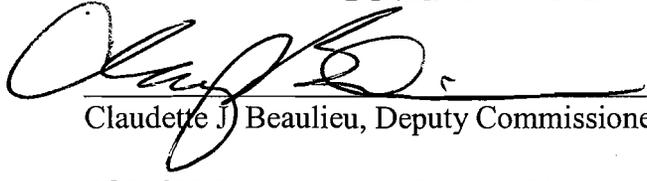




STATE OF CONNECTICUT

DEPARTMENT OF SOCIAL SERVICES

UNIFORM POLICY MANUAL


Claudette J. Beaulieu, Deputy Commissioner

April 1, 2007
Effective Date

POLICY TRANSMITTAL NO.: UP-07-02

SUBJECT: Deficit Reduction Act of 2005 – Medicaid Long-Term Care Issues

This transmittal revises policy in accordance with changes made by the Deficit Reduction Act of 2005 (Public Law 109-171) regarding transfers of assets and their effect on eligibility for long-term care (LTC) services under the Medicaid program. Also included are other policy revisions being made pursuant to this federal law concerning the treatment of certain assets such as annuities, mortgage notes, interest in continuing care retirement communities (CCRC's), and home property in which the individual's equity is more than \$750,000.

Most of the changes affect transfers made or assets such as annuities purchased on or after February 8, 2006. Transfers made and annuities purchased before that date will continue to be evaluated as they have been previously.

Chapter 3028 of the Uniform Policy Manual (UPM) describes the effect of transfers of assets on eligibility for long-term care services under the Medicaid program, as they existed before the new law. Much of the policy contained in chapter 3028 is not changing. With minor revisions, 3028 is remaining as a chapter within the UPM because most of the transfers associated with upcoming applications will have been made prior to February 8, 2006. With respect to most transfers, Chapter 3028 will become obsolete on February 9, 2009. For transfers involving trusts and similar instruments, chapter 3028 will become obsolete on February 9, 2011.

We are adding a new chapter 3029 to implement the revised policy regarding transfers made on or after February 8, 2006. In some cases, workers may have to refer to both chapters 3028 and 3029, if an applicant has made transfers before and after the effective date of the new law. Many of the subject pages in chapter 3029 are the same as their corresponding subject pages in chapter 3028, because much of the policy is not changing, except where indicated below.

Here is a summary of the areas where changes are being made pursuant to the Deficit Reduction Act of 2005, followed by a more detailed explanation of the changes.

- Look-back period – from three to five years
- Beginning date of penalty period – from date of transfer to date otherwise eligible
- Undue hardship claim process – LTCF can file claim with resident's permission
- Treatment of annuities – the state becomes a beneficiary in LTC Medicaid cases
- Home equity limitation - \$750,000 limit for LTC Medicaid
- Treatment of interest in continuing care retirement communities (CCRC's)
- Treatment of promissory notes, loans and mortgages
- Treatment of life estates

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Look-Back Period

Policy for Transfers Made Prior to 2-8-06

Transfers (except for certain transfers involving trusts and similar instruments) made **prior to 2-8-06** are subject to DSS review if they occur **within three years** of an application for Medicaid to cover long-term care services (the look-back period). Example: Mr. Jones makes a transfer on 2-7-06. DSS would evaluate the transfer only if he applies for long-term care benefits under the Medicaid program before 2-8-09. The worker would use chapter 3028 to evaluate the transfer.

Policy for Transfers Made on or after 2-8-06

All transfers made **on or after 2-8-06** are subject to DSS review if they occur **within five years** of an application for Medicaid to cover long-term care services. Example: Mr. Jones makes a transfer on 2-8-06. If he applies before 2-9-11, DSS would have to evaluate the transfer, and use the new policy (chapter 3029).

Beginning Date of Penalty Period

Policy for Transfers Made Prior to 2-8-06

For someone making a transfer prior to 2-8-06, and applying for LTC Medicaid within three years of the transfer, the penalty period begins as of the first day of the month in which the transfer is made, and which does not occur during any other period of ineligibility. Example: Mr. Jones transfers \$100,000 on 2-7-06 and applies on 5-1-08. The penalty period would have begun on 2-1-06 and would have expired by the time of the application (based on the average cost of nursing home care as of 5-1-08). The worker would use UPM 3028.

Policy for Transfers Made on or after 2-8-06

For applicants, the penalty period for transfers made on or after 2-8-06 will generally begin as of the date on which the individual is eligible for Medicaid and would otherwise be eligible for payment of LTC services under the Medicaid program based on an approved application, and which does not occur during any other period of ineligibility. Example: Mr. Jones makes a transfer of \$100,000 on 2-8-06. He applies for LTC Medicaid on 2-5-11 and meets all other Medicaid eligibility requirements. There are no other transfers. The penalty period begins on 2-5-11 and its length is based on the transfer amount (\$100,000) divided by the average cost of nursing home care as of 2-5-11. The worker would use UPM 3029.

