MICHAEL P. STARKOWSKI
Commissioner

STATE OF CONNECTICUT

DEPARTMENT OF SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

MEMORANDUM

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To: Individuals Who Commented on Regulation 06-14/RA
DRA Medicaid Eligibility

From: Michael P. Starkowski (cps)
Commissioner
Department of Social Services
25 Sigourney Street
Hartford, CT 06106

Date: February 11, 2009

Re: Response to Comments on the Proposed Regulation

The following are the Department's response to comments received concerning the proposed regulation referenced above. The Notice of Intent for this regulation was published in the Connecticut Law Journal on April 10, 2007. A copy of the regulation with revisions based on public comment is enclosed.

Effective Date.

Comment: The effective date of the regulations should be no earlier than the date, after the comment period, on which the Department makes any final changes to the regulations as proposed. Also, any provision in the proposed regulations that is not required by or addressed in the Deficit Reduction Act of 2005 (the DRA) (e.g., UPM 4030.40 concerning loans) should be implemented only for those transfers that occur on or after the implementation date of the proposed regulations, rather than for transfers made on or after February 8, 2006.

Since the DRA does not include material about home equity, the effective date for those changes should be after the proposed regulations are adopted, rather than the dates proposed for other DRA regulations.

Response: *The Department does not agree with the comment. Each provision of the proposed regulations is necessary to conform the Department's policy to the requirements of both the federal Medicaid program and the Deficit Reduction Act of 2006. The Department is required by the DRA to apply the changes specifically required by the DRA effective February 8, 2006. Other changes, required by the federal Medicaid program, or to give effect to the DRA, are effective April 1, 2007.*

Look-Back Date for Transfers – UPM 3029.05 C.

Comment: Policy should be expanded to clarify that the new, longer look-back period does not require individuals to produce 60 months of documentation when applications are filed now through February 2009. In February 2009, individuals may be required to submit 37 months of documentation, reflecting the lengthening of the look-back effectively by one month beginning in that month. The gradual transition to the longer look back may be accomplished by addition of an additional month of review each month until February 2011, the five-year anniversary of the DRA. This explanation should appear in policy.

Response: *The policy is written to comply with the language of the DRA, which calls for a 60-month look-back period for transfers made on or after February 8, 2006. UPM 3029.03 states that the policy contained in Chapter 3029 pertains only to transfers made on or after February 8, 2006, so that transfers occurring prior to that date will continue to be subject to the 36 month look-back described in chapter 3028.*

The Department agrees that there will be a gradual transition to the longer look-back period that will not be fully accomplished until February 8, 2011. How the Department's workers should implement the phase-in process is a procedural issue, and is explained at P-3029.01. Although the procedure pages serve mainly to assist the Department's staff in implementing the policy, these pages are also available to the general public upon request.

Definition of Individuals Affected by the DRA – UPM 3029.05 B.

Comment: The definition of individuals affected by the DRA is too narrow; it excludes from consideration those who are not yet receiving services, but are applying for them. As a result, it has a particularly harsh effect on people in the community who hope to remain home receiving institutional care services through a home and community-based waiver. The definition should be expanded to include those institutionalized people who are already receiving or who are in need of services.

Comment: The language in the proposed UPM 3029.05 B states that the individual is considered institutionalized if the person is *receiving* home and community based services under a Medicaid waiver. The language in the DRA, however, refers to an individual who is eligible for "and would otherwise be receiving institutional level care," not who *is* receiving institutional level care. This language does not comply with the DRA. The proposed language would mean that an individual who requires home care may never start the penalty and, therefore, may never become eligible. An individual may be discharged to a nursing home following a hospital stay and "be receiving" institutional care at the time of the application for Medicaid coverage. By contrast, an individual seeking access to the home care program must *first* demonstrate financial eligibility before any care can be provided. If not, then he or she will never be "receiving"

the home and community based services. This section should be changed to simply refer to a person who "would otherwise be receiving" care (i.e., qualifies for care and has applied) or the reference should include individuals who are "receiving" or "applying for" care. Another option would be to require that the person be receiving services in some fashion, presumably from family.

Response: *UPM 3029.05B describes the categories of institutionalized individuals subject to the Department's transfer of asset regulations. These categories include individuals who are receiving home and community based services under a Medicaid waiver. This description is consistent with the existing language in UPM section 3028.05B and does not represent a change.*

In practice, however, the Department has regarded individuals who have applied for, but who are not receiving, home and community based services under a Medicaid waiver as being subject to the provisions of the Department's transfer of asset regulations. Accordingly, the Department has amended UPM 3029.05B to include individuals who are applying for home and community based services under a Medicaid waiver.

Start Date of the Penalty Period – UPM 3029.05 E 2

Comment: The start date of the penalty period is too narrow and is inconsistent with the DRA. 42 USC 1396p(c) (1) (D) provides that the start date of a period of ineligibility is

the date on which the individual is eligible for medical assistance under the State plan and would otherwise be receiving institutional level care described in subparagraph (C) based on an approved application for such care but for the application of the penalty period.

This means that the start date of the period of ineligibility is based on the individual's need for, not actual receipt of, institutional level care and whether the individual is financially eligible for medical assistance. The proposed UPM provision, however, defines the start date of the penalty as the date the individual "would otherwise be eligible for Medicaid payment for LTC services." The proposed UPM provision should be changed to read: "the date on which the individual is eligible for Medicaid under Connecticut's state plan and would otherwise be receiving institutional level care as defined at 3029.05 B based on an approved application for such care . . . ."

Response: *The Department believes that the language in UPM 3029.05E accurately reflects the provisions of the DRA. Section 6011(b) (1) (ii) of the DRA provides that the start date of a period of ineligibility is the date on which the individual is eligible for medical assistance under the State plan and would otherwise be receiving institutional level care described in subparagraph (C)*

based on an approved application for such care but for the application of the penalty period.

The Department interprets this language to mean that the penalty period would commence as of the date that the Medicaid program would pay for the individual's long term care services, but for the application of the penalty period. This requires that an individual formally apply for Medicaid and be otherwise eligible for the payment of long term care services under the Medicaid program, but for the application of the penalty period.

This interpretation is supported by the Centers for Medicare and Medicaid Services ("CMS"), which describes the penalty as commencing on the date on which the individual is eligible for medical assistance under the State plan 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.

For individuals residing in nursing facilities, the penalty will commence on the date that Medicaid would otherwise pay for institutional care under an approved application for Medicaid, but for the application of the penalty. For individuals applying for home and community based services under a Medicaid waiver, the penalty will commence on the date that the Department would have approved the payment of the services under an approved application, but for the application of the penalty period.

Length of the Penalty Period – UPM 3029.05 F 2 b.

Comment: The language in UPM 3029.05 F.2.b. (proceeds referred to as "equity derived from the home") concerning the length of the penalty period is inconsistent with the language in UPM 3029.15 D.3. and 3029.15 E.3. ("the proceeds of a home equity loan, reverse mortgage or similar instrument). To avoid any confusion about the nature of the assets in 3029.05 F.2.b., that provision should be amended to state "the month of the transfer, if the transfer involves the home or the proceeds of a home equity loan, reverse mortgage or similar instrument."

Response: *The Department agrees and has revised UPM 3029.05 F.2.b. accordingly.*

Comment: UPM 3029.05 F.2.b. (2) and 3029.15 E.3. (Transfers Made Exclusively for a Purpose Other than Qualifying for Benefits) violate federal law, specifically 42 USC 1396r-5 (MCCA), whose stated purpose was to prevent spousal impoverishment. MCCA creates a clear divide between pre- and post-eligibility, which has been recognized by the State. Although federal and state law permit the community spouse to sell the home and use the proceeds of the sale as he or she wishes, the proposed regulation penalizes the institutionalized

spouse if that same spouse takes out a reverse mortgage to assist a grandchild with education costs. This provision makes no sense as a policy matter and is inconsistent with federal law. While the post-eligibility transfer of the home has some (albeit tenuous) basis in federal law, a prohibition on transfers of cash taken out as a home equity loan does not. Also, such a practice can only lead to divorce. Otherwise, if the community spouse takes out a loan and wants to help her children with that cash, the institutionalized spouse will be harmed. Moreover, what is the point of the penalty? Neither federal nor state law permit recovery against the estate of the community spouse for care provided to the institutionalized spouse. Even if the community spouse keeps the home, the state will not benefit from that on her death. The Department is seeking to discourage using such proceeds as a way of shifting wealth to the next generation. But the remedy for such perceived abuse is to penalize the community spouse for making the transfers, not the institutionalized spouse.

Response: *CMS has advised states that transfers of home equity loan proceeds are subject to penalties. CMS has also advised states that transfers made by community spouses, including those made after the institutionalized spouse become eligible for Medicaid, can result in penalties.*

The Department has consistently regarded the transfer of the community spouse's home as a potentially disqualifying transfer that could affect the institutionalized spouse's eligibility for Medicaid payment of long term care services. This reflects a public policy that encourages retention of the property by the community spouse. As the value of any home is equivalent to the equity of the home, the Department believes that it is logical to regard transfers of home equity as equivalent to transfers of the home itself.

Although the Department cannot directly recover from the community spouse's decedent estate, the inclusion of the home in the decedent estate has a positive financial impact on the Medicaid program. The institutionalized spouse is often the beneficiary of the community spouse's decedent estate. Once the title of the home passes to the institutionalized spouse, the Department can place a lien on the property and recover previously paid assistance once it is sold. In situations where the community spouse has disinherited the institutionalized spouse, the inclusion of the home in the community souse's decedent estate increases the value of the institutionalized spouse's statutory share.

Return of the Transferred Asset - UPM 3029.10 H 4

Comment: This is a completely new policy that is not required by the DRA, and is inconsistent with federal law, is unenforceable and violates the principle enunciated in Buckner v. Maher. Moreover, it has the effect of causing an individual to be denied eligibility for a period of time longer than the asset that is returned would have covered.

For example, a person has made a gift and a four-month penalty is imposed beginning on the date the gift is made because the person is in need of or is receiving care and has no other assets. Assume there is a partial return of the gift near the end of the four-month penalty period, which would have the effect of reducing the penalty by two months. In that case, the person would have assets to pay for two months of care.

Under the proposed policy, the person is presumed to have the assets available that would have been sufficient to pay for a period of time longer than the value of the asset. If the proposed amendment were applied to the above situation, the individual would have no eligibility for the additional two months, during which the person has received care and has no way to pay for the care received.

The effect of the proposed policy is to actually lengthen the penalty period by denying assistance on the presumption that the assets were actually available when they were not. The effect of imposing a longer penalty period, two months in this case, violates federal law.

This provision will create a result that is worse when the asset is returned than when it is not returned.

Example: May 2007 individual transfers $10,000 to daughter;
November 2008 individual requires institutional care;
January 2009 spent down and application filed;
March 2009 Department says there is a 1-month penalty;
Individual appeals and Fair Hearing in May 2009;
July 2009 Department decision is upheld;
Nursing home bill is now $84,000 ($12,000 per month since January)
Individual asks daughter to return the $10,000 and she pays the facility.

As a result of the above, if the asset is not returned, the penalty runs from January 1, 2009 to January 30, 2009 and eligibility begins February 1, 2009. If the asset is returned, later than January 2009, eligibility does not begin until July, 2009, when the asset is returned. This will be a detriment to returning an asset.

If this proposed amendment is not withdrawn, at a minimum it should only be effective after the date of the formal conclusion of the review process, and should be effective only as to those applications in which the date of the return of the asset is after the effective date of the policy.

Response: *This policy reflects CMS State Medicaid Manual guidance and is implemented in response to states' findings that estate planners have used an oversight in the DRA to circumvent the intent of the law. One purpose of the DRA was to discourage improper transfers being made via what was previously known as the "half-a-loaf" technique. Using this technique, a person could*

transfer half of his assets and use the remaining half to cover long-term-care expenses incurred during the penalty period.

Prior to the DRA, because the penalty period began as of the first day of the month of the transfer, even an institutionalized person could transfer assets for less than fair market value, keep enough (generally about the same amount as that which was transferred) to cover the long-term-care costs during the penalty period, and still become immediately eligible for Medicaid once the penalty period expired (within the three year look-back period).

Example: Mr. Jones, already in a nursing home, transfers $80,000 on July 1, 2005 to his adult daughter. He still has $80,000 in the bank, which he will use to pay for his care at the nursing home (at the private rate) for approximately ten months (through 4-30-06). The private rate at the nursing home is about the state average. He applies for Medicaid on April 1, 2006. Based on pre-DRA law (because the transfer occurred prior to 2-8-06), the penalty period begins on July 1, 2005 and ends on April 30, 2006 (divide the amount of the transfer ($80,000) by the average private cost of care at a CT nursing home at the time of application (approximately $8,000). Despite having transferred $80,000 within the past ten months, Mr. Jones is eligible for Medicaid on May 1, 2006.

This flaw in the previous policy actually encouraged a person to make transfers for less than fair market value, as long as the person had sufficient assets to cover expenses during the penalty period. In fact, because the penalty date began as of the month of transfer, a person not needing immediate nursing home care could transfer all of his or her assets and still become eligible for Medicaid to pay for long-term-care costs if long-term-care services did not become necessary until the penalty period had passed.

The DRA provision regarding the date that the penalty period begins was enacted, in part, to correct this flaw. Instead of starting the penalty period as of the month of the transfer, the DRA calls for the penalty period to begin when the person applies for Medicaid and would be "otherwise eligible" for coverage of long-term-care services. The intent was to discourage ANY transfers for less than fair market value in order to qualify for Medicaid (except those that are exempt, such as transfers to spouses and disabled children) during the look-back period. By discouraging transfers, the DRA meant to have persons use their own assets, rather than Medicaid, to cover the cost of long-term care. The Medicaid program should always be the program of last resort.

Estate planners, however, have discovered an oversight in the DRA (known as the "reverse half-a-loaf" technique) that would allow a person to continue the practice of transferring half of his assets. Using this technique, a person would "transfer" ALL counted assets to the transferee and become "otherwise eligible" for Medicaid. The penalty period begins, under DRA rules, once a person is otherwise eligible, and continues regardless of the person's subsequent

acquisition of assets or other reason for Medicaid ineligibility. Later, once the penalty period had begun, the transferee would "gift back" half of the transferred assets to the Medicaid applicant. This would result in cutting the length of the penalty period in half. The Medicaid applicant would use the returned asset to cover the cost of care during the reduced penalty period, and the transferee would be able to retain the other half of the assets. Medicaid would begin paying the applicant's long-term care costs fifty percent sooner than was intended by the DRA.

