SOCIAL SERVICES  
UNIFORM POLICY MANUAL**

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<b>Subject:</b> <b>Compensation</b>		

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3028.30 Compensation in exchange for a transferred asset is counted in determining whether fair market value was received.

A. Compensation Which is Counted

1. When an asset is transferred, compensation is counted when it is received at the time of the transfer or any time thereafter.
2. Compensation received prior to the time of the transfer is counted if it was received in accordance with a legally enforceable agreement.
3. Compensation may include the return of the transferred asset to the extent described at 3028.10.

B. Value of Compensation

Each form of compensation is assigned a dollar value to compare with the fair market value of the transferred asset.

1. In determining the dollar value of services rendered directly by the transferee, the Department uses the following amounts:
  - a. for all services of the type normally rendered by a homemaker or home health aid, the current state minimum hourly wage for such services;
  - b. for all other types of services, the actual cost.
2. Out-of-pocket payment by the transferee may include capital alterations necessary to allow the transferor continued use of the home to avoid institutionalization.
3. Compensation in the form of real or personal property is compared using its fair market value.
4. The value of a note of indebtedness is the total amount owed.