For those who are already receiving LTC Medicaid benefits and make an improper transfer on or after 2-8-06, the penalty period begins as of the first of the month in which the transfer is made, and which does not occur during any other period of ineligibility. Because of the ten-day notice requirements, we may have to initiate a recovery action to recoup Medicaid payments made on behalf of the recipient for services incurred in the month of the transfer. We may also need to initiate a recovery action when a transfer is not reported in a timely manner, and part or all of the penalty period has already passed.

Undue Hardship Claim Process

Even before the new law, there has been a process in which the applicant may claim that a denial of payment for LTC services would result in an undue hardship. If the claim is upheld, the department will grant full Medicaid benefits, including payment for LTC care.

This transmittal describes the undue hardship claim process in more detail. Time limits for the individual to file a claim, and for the department to respond, are given. A letter has been developed to notify the individual regarding the outcome of his or her claim of undue hardship, and to explain the individual's appeal rights. These clarifications apply to any undue hardship claim regardless of the date of the transfer associated with the claim. This policy will appear in both chapters 3028 and 3029.

For undue hardship claims associated with transfers occurring on or after February 8, 2006, a nursing home in which the individual is residing will be allowed to file such a claim on behalf of the individual, with the individual's or his or her authorized representative's permission. Follow UPM 3029.

Treatment of Annuities

Annuities are described in the Assets section (4000) in the UPM. They are evaluated both as assets to the extent that they are assignable or have not been annuitized, and as income to the extent that they generate an income stream to the beneficiary. Additionally, the right to receive income from an annuity is regarded as a counted asset, whether the annuity is or is not assignable, (i.e. the income stream is a counted asset). The purchase of an annuity may also be considered as a transfer of assets to the extent that funds that had previously been available to an individual may now be unavailable. We evaluate annuities in much the same way that we evaluate trusts.

Annuities purchased on or after February 8, 2006 will now be subject to other considerations. First, the department will automatically become a remainder beneficiary under the annuity or similar financial instrument by the provision of LTC Medicaid benefits to an individual. We must disclose this fact at the time of application or reapplication.

Second, the purchase of an annuity will automatically be considered to be a transfer of assets unless: the department is named as the remainder beneficiary in the first position for at least the total amount of Medicaid paid on behalf of the annuitant; or, the department is named as such a beneficiary in the second position after the community spouse or minor or disabled child, and is named in the first position if the spouse or representative of the child disposes of any such remainder for less than fair market value. In addition, the annuity must meet all the following criteria: it must be irrevocable and nonassignable; it must be actuarially sound; and it must provide for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments.

Certain types of annuities are not subject to the transfer of asset rules. Examples of such annuities are those described in certain subsections of sections 408 and 408A of the Internal Revenue Code of 1986, including simplified employee pensions and certain Roth IRAs.

Home Equity Limitation

Presently, there is no limit on the amount of equity an individual may have in his or her home property. If he or she permanently enters an LTCF, and there is no spouse or minor or disabled child in the home, the home continues to be excluded as an asset as long as the individual is making a bona fide effort to sell it.

Under the new law, an individual applying for LTC services under Medicaid is ineligible for payment of LTC services if his or her equity in the home property exceeds \$750,000. Please note that this provision affects only whether Medicaid will pay for LTC services – it does not affect actual Medicaid eligibility. Therefore, similar to an individual with a transfer of asset penalty, an individual with substantial home equity may qualify for Medicaid, but may not be entitled to receive Medicaid payment of LTC services. This provision does not apply if the individual's spouse, child under age 21, or disabled child is living in the home. The new law takes effect with LTC Medicaid applications filed on or after January 1, 2006. Individuals granted Medicaid based on applications filed prior to January 1, 2006 are not affected as long as they remain otherwise eligible. Those already granted Medicaid based on applications filed on or after January 1, 2006 may be affected at the time of their first redetermination.

Individuals may reduce their equity in home property by taking out a home equity loan or a reverse annuity mortgage. Such devices remain excluded as income. However, the Center for Medicare and Medicaid Services (CMS) has informed us that the proceeds of a loan or mortgage are counted assets, and that if an individual or his or her spouse improperly transfers the proceeds from a loan or mortgage, a penalty period should be imposed.

We may waive the home equity limitation if it would cause undue hardship, and for certain individuals with asset disregards resulting from long-term care insurance policies certified by the Connecticut Partnership for Long-Term Care.

Interest in Continuing Care Retirement Communities (CCRC's)

Presently, the entrance fee paid by a resident of a CCRC may be considered an asset under certain circumstances. This generally occurs when the resident leaves the CCRC and is entitled to a refund of part or all of the fee. There is nothing in the UPM that specifically addresses this type of asset, but it would be classified as an available asset under the general definition of something of value that an individual has the legal right, authority or power to use for his or her general or medical support.

The new law specifically addresses the treatment of entrance fees in a CCRC. The fees will generally be treated as they are now. The fees will not be considered assets if they convey an ownership interest in the CCRC.

Promissory Notes, Loans and Mortgages

Presently, promissory notes, loans, mortgages and similar financial instruments are considered assets to the extent that the owner can sell or otherwise obtain his or her equity. Monies derived from such assets are evaluated as income. The right to receive income is also an available asset.