The Department agrees that the effective date of this policy item should be April 1, 2007, the effective date of the regulation.

Transfers Made for a Purpose Other than Qualifying for Benefits - UPM 3029.10 E and UPM 3029.15

Comment: The Department should allow transfers that might otherwise trigger a penalty if the applicant "retained other income or assets to cover basic living expenses and medical costs as they could have reasonably expected to exist" during the look-back period.

Response: *The Department agrees and has always allowed these types of transfers, provided that the transfer was made exclusively for purposes other than qualifying for Medicaid. UPM 3028.15 B. and 3029.15 B. both allow such transfers.*

Comment: UPM 3029.10 E. and UPM 3029.15 should explicitly specify that transfers made for circumstances such as

- making charitable and religious donations
- helping a grandchild pay for education
- helping a child pay medical bills
- helping family fend off a financial crisis
- helping family member with a care-giving expense
- helping a loved one start a small family business

should be presumed to be made for a purpose other than qualifying for benefits, unless the Department finds indications or evidence of a contrary intent. Department staff should be instructed to recognize these "innocent transfers."

Response: *The Department position is that each case should be evaluated independently. Although all of the above examples may represent transfers for purposes other than qualifying for Medicaid, they do not necessarily represent transfers made exclusively for purposes other than qualifying for Medicaid. The Department would need to look at the situation in its entirety.*

For example, someone who is in good health, working and having other assets may argue that they gifted money exclusively for their grandchild's education. However, someone who is receiving nursing home care and whose funds are running low would not be as credible when arguing that the transfer was made exclusively for educational purposes.

Comment: The procedural sections of the UPM should be amplified and staff should be instructed to presume that transfers made in the situations described above were made exclusively for a purpose other than to qualify.

With regard to the procedural sections of the UPM and verification, it is critical that there be consistent application of the new regulations to ensure fairness and to avoid erroneous or arbitrary imposition of harsh penalties under the DRA. Clarity and direction concerning the amount and nature of required verification and use of individual judgment is critical. Training is essential to accomplish uniformity among the regions. Staff should use prudent judgment when determining whether transfers require verification, particularly when dealing with people who suffer from dementia, Alzheimer's disease, etc.

Response: *These are procedural pages not subject to comment and response. Nevertheless, see response to previous comment.*

Comment: The procedural pages relating to UPM 3028.15 and 3029.15 concerning "Foreseeable Needs Met," should note that, in applying this standard, the factors listed are only examples, and that it is not necessary for all factors to exist. If "health" is a factor tending to support that foreseeable needs were met, the procedural language should consider only that the transferor was in good health, not that there are no serious medical problems. Also, when considering whether there are "serious medical problems," it is those problems that are "of a degenerative nature" that should be considered.

Response: *As noted previously, the Department believes that each case should be considered independently based on its unique circumstances. The Department agrees that the factors listed in the procedural section are only examples, and do not all necessarily need to exist in each case. Training will reinforce this concept.*

Transfer of the Proceeds of a Home Equity Loan, Reverse Mortgage or Similar Instrument – UPM 3028.15D, 3029.15 D, 3029.14, 4030.50

Comment: Because Medicaid considers the home to be a protected asset, there are currently no restrictions on the disposition of proceeds from a reverse mortgage. It may create disincentives to the use of reverse mortgages if purchasers are subject to restrictions on the use of these funds. Also, how would a consumer demonstrate whether expenditure was from reverse mortgage proceeds or another source of income?

Comment: Penalizing the transfer of the proceeds from a home equity loan, reverse mortgage or similar instrument subject is not required or authorized by the DRA. Although home equity loans generally are taken to allow people to stay in their homes, sometimes the proceeds are transferred for purposes other than to qualify for benefits. The standard in UPM 3029.15 D.3. establishes a stricter standard because it assumes that transfers of such proceeds can never be made for purposes other than to qualify for long-term care Medicaid. This section, therefore, should be deleted. If not, there should be a provision added that the transfer of such proceeds should be evaluated just like any other transfer.

Comment: UPM 3029.14 A. should contain a cross reference to the section on transfers and the exceptions allowed within the transfer section (UPM 3028.15). There are situations where parents loan money to children or grandchildren to buy cars, a home or to pay tuition. These are ordinary and usual transaction that should not lead to automatic disqualification or an impermissible transfer of assets resulting in a penalty. Such transfers need to be evaluated in policy and practice guidelines to avoid unintended and unfair results.

Comment: The provisions in UPM 3029.14 F and G. which provide that the Department evaluates the "income stream derived from such instrument . . . as an available asset" is not supported by the statutory definition of the term "assets." A serious flaw would arise if the income stream is required to be reduced to a present value and sold. People planning to have care at home may try to obtain a regular income stream to pay for daily care, and plan to have the income stream supplemented by one of the CHCPE programs. This is a rational strategy. If people are forced to treat the income stream as an asset, they will use up their resources and then be forced to go into nursing homes, instead of being able to stay at home. The Department should not require that people reduce the income stream to a current value and that it be sold.

Comment: The provision in UPM 3029.14 G. that treats individual payments as "counted income" will have the unintended consequence of disqualifying people who have taken a reverse mortgage in order to afford staying in their homes because the reverse mortgage payments and Social Security may well exceed the home care income cap of $1,869 per month. Although the Department allows for a pooled trust for excess income, that is a cost to the applicant and may result in money in a pooled trust that cannot be used fully for "supplemental expenses."

Comment: UPM 4030.50 should be effective at a future date to avoid problems with retroactive application. UPM 4030.50, which deals with an applicant who pays money to someone else to obtain an income stream, should be distinguished from UPM 4030.40 B. where the applicant borrows money to live.

Comment: UPM 3029.15 D. creates a separate rule for the evaluation of transfers of the proceeds of a home equity loan, reverse mortgage or similar instrument. This is an impermissible and probably unconstitutional distinction.

Response: *CMS has advised states that transfers of home equity loan proceeds are subject to penalties, the same as other transfers of resources. This inclusion of transfers of home equity loan proceeds is meant to comply with existing Medicaid law.*

It is not the Department's intent to subject transfers involving the proceeds of home equity loans or other similar instruments to a higher standard than those used to evaluate other types of transfers. For example, we would not penalize a transfer involving funds derived from home equity if the transferor demonstrates that the transfer was made exclusively for reasons other than to qualify for Medicaid. We have amended our regulations accordingly.

The provisions of UPM 3029.14 do not apply to the proceeds of home equity loans or reverse annuity mortgages. UPM 3029.14 pertains to mortgage notes, installment contracts and loan notes, which are financial instruments owned by individuals that generate income. These streams of income can be sold, and as Medicaid requires States to count resources that individuals can use for their support, we believe the law requires us to evaluate income streams as counted assets.

Payments received from home equity loans, reverse annuity mortgages and other similar instruments, on the other hand, are the proceeds of a loan that the recipient must repay. Although the transfer of these monies can result in a penalty, the proceeds of these instruments are not counted as income upon receipt.

Elimination of Segregated Proceeds of a Loan as an Excluded Asset – deletion of UPM 4030.40 B.

Comment: Eliminating the exclusion of segregated proceeds of loans as excluded assets is not required or authorized by the DRA.

Comment: The Department's authority for treating the proceeds of all mortgages as countable assets is questionable and does not derive from the DRA or any other Medicaid provision.

Comment: The elimination of UPM 4030.40 B. has pernicious consequences for home care eligibility. Removing this section causes trust income and accrued segregated funds from a reverse mortgage to be treated as an available asset. People taking these reverse mortgages do not have sufficient cash or assets to pay their bills for housing, medicine and food. They must accumulate funds to pay their taxes twice a year and make repairs to their houses. If they cannot

accumulate a segregated fund, they will be forced from their homes. This acts contrary to the Department's efforts to encourage more home care. UPM 4030.40 B. should not be removed.

Response: *The Department could not find any basis in federal law for excluding these funds as assets if retained by the individual after the month of receipt. Accordingly, the Department had removed this provision for all programs in order to comply with federal law.*

The Department does not believe that the removal of this provision will create a hardship for individuals, as they will still be able to use lines of credit for payment of expenses. The Department will continue to regard the proceeds from lines of credit as loans, which we exclude as income in the month of receipt and as assets until the following month to the extent retained.

Post-Eligibility Transfer of the Home Property by Community Spouse - UPM 3029.15 E. 3.

Comment: The Department's current regulation restricting the post-eligibility transfer of home property by the community spouse goes beyond federal requirements, and there is no authority in the DRA or other federal law for this new provision that imposes a post-eligibility penalty for the community spouse's transfer of the proceeds of a home equity loan, reverse mortgage or similar instrument that reduces the spouse's equity in the home. Moreover, in applying this new policy, the Department cannot reach back to transfers made from loan proceeds that took place before the effective date of the regulations, even if such transfers were made within the applicable look-back period. The authority to penalize such transfers derives solely from the repeal of section 4030.40 under these proposed regulations, and not from the DRA.

Response: *CMS has advised states that transfers of home equity loan proceeds are subject to penalties. CMS has also advised States that transfers made by community spouses, including those made after the institutionalized spouse become eligible for Medicaid, can result in penalties.*

The Department has consistently regarded the transfer of the community spouse's home as a potentially disqualifying transfer that could affect the institutionalized spouse's eligibility for Medicaid payment of long term care services. This reflects a public policy that encourages retention of the property by the community spouse. As the value of any home is equivalent to its equity, the Department's position is that it is logical to regard transfers of home equity as equivalent to transfers of the home itself.

Undue Hardship – UPM 3029.05 B., 3029.25 A., 3029.25 B., 3029.25 D., UPM 3029.10 I., 3029.11 E.1.

Comment: These provisions apply only to individuals in nursing homes or medical institutions facing eviction, and to individuals receiving home and community-based services under the Medicaid waiver home care program who face a loss of services. The draft regulations do not provide for an undue hardship exception for individuals who are first applying for the Connecticut Home Care Program for Elders (CHCPE) under the Medicaid waiver. Also, the proposed regulations deny an individual in a hospital bed awaiting nursing home placement from asserting an undue hardship claim. The DRA mandates availability of the undue hardship exception for individuals in need of or receiving institutional level care and nowhere excludes individuals applying for such care in the first instance. By narrowly applying the hardship provision solely to institutionalized individuals, the proposed regulations arguably conflict with federal law. As proposed, the regulations will have a dramatic and adverse effect on those who wish to remain at home and need services to do so by not allowing for an undue hardship exception for them. The word "institutionalized" should be deleted from UPM 3029.05 A, 3029.05 B 1, 3029.05 B 2, 3029.25A. UPM 3029.25 B should be rewritten as follows: "When an individual would not be[ing] eligible for LTCF services or services provided by a medical institution which [sic] are equivalent to those provided in a long-term care facility, or home and community-based services under a Medicaid waiver solely because of the imposition of a penalty period and the imposition of such a penalty period will result in and create undue hardship, the Department does not impose such penalty."

Response: *The Department agrees to make the requested change to provide that the undue hardship exception applies to applicants for assistance as well as institutionalized individuals.*

Comment: UPM 3029.25 does not include any provision, as authorized by the DRA, for bedhold payments while an undue hardship waiver application is pending. Since, under the DRA, the state may provide for payment to nursing homes in order to hold the bed of an individual at the facility, but not in excess of 30 days, a new paragraph should be added to these proposed regulations to provide for such payments while an undue hardship application is pending.

Response: *The Department does not agree to this change. The requested change is not required by the DRA and the Department has elected not to provide for the requested bed hold payments to nursing homes.*

Comment: The criteria for satisfying the undue hardship exception are overly burdensome and conflict with the DRA. First, UPM 3029.25 A.1 does this by omitting endangerment of an individual's health as grounds for the exception, as provided in the DRA. In addition, the proposed regulations go beyond the criteria set forth in the DRA for undue hardship. Nowhere in the DRA is there criteria related to whether the transferee still has the transferred asset or its equivalent, as set forth in UPM 3029.25 B 2. The CMS guidance of 7/27/06 looks to the

individual's ability to pay for care, not the transferee's possession of the funds. Moreover, the criteria fail to consider whether the transferee is willing or able to use the transferred funds, or their equivalent, for the individual's care. If the undue hardship criteria are set so high and are unduly burdensome to prove, it is an empty undue hardship exception. If the criteria can never be met, as a practical matter, nursing homes will face uncompensated care and clients will face the prospect of hospital dumping.

Response: *The Department agrees that the undue hardship waiver applies when an individual's health is endangered and has revised section 3029.25 A.1. . The Department does not agree with the remaining comments. Per CMS, as long as the DRA criteria is adhered to, states have considerable flexibility in deciding the circumstances under which they will not impose penalties under the transfer of assets provisions because of undue hardship. The remaining comments are directed at an area where the Department has flexibility. The Department views the criteria as reasonable and appropriate.*

Comment: Neither the DRA nor existing Medicaid recovery statutes authorize recovery from transferees at all. Proposed UPM 3029.10 I. and 3029.11 E.1., therefore, exceed the authority of federal law, both in the DRA, where transferee recovery is nowhere authorized, and in the Medicaid recovery provisions at 42 USC 1396p.

Response: *The Department does not agree with the comment. The provision is based on state law (Conn. Gen. Stat. § 17b-261a (b)). The provision is not contrary to the Social Security Act because the Act does not expressly preclude recovery from the transferee.*

Comment: The time frame in UPM 3029.25 D., requiring an individual to claim and prove undue hardship in 10 days from the date of the Department's preliminary decision concerning the imposition of a penalty, is burdensome. Counting mailing time on either end, it is really only 7 or 8 days for people to obtain evidence. The evidence is likely to be in the knowledge or possession of a third party. This is insufficient time. Instead, the proposed regulations should incorporate the Social Security presumption that notice is received by the individual 5 days after the agency's mailing date. The time for claiming the undue hardship exception should be no less than 14 days. The period should be 14 days from receipt of the notice, not the date of the notice, for an individual to claim undue hardship or to otherwise rebut the Department's decision to impose a penalty period, and an extension should be granted automatically, if requested by the individual. While the proposed regulation permits requests for extension of time to respond, such extensions will be granted only if the request is reasonable. This undefined standard would lead to variation among and within the DSS offices. The proposed regulations should allow for extensions of time upon request.

Response: *The Department has amended the time frame from ten to fifteen days. Also, the Department has amended the regulation to provide for a mandatory granting of the first request for an extension of the time to claim undue hardship; subsequent requests may be granted by the Department if reasonable.*

Comment: There should be a period of 30 days for a response time.

