Subject: Adjustment of Penalty Periods Due to Returns of Previously-Transferred Assets
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Good afternoon -

Beginning July 1st:

- We will no longer adjust transfer of asset penalty periods when only part of the transferred assets is returned;
- We will remove a transfer of asset penalty only when all of transferred assets have been returned; and
- We will regard returned assets as available only from the time of the return forward in most situations.

These changes are pursuant to Public Act 11-44 and should save you time as you will no longer need to recalculate penalty periods when only part of the transferred amount is returned. We must, however, continue to remove a transfer of asset penalty in its entirety when all of transferred assets are returned. **The return of "all" transferred assets means the total amount transferred, regardless of to whom or the number of transfers.**

In addition, you will no longer need to recalculate the start of a penalty in most situations as we will count returned assets as available only from the point of the return forward, except when the return was planned as part of a Medicaid estate planning strategy (more information will follow about this). Since the new law is expected to discourage the types of transfer-and-return strategies we've encountered, counting returned assets as continuously available from the time of the transfer should become the exception under the new law. **Please contact Adult Services for advice if you encounter situations where the return of assets appears to be planned as part of a Medicaid estate planning strategy designed to ultimately pass assets to others.**

Some examples of how these changes apply:

Example 1 - Mrs. Smith enters a nursing facility on July 1st, transfers $10,000 to each of her four children (all of her assets) to qualify for assistance and applies for Medicaid. Based on the total amount transferred of $40,000, we impose a 3.78 month penalty effective July 1st using the new average private cost of long term care of $10,586. In August, three of her children return their gifts (total amount returned is $30,000).

Because not all of the transferred assets have been returned, we will not make any adjustments to the 3.78 month penalty period. We would count the $30,000 as an available asset at the point of its return in August. Mrs. Smith can use the $30,000 that was returned to pay for her care during part of the penalty period.

Example 2 – Mrs. Doe makes numerous transfers totaling $40,000 to qualify for assistance during the lookback period. She enters a nursing home on July 1st and applies for Medicaid. She has no assets at the time of application. We impose a penalty period beginning on July 1st. In October, the entire $40,000 is returned after the family realizes that Medicaid won't pay for her care.

Since all of the transferred assets were returned in October, we must remove the penalty. We would count the returned assets as available as of October, which would likely result in the closure of her case. We would authorize payment of long term care services as of July 1st since we've removed the penalty.

Example 3 – Mr. S applied for Medicaid in February 2011. He transferred $100,000 (all of his assets) during the lookback period to qualify for assistance. We commenced a penalty period beginning February 1st. As part of a Medicaid estate planning strategy, the transferee pays $10,000 per month to the nursing home for Mr. S' care beginning in March. Each month, the worker has adjusted the length of the penalty to reflect the partial return as well as the commencement date of the penalty, reflecting the fact that the returned assets are regarded as always available, thereby making Mr. S historically ineligible due to excess assets. As of June 30th, the outstanding amount of the transfer is $60,000.

Under the new law, we will not make any further adjustments to the penalty period unless the entire amount remaining is returned. The penalty period, based the last-adjusted amount of $60,000, will remain in place until such time that the entire remaining balance is returned. If all of the remaining assets are returned, we remove the remainder of the penalty period. Since the returns were planned as part of a Medicaid estate planning strategy, we would regard the returned assets as always available. Although we would remove the penalty if all assets are returned, we would not historically authorize payments to the nursing home, which should have been paid by the monthly returns anyways.

I understand that the above changes represent a significant new way of dealing with returns of transferred assets. We are developing a Program Information Bulletin and will work with OSD to provide training. In the meantime, my staff and I are available to provide guidance on situations that you encounter.

Thank you!

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