Under the new law, we continue to evaluate a promissory note, loan, mortgage or similar financial instrument as an asset or as an income-producer. However, for transfer of asset purposes only, funds used to purchase a promissory note, loan, mortgage or similar financial instrument are considered assets that have been transferred for less than fair market value unless the financial instrument is bona fide (as explained in policy) and meets all of the following criteria: it has a repayment term that is actuarially sound; it provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments; and it prohibits the cancellation of the balance upon the death of the lender. If the note, loan, mortgage or similar financial instrument is not bona fide or does not meet all three criteria described above, the outstanding balance due as of the date the individual applies for LTC Medicaid is considered an asset transferred for less than fair market value.

Life Estates (Life Use)

Currently, life use is evaluated as an asset. It may or may not be counted, depending on whether the owner can sell it.

The new law describes how to treat funds an individual pays to purchase life use of another person's home. Under the new law, funds used to purchase life use of another person's home are considered assets transferred for less than fair market value unless the purchaser resides in the home for a period of at least one year after the date of the purchase.

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DISPOSITION: This Policy Transmittal should be retained for reference.

DISTRIBUTION: UPM list

RESPONSIBLE UNIT: Adult Support (860) 424-5250

Date Issued: 4-20-07

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**CONNECTICUT DEPARTMENT OF SOCIAL SERVICES
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Date: 4-1-07

Transmittal: UP-07-02

2540.64

Section:

Categorical Eligibility Requirements

Type:

POLICY

Chapter:

Medicaid Coverage Groups

Program:

FMA-CN

Subject:

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

2540.64 A. Coverage Groups 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 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 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.

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

Date: 4-1-07

Transmittal: UP-07-02

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 thirty (30) continuous days of residence, 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 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.
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.

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

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2540.92

Section:

Categorical Eligibility Requirements

Type:

POLICY

Chapter:

Medical Coverage Groups

Program:

MAABD-CN

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 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, 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, are considered to meet the income and asset criteria of this coverage group (Cross Reference: 2540.85).
4. The home equity limitation described in Section 4030.20 applies to this coverage group.

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

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2540.94

Section:
Categorical Eligibility Requirements

Type:
POLICY

Chapter:
Medicaid Coverage Groups

Program:
MAABD-CN

Subject:
Qualified Medicare Beneficiaries

2540.94 A. Coverage Group Description

1. This group includes individuals who:
 - a. are entitled to hospital insurance benefits under part A of Title XVIII of the Social Security Act; and
 - b. have income and assets equal to or less than the limits described in paragraph C and D.
2. A Qualified Medicare Beneficiary (QMB) may be eligible for full Medicaid benefits under another coverage group during the same period he or she is also eligible under the QMB coverage group.

B. Covered Benefits

An individual who qualifies for this coverage group may receive payment for:

1. Medicare Part A and B premiums; and
2. payment for coinsurance and deductible amounts for services covered under Medicare.

C. Duration of Eligibility

An individual qualifies for benefits under this coverage group starting the first day of the calendar month following the month in which an individual is determined eligible and continuing for every month thereafter in which the individual meets the criteria described in paragraph A.

D. Income Criteria

1. The Department uses AABD income criteria (Cross Reference: 5000), including deeming methodology, to determine eligibility for this coverage group except for the following:
 - a. the annual cost of living (COLA) percentage increase received by SSA and SSI recipients each January is disregarded when determining eligibility in the first three months of each calendar year;
 - b. for eligibility to exist income must be equal to or less than 100% percent of the Federal Poverty Level for the appropriate needs group size.

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

Date: 4-1-07

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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 with respect to transfers of assets occurring on or after February 8, 2006.

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

Date: 4-1-07

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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.

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

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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 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

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3028.05 page 2

Section:

Technical Eligibility Requirements

Type:

POLICY

Chapter:

Transfer of Assets

Program: MA

Subject:

Basic Provisions

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

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

(Cross Reference: 3028.11 B. 2)

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

D. Transfers Attributable to Individual or Spouse

1. The Department considers transfers of assets made within the time limits described in paragraph C on behalf of an institutionalized individual or his or her spouse by a guardian, conservator, person having power of attorney or other person or entity so authorized by law to have been made by the individual or spouse.

2. In the case of an asset that the individual holds in common with another person or persons in joint tenancy, tenancy in common, or similar arrangement, the Department considers the asset (or affected portion of such asset) to have been transferred by the individual when the individual or any other person takes an action to reduce or eliminate the individual's ownership or control of the asset.

E. Start of the Penalty Period

The penalty period begins:

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

2. the first day following a period of ineligibility caused by a previous transfer of assets, if the transfer under examination occurred during a period of ineligibility caused by a previous transfer of assets.

F. Length of the Penalty Period

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

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Technical Eligibility Requirements

Type:

POLICY

Chapter:

Transfer of Assets

Program: MA

Subject:

Basic Provisions

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

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

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

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

(1) the month of institutionalization; or

(2) the month of the transfer, if the transfer involves the home, 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 a partial month based on that particular transfer.

3. 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.

G. Medicaid Eligibility During the Penalty Period

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

a. LTCF services; and

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.

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Date: 4-1-07

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Section:
Technical Eligibility Requirements

Type:
POLICY

Chapter:
Transfer of Assets

Program: MA

Subject:
Basic Provisions

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

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.