Response: *The Department does not agree to make the requested change. See response to previous comment.*

Comment: The proposed regulation should be modified to allow for undue hardship waiver requests at any time during the penalty period because there may be unforeseen changes in peoples' lives and they may be unable to pay for their own care.

Response: *The Department does not agree to make the requested change. See response to previous comment.*

Comment: The Department should consider waiving the penalty when denial of access to Medicaid-funded long-term care services will result in unnecessary hospitalization. This change may be necessary to conform to the Americans with Disabilities Act.

Response: *The Department does not agree to make the requested change. The Department does not believe that the requested change is necessary to conform to the Americans with Disabilities Act.*

Comment: Because nursing homes are disproportionately affected by the prolonged penalty period, nursing homes should be allowed to request and receive undue hardship payments from the state during a resident's penalty period, for both pre- and post-DRA transfers that result in a penalty.

Response: *The Department does not agree to make the requested change.*

Comment: With regard to the criterion that "the resident has been threatened with eviction due to non-payment and has exhausted all legal methods to prevent eviction," nursing homes effectively have no authority to "evict" residents whose health or life would be endangered if they were evicted, so it is questionable whether they can threaten a resident with eviction. While nursing homes may discharge a resident for non-payment, the homes may not discharge a resident for non-payment once the resident has been deemed eligible for Medicaid. As a practical matter, even when a nursing home can discharge for nonpayment, assuming the resident either does not appeal or loses the appeal, the discharge cannot occur because there must be an adequate discharge plan, and it is impossible to find services for someone who has no source of payment. For all

of these reasons, nursing homes typically do not threaten discharge in these situations; particularly given the unnecessarily traumatic effect that doing so could have on the resident. As a result, many residents who would otherwise be eligible to claim undue hardship will not be able to claim it because there is no "threat" of eviction.

Response: *The Department does not agree to make any changes in the cited provisions. The Department believes that the criteria are appropriate. In addition, there are already provisions in the Uniform Policy Manual for unusual circumstances, i.e. undue influence, dementia.*

Comment: The resident/transferor should not have to show that the transferee no longer holds the asset in order to qualify for the hardship relief. The DRA does not require this. Most residents will have a difficult time meeting this requirement, especially in time to file the hardship waiver request.

Response: *The Department has made a modification to this policy. To claim undue hardship you must prove that the person to whom you transferred the asset is a family member or the person handling your affairs, no longer has the asset, does not have any other assets of similar value to use to pay for the cost of care. If the person or organization to whom you transferred the asset is not a family member and was not handling your affairs and there is no family member or other person or organization that can or will provide care for you, and the nursing home is threatening to evict you because they have not been paid, and you have already tried all legal ways to stop the eviction you may qualify for undue hardship. In addition, if the provider is threatening to stop home care services because they have not been paid, and you have already tried all legal ways to keep the services in place, you can claim undue hardship.*
It is reasonable to expect that if the individual receiving the transferred asset is a relative or someone handling the affairs of the applicant, they could show that they no longer have the asset.

Comment: Hardship should be based, as required by the DRA, on the inability to pay for medical care and other necessities of life, not on the unrealistic assumption that every person, charity, church or candidate who received a transfer will be able and willing to make a return. Moreover, this required documentation of resources of third parties. Those who will be seeking this documentation are typically seriously disabled, in need of long-term care services and impoverished; they will not have access to this documentation, not any means of compelling its production. UPM 3029.25 B 2 should be deleted.

Response: *The Department does not agree to make the requested change. See previous response.*

Comment: Nursing homes should have the latitude to file undue hardship requests for residents who are incapable of giving or unwilling to give the facility

permission to file a claim on their behalf. Some residents have no next-of-kin or appointed legal representative; these residents are most vulnerable and deserving of undue hardship relief if a penalty is imposed. As long as the facility can document the resident's incapacity to give permission and the fact that no substitute decision-maker is available to grant permission on his or her behalf, the nursing home should be permitted to file an undue hardship request on behalf of the resident.

Response: *The Department does not agree to make the requested change.*

Comment: Nursing homes should be permitted to seek undue hardship relief based on the facility's financial hardship, in addition to the individual having the undue hardship waiver process. The facility suffers the hardship due to the imposition of a penalty period because the person cannot be evicted. In order to address the additional financial risk being faced by nursing homes due to the new federal transfer of asset laws, CANPFA proposes that the Department add the following provision to its regulation, which used to be contained in Conn. Gen. Stat. 17b-261a(d):

> The Commissioner, upon request of a facility, may grant financial relief to a nursing facility if the nursing facility established that (1) it is experiencing financial hardship due to the transfer of asset penalty period and (2) it has made every effort permissible under state and federal law to recover the funds that are due to it for caring for the individual. If the Department agrees to provide relief to the facility by making Medicaid payments, the Department shall seek recoupment of said payment from the individual and the transferee by pursuing all means available to it under state and federal law.

Response: *The Department does not agree to make the requested change. The undue hardship provision of the DRA is limited to hardship upon the individual. The DRA does not authorize the requested change.*

Comment: The requirement in the undue hardship provision that requires the individual to "exhaust all legal methods to prevent the eviction" should be further defined because it is not clear what constitutes "all legal methods." The regulation should make clear that a resident is deemed to have exhausted all legal methods to prevent eviction if the resident contests the eviction at a DSS hearing pursuant to section 19a-535 of the Connecticut General Statutes. No resort to the courts should be necessary, as this could take years and would require an attorney, which the resident probably would not be able to afford. Also, there may be situations where a resident, due to mental or physical infirmity or lack of resources, or both, cannot contest the eviction. There should be a provision for waiving this requirement in the regulation.

Response: *The Department does not agree to make the requested change. The Department believes that, in most cases, an individual will have "exhausted all legal methods to prevent the eviction" by contesting the eviction at an administrative hearing. The Department, however, believes that situations may exist where resort to the courts is appropriate. Further, free legal representation may be available and an infirmed individual's authorized representative would be authorized to contest the eviction. The concerns expressed regarding affordability of legal representation and inability to contest the eviction do not warrant making the requested change. The Department does not agree to provide for a waiver of the "exhaustion" requirement.*

Comment: With regard to the requirement that the transferor establish 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, there are several issues. The regulation should make it clear that all that is required to establish that the transferee is no longer in possession of the asset is a statement of the transferor, transferee or some other person with knowledge submitted to the Department. There may be situations where the transferee still has the asset, but refuses to liquidate it or other assets to pay for the cost of care. The nursing home has no right of action against the transferee. The regulations should provide that, if the nursing home has acted with due diligence, the nursing home should not bear the loss.

Response: *The Department does not agree to make the requested change. The "undue hardship" exception applies to hardship upon the individual and not upon the nursing home. The concerns addressed in the comment are directed at the interests of nursing homes, and not the individual.*

Comment: The regulation does not specify whose responsibility it is to prove that there is no family member or other individual or organization able and willing to pay for the individual's care. If it is the resident's responsibility to do that, the regulation should make that clear, or make it clear that someone with relevant knowledge may establish that.

Response: *The Department does not agree to make the requested change. The regulation expressly provides that the transferor must establish that the transferee is no longer in possession of the transferred asset. Proof establishing lack of possession could be supplied by someone with relevant knowledge.*

Comment: In addition to the undue hardship exception, the law should be amended so that the Medicaid program will reimburse a nursing home for care rendered to an otherwise eligible resident who had made a prohibited transfer under the following conditions:

1. At the time of admission, the facility asks the resident whether he or she made a transfer of assets that would result in a period of ineligibility for Medicaid.
2. If such a transfer is disclosed, the facility attempts to obtain an agreement from the transferee to use the transferred asset to pay the cost of care until the resident becomes eligible for Medicaid.
3. If such a transfer is not disclosed, but is later discovered, or if no agreement with the transferee can reasonably be obtained, or if an agreement is obtained but the transferred assets are not, in fact, used to pay for the resident's care, the facility seeks to recover the cost of care from the transferor, the transferee or other third party, as allowed by contract and common law, by filing a complaint in a civil action in Superior Court or other court with proper jurisdiction, except that no nursing facility shall be required to file a complaint if there is no reasonable likelihood of recovery
4. The facility's Medical Director certifies that, as a practical matter, the resident cannot be safely cared for at home.

This is a fair and reasonable alternative to the undue hardship provision if the requirements of that provision cannot be met. The nursing home benefits the state by seeking to recover assets to pay for care and the nursing home is assured of payment for care rendered to the transferor.

Response: *The comment is directed at federal law, not the regulation. The Department is unable to make the requested changes.*

Annuities - UPM 3029, 4030.47

Comment: With respect to annuities, the policy should make it clear that the new policies do not apply to any annuity purchased prior to February 8, 2006, the date of the DRA's enactment. It would also be helpful to eligibility workers and applicants to incorporate the effective-date rules into the specific policy sections dealing with annuities – 3029.12 and 4030.47 – to minimize confusion.

Response: *We agree with this comment. We have amended UPM 4030.47, however, UPM 3029 clearly indicates that the chapter refers to transfers occurring on or after February 8, 2006. No further clarification of this point is required.*

Comment: UPM 3029.12 – This section and other regulations dealing with annuities (UPM 3029.10 J 2 and 4030.47 A) should be revised so that the purchase of any annuity not included within the definition of "asset" under 42 USC 1396p(c)(1)(G) will not be treated as a "transfer of asset." Section 3029.12 and other regulations dealing with annuities should also be revised so that the requirement of naming the State as a remainder beneficiary will not apply to annuity not included in the definition of "asset" under 42 USC 1396p(c)(1)(G).

Response: *We disagree with this comment. UPM 3029.12 is clear regarding under which conditions the purchase of an annuity is considered to be a transfer of assets. The descriptions listed in UPM 3029.12 are those that define an annuity as "not an asset" under the transfer rules.*

Section 1917 (e)(1) mandates disclosure whether an annuity is treated as an asset or not. (e) (2) (A) indicates the State's right to be a beneficiary based on the provision of services. The definition of assets, as used here, is exclusive to transfers. This is a separate topic from whether an annuity is treated as an asset or not. CMS direction also indicates that the State has a right to be named as a remainder beneficiary on any annuity purchased on or after February 8, 2006.

Comment: 42 USC 1396p(c)(1)(G)(i) states that the purchase of certain types of annuities is not treated as the purchase of assets. In general, those annuities are annuities purchased in or with the proceeds of certain retirement accounts described in the Internal Revenue Code, known as Retirement Annuities. Since Retirement Annuities are not assets, they are not subject to 42 USC 1396p(c)(1)(F), which is the only section of federal law that states that the purchase of an annuity will be treated as a transfer of an "asset" unless the state is named as a remainder beneficiary, after certain permitted prior beneficiaries. UPM 3029.12 makes no distinction between the purchase of Retirement Annuities and the purchase of non-Retirement Annuities, so it violates federal law. Also the failure to protect Retirement Annuities from the naming the state as a residuary beneficiary is very damaging to Connecticut citizens, many of whom have annuities in their retirement plans. Although the DRA is clear that the annuity rules apply only to transactions occurring after February 8, 2006, the scope and ambiguity of UPM 4030.47 A suggests that DSS may be requiring that all annuities name the state as the residuary beneficiary, even Retirement Annuities purchased prior to February 8, 2006.

Response: *Please see above comment. Section 1917(c)(1), subparagraph (G) describes retirement and other types of annuities that are not regarded as assets in the context of transfers of assets. These annuities, nevertheless, are still available assets that must be evaluated in terms of clients' Medicaid eligibility.*

Additionally, section 1917(c)(1), subparagraph (F), requires that the State be named the remainder beneficiary in order for annuities described in that paragraph to not be regarded as improper transfers. As both subparagraphs (F) and (G) apply to annuities described in that paragraph, the requirements of these subparagraphs are conjunctive. Therefore, all annuities, including retirement annuities, purchased on or after February 8, 2006 must name the State as reminder beneficiary in order to comport with subparagraph (F). UPM 3029.12 makes no distinction between the purchase of Retirement Annuities and the purchase of non-Retirement Annuities because the law does not distinguish between these purchases. CMS agrees with this interpretation.

Comment: 42 USC 1396p(c)(1)(G)(ii) states that the purchase of an annuity that is irrevocable, non-assignable, actuarially sound, and that provides equal payments during its term (Actuarially Sound Annuities) also are not treated as the purchase of "assets." Since they are not "assets," they are not subject to 42 USC 1396p(c)(1)(F), which is the only section that states the purchase of an annuity will be treated as the transfer of an "asset" unless the state is named as the remainder beneficiary. Since UPM 3029.12 does not make a distinction between the purchase of Actuarially Sound Annuities and non-Actuarially Sound Annuities, it violates federal law and also fails to protect Actuarially Sound Annuities from the requirement of naming the State as a residuary beneficiary, even for those Actuarially Sound Annuities purchased prior to February 8, 2006.

Response: *Please see above comment. Even though the purchase is not penalized as a transfer for less than fair market value, it must still be considered in the determination of eligibility.*

Comment (JH): UPM 3029.12 C – This section should be removed entirely because it provides that a payment made from an annuity purchased with the assets of the institutionalized individual or his or her spouse is subject to a penalty, unless the payment is made to the individual, his spouse, a disabled child or a trust as described in UPM 4030.80 D 1. There is no authority for different treatment for transfers from an annuity than for any other transfers. If not removed, this section should state that transfers other than to the afore-mentioned individuals should be evaluated as any other transfer would be evaluated. A cross-reference to appropriate UPM sections must be included.

Response: *We did not intend to hold transfers involving payments from annuities to any higher standard from that used to evaluate other transfers. Our intent was to clarify that payments from annuities can be subject to penalty, even when the annuity itself fully comports with the requirements of the Deficit Reduction Act.*

Comment: There is nothing in UPM 3029.12 or other sections that pertains to the requirement in 42 USC 1396p(e)(1) requiring the Department, in its application form, to "include a statement that under [42 USC 1396p(e)(2)] the State becomes a remainder beneficiary under such annuity [i.e., an annuity described in 42 USC 1396p (c)(1)(F)]," subject to the limitations contained in the DRA and 42 USC 1396p (e.g. effective date rules, preference for spouse and disabled children, etc.) Having such as a statement is required by statute and should prevent individuals from becoming disqualified under the transfer of asset rules. Of course, the Department may not use the required statement to take from an annuity any more than that to which it is entitled under 42 USC 1396p.