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3028.15 page 2

Section:
Technical Eligibility Requirements

Type:
POLICY

Chapter:
Transfer of Assets

Program: MA

Subject:
Transfer Made Exclusively for Reasons Other Than Qualifying

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.

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

Date: 1-1-03

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3028.20

Section:
 Technical Eligibility Requirements

Type:
 POLICY

Chapter:
 Transfer of Assets

Program: MA

Subject:
 Transfers Made in Return for Other Valuable Consideration

3028.20 A. General Principles

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

2. If the transfer occurred on or after July 1, 2001, the value of the other valuable consideration, computed as described in subparagraph 3 below, must be equal to or greater than the value of the transferred asset in order for the asset to be transferred without penalty.

3. The value of the other valuable consideration, as described in paragraph B, is equal to the average monthly cost to a private patient for long-term care services in Connecticut, multiplied by the number of months the transferee avoided the need for the transferor to be institutionalized.

(Cross Reference: P-3028.30)

B. Criteria for Other Valuable Consideration

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

1. the services rendered are of the type provided by a homemaker or a home health aide; and

2. the services are essential to avoid institutionalization of the transferor for a period of at least two years; and

3. the services are either:
 - a. provided by the transferee while sharing the home of the transferor; or

 - b. paid for by the transferee.

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UNIFORM POLICY MANUAL**

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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 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).

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Section:
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Type:
POLICY

Chapter:
Transfer of Assets

Program: MA

Subject:
Undue Hardship

3028.25 D. Undue Hardship Determinations

1. The individual has ten days from the date of the notice described in 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 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.

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3028.30

Section:
 Technical Eligibility Requirements

Type:
 POLICY

Chapter:
 Transfer of Assets

Program: MA

Subject:
 Compensation

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

A. Compensation Which is Counted

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

B. Value of Compensation

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

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

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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 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, 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.

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 to send an interim notice to the individual stating that it is either upholding

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3028.35 page 2

Section:
Technical Eligibility Requirements

Type:
POLICY

Chapter:
Transfer of Assets

Program: MA

Subject:
Notification and Rebuttal

3028.35 C. 2. Rebuttal Process (continued)

or reversing its preliminary decision.

3. The notification described in 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 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: 3028.25).

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3028.40

Section:
 Technical Eligibility Requirements

Type:
 POLICY

Chapter:
 Transfer of Assets

Program: MA

Subject:
 Withdrawals

- 3028.40 A. An applicant's decision to withdraw a written application does not interrupt processing of the information regarding an asset transfer.
- B. If the information processed supports the decision that the transfer was improper, a penalty period is calculated to the extent possible.
- C. The eligibility decision made on the withdrawn application regarding the asset transfer applies to any subsequent applications made by the individual or the individual's spouse during the penalty period.
- D. The penalty period may be recalculated if additional information is presented for a reapplication.

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P-3028.04

Section:
 Technical Eligibility Requirements

Type:
 PROCEDURES

Chapter:
 Transfer of Assets

Program: **MA**

Subject:
 Choosing the Correct Policy to Use

P-3028.04

Use the policy contained in chapter 3028 only if:

- the transfer occurs or the trust is established on or after August 11, 1993 but prior to February 8, 2006; and
- Medicaid benefits are requested for the month of October 1993 or subsequent months.

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P-3028.07

Section:
Technical Eligibility Requirements

Type:
PROCEDURES

Chapter:
Transfer of Assets

Program: MA

Subject:
Considering the Type of Assets Transferred

- P-3028.07
1. Determine whether the asset transferred was the individual's or the spouse's home or the proceeds from a home equity loan, reverse mortgage or similar instrument. Remember that when any of these assets are transferred after the first month of Medicaid eligibility, the transfer must be examined when it is made by **either** spouse.
 2. Consider the intent behind changes in living arrangements on a case by case basis. For example, if the individual went to live with someone else for what was considered a temporary period immediately prior to entering an institution, do not consider the temporary arrangement a home unless there is clear intent to establish a new permanent residence there.
 3. If the asset was the home, disregard the transfer if the transferee is the individual's spouse, child, or sibling in accordance with policy (Cross Reference: 3028.10).
 4. If the individual transferred his or her home to someone other than those described in step 3, evaluate the transfer based on the policy described in this chapter.
 5. If the asset transferred was something other than the home, evaluate the transfer based on the policy described in this chapter.

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P-3028.11

Section:
Technical Eligibility Requirements

Type:
PROCEDURES

Chapter:
Transfer of Assets

Program: MA

Subject:
Considering Transfers Made to or by Spouses

- P-3028.11
1. Disregard any transfer the individual makes to his or her community spouse, or to a third party, such as a conservator or guardian, for the sole benefit of the community spouse. Do not disregard a transfer made to a trustee for the benefit of the community spouse unless the transfer is made for the sole benefit of the spouse, as described in policy.
 2. Disregard the transfer of either spouse's home to the other spouse or to another qualifying individual as listed in policy.
 3. Disregard any transfer other than that of the home or the proceeds from a home equity loan, reverse mortgage or similar instrument made by the community spouse after the end of the first month of eligibility for the institutionalized spouse.
 4. Disregard a transfer made by either spouse if the institutionalized spouse would have been eligible if either spouse still had the asset. To make this determination follow the procedures outlined at P-3028.16.
 5. When determining if a penalty is necessary, follow the policy and procedures for an applicant or recipient regardless of which spouse actually made the transfer.

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P-3028.16 page 3

Section:
 Technical Eligibility Requirements

Type:
 PROCEDURES

Chapter:
 Transfer of Assets

Program: **MA**

Subject:
 Evaluating Transfers Made for Another Purpose

P-3028.16 4. Transferred Asset Would Not Affect Eligibility if Retained

Do not impose a penalty when the institutionalized individual would have been eligible for assistance if the individual or his or her spouse still had the transferred asset. Remember the exception to this rule regarding the transfer of the home or proceeds of a home equity loan, reverse mortgage or similar instrument that reduces equity in the home. To determine how retention of the asset would affect eligibility, determine if the transfer occurred before or after the start of the institutionalized spouse's first period of institutionalization.

- For transfers made before the individual was institutionalized:
 - * add the transferred asset to the assets used in the assessment of spousal assets;
 - * determine a new spousal share and a new CSPA based on the assessment including the transferred asset;
 - * add the assets left at the time of application to the transferred asset;
 - * if the result is equal to or less than the total of the new CSPA and the asset limit, the transferred asset would not affect eligibility if retained;
 - * if the result is greater than the total of the new CSPA and the asset limit, impose a penalty based on the total amount transferred.
- For transfers made after the individual was institutionalized:
 - * compare the total of the transferred asset plus any assets already protected to the CSPA established in the eligibility determination;
 - * if the total is equal to or less than the total of the CSPA and the asset limit, the transfer would not have affected eligibility;
 - * if the total is greater than the total of the CSPA and the asset limit, the individual is ineligible. A penalty is imposed based on the total amount transferred.
- For multiple transfers made before or after the individual was institutionalized, add all the transfers together before determining the intent of the transfer.

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Section:
Technical Eligibility Requirements

Type:
PROCEDURES

Chapter:
Transfer of Assets

Program: MA

Subject:
Evaluating Transfers Made For Another Purpose

P-3028.16 4. Transferred Asset Would not Affect Eligibility if Retained (continued)

- Remember that when either spouse transfers his or her home or the proceeds of a home equity loan, reverse mortgage or similar instrument the transfer cannot be considered to be made for reasons other than to qualify, and will result in the imposition of a penalty period, unless the transfer is made to certain persons described in policy.

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

- Do not impose a penalty when the spouse of the institutionalized individual transfers an asset after the first month of eligibility when it is determined that the asset is neither the home nor the proceeds of a home equity loan, reverse mortgage or similar instrument.
- Do not impose a penalty when it is determined that the spouse of an institutionalized individual transferred the home or the proceeds of a home equity loan, reverse mortgage or similar instrument to a qualifying individual as listed in policy.

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P-3028.18

Section:
Technical Eligibility Requirements

Type:
PROCEDURES

Chapter:
Transfer of Assets

Program: MA

Subject:
Determining Undue Hardship

P-3028.18 Undue Hardship Claim Process

Refer to P-3028.25 regarding procedures for notifying the individual of:

- the Department's preliminary decision that an improper transfer of assets has occurred; and
- the time limit for the individual to claim undue hardship; and
- the time limit for the Department to notify the individual of its final decision and to explain the individual's appeal rights.

Criteria for Undue Hardship

After consulting with the Supervisor, do not impose a penalty period if:

- the institutionalized individual has been threatened with eviction from an LTCF or medical institution and the individual has exhausted all legal methods to prevent the eviction; or
- the medical provider has threatened to terminate home and community-based services provided under a Medicaid waiver; and
- the transferee no longer has the asset and has no other assets of comparable value to pay the cost of care; and
- there is no other family member or other individual or organization willing and able to provide care to the individual.

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Subject:
Making a Preliminary Decision and Allowing a Rebuttal

- P-3028.25
1. Make sure that you have, at least, the following information to determine that a transfer has been made:
 - the type of asset transferred;
 - how the asset was transferred;
 - the date the transfer occurred.
 2. If you do not have enough information to determine that the institutionalized individual or his or her spouse has actually disposed of the asset, discuss the situation with your supervisor, and deny or discontinue assistance based on insufficient information, if appropriate. If you do have enough information, continue with step 3.
 3. After discussion with the Supervisor and obtaining supervisory approval, make a preliminary decision to impose a penalty period when the facts lead to the conclusion that a transfer of assets is one which calls for such penalty.
 4. Provide written notice (W-495A) to the institutionalized individual and to his or her spouse when the spouse is the transferor. The notice contains:
 - the decision; and
 - the reasons for the decision; and
 - the right to rebut the decision of the Department within 10 days.
 5. Give interpretive help if requested. Extend the ten day deadline if the individual so requests and the request is reasonable.
 6. Review any material presented in rebuttal with the Supervisor to determine if it supports a change in decision.
 7. Take into consideration all evidence presented, including the transferor's statement as to the reason for the transfer. Allow the individual to claim undue hardship, and evaluate this claim with the Supervisor if the individual makes this claim (Cross Reference: 3028.25).