Response: *The application is being changed to meet the requirement.*

Comment: UPM 3029.10 and 3029.15 D - These sections need to distinguish between the purchase of *deferred* annuities, which have accessible cash balances and are frequently purchased by consumers in lieu of certificates of deposit, and the purchase of *immediate* annuities, which typically do not have accessible cash balances. The purchase of a *deferred* annuity by an applicant or a spouse should *never* be treated as a transfer for the purpose of qualifying for or maintaining Medicaid eligibility because the cash balance in the deferred annuity is always treated as an available asset. These UPM provisions should contain an exception to the transfer of asset rules for any annuity to the extent that it is treated as an asset and available to the applicant or his or her spouse.

Response: *We disagree. Federal law does not differentiate between deferred and immediate annuities.*

Comment: UPM 4030.47 – The Department should delete the following sentence, which states: "Additionally, the right to receive income from an annuity is regarded as an available asset, whether or not the annuity is assignable." This goes well beyond the DRA. If the equity in the annuity is counted as an available asset as would be the case for a deferred annuity, it is double counting to treat the income stream from that same deferred annuity as an additional available asset. To the extent that the annuity is not assignable, the proposed regulation creates an impossibility. If the annuity cannot be assigned, it is not an "actually available" asset. The Department should not treat income streams from *immediate* annuities as "available" assets. If the Department disagrees with this, however, and wants to treat income streams from immediate annuities as available assets, the policy should distinguish between deferred annuities and immediate annuities. It appears that the Department has in mind only deferred annuities when it states that the "equity in an annuity is a counted asset to the extent that the assistance unit can sell or otherwise obtain the entire amount of equity in the investment." It would be helpful to say that (a) those annuities in which there is equity are typically called "deferred annuities; and (b) the rule concerning the valuing of the income stream, i.e, the right to receive income, applies only if and to the extent that equity in an annuity is not counted as an available asset. It needs to be clear that a worker cannot take into account the cash surrender value of a deferred annuity and, at the same time, the income stream. To do so would be double-counting.

Response: *Federal law requires that we count available assets in determining an individual's Medicaid eligibility. Available assets are those assets that an individual has the power, right or authority to obtain, or to have applied for, his or her general or medical support (UPM 4001.01).*

We do not agree that this regulation needs to distinguish between deferred and immediate annuities. "Double-counting" will not occur as the means by which we evaluate annuities as assets are mutually exclusive of one another.

If a Medicaid applicant has a deferred annuity, our Department will count the amount that the individual can obtain from the annuity as an available asset. There would be no need to additionally count any amount that the individual could receive from the sale of the annuity as a financial commodity or the sale of the right to receive income.

If an individual has an immediate annuity that is assignable, we would count the amount that the individual could obtain from the sale of the annuity as a financial commodity. There would be no need to count any amount that the individual could receive from the sale of the right to receive income.

Finally, if an individual has an immediate annuity that is not assignable, we would count the value of the income stream as an available asset. Individuals would have the opportunity to demonstrate that there is no market for a specific annuity, in which case there would not be any value as an asset.

Comment: While the Department could treat income streams from immediate annuities as assets, it should not do so with respect to assignable annuities because it will force people to sell their annuities in the commercial market to firms that will pay only a fraction of the real value of the annuity. This will hurt applicants and their spouses and is bad public policy; it is antithetical to the transfer-of-asset policy. Requiring elderly people to transfer substantial wealth to strangers by means of heavily discounted sales is even less defensible than people transferring their wealth to their children to qualify for Medicaid.

Response: *We disagree. Medicaid is a payor of last resort. Therefore, individuals must first use other available resources.*

Comment: Encouraging people, especially applicants, to sell the income streams form their assignable annuities will hurt the Department because it will (a) substantially increase (relative to the amount of income produced by the annuity) the monthly payment by the Department to the nursing home once the person is on Medicaid; and (b) encourage people to sell their income streams from their annuities to individuals who offer prices competitive with those offered by commercial companies. It would be better for the Department to permit the recipient to continue receiving the annuity and reduce[wouldn't it increase] the recipient's applied income. Nevertheless, if the Department wants to treat income streams on assignable, immediate annuities as assets, it will need to provide guidelines on steps that applicants will need to take to sell their annuities, such as offering a list of companies and providing time for the owner to attempt to sell the annuity.

Response: *Please see our response to the comment above. In addition, although we will work with individuals in determining the value of annuities, the responsibility for verifying the value ultimately is with the applicant.*

Comment: The Department has no authority to treat a nonassignable annuity as an available asset. First, for employer-sponsored pensions and individual retirement annuities, the position runs afoul of ERISA 206(d) and IRC 401(a)(13) with respect to qualified plans and the rule prohibiting assignments of individual retirement annuities under IRC 408(b). An explicit exemption must be made for these employer sponsored plans and individual retirement annuities.

Response: *We disagree. Even though it is not penalized as a transfer, we still must consider it an asset to the extent that the individual can sell the annuity. It is our understanding that there is not a market for qualified annuities, i.e. employer-sponsored or individual retirement annuities. As the sale of these types of annuities is not an issue, our regulation does not conflict with ERISA.*

Comment: For other nonassignable annuities, in Estate of Gross, 687 N.W.2d 460(N.D. 2004), the agency established availability of a nonassignable annuity because of testimony that a market existed for the income stream. Only a year later, however, in Estate of Pladson, 707 N.W.2d 473(N.D. 2005), the same court ruled that since the Medicaid applicant proved that there was no market for the income stream, it could not be counted as an asset. The Department must provide applicants and eligibility workers with guidelines for determining when a market exists and provide an exemption while the income stream is on the market.

Response: *We will provide guidelines to our staff.*

Comment: The DRA addressed the subject of annuities only in the context of a transfer of assets. No change was dictated regarding their being income or assets. Under federal law, it has always been clear that an annuity, once annuitzed, was no longer an asset, but simply a stream of payments, each one of which counted as income. The proposed change flies in the face of economic reality in that it treats as an "asset" something that has no value and cannot be bought or sold, such as a nonassignable stream of income. Creating this regulation will only create administrative delays and hearings. There is patent unfairness in allowing pension payments – which are, in effect, a stream of income from an employer with an employer-funded benefit plan – to be treated as income, not assets, but implying that an individual retirement annuity will be treated as an asset that may potentially disqualify the individual or spouse from accessing medical assistance. This is unreasonable and punishes those who have been the least fortunate in their employment benefits history.

Response: *We have addressed the issues raised in this comment in our responses above.*

Comment: UPM 4030.47 A disclosure requirements are unclearly written and can be construed as saying that the Application of Recertification form must include a statement that the State is the remainder beneficiary for all annuities,

whether purchased before or after February 8, 2006, even if the annuity is a Retirement Annuity or an Actuarially Sound Annuity. It is important to clarify that this paragraph does not apply to these categories of annuities.

Response: *We agree with this comment. We have amended UPM 4030.47.*

Continuing Care Retirement Communities (CCRCs) and Life Care Communities (LCCs) – UPM 4030.18

Comment: The proposed regulation should be changed to (a) take out apostrophes from CCRC's and LCC's; (b) change paragraph A to say that the individual can use the entrance fee to pay for care under the terms of the CCR or LCC contract should other assets or income be insufficient to pay for such care; (c) change paragraph B to say that the individual is eligible for a refund of the entrance fee upon death or termination of the CCRC or LCC contract and leaves the community; and (d) add new paragraph C to say that the entrance fee does not confer an ownership interest in the CCRC or LCC. The reference in paragraph A to "other income and assets" is inconsistent with the DRA; the reference to "other income" does not make sense as the regulation pertains to situations when the individual's income or other assets (other than the entrance fee) are insufficient to pay for care costs. These proposed changes are consistent with CMS Guidance letter. Also, it should be made clear that individuals who are entering into these contracts prior to the effective date of the DRA should be able to rely on pre-DRA law, where such fees were considered inaccessible assets.

Response: *We have made these changes.*

Comment: (RF) We have concerns about the CCRC rules, especially with regard to the spouse of a person with Alzheimer's. If an individual suffering from the disease must go into a nursing home and the entrance fee deposit exceeds the minimum CSRA, must the community spouse move out of the CCRC because the fees are considered available assets? This is inequitable.

Response: *We do not agree to modify the policy as it currently stands. Each application will be evaluated on its own unique circumstances to ensure compliance with MCCA rules.*

Life Estates (Life Use) - UPM 3029.13

Comment: This generally tracks the DRA, but uses the term "life use" instead of "life estate," as used in the DRA. Although the terms are used interchangeably in one Connecticut Appellate Court decision, there may be a distinction under Connecticut real estate law. Also, the DRA states that the term "assets" with respect to a transfer of assets, includes the purchase of a life estate interest in another individual's home "unless the purchaser resides in the home for a period

of at least 1 year after the date of the purchase." The proposed regulation says that the funds used to purchase the life use are considered to be a transfer of assets for less than fair market value "if the purchaser resides in the home for less than one year after the date of purchase." The CMS explanation of this provision is detailed and should be reflected in the UPM regulation. It explains that the acquisition of a life estate and the prior property of another would serve to transform countable resources (cash) into a non-countable resource (the life estate). It clarifies mechanics in calculating whether a transfer has occurred and for what period of time. These clarifications should be in the UPM proposals. CMS makes it clear that the DRA provisions pertaining to life estates do not apply to the retention of life estates by individuals transferring real property, and this should be included in the UPM regulations. Other concerns are: (1) CMS states that there is no proration of the penalty period, but this is overly restrictive in that an individual who has paid full value for the life interest and then lives in the other person's home for a period of less than a year should receive some benefit – an example is an individual with an unexpected illness causes a hospitalization and the need to move out of the house; and (2) the one-year residence test should provide that the one year is not required to immediately follow the purchase of the life estate; possibly the one-year period could be broken up into non-consecutive periods.

Response: *The department has historically used the term "life use" to refer to a "life estate."*
The department feels that an explanation behind this policy is a training issue, and that the regulation should consist solely of the policy itself.

The department feels that the provisions of this policy clearly pertain to the purchase of life use of another person's home, rather than the retention of life use by someone transferring the home. There is no need for further clarification.

The department is following CMS guidance and considering the amount of the transfer to be the amount paid for the life use, if the individual lives in the home for less than one year. As CMS also advises, the department will calculate the value of the life use and compare it to the amount paid for it only if the individual lives in the home for at least one year after the purchase.

It is also the department's position that the one year time period must be one continuous period beginning immediately upon purchase of the life use. The individual should benefit immediately from his or her investment, and there should be no interruption. A similar requirement exists with respect to the purchase of annuities (no deferred payments are allowed, and the payments must be of equal amount with no balloon payments).

Home Property and Home Equity – UPM 4030.20 E.

Comment: Because the application date of the DRA is January 1, 2006 and the proposed regulations follow this, the state now has the right to conduct reviews of applications already approved, perhaps at redetermination. At that time, the Department could presumably deny ongoing eligibility for someone with a home over the equity cap. This does not seem fair, and the UPM should state how the application date will be applied. The CMS letter provides a method of valuing home equity by following the basic policies of the Supplemental Security Income Program, and then it says that states should follow their existing policies to determine the current market value. There is no methodology stated in the UPM regulation, nor is there a cross reference to an existing method of determining value, because the UPM does not have such a policy. The CMS letter notes that only a fractional interest of the applicant should be considered if the home is held in many forms of shared ownership, but this is not in the proposed UPM.

Response: *The Department does not see a need to make any changes in the cited provision. 4030.20E.1.states"The provisions of this paragraph apply only to an individual with equity interest in his or her home of greater than $750,000 and who applies on or after 1/1/06." We will continue to use our existing methodology to determine fair market value, which is based on real estate appraisal analysis. If the applicant has only a fractional interest in the property, and the other shares were not transferred to others for the purposes of qualifying for assistance, we would look at only the applicant share of the fair market value. This does not represent a change.*

Comment: The proposed regulation should define "other long term care services." The CMS letter defines other long term care services to include (1) a level of care in any institution equivalent to nursing facility services; (2) home or community-based services furnished under a 1915 (c) or (d) waiver; and (3) services provided to a non-institutionalized individual that are described in Paragraphs (7) and (22) of section 1905(a) of the Social Security Act and also, if the state has elected to apply to section 1917(c) to other long-term care services for which medical assistance is otherwise available under the State plan to individuals requiring long-term care, those services.

Response: *This is already defined in 3028.05 B.2.and 3029.05 B. 2.*

Exemption from Home Equity Provisions – UPM 4030.20 E., 4030.65 D.

Comment: The phrasing of the proposed regulation may suggest that an individual must demonstrate both that he or she cannot obtain a reverse mortgage, home equity loan or similar instrument and that he or she is eligible for a Long-Tern Care Insurance disregard in an amount greater than or equal to the amount of home equity in excess of $750,000, plus the amount of any other counted assets. The correct approach, in order to ensure that it is clear that

either one of these conditions may be present, is to use "or" instead of "and" to separate the two conditions.

Response: *We have made this change.*

Transfers Made in Return for Other Valuable Consideration – UPM 3029.20 B. Comment from AARP (no amendment was made to this provision)

Comment: The 2-year minimum for care-givers providing services essential to avoid institutionalization of the transferor is arbitrary and unreasonable, and should be deleted.

Response: *The department disagrees. This provision has been in effect long before the DRA and has not changed.*

Notification and Rebuttal – UPM 3028.35

Comment: The definition of "objective evidence" as "evidence which rational people agree is real and valid" is troublesome because it indicates that there is no standard procedure for objectively evaluating the validity of the evidence presented. Vulnerable, elderly people may not have the resources to challenge these decisions, and may be adversely affected by this lack of objectivity.

Response: *The department disagrees. This provision has been in effect long before the DRA and has not changed.*

Transfers Affecting Both Spouses – UPM 3028.05

Comment: UPM 3028.05 H. is a troubling provision. We are not familiar with a precedent for a penalty being applied to the spouse of a beneficiary and could anticipate many difficulties in applying penalties to spouses.

Response: *The department disagrees. This provision has been in effect long before the DRA and has not changed.*

Bed hold Payments –

Comment: The Department should adopt regulations providing for bed hold payments when a nursing home resident has an application pending for undue hardship relief, as permitted in the DRA.

Response: *The state did not elect to use this option and does not believe it is in the state's best interest to do so.*

Transfers to Pooled Trusts – UPM 3029.11

As part of the Uniform Administrative Procedures Act process, the Office of the Attorney General made the following comment:

In order to comply with federal law, Section 3029.11 D. 2 must state that a transfer to a pooled trust is subject to the under age 65 requirement in 1396p (c) of the United States Code. CMS Regional Bulletin 2008-05 confirms this position.

Response: The state is revising section 3029.11 D accordingly so that the regulation is legally sufficient.