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8. Weigh the evidence presented in the rebuttal in accordance with policy, noting particularly:
 - provision for foreseeable needs;
 - unusual or unexpected circumstances;
 - further information which affects the computation of fair value.
 9. Record the analysis and result of the rebuttal.
 10. Notify the individual of the interim decision in writing (W-495B) within ten days.
 11. If the individual has not rebutted, and has not claimed undue hardship, complete and send the final decision notice (W-495C) to the individual when you dispose of the case.
 12. If the individual has either rebutted or claimed undue hardship, and his or her claim is being denied, complete and send final decision notice (W-495C) to the individual when you dispose of the case.

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Transfer of Assets

Program: MA

Subject:
Calculating and Imposing the Penalty Period

- P-3028.30
1. Calculate the penalty period using the steps that follow.
 2. Start with the fair market value of the transferred asset.
 3. Deduct from the fair market value any compensation received which is acceptable per policy.
 4. Divide the remainder by the average monthly cost of care to a private patient in a LTCF. This figure is \$7,417.00 from 7/1/03 – 6/30/04, \$7,665.00 from 7/1/04 – 6/30/05, \$7,905.00 from 7/1/05 – 6/30/06, and \$8,646.00 as of 7/1/06.
 - For applicants, base the cost on the appropriate figure as of the month of application;
 - For recipients, base the cost on the appropriate figure as of the month of institutionalization, if the transfer occurred while the individual was receiving Medicaid in the community, and the transfer did not affect eligibility at that point in time;
 - For recipients, base the cost on the appropriate figure as of the month of the transfer, if the transfer involves either the home transferred by the spouse while the institutionalized individual is receiving Medicaid, or any asset transferred by an institutionalized individual while receiving Medicaid.
 5. The result of the calculation above will be a whole number representing the number of whole months of the penalty period and/or a fraction representing a partial month.
 6. Use the partial amount to determine the last day of the penalty period by the following method:
 - multiply the fraction that represents the partial month described in step 5 by the number of days in the month in which the penalty period expires;
 - the resulting whole number is the day of the month on which the penalty period expires.

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P-3028.30 7. If only one transfer has occurred, begin the penalty period as of the first day of the month in which the individual makes the transfer for less than fair market value. If the person making the improper transfer is the institutionalized individual's spouse, including situations where the institutionalized individual transfers an asset to the spouse and the spouse subsequently transfers the asset for less than fair market value to a third party, start the penalty period as of the first day of the month in which the spouse makes the transfer.

8. For two or more transfers:

- start the computation with the month of the first transfer;
- evaluate each transfer separately and compute separate periods of ineligibility, unless multiple transfers occur in the same month;
- if more than one transfer occurs in a single month, total the uncompensated values of assets transferred that month and treat the transfers as a single transfer for that month;
- follow steps 2 and 3 for transfers occurring in subsequent months to determine the amount of the uncompensated value during each month in which a transfer has occurred;
- for each month during which a transfer has occurred, compute a penalty period by dividing the uncompensated value by the appropriate figure from step 4;
- begin each penalty period as of the first day of the month in which the transfer occurred, if this month is not already included as part of a penalty period resulting from a previous transfer;
- if a transfer occurs during a penalty period resulting from a previous transfer, begin the penalty period resulting from this subsequent transfer as of the first day immediately following the last day of the prior penalty period.

If the penalty periods associated with the transfers would overlap, compute one penalty period by dividing the total uncompensated values from the transfers by the appropriate figure from step 4. Begin the penalty period as of the first day of the month in which the first transfer occurred.

9. When a case involving a transfer of assets is being denied for another reason, or is being withdrawn, calculate the penalty period if you have

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P-3028|30 9. (continued)

sufficient information and document the case record as described in P-3028.40.

- | 10. To prevent payment of LTCF or community based services when regular Medicaid is granted to an individual subject to a transfer of assets penalty, be sure that the MANC screen is completed after the application is finalized.
- | 11. Enter a date in the LTC Authorization Date field on the INST screen equal to the first day following the day the penalty period expires.
- | 12. If an individual has a spouse who is already subject to a penalty for an improper transfer, apportion the length of the remaining penalty period as follows if both spouses are institutionalized and would otherwise be eligible for the payment of LTCF services under the Medicaid program:
 - Determine the time remaining in the penalty period with respect to the individual's spouse and note it in the case record and on the narrative screen.
 - Divide this number by two and set penalty periods of equal lengths for each spouse beginning as of the first day of the month in which the second spouse is institutionalized and would otherwise be eligible for LTCF payments under the Medicaid program.
 - If one spouse leaves the institution or is discontinued from the Medicaid program before serving out his or her portion of the penalty period, add the time remaining in his or her penalty period to that of the other spouse's penalty period.

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Chapter:

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3029 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.

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Transfer of Assets

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Basic Provisions

3029.05 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 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; 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 references: 2540.64 and 2540.92).

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 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.

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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 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 and/or partial months resulting from the computation described in 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 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

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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; and
 - 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.

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3029.05 H. Transfers Affecting Both Spouses (continued)

2. When a penalty period is apportioned between spouses as described in 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 3029.05 H. 2, the remaining portion of the penalty period applicable to both spouses is served by the remaining spouse.

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

1. Subject to the provisions in 3029.10 B. 2, an individual may transfer assets of any type without penalty to his or her spouse, or to a third party for the sole benefit of such spouse.
2. Subject to the provisions in subparagraphs a and b below, in or after the month of initial Medicaid eligibility, an institutionalized spouse may transfer assets without penalty to his or her community spouse, or to a third party for the sole benefit of such spouse.
 - a. The amount of the assets transferred must be no greater than that amount needed to raise the community spouse's assets up to the CSPA.
 - b. The transfer must be made as soon as practicable, allowing for such time as necessary for the community spouse to obtain a court order for support.
3. The individual's spouse may transfer assets of any type without penalty to a third party for the sole benefit of himself or herself.

C. Transfers to a Disabled Child

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

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

D. Transfers to Certain Trusts

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

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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 3029.10 H. 2 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.

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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 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.

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Subject:

Transfers Involving Trusts

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 3029.11 C. 3:

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3029.11 C. 4. Irrevocable Trusts (continued)

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

D. Exceptions

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

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

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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.

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Subject:				
	Treatment of Annuities			

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; or
 - b. purchased with proceeds from an account or trust described in subsection (a), (c), or (p) of section 408 of such Code; a simplified employee pension (within the meaning of section 408(k) of such Code); or a Roth IRA described in section 408A of such 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; and
 - b. is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration); and
 - 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:

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

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	Purchase of Life Use

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 resides in the home for less than one year after the date of the purchase.

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	Purchase of a Mortgage Note, Loan or Installment Contract			

- 3029.14
- 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); and
 - 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; or
 - 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 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

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Subject:				
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3029.14 E. (continued)

criteria described in 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.

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Section:

Technical Eligibility Requirements

Type:

POLICY

Chapter:

Transfer of Assets

Program:

MA

Subject:

Transfer Made Exclusively for Reasons Other Than Qualifying

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 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 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).

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Type:

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Chapter:

Transfer of Assets

Program: MA

Subject:

Transfer Made Exclusively for Reasons Other Than Qualifying

3029.15 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.

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3029.20

Section:
Technical Eligibility Requirements

Type:
POLICY

Chapter:
Transfer of Assets

Program: MA

Subject:
Transfers Made in Return for Other Valuable Consideration

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

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3029.25

Section:
 Technical Eligibility Requirements

Type:
 POLICY

Chapter:
 Transfer of Assets

Program: **MA**

Subject:
 Undue Hardship

3029.25 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, 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 payment for LTCF or equivalent services described at 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; 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: 3029.35).

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Subject:
Undue Hardship

3029.25 D. Undue Hardship Determinations

1. The individual has ten days from the date of the notice described in 3029.25 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: 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 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.

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.

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Section:
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Type:
POLICY

Chapter:
Transfer of Assets

Program: MA

Subject:
Compensation

3029.30 Compensation in exchange for a transferred asset is counted in determining whether fair market value was received.

A. Compensation Which is Counted

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

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Type:
 POLICY

Chapter:
 Transfer of Assets

Program: MA

Subject:
 Notification and Rebuttal

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 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, 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.

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 to send an interim notice to the individual stating that it is either upholding

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Subject:
 Notification and Rebuttal

3029.35 C. 2. Rebuttal Process (continued)

or reversing its preliminary decision.

3. The notification described in 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).

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P-3029.01

Section:
Technical Eligibility Requirements

Type:
PROCEDURES

Chapter:
Transfer of Assets

Program: MA

Subject:
Defining the "Look Back" Period

- P-3029.01
1. To evaluate transfers, count back 36 months from:
 - the date of application, if the applicant is institutionalized as of the date of application; or
 - the date of institutionalization, if the individual:
 - is receiving Medicaid while living in the community, but subsequently becomes institutionalized; or
 - applies for Medicaid while living in the community, but becomes institutionalized while the application is pending.
 2. If the 36 month period extends to a date prior to February 8, 2006, do not look back further than the 36th month.
 3. If you do not reach a date prior to February 8, 2006 by the 36th month, continue counting retrospectively until you have either reached February 8, 2006 or the 60th month, whichever occurs first.
 4. To define the look-back period involving a payment made from an irrevocable trust which **could have been** made to or for the benefit of the individual, but which was made other than for that purpose, follow steps 1 through 3.
 5. To define the look-back period for transfers involving the following trusts, count back 60 months from the date of application or 60 months from the date of institutionalization, as described in step 1:
 - payments from a revocable trust other than those made to or for the benefit of the individual; and
 - the establishment of an irrevocable trust in which no payments can be made to the individual under any circumstances.