Date: 1-1-01 **Transmittal: UP-00-25** **2540.60**

Section: **Type:**
Categorical Eligibility Requirements **POLICY**

Chapter: **Program:**
Medicaid Coverage Groups **FMA-CN**

Subject:
HUSKY A for Long Term Care Facility Residents Under Special Income Level (T01)

2540.60 A. Coverage Group Description

This group includes residents of long term care facilities (LTCF) who:

1. reside in the LTCF for at least thirty (30) consecutive days; [and]
2. have income within a special income level; and
3. meet any of the following criteria:
   a. are under twenty-one (21) years of age; or
   b. are considered by the Department to be Caretaker Relatives on the basis of the following AFDC criteria:
      (1) meeting the conditions of "living with" the dependent child, although temporarily separated ([cross reference] Cross Reference: 2515); and
      (2) being within acceptable degree of relationship to the child ([cross reference] Cross Reference: 2515); or
   c. are pregnant women.

B. Duration of Eligibility

Individuals qualify as categorically needy under this coverage group beginning with the first day of the first thirty (30) continuous days of residence, and continue to qualify [for] so long as the conditions above are met.

C. Income and Asset Criteria

1. The Department determines income eligibility under this coverage group by comparing the individual's gross income to the [Special] special Categorically Needy Income Limit (CNIL), set at 300% of the maximum SSI amount for one person.
   a. If the individual's gross income is less than the special CNIL, he or she passes the income test.
   b. If the individual's gross income equals or exceeds the special CNIL, he or she does not qualify under this coverage group.

2540.60 C. Income and Asset Criteria (continued)

2. The Department uses the AFDC asset limit to determine eligibility for this coverage group.

3. The home equity limitation described in section 4030.20 applies to this coverage group.

Date: XX-XX-06 **Transmittal: UP-06-XX** **2540.64**

Section: **Type:**
Categorical Eligibility Requirements **POLICY**

Chapter: **Program:**
Medicaid Coverage Groups **FMA-CN**

Subject:
HUSKY A for Individuals Receiving Home and Community Based Services (H01)

2540.64 A. Coverage [Groups] Group Description

This group includes individuals who:

1. would be eligible for HUSKY A as categorically needy if residing in a long term care facility (LTCF); [and]

2. qualify to receive home and community-based services under a waiver approved by the [Health Care Financing Administration] Centers for Medicare and Medicaid Services; and

3. would, without such services, require care in an LTCF.

B. Duration of Eligibility

Individuals qualify for HUSKY A as categorically needy for as long as they meet the conditions above and receive home and community-based services under a waiver.

C. Income and Asset Criteria

1. The Department determines income eligibility under this coverage group by comparing the individual's gross income to the [Special] special Categorically Needy Income Limit (CNIL), set at 300% of the maximum SSI amount for one person. To qualify as categorically needy, the individual's gross income must be less than the special CNIL.

2. The Department uses the AFDC asset limit to determine eligibility.

3. The home equity limitation described in section 4030.20 applies to this coverage group.

Date: XX-XX-06 **Transmittal: UP-06-XX** **2540.88**

Section: *Categorical Eligibility Requirements*
Type: **POLICY**

Chapter: Medicaid Coverage Groups
Program: MAABD-CN

Subject: Long Term Care Facility Residents Eligible Under Special Income Level (L01)

2540.88 A. Coverage Group Description

This group includes residents of long term care facilities (LTCF), who:

1. meet the categorical requirements of age, blindness or disability[, and] ;
2. reside in the LTCF for at least thirty (30) consecutive days; and
3. have income below a special income level.

B. Duration of Eligibility

Individuals qualify as categorically needy under this coverage group beginning with the first day of the first thirty (30) continuous days of residence, and continue to qualify [for] so long as the conditions above are met.

C. Income and Asset Criteria

1. The Department determines income eligibility under this coverage group by comparing the individual's gross income to the [Special] special Categorically Needy Income Limit (CNIL), set at 300% of the maximum SSI amount for one person.
   a. If the individual's gross income is less than the [Special] special CNIL, he or she passes the income test.
   b. If the individual's gross income equals or exceeds the [Special] special CNIL, he or she does not qualify under this coverage group.
2. The Department uses the AABD asset limit to determine eligibility for this coverage group.
3. The home equity limitation described in section 4030.20 applies to this coverage group.

Date: x-x-09 **Transmittal: UP-09-** **2540.92**

Section: **Type:**
Categorical Eligibility Requirements **POLICY**

Chapter: **Program:** **MAABD-CN**
Medical Coverage Groups

Subject:
Individuals Receiving Home and Community Based Services (W01)

2540.92 A. Coverage Group Description

This group includes individuals who:

1. would be eligible for MAABD if residing in a long term care facility (LTCF); [and]

2. qualify to receive home and community-based services under a waiver approved by the Centers for Medicare and Medicaid Services; and

3. would, without such services, require care in an LTCF.

B. Duration of Eligibility

Individuals qualify for Medicaid as categorically needy for as long as they meet the conditions above and receive home and community-based services under a waiver.

C. Income and Asset Criteria

1. Except as described in subparagraph 3 below, the Department determines income eligibility under this coverage group by comparing the individual's gross income to the [Special] special Categorically Needy Income Limit (CNIL), set at 300% of the maximum SSI amount for one person. To qualify as categorically needy, the individual's gross income must be less than the special CNIL.

2. Except as described in subparagraph 3 below, the Department uses the AABD asset limit to determine eligibility.

3. Individuals who are eligible for Medicaid under the "Working Individuals with Disabilities" coverage group, the "Severely Impaired" coverage group or the "Severely Impaired Non-SSI Recipients" coverage group, and who also meet the non-financial eligibility criteria described in paragraph A to receive home and community-based services under the Personal Care Assistance waiver, the Acquired Brain Injury waiver, the Department of Developmental Services Comprehensive waiver or the Department of Developmental Services Individual and Family Support waiver are considered to meet the income and asset criteria of this coverage group. (Cross References: 2540.85, 2540.76 and 2540.77)[.]

2540.92 C. Income and Asset Criteria (continued)

4. The home equity limitation described in section 4030.20 applies to this coverage group.

Date: xx-xx-06 **Transmittal:** UP-06- **3028**

Section: Technical Eligibility Requirements **Type:** POLICY

Chapter: Transfer of Assets **Program:** MA

Subject:

3028 This chapter describes the technical eligibility requirement in the Medicaid program pertaining to the transfer of an asset for less than fair market value, for transfers that occur prior to February 8, 2006.

The material contained in this chapter pertains only to the Medicaid program. Policy and procedures concerning transfers of assets in the cash and Food Stamp programs are contained elsewhere in this section, as are the Medicaid policy and procedures existing [prior to the implementation of this policy] with respect to transfers of assets occurring on or after February 8, 2006.

Date: xx-xx-06 **Transmittal:** UP-06- **3028.03**

Section: Technical Eligibility Requirements **Type:** POLICY

Chapter: Transfer of Assets **Program:** MA

Subject: Effective Dates

3028.03 The Department uses the policy contained in this chapter to evaluate asset transfers, including the establishment of certain trusts, if:

1. the individual is requesting Medicaid benefits for October 1, 1993 or later; and

2. the transfer occurred or the trust was established on or after August 11, 1993 but prior to February 8, 2006.

Date: xx-xx-06 **Transmittal: UP-06-** **3028.05**

Section:
Technical Eligibility Requirements

Type:
POLICY

Chapter:
Transfer of Assets

Program: **MA**

Subject:
Basic Provisions

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] Cross References: 2540.64 and 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

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

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, or the proceeds from a home equity loan, reverse mortgage or similar instrument 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. (Cross Reference: 3028.15)[.]

2. Except as described in subparagraph 3 below, each transfer is evaluated separately and a penalty period established consisting of a number of whole months [and/or] or a partial month based on that particular transfer.

3. [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]

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.

Date: 10-1-93	Transmittal: UP-94-21	3028.15
Section: Technical Eligibility Requirements		**Type:** POLICY
Chapter: Transfer of Assets		**Program:** MA

Subject:
Transfer Made Exclusively for Reasons Other Than Qualifying

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] in section 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)[.]

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[.] ; and

3. the transferred asset was not the proceeds of a home equity loan, reverse mortgage or similar instrument that reduces the institutionalized individual's or the spouse's equity in his or her 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[.] ; and

3. the transferred asset was not the proceeds of a home equity loan, reverse mortgage or similar instrument that reduces the institutionalized individual's or the spouse's equity in his or her home.

Date: xx-xx-06 **Transmittal: UP-06-** **3028.25**

Section:
Technical Eligibility Requirements

Type:
POLICY

Chapter:
Transfer of Assets

Program: **MA**

Subject:
Undue Hardship

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] as described in section 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.

C. Notice of Undue Hardship Provision

The Department notifies individuals applying for LTC services that an undue hardship provision exists. This notification is part of the preliminary decision notice that the Department sends to the individual when it determines that he or she has made an improper transfer of assets resulting in a penalty period. (Cross Reference: 3028.35)

3028.25 D. Undue Hardship Determinations

1. The individual has ten days from the date of the notice described in section 3028.25 C. to claim undue hardship or to otherwise rebut the Department's decision to impose a penalty period. The Department may grant an extension if the individual so requests and the request is reasonable.

2. If the individual does not claim undue hardship or rebut the Department's preliminary decision to impose a penalty period, the Department sends the individual a final decision notice regarding the penalty period at the time of the disposition of the Medicaid application. This notice contains all the elements of the preliminary notice, and a description of the individual's appeal rights. (Cross Reference: 3028.35)

3. If the individual claims undue hardship or rebuts the Department's preliminary decision to impose a penalty period, the Department has ten days from the receipt of such claim or rebuttal to send an interim decision notice to the individual stating that it is either upholding or reversing its preliminary decision.

4. The notification described in section 3028.25 D. 3. informs the individual that:

   a. the Department is reversing its preliminary decision, and is not imposing a penalty period with respect to LTC services; or

   b. the Department's preliminary decision is upheld, and a penalty period is being established, during which Medicaid will not pay for LTC services.

5. The Department sends a final decision notice regarding the undue hardship/rebuttal issue at the time of the mailing of the notice regarding the disposition of the Medicaid application.

Date: xx-xx-06 **Transmittal: UP-06-** **3028.35**

Section:
Technical Eligibility Requirements

Type:
POLICY

Chapter:
Transfer of Assets

Program: **MA**

Subject:
Notification and Rebuttal

3028.35 A. Notification

1. Prior to denial or discontinuance of LTC Medicaid benefits, the Department notifies the individual and his or her spouse of its preliminary decision that a transfer of an asset is determined to have been improper.

2. The notification includes a clear explanation of both:

   a. the reason for the decision; and

   b. the right of the individual or his or her spouse to rebut the issue within [the time limit established by the Department.] ten days.

B. Rebuttal

1. An institutionalized individual, or his or her spouse, who is notified of the Department's determination that an asset transfer was improper, [may rebut] has ten days from the date of the notice to rebut this determination prior to the implementation of the negative action. The Department may grant an extension if the individual so requests and the request is reasonable.

2. Rebuttal must include:

   a. a statement from the individual or his or her spouse as to the reason for the transfer; and

   b. objective evidence, which is:

      (1) evidence which rational people agree is real or valid; and

      (2) documentary or non-documentary.

[3. A successful rebuttal clears this eligibility requirement.]

C. Rebuttal Process

1. If the individual does not rebut the Department's preliminary decision to impose a penalty period, the Department sends the individual a final decision notice regarding the penalty period at the time of the disposition of the Medicaid application. This notice contains all the elements of the preliminary notice, and a description of the individual's appeal rights.

2. If the individual rebuts the Department's preliminary decision to impose a penalty period, the Department has ten days from the receipt of the rebuttal

3028.35 C. 2. Rebuttal Process (continued)

to send an interim notice to the individual stating that it is either upholding or reversing its preliminary decision.

3. The notification described in section 3028.35 C. 2. informs the individual that:

a. the Department is reversing its preliminary decision, and is not imposing a penalty period with respect to LTC services; or

b. the Department's preliminary decision is upheld, and a penalty period is being established, during which Medicaid will not pay for LTC services.

4. The Department sends a final notice regarding the rebuttal issue at the time of the mailing of the notice regarding the disposition of the Medicaid application.

D. Undue Hardship

Regardless of whether the individual rebuts the Department's decision, the individual may claim that a denial or discontinuance of LTC benefits will cause undue hardship. (Cross Reference: 3028.25)

Date: xx-xx-06 **Transmittal: UP-06-** **3029**

Section:
Technical Eligibility Requirements

Type:
POLICY

Chapter:
Transfer of Assets

Program: MA

Subject:

3029 (NEW) This chapter describes the technical eligibility requirement in the Medicaid program pertaining to the transfer of an asset for less than fair market value. The policy material in this chapter pertains to transfers that occur on or after February 8, 2006.

The material contained in this chapter pertains only to the Medicaid program. Policy and procedures concerning transfers of assets in the cash and Food Stamp programs are contained elsewhere in this section, as are the Medicaid policy and procedures that pertain to transfers occurring prior to February 8, 2006.

Date: xx-xx-06 **Transmittal:** UP-06- **3029.03**

Section:
Technical Eligibility Requirements

Type:
POLICY

Chapter:
Transfer of Assets

Program: **MA**

Subject:
Effective Dates

3029.03 (NEW) The Department uses the policy contained in this chapter to evaluate asset transfers, including the establishment of certain trusts and annuities, if the transfer occurred, or the trust or annuity was established, on or after February 8, 2006.

Date: x-x-09 **Transmittal: UP-09-** **3029.05**

Section:
Technical Eligibility Requirements

Type:
POLICY

Chapter:
Transfer of Assets

Program: **MA**

Subject:
Basic Provisions

3029.05 (NEW)

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 3029.05 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;

   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 References: 2540.64 and 2540.92). An individual who is applying for home and community-based services under a Medicaid waiver, and whom the department determines to be functionally in need of such services, is also considered institutionalized.

C. Look-Back Date for Transfers

The look-back date for transfers of assets is a date that is 60 months before the first date on which both the following conditions exist:

1. the individual is institutionalized; and

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

D. Transfers Attributable to Individual or Spouse

1. The Department considers transfers of assets made within the time limits described in section 3029.05 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.

3029.05 D. Transfers Attributable to Individual or Spouse (continued)

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 as of the later of the following dates:

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 date on which the individual is eligible for Medicaid under Connecticut's State Plan and would otherwise be eligible for Medicaid payment of the LTC services described in section 3029.05 B. based on an approved application for such care but for the application of the penalty period, and which is not part of any other period of ineligibility caused by a transfer of assets.