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P-3029.03

Section:
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Type:
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Chapter:
 Transfer of Assets

Program: **MA**

Subject:
 Looking for Transfers

- P-3029.03
1. Explore the possibility of unreported transfers by questioning the potential of ownership of the following in the "look back" period:
 - a house;
 - a car;
 - a savings account;
 - a checking account;
 - a trust, annuity or similar asset;
 - a lump-sum.
 2. Use the following guidelines in investigating savings accounts:
 - examine the savings accounts history during the "look back" period months;
 - question any withdrawals which appear to involve transfers that might affect eligibility;
 - use prudent judgment in determining whether a withdrawal requires verification, especially if the withdrawal occurred more than 36 months prior to the date of application;
 - accept reasonable explanations, especially if the individual was in good health and not institutionalized at the time of the withdrawal;
 - as a general rule, be more accepting the lower the withdrawal amount and the earlier the withdrawal date .
 3. Use the following guidelines in investigating checking accounts:
 - examine checking account history during the "look back" period months;
 - establish the normal pattern of payment of expenses by looking at the checking account history for at least the 6 months prior to institutionalization and each month subsequent to institutionalization;
 - request further information about any withdrawals which are not part of the normal pattern or appear questionable, regardless of when they occurred

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Chapter:
 Transfer of Assets

Program: **MA**

Subject:
 Looking for Transfers

P-3029.03 3. (continued)

 during the “look back” period;

- use prudent judgment in determining whether a withdrawal requires verification;
 - as a general rule, be more accepting the lower the withdrawal amount and the earlier the withdrawal date;
 - accept reasonable explanations, especially if the individual was in good health and not institutionalized at the time of the withdrawal.
4. Examine two or more transfers separately, unless the transfers occurred during the same month.

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P-3029.04

Section:
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Type:
PROCEDURES

Chapter:
Transfer of Assets

Program: MA

Subject:
Choosing the Correct Policy to Use

- P-3029.04
1. If the date of the transfer or the establishment of the trust or annuity is prior to February 8, 2006, follow the policy contained at Chapter 3028 to evaluate the transfer or the trust or annuity.
 2. Use the policy contained in chapter 3029 only if the transfer occurs or the trust or annuity is established on or after February 8, 2006.

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P-3029.06

Section:
Technical Eligibility Requirements

Type:
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Chapter:
Transfer of Assets

Program: MA

Subject:
Identifying Institutionalized Individuals

- P-3029.06
1. Make sure that the policy contained in this chapter is appropriate to use, as described in P-3029.04.
 2. Look for possible transfers made by the individual or his or her spouse, or by someone legally authorized to act on behalf of the individual or spouse.
 3. Remember that the policy in this chapter affects only the eligibility for payment of LTC services under the Medicaid program with respect to those individuals classified as institutionalized.
 4. If a non-institutionalized individual has made a transfer that could affect future benefits, document the case record as described in P-3029.40.
 5. If an institutionalized individual, his or her spouse, or someone legally authorized to act on their behalf has made a transfer, use the policy contained in this chapter to determine whether the benefits of the institutionalized individual will be affected.

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Section:
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Chapter:
Transfer of Assets

Program: MA

Subject:
Considering the Type of Assets Transferred

- P-3029.07
1. Determine whether the asset transferred was the individual's or the spouse's home or the proceeds from a home equity loan, reverse mortgage or similar instrument. Remember that when any of these assets are transferred after the first month of Medicaid eligibility, the transfer must be examined when it is made by **either** spouse.
 2. Consider the intent behind changes in living arrangements on a case by case basis. For example, if the individual went to live with someone else for what was considered a temporary period immediately prior to entering an institution, do not consider the temporary arrangement a home unless there is clear intent to establish a new permanent residence there.
 3. If the asset was the home, disregard the transfer if the transferee is the individual's spouse, child, or sibling in accordance with policy (Cross Reference: 3029.10).
 4. If the individual transferred his or her home to someone other than those described in step 3, evaluate the transfer based on the policy described in this chapter.
 5. If the asset transferred was something other than the home, evaluate the transfer based on the policy described in this chapter.

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P-3029.11

Section:
 Technical Eligibility Requirements

Type:
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Chapter:
 Transfer of Assets

Program: MA

Subject:
 Considering Transfers Made to or by Spouses

- P-3029.11
1. Except as described below, disregard any transfer the individual makes to his or her community spouse, or to a third party, such as a conservator or guardian, for the sole benefit of the community spouse.
 - Do not disregard a transfer made to a trustee for the benefit of the community spouse unless the transfer is made for the sole benefit of the spouse, as described in policy.
 - Do not disregard a transfer the individual makes to his or her community spouse after the effective date of eligibility, if the community spouse already has assets equal to his or her CSPA.
 2. Disregard the transfer of either spouse's home to the other spouse or to another qualifying individual as listed in policy.
 3. Disregard any transfer other than that of the home or the proceeds from a home equity loan, reverse mortgage or similar instrument made by the community spouse after the end of the first month of eligibility for the institutionalized spouse.
 4. Disregard a transfer made by either spouse if the institutionalized spouse would have been eligible if either spouse still had the asset. To make this determination follow the procedures outlined at P-3029.16.
 5. When determining if a penalty is necessary, follow the policy and procedures for an applicant or recipient regardless of which spouse actually made the transfer.

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P-3029.12

Section:
Technical Eligibility