F. Length of the Penalty Period

1. The length of the penalty period consists of the number of whole or partial months resulting from the computation described in section 3029.05 F. 2.

2. The length of the penalty period is determined by dividing the total uncompensated value of all assets transferred on or after the look-back date described in section 3029.05 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, or the

3029.05 F. 2. b. (2) Length of the Penalty Period (continued)

proceeds from a home equity loan, reverse mortgage or similar instrument 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. (Cross Reference: 3029.15)

3. Uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer. A single penalty period is then calculated, and begins on the date applicable to the earliest transfer.

4. Once the Department imposes a penalty period, the penalty runs without interruption, regardless of any changes to the individual's institutional status.

G. Medicaid Eligibility During the Penalty Period

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

   a. LTCF services;

   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;

   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.

3029.05 H. Transfers Affecting Both Spouses (continued)

2. When a penalty period is apportioned between spouses as described in section 3029.05 H.1., the penalty period for each spouse is equal to one half the total penalty period remaining at the time.

3. If one spouse no longer is subject to his or her portion of the penalty period described in section 3029.05 H. 2., the remaining portion of the penalty period applicable to both spouses is served by the remaining spouse.

Date: 4-1-07 **Transmittal: UP-07-02** **3029.10**

Section: **Type:**
Technical Eligibility Requirements **POLICY**

Chapter: **Program:** **MA**
Transfer of Assets

Subject:
Transfers Not Resulting in a Penalty

(NEW) 3029.10 The transfers described in section 3029.10 do not render an individual ineligible for Medicaid payment of long-term care services.

A. Transfer of the Home

1. An individual or his or her spouse may transfer his or her home without penalty to his or her:

a. spouse;

b. child under age 21;

c. child of any age if the child is considered to be blind or disabled under criteria for SSI eligibility;

d. sibling, if the sibling:

(1) has an equity interest in the home; and

(2) was residing there for a period of at least one year before the date the individual is institutionalized; or

e. son or daughter, other than one described in sections 3029.10 A. 1. b. and 3029.10 A. 1. c., who:

(1) was residing in the home for a period of at least two years immediately before the date the individual is institutionalized; and

(2) provided care to the individual which avoided the need of institutionalizing him or her during those two years.

2. For purposes of this chapter, the word "home" refers to:

a. the real property used as principal residence by an institutionalized individual immediately prior to his or her institutionalization;

b. the real property used as principal residence by the spouse of the institutionalized individual; or

c. the real property used as principal residence by an individual receiving home and community-based services under a Medicaid waiver.

3029.10 B. Transfers Made to or for the Benefit of Spouses

1. Subject to the provisions in section 3029.10 B. 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 Community Spouse Protected Amount (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 in section 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 in section 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.

3029.10 E. Transfers Made Exclusively for Reasons Other than Qualifying

An otherwise eligible institutionalized individual is not ineligible for Medicaid payment of LTC services if the individual, or his or her spouse, 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 provides 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 the individual provides 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: 3029.20)

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.

2. If only part of the transferred asset is returned, the penalty period is adjusted.

3. The adjusted penalty period described in section 3029.10 H. 2. above is based on the uncompensated value of the original transfer minus the value of the part of the asset that is returned.

4. The part of the asset that is returned to the individual is considered available to the individual during the time period from the date of its transfer to the date of its return, and remains available for as long as the individual has the legal right, authority or power to liquidate it.

3029.10 I. Transferor Subject to Undue Hardship

The Department waives the penalty period associated with the transfer of an asset if the Department determines that denial of payment for services would create an undue hardship. In such cases, the Department may pursue recovery against the transferee, if appropriate. (Cross Reference: 3029.25)

J. "For the Sole Benefit of"

The phrase "for the sole benefit of" an individual, as described in sections 3029.10 B., C. and D., means that the asset, trust or similar device benefits no one but the individual, either at the time of the transfer or establishment of the trust, or at any time in the future, except as described below.

1. With respect to the establishment of a trust, the trust may provide for a reasonable fee to be paid to the trustee for managing the trust.

2. If a beneficiary is named to receive the transferred asset, or whatever is left of it, at the time of the individual's death, the transfer or trust is still considered to have been made for the sole benefit of the individual if:

   a. the Department is named as the primary beneficiary of the asset, up to the amount of Medicaid payments paid on behalf of the individual; and

   b. the designated beneficiary or beneficiaries receive any amount that remains.

Date: 4-1-07 **Transmittal: UP-07-02** **3029.11**

Section:
Technical Eligibility Requirements

Type:
POLICY

Chapter:
Transfer of Assets

Program: **MA**

Subject:
Transfers Involving Trusts

(NEW) 3029.11

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 section 3029.11 C. 3.:

3029.11 C. 4. Irrevocable Trusts (continued)

a. additional funds placed into the trust by the individual, spouse or other person or entity described in section 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

Assets transferred to the following types of trusts, established for an individual who is less than 65 years old and disabled under criteria for SSI eligibility, do not cause a penalty if:

1. the trust meets the following conditions:

a. the trust is established for the benefit of such individual by his or her parent, grandparent, legal guardian or by a court; and

b. the trust specifies that 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. the trust meets the following conditions:

a. the trust is established and managed by a non-profit association;

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;

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, 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.

3029.11 E. Undue Hardship

1. The Department waives the penalty period associated with a transfer of assets involving a trust upon determining that to do so would cause an undue hardship on the individual. In such cases, the Department may pursue recovery against the transferee, if appropriate.

2. The Department uses the criteria described in this chapter to determine whether undue hardship exists.(Cross Reference: 3029.25)

Date:	**x-x-09**	**Transmittal: UP-09-**	**3029.12**
Section:		**Type:**	
	Technical Eligibility Requirements		**POLICY**
Chapter:		**Program:**	**MA**
	Transfer of Assets		
Subject:			
	Treatment of Annuities		

(NEW) 3029.12 A. Annuities Purchased by or on behalf of Annuitants Applying for Medical Assistance for Nursing Facility or Other Long-Term Care Services

The Department shall consider the purchase of an annuity by, or on behalf of, an annuitant who has applied for nursing facility or other long-term care services to be a transfer for less than fair market value unless:

1. the annuity is:

   a. an annuity described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986 (IRS Code); or

   b. purchased with proceeds from an account or trust described in subsection (a), (c), or (p) of section 408 of the IRS Code; a simplified employee pension (within the meaning of section 408(k) of the IRS Code); or a Roth IRA described in section 408A of the IRS Code; and

   c. the Department is:

      i. named as a remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant; or

      ii. named as a remainder beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if such spouse or a representative of such child disposes of any such remainder for less than fair market value; or

2. the annuity:

   a. is irrevocable and non-assignable;

   b. is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration);

   c. provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made; and

   d. the Department is:

3029.12 A. Annuities Purchased by or on behalf of Annuitants Applying for Medical Assistance for Nursing Facility or Other Long-Term Care Services (continued)

i. named as a remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the institutionalized individual; or

ii. named as a remainder beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if such spouse or a representative of such child disposes of any such remainder for less than fair market value.

B. Annuities Purchased by or on behalf of the Community Spouse of an Individual Applying for Medical Assistance for Nursing Facility or Other Long-Term Care Services

The Department shall consider the purchase of an annuity, by or on behalf of the community spouse of an individual who has applied for medical assistance with respect to nursing facility services or other long-term care services, to be a transfer for less than fair market value unless:

1. the Department is named as a remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the institutionalized individual; or

2. the Department is named as a remainder beneficiary in the second position after the minor or disabled child and is named in the first position if such child or a representative of such child disposes of any such remainder for less than fair market value.

C. Payments Made from an Annuity

The department shall consider any payment made from an annuity purchased with the assets of an applicant or recipient of long-term care medical services, or his or her spouse, as an asset transferred for less than fair market value unless the payment is made to:

1. the applicant or recipient of long-term care medical services;

2. the spouse of an applicant or recipient of long-term care medical services;

Date:	x-x-09	Transmittal: UP-09-	3029.12 page 3
Section:	Technical Eligibility Requirements	Type:	POLICY
Chapter:	Transfer of Assets	Program:	MA
Subject:	Treatment of Annuities		

3029.12 A. Payments Made from an Annuity (continued)

3. the child of an applicant or recipient of long-term care medical services or his or her spouse, provided such child is considered blind or disabled under the criteria for SSI eligibility; or

4. a trust as defined in section 4030.80 D.1.

Date:	**4-1-07**	**Transmittal:**	**UP-07-02**	**3029.13**
Section:			**Type:**	
	Technical Eligibility Requirements			**POLICY**
Chapter:			**Program:**	**MA**
	Transfer of Assets			
Subject:				
	Purchase of Life Use			

(NEW) 3029.13 Funds used to purchase life use of another person's home are considered to be a transfer of assets for less than fair market value if the purchaser fails to reside in the home for at least one year after the date of the purchase.

Date:	**xx-xx-06**	**Transmittal: UP-06-**	**3029.14**
Section:		**Type:**	
	Technical Eligibility Requirements		**POLICY**
Chapter:		**Program:**	**MA**
	Transfer of Assets		
Subject:			
	Purchase of a Mortgage Note, Loan or Installment Contract		

3029.14 (NEW)

A. If an individual or his or her spouse uses his or her funds to purchase a mortgage note, loan, installment contract or similar financial instrument, the Department may consider such a transaction a transfer of assets for less than fair market value.

B. The purchase of a bona fide mortgage note, loan, installment contract or similar financial instrument is not considered a transfer of assets for less than fair market value if the mortgage note, loan, installment contract or similar financial instrument:

1. has a repayment term that is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration);

2. provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments; and

3. prohibits the cancellation of the balance upon the death of the lender.

C. A mortgage note, loan, installment contract or similar financial instrument is considered bona fide only if:

1. a repayment agreement is in place at the time the funds are dispersed; and

2. repayment is made to:

a. the individual applying for or receiving LTC services under Medicaid;

b. the individual's spouse; or

c. the child of the individual or spouse, provided the child is considered blind or disabled under the criteria for SSI eligibility.

D. An individual or spouse who purchases a mortgage note, loan, installment contract or similar financial instrument that does not meet the criteria described in sections 3029.14 B. and C. is considered to have made a transfer of assets for less than fair market value.

E. The uncompensated value involving the purchase of a mortgage note, loan, installment contract or similar financial instrument that does not meet the

3029.14 E. (continued)

criteria described in sections 3029.14 B. and C. is considered the outstanding balance due as of the date of the institutionalized individual's application for Medicaid benefits.

F. Notwithstanding any other provision of this paragraph, the Department evaluates a mortgage note, loan, installment contract or similar financial instrument, and the income stream derived from any such instrument, as an available asset.

G. The Department considers the individual payments derived from a mortgage note, loan, installment contract or similar financial instrument as counted income.

Date: 4-1-07	Transmittal: UP-07-02	3029.15
Section: Technical Eligibility Requirements		**Type:** POLICY
Chapter: Transfer of Assets		**Program:** MA

Subject:
Transfer Made Exclusively for Reasons Other Than Qualifying

(NEW) 3029.15 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 evaluating 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 evaluating 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 based on the transferor's health and financial situation at the time of the transfer.

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)

3029.15 D. Transferred Asset Would Not Affect Eligibility if Retained

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

   a. the institutionalized individual would have been eligible if the transferor had retained the asset;

   b. the transferred asset was not the institutionalized individual's or the spouse's home; and

   c. the transferred asset was not the proceeds of a home equity loan, reverse mortgage or similar instrument that reduces the institutionalized individual's or the spouse's equity in his or her home.

2. The Department evaluates transfers described in sections 3029.15 D. 1. b. and c. in accordance with the provisions of this chapter.

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

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

   a. the spouse transferred the asset after the first month of eligibility for the institutionalized individual has passed;

   b. the transferred asset was not the institutionalized individual's or the spouse's home; and

   c. the transferred asset was not the proceeds of a home equity loan, reverse mortgage or similar instrument that reduces the institutionalized individual's or the spouse's equity in his or her home.

2. The Department evaluates transfers described in sections 3029.15 E. 1. b. and c. in accordance with the provisions of this chapter.

Date: 4-1-07 **Transmittal: UP-07-02** **3029.20**

Section:
Technical Eligibility Requirements

Type:
POLICY

Chapter:
Transfer of Assets

Program: MA

Subject:
Transfers Made in Return for Other Valuable Consideration

(NEW) 3029.20 A. General Principles

1. Other valuable consideration may be received either prior to or subsequent to the transfer.

2. The value of the other valuable consideration, computed as described in section 3029.20 A. 3., 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 section 3029.20 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-3029.30)

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;

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.

Date: xx-xx-06	Transmittal: UP-06-	3029.25
Section: Technical Eligibility Requirements		Type: POLICY
Chapter: Transfer of Assets		Program: MA
Subject: Undue Hardship		

3029.25 (NEW)

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, which exists if the individual would be deprived of:

1. medical care such that his or her life would be endangered; or

2. food, clothing, shelter or other necessities of life.

B. Undue Hardship Conditions

When an individual would be in danger of losing or being denied payment for LTCF or equivalent services described in section 3029.05 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;

   b. The long-term care facility has refused to accept the individual who is receiving LTC services in a general hospital and is awaiting nursing home placement; or

   c. The medical provider has threatened to deny or terminate home and community-based services being provided under a Medicaid waiver; and

2. The transferee is a family member or someone handling the transferor's affairs, and the transferor establishes that the transferee is no longer in possession of the transferred asset and that the transferee has no other assets of comparable value with which to pay the cost of care;

3. The transferee is neither a family member nor someone handling the transferor's affairs; and

4. There is no family member or other individual or organization able and willing to provide care to the individual.

3029.25 C. Notice of Undue Hardship Provision

The Department notifies individuals applying for LTC services that an undue hardship provision exists. This notification is part of the preliminary decision notice that the Department sends to the individual when it determines that he or she has made an improper transfer of assets resulting in a penalty period. (Cross Reference: 3029.35)

D. Undue Hardship Determinations

1. The individual has 15 days from the date of the notice described in section 3029.25 C. to claim undue hardship or to otherwise rebut the Department's decision to impose a penalty period. The Department shall grant an extension if the individual so requests, and shall grant subsequent requests if such requests are reasonable.

2. If the individual does not claim undue hardship or rebut the Department's preliminary decision to impose a penalty period, the Department sends the individual a final decision notice regarding the penalty period at the time of the disposition of the Medicaid application. This notice contains all the elements of the preliminary notice, and a description of the individual's appeal rights. (Cross Reference: 3029.35)

3. If the individual claims undue hardship or rebuts the Department's preliminary decision to impose a penalty period, the Department has ten days from the receipt of such claim or rebuttal to send an interim decision notice to the individual stating that it is either upholding or reversing its preliminary decision.

4. The notification described in section 3029.25 D. 3. informs the individual that:

   a. the Department is reversing its preliminary decision, and is not imposing a penalty period with respect to LTC services; or

   b. the Department's preliminary decision is upheld, and a penalty period is being established, during which Medicaid will not pay for LTC services.

5. The Department sends a final decision notice regarding the undue hardship/rebuttal issue at the time of the mailing of the notice regarding the disposition of the Medicaid application.

3029.25 E. Undue Hardship Requests by the LTCF

The individual may give permission for the LTCF in which he or she is residing to file a claim for undue hardship on behalf of the individual.

Date: xx-xx-06 **Transmittal: UP-06-** **3029.30**

Section:
Technical Eligibility Requirements

Type:
POLICY

Chapter:
Transfer of Assets

Program: MA

Subject:
Compensation

3029.30 (NEW) 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 in section 3029.10.

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.

Date: 4-1-07 **Transmittal: UP-07-02** **3029.35**

Section:
Technical Eligibility Requirements

Type:
POLICY

Chapter:
Transfer of Assets

Program: MA

Subject:
Notification and Rebuttal

(NEW) 3029.35

A. Notification

1. Prior to denial or discontinuance of LTC Medicaid benefits, the Department notifies the individual and his or her spouse of its preliminary decision that a transfer of an asset is determined to have been improper.

2. The notification includes a clear explanation of both:

   a. the reason for the decision; and

   b. the right of the individual or his or her spouse to rebut the issue within 15 days.

B. Rebuttal

1. An institutionalized individual, or his or her spouse, who is notified of the Department's determination that an asset transfer was improper, has 15 days from the date of the notice to rebut this determination prior to the implementation of the negative action. The Department shall grant an extension if the individual so requests, and shall grant subsequent requests if such requests are reasonable.

2. Rebuttal must include:

   a. a statement from the individual or his or her spouse as to the reason for the transfer; and

   b. objective evidence, which is:

      (1) evidence which rational people agree is real or valid; and

      (2) documentary or non-documentary.

C. Rebuttal Process

1. If the individual does not rebut the Department's preliminary decision to impose a penalty period, the Department sends the individual a final decision notice regarding the penalty period at the time of the disposition of the Medicaid application. This notice contains all the elements of the preliminary notice, and a description of the individual's appeal rights.

2. If the individual rebuts the Department's preliminary decision to impose a penalty period, the Department has ten days from the receipt of the rebuttal

3029.35 C. 2. Rebuttal Process (continued)

to send an interim notice to the individual stating that it is either upholding or reversing its preliminary decision.

3. The notification described in section 3029.35 C. 2. informs the individual that:

   a. the Department is reversing its preliminary decision, and is not imposing a penalty period with respect to LTC services; or

   b. the Department's preliminary decision is upheld, and a penalty period is being established, during which Medicaid will not pay for LTC services.

4. The Department sends a final decision notice regarding the rebuttal issue at the time of the mailing of the notice regarding the disposition of the Medicaid application.

D. Undue Hardship

Regardless of whether the individual rebuts the Department's decision, the individual may claim that a denial or discontinuance of LTC benefits will cause undue hardship. (Cross Reference: 3029.25)

Date: 4-1-87	Transmittal: UP-87-1	3099.25
Section: Technical Eligibility Requirements		**Type:** POLICY
Chapter: Verification Requirements		**Program:** AFDC AABD FS MA
Subject: Transfer of Assets		

[3099.25 A. For every asset transfer considered by the Department in determining eligibility, verification is required of the following:

1. the date of the transfer;

2. to whom the asset was transferred;

3. the value of the compensation received.

B. Compensation claimed in the transfer of an asset is not credited unless it is verified to the satisfaction of the Department.

C. For certain specific transfers, verification is required when pertinent, as follows:

1. medical documentation of disability with the date of onset, if the transferor was living in the community at the time of the transfer;

2. the purpose of withdrawals from a bank account, which:

   a. exceed $500; and

   b. are not part of a regular pattern of expenditure;

3. medical expenses used to reduce a penalty period.

D. Fair value of an asset is determined by the Department. The assistance unit must verify fair market value if it claims the asset has a lower value than that set by the Department.

E. For undue hardship claims:

1. the threat of eviction from the facility due to non-payment must be in writing; and

2. the transferor must establish with convincing evidence that the transferee:

   a. no longer has possession of the asset; and

   b. has no other assets to pay for care.

3099.25 F. Incompetence at the time of transfer must be verified.

G. Claims that a transfer was the result of undue influence must be in a signed statement describing the circumstances of the transfer submitted:

1. by the transferor if competent;

2. by the transferor's conservator if not competent.

H. Claims of undue influence, undue hardship, incompetence or sudden onset of disability are disregarded if they are not verified.]

Date: xx-xx-06	Transmittal: UP-06-XX	4030
Section: Treatment of Assets	**Type:**	POLICY
Chapter: Treatment of Specific Types	**Program:**	AFDC AABD MA
Subject:		FS

4030 The Department evaluates all types of assets available to the assistance unit when determining the unit's eligibility for benefits.

This chapter describes some of the assets which an assistance unit may own, and describes how ownership of the asset affects the unit's eligibility under the various programs the Department administers.

The assets specifically described are:

Bank Accounts
Burial Funds, Irrevocable Burial Funds[,] and Burial Plots
Corrective Payments
Earned Income Tax Credits
Home Property
Income Tax Refunds
Life Insurance Policies
Life Use
Loans
Lump Sum Payments
Annuities
Mortgage Notes
Motor Vehicles
Nonessential Household Items
Non-home Property
Security Deposits
Stocks and Bonds
Trusts

Date:	**4-1-07**	**Transmittal :**	**UP-07-02**	**4030.18**
Section:			**Type:**	
	Treatment of Assets			**POLICY**
			Program:	**MA**
	Treatment of Specific Types			
Subject :				
	Entrance Fees for Continuing Care Retirement Communities			

(NEW) 4030.18 When Continuing Care Retirement Communities (CCRCs) or Life Care Communities (LCCs) contractually require entrance fees, the entrance fees must be evaluated as assets in determining eligibility. The following conditions must be met in order for the fee to be considered as an asset:

A. the entrance fee can be used to pay for care under the terms of the entrance contract should other income or resources of the individual be insufficient;

B. the entrance fee (or remaining portion) is refundable when the individual dies or terminates the contract and leaves the community; and

C. the entrance fee does not confer an ownership interest in the community.

Date: 4-1-07	Transmittal: UP-07-02	4030.20
Section: Treatment of Assets		**Type:** POLICY
Chapter: Treatment of Specific Types	**Program:**	AFDC AABD MA FS
Subject: Home Property		

4030.20 A. All Programs

1. [Equity in home] Home property owned by a member of the assistance unit is not counted in the determination of the unit's eligibility for assistance as long as the unit uses the property as its principal residence. Subject to the provisions of paragraph E. below, certain individuals with substantial home equity may not be eligible for payment of nursing facility and other long-term care services under the Medicaid program.

2. Home property consists of:

   a. the home itself which the assistance unit uses as principal residence, the surrounding property which is not separated from the home by intervening property owned by others[,] and any related outbuildings used in the operation of the home; or

   b. life use of the property the unit uses as its principal residence.

3. A multi-family dwelling is considered home property in its entirety if the assistance unit is occupying at least one unit of the dwelling as principal residence.

4. A home which the assistance unit has left temporarily unoccupied for reasons of employment, training for future employment, illness[,] or uninhabitability caused by a catastrophic event remains excluded if the assistance unit intends to return to the home.

5. A trailer, camper[,] or mobile home is considered home property if the assistance unit is using it as principal residence.

B. AFDC

The Department places a lien against the assistance unit's home property after the assistance unit has received benefits for four cumulative months. (Cross [reference: Section] Reference: section 7500)[.]

C. AABD

The Department places a lien against the assistance unit's home property as of the effective date the unit receives benefits from the Department. (Cross [reference: Section] Reference: section 7500)[.]

4030.20 D. MA

1. If the individual owns home property and enters a long-term care facility, the home property retains its status as an excluded asset for as long as any of the following persons is lawfully residing in the home:

   a. the individual's spouse; [or]

   b. the individual's child who is under age 21 or blind or disabled; or

   c. the individual's sibling if the sibling:

      (1) is joint owner of the home; and

      (2) was residing in the home for at least one year immediately before the individual entered the long-term care facility.

2. If the individual enters a long-term care facility and none of the persons listed above is lawfully residing in the individual's home, the home's status as an excluded asset depends upon the expectation of the individual to return to the home.

   a. If the individual can reasonably be expected to return to the home, the home continues to be excluded as home property.

   b. If the individual cannot reasonably be expected to return to the home, the home is considered non-home property, and is subject to the policies and procedures described in this chapter.

3. The Department assesses the individual's expectation to return to the home, if necessary:

   a. at the time of the initial application for assistance; and

   b. every six months, beginning six months from the later of the following dates:

4030.20 D. 3. b. MA (continued)

(1) the effective date of assistance; or

(2) the date of admission to the long-term care facility.

4. The Department determines whether the individual can be expected to be discharged from the long-term care facility to return home based on the following:

a. diagnosis of the individual's medical condition as documented by the long-term care facility's authorizing physician; [and]

b. the physician's prognosis for the individual's recovery; [and]

c. availability of private care which the individual could receive at home as an alternative to institutionalization; [and]

d. statement from the individual, if he or she is competent, regarding the intent to return home; and

e. the individual's financial ability to maintain the home.

5. The Department places a lien against the individual's home if the home loses its exclusion as home property ([cross reference: Section] Cross Reference: section 7510).

6. The individual has the right to a Fair Hearing if he or she contests the Department's assessment of the expectation to return to the home, and the subsequent notice of intent to place a lien against the property.

7. The property regains its excluded status, and the Department removes its lien, if the individual does return to the home.

4030.20 E. MA – Effect of Substantial Home Equity on Payments for Nursing Facility and Other Long-Term Services for Applications Made On or After 1/1/06

1. The provisions of this paragraph apply only to an individual with an equity interest in his or her home of greater than $750,000 and who applies on or after 1/1/06.

2. An individual with an equity interest in his or her home of greater than $750,000 is ineligible for the payment of nursing facility and other long-term care services unless any of the following persons are lawfully residing in the home:

   a. the individual's spouse; or

   b. the individual's child who is under 21; or

   c. the individual's child who is considered blind or disabled under the criteria for SSI eligibility.

3. Beginning in the year 2011, the home equity limit will increase each year. The increase will be based on the percentage increase in the consumer price index for all urban consumers, rounded to the nearest $1,000.

4. The following individuals may be eligible to receive Medicaid payment for long term care services, notwithstanding possessing home equity in excess of $750,000:

   a. individuals who demonstrate, to the satisfaction of the Department, that they cannot obtain a reverse mortgage, home equity loan or similar instrument; or

   b. individuals eligible for a Long-Term Care Insurance disregard in an amount greater than or equal to the amount of home equity in excess of $750,000, plus the amount of any other counted assets. (Cross Reference: 4022.10)

5. The Department may waive application of the home equity provision if the denial of payment of nursing facility and other long-term care services would result in an undue hardship. (Cross Reference: 3029.25)

4030.20 [E.] F. Food Stamps

1. The Department does not place a lien against the assistance unit's home property in the Food Stamp program.

2. One lot is considered home property, and is excluded as an asset, if the assistance unit does not already own a home but is planning to build or is building a permanent home on that lot. If the home is in the process of being built on the excluded lot, the value of the partially completed home is excluded, also, as home property.

Date: xx-xx-06	Transmittal: UP-06-xx	4030.40
Section: Treatment of Assets		**Type:** POLICY
Chapter: Treatment of Specific Types		**Program:** AFDC AABD MA FS
Subject: Loans		

4030.40 [A.] Income Versus Assets

Unless specifically excluded, money borrowed by the assistance unit is considered income in the month it is received, and, to the extent retained, an asset as of the following month.

[B. Loans as Excluded Assets

A loan which has been excluded as income, as described in Section 5050, is also excluded as an asset if it is kept separate from non-excluded assets.]

Date:	4-1-07	Transmittal:	UP-07-02	4030.47
Section:	Treatment of Assets		Type:	POLICY
Chapter:	Treatment of Specific Types		Program:	MA
Subject :	Annuities			

(NEW) 4030.47 Annuities are evaluated as both an asset representing an investment and as income that the beneficiary may receive on a regular basis. (Cross Reference: 5050, Treatment of Specific Types) The assistance unit's equity in an annuity is a counted asset to the extent that the assistance unit can sell or otherwise obtain the entire amount of equity in the investment. Any payments received from an annuity are considered income. Additionally, the right to receive income from an annuity is regarded as an available asset, whether or not the annuity is assignable. The Department, in its sole discretion, may exclude the right to receive income from an annuity as an available asset if it is determined that retention of the annuity would be more cost effective.

A. Disclosure of Annuities

1. An applicant or recipient and his or her spouse must, as a condition of eligibility for long-term care medical services, disclose a description of any interest held in an annuity by the applicant and recipient or his or her spouse.

2. The Department shall notify an applicant or recipient of long-term care medical services that, pursuant to paragraph (2) of subsection (e) of section 1396p of the United States Code, the department becomes a remainder beneficiary under such an annuity, purchased on or after February 8, 2006, by virtue of the provision of long-term care medical assistance services.

3. The Department shall notify the issuer of the annuity of the department's right as a preferred remainder beneficiary.

4. The Department may require the issuer to notify the department when there is a change in the amount of income or principal being withdrawn. The department shall use this information in determining the amount of the department's obligation for medical assistance or the ongoing eligibility of the applicant or recipient.

Date:	4-1-07	Transmittal:	UP-07-02	4030.47 Page 2
Section:	Treatment of Assets		Type:	POLICY
Chapter:	Treatment of Specific Types		Program:	MA
Subject :	Annuities			

B. Treatment of Annuity Purchases

The purchase of an annuity, on or after February 8, 2006, by an applicant for or recipient of long-term care medical services or his or her spouse or both shall be considered a transfer for less than fair market value unless the annuity meets the conditions described in section 3029.12 (Treatment of Annuities).

Date: xx-xx-06 **Transmittal: UP-06-** **4030.50**

Section: **Type:**
Treatment of Assets **POLICY**

Chapter: **Program:** **AFDC**
Treatment of Specific Types **AABD**
MA
Subject: **FS**
Mortgage Notes, Loans and Installment Contracts [and Annuities]

4030.50 Mortgage notes, loans, installment contracts, and [annuities] similar financial instruments must be evaluated as both an asset representing an investment and as income which the beneficiary may receive on a regular basis ([cross reference:] Cross Reference: 5050, Treatment of Specific Types). Also, the right to receive income is regarded as an available asset.

A. All Programs Except Food Stamps

The assistance unit's equity in a mortgage note, loan, installment contract, or [annuity] similar financial instrument is a counted asset to the extent that the assistance unit can sell or otherwise obtain the entire amount of equity in the investment.

B. Food Stamps

A mortgage note, loan, installment contract, or [annuity] similar financial instrument is an excluded asset if it is producing income which is consistent with its fair market value.

C. Medicaid

If an individual or his or her spouse uses his or her funds to purchase a mortgage note, loan, installment contract or similar financial instrument, the Department may consider such a transaction a transfer of assets for less than fair market value. (Cross References: 3028, 3029)

Date: 9-1-95	Transmittal: UP-95-22	4030.65
Section: Treatment of Assets		**Type:** POLICY
Chapter: Treatment of Specific Types		**Program:** AFDC FMA FS
Subject: Non-home Property		

4030.65 A. Food Stamp Program

1. Under the Food Stamp program, non-home property is excluded if it is producing income consistent with its fair market value.

2. If the non-home property is not producing income, it is excluded for as long as the individual is making a bona fide effort to sell it.

B. AFDC and FMA

1. For all AFDC and FMA cases, the assistance unit's equity in any type of real property which is not home property, and which would cause the assistance unit to be ineligible, is excluded for a period of up to nine calendar months. The exclusion period begins with the first month in which the assistance unit is otherwise eligible and:

   a. the assistance unit owns the property; [and]

   b. the property is available to the assistance unit; [and]

   c. the assistance unit is making a bona fide effort to sell the property; and

   d. in AFDC, the assistance unit grants the Department a security mortgage on the property pending the sale.

2. The number of months of the exclusion is cumulative for all months in which the person is otherwise eligible **and** receives assistance, and may not exceed a total of nine calendar months for each piece of property.

3. If the assistance unit has not sold the non-home property by the end of the ninth month:

   a. the unit's equity in the property is considered a counted asset as of the tenth month; and

   b. in AFDC, the amount of assistance received during the nine month disposal period is considered an overpayment.

4030.65 B. AFDC and FMA (continued)

4. If the assistance unit does not comply with the procedural requirements listed above, the unit's equity in non-home property is considered a counted asset.

5. If the assistance unit's equity in the non-home property, combined with the unit's other counted assets, would not cause the unit to be ineligible, the unit has the option of having such equity considered a counted asset. In such a case, the unit does not need to satisfy the procedural requirements described above.

C. AABD and Community MAABD

1. Non-home property of any type is excluded as long as the assistance unit is making a bona fide effort to sell it.

2. The exclusion period begins in the first month in which all of the following conditions are met:

   a. the assistance unit is otherwise eligible for assistance;

   b. the assistance unit owns the property;

   c. the property is available to the assistance unit;

   d. the assistance unit is making a bona fide effort to sell the property; and

   e. in AABD, the assistance unit grants the Department a security mortgage on the property pending its sale.

3. The Department does not place a lien on property in community MA cases. (Cross [reference] Reference: 7510)

D. Long Term Care MAABD

1. Property Previously Used as the Primary Residence

   a. Property previously used as a primary residence becomes non-home property when the individual enters a long-term care facility and:

      (1) no relative of acceptable relationship is lawfully residing in the home; and

      (2) the individual cannot reasonably be expected to return to the home. (Cross Reference: 7510)

   b. [For individuals who apply on or after July 1, 1991 and before

4030.65 D. 1. b. Long Term Care MAABD (continued)

July 1, 1993, non-home property that was the recipient's primary residence prior to entering the nursing home is excluded for eighteen months as long as the individual is making a bona fide effort to sell it.]
Non-home property that was the recipient's primary residence prior to entering the nursing home is excluded for as long as the individual is making a bona fide effort to sell it.

c. [Subject to paragraph d below, for individuals who apply between July 1, 1993, and August 31, 1995, inclusive, non-home property that was the recipient's primary residence prior to entering the nursing home is excluded for nine months as long as the individual is making a bona fide effort to sell it.]
The exclusion period begins with the first month of eligibility during which the person owns the property, and is cumulative for all months in which the person receives assistance.

d. [For individuals who apply on or after September 1, 1995, or whose nine month exclusion described in paragraph c above expires on or after August 31, 1995, non-home property that was the recipient's primary residence prior to entering the nursing home is excluded for as long as the individual is making a bona fide effort to sell it.]
For an individual who applies on or after January 1, 2006, with an equity interest in his or her home of greater than $750,000, the individual is ineligible for the payment of nursing facility and other long-term care services unless any of the following persons is lawfully residing in the home:

1. the individual's spouse;

2. the individual's child who is under 21; or

3. the individual's child who is considered blind or disabled under the criteria for SSI eligibility.

e. [The exclusion period begins with the first month of eligibility during which the person owns the property, and is cumulative for all months in which the person receives assistance.]
Beginning in the year 2011, the home equity limit will increase each year. The increase will be based on the percentage increase in the consumer price index for all urban consumers, rounded to the nearest

4030.65 D. 1. e. Long Term Care MAABD (continued)

$1,000.

f. [The Department places a lien against the property. (Cross Reference: 7510)]
The following individuals may be eligible to receive Medicaid payment for long term care services, notwithstanding possessing home equity in excess of $750,000:

1. individuals who demonstrate, to the satisfaction of the Department, that they cannot obtain a reverse mortgage, home equity loan or similar instrument; or

2. individuals eligible for a Long-Term Care Insurance disregard in an amount greater than or equal to the amount of home equity in excess of $750,000, plus the amount of any other counted assets. (Cross Reference: 4022.10)

g. The Department may waive application of the property equity provision if the denial of payment for nursing facility and other long-term care services would result in an undue hardship. (Cross Reference: 3029.25)

h. The Department places a lien against the property. (Cross Reference: 7510)

2. Other Non-home Property

[a. Subject to paragraph b below, for individuals who apply prior to September 1, 1995, all other non-home property is excluded for nine months, as long as the individual is making a bona fide effort to sell it.]

[b.] a. [For individuals who apply on or after September 1, 1995, or whose nine month exclusion described in paragraph a above expires on or after August 31, 1995, all] All other non-home property is excluded for as long as the individual is making a bona fide effort to sell it.

[c.] b. The exclusion period begins with the first month in which all of the following conditions are met:

(1) the assistance unit is otherwise eligible for assistance;

4030.65 D. 2. b. Long Term Care MAABD (continued)

(2) the assistance unit owns the property;

(3) the property is available to the assistance unit; and

(4) the assistance unit is making a bona fide effort to sell the property.

[d. The Department places a lien against all non-home property. (Cross Reference: 7510)]

3. RECOVERY

The Department places a lien against all non-home property. (Cross Reference: 7510)

E. Qualified Medicare Beneficiaries and Specified Low Income Medicare Beneficiaries

Non-home property of any type is excluded for as long as the assistance unit is making a bona fide effort to sell the property.

Date: xx-xx-06	Transmittal: UP-06-	4030.80
Section: Treatment of Assets	**Type:**	POLICY
Chapter: Treatment of Specific Types	**Program:**	AFDC AABD MA
Subject: Trusts		FS

4030.80 A. General Principles Pertaining to Trusts

1. The Department evaluates an individual's interest in a trust as:

   a. a potentially counted asset in determining whether the individual's assets are within the program limits (Cross Reference: 4005); [and]

   b. a potential source of income in determining whether the individual's income is within the program limits, and in computing the amount of benefits for which the individual may be eligible (Cross Reference: 5000); and

   c. a possible transfer of assets by the individual or by his or her spouse in determining whether the individual will be subject to a penalty period. (Cross References: 3025, 3028, 3029)[.]

2. For all programs except Food Stamps, if the assistance unit is a beneficiary of a trust, but the funds in the trust are inaccessible to the unit, the unit shall cooperate with the Department in attempting to gain access to the funds as a condition of eligibility.

3. The Department considers the corpus of a trust that an individual can revoke as an available asset to him or her.

4. The Department considers payments from a trust to or for the benefit of the individual to be the individual's income.

5. The term "trust" includes any legal instrument or device like a trust, such as an annuity.

B. Testamentary Trusts and Certain Inter Vivos Trusts that are not Established or Funded by the Individual or by his or her Spouse during their Lifetime

The individual's interest in a testamentary trust, and the individual's interest in a trust that was not established or funded by the individual or by his or her spouse during their lifetime, are evaluated under the cash and Medicaid programs as described in this paragraph.

4030.80 B. Testamentary Trusts and Certain Inter Vivos Trusts that are not Established or Funded by the Individual or by his or her Spouse during their Lifetime (continued)

1. The Department determines whether the corpus, or principal of such a trust is an available asset by referring to the terms of the trust and the applicable case law construing similar instruments.

2. The principal of such a trust is an available asset to the extent that the terms of the trust entitle the individual to receive trust principal or to have trust principal applied for his or her general or medical support.

3. Under circumstances described in subparagraph 2 above, the trust principal is considered an available asset if the trustee's failure to distribute the principal for the benefit of the individual in accordance with the terms of the trust would constitute an abuse of discretion by the trustee.

4. The Department considers the following factors in determining whether the trustee would be abusing his or her discretion by refusing to distribute trust principal to the individual:

   a. the clarity of the settlor's intention to provide for the general or medical support of the individual; [and]

   b. the degree of discretion afforded to the trustee; [and]

   c. the value of the trust created, with a high dollar value tending to indicate an intent to provide for general or medical support; and

   d. the history of trust expenditures prior to the filing of an application for assistance for or on behalf of the individual.

C. Medicaid-Qualifying Trusts -- MA

The funds in an inter vivos trust, to the extent that they may be used at the discretion of the trustee, are considered available to an individual if:

1. the trust was established by the individual or individual's spouse prior to August 11, 1993; [and]

2. the individual is a beneficiary of the trust; and

4030.80 C. Medicaid-Qualifying Trusts – MA (continued)

3. the trustee is able to distribute the funds to the individual at the trustee's discretion. This is true even if:

   a. the trust is irrevocable; and

   b. the trustee does not exercise his or her discretion.

D. Inter Vivos Trusts Established on or After August 11, 1993 - MA

For the purpose of determining an individual's eligibility under the Medicaid program, paragraph D pertains to inter vivos trusts established by the individual on or after August 11, 1993.

1. The Department considers an individual to have established a trust if the individual's assets were used to form all or part of the corpus of the trust and if any of the following individuals established the trust by means other than a will:

   a. the individual; [or]

   b. the individual's spouse; [or]

   c. 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; or

   d. a person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

2. For a trust whose corpus includes assets of an individual described in paragraph 1 and of any other person, the Department evaluates only that portion of the trust attributable to the assets of the individual.

3. The Department evaluates trusts described in paragraph D regardless of:

   a. why the trust was established; [or]

4030.80 D. 3. Inter Vivos Trusts Established on or After August 11, 1993 (continued)

b. whether the trustees have or exercise any discretion under the trust; [or]

c. any restrictions on when or whether distributions may be made from the trust; or

d. any restrictions on the use of distributions from the trust.

4. With respect to a revocable trust, the following principles apply:

a. The Department considers the corpus of such a trust as an available asset.

b. The Department considers payments from the trust made to or for the benefit of the individual as income of the individual.

c. The Department considers payments from a revocable trust that are neither to nor for the benefit of the individual to be assets transferred by the individual as described in [chapter] chapters 3028 and 3029.

5. With respect to an irrevocable trust, the following principles apply:

a. The Department considers the portion of the corpus of an irrevocable trust, or the income generated by the corpus of such trust, to be an available asset of the individual if there are any circumstances under which a payment from the trust could be made to or on behalf of the individual.

b. The Department considers payments from that portion of the corpus or income generated by the corpus of a trust described in paragraph a. to be:

(1) the individual's income, if the payments are to or for the benefit of the individual; and

(2) a transfer of assets by the individual, as described in [chapter] chapters 3028 and 3029, if the payments are for any other purpose.

4030.80 D. 5. Inter Vivos Trusts Established on or After August 11, 1993 (continued)

c. The Department considers any portion of a trust from which, or any income generated by the corpus from which, no payment could be made to the individual under any circumstances as a transfer of assets, as described in [chapter] chapters 3028 and 3029.

6. The Department does not consider the following types of trusts in determining the individual's eligibility for Medicaid:

a. a trust containing the assets of an individual under age 65 who is disabled, according to criteria under the SSI program, if:

(1) the trust is established for the benefit of such individual by his or her parent, grandparent, [or] legal guardian[,] or by a court acting in accordance with the authority of state law; and

(2) under the terms of the trust, 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.

b. a trust that meets the following conditions:

(1) the trust is established and managed by a non-profit association; [and]

(2) 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]

(3) accounts in the trust are established solely for the benefit of individuals who are disabled, according to criteria under the SSI program, by the individuals, their parent, grandparent, [or] legal guardian[,] or by a court; and

4030.80 D. 6. b. Inter Vivos Trusts Established on or After August 11, 1993 (continued)

(4) 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 is required by its terms to pay to the state from such remaining amount, an amount equal to the total amount of Medicaid benefits paid on behalf of the individual.

7. The Department waives the policies described in paragraph D if it is determined that the application of such policies would create an undue hardship. (Cross [Reference] References: 3028 and 3029 for undue hardship criteria)[.]

E. Trusts in the Food Stamps Program

1. The funds in a trust are considered inaccessible to the assistance unit if:

a. the trust arrangement is not likely to cease during the certification period and the assistance unit has no power to revoke the trust arrangement or change the name of the beneficiary during the certification period; or

b. the trustee is either:

(1) a court or an institution, corporation or organization which is not under the direction or ownership of the assistance unit; or

(2) an individual appointed by the court who has court imposed limitations placed on the use of the funds; or

c. trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction[,] or influence of the assistance unit; and

d. the funds held in irrevocable trust are either:

4030.80 E. 1. d. Trusts in the Food Stamps Program (continued)

(1) established from the assistance unit's own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the assistance unit creating the trust; or

(2) established from non-assistance unit funds by a non-assistance unit member.

2. If the funds in a trust are totally available to the assistance unit at the present time, the total value is a counted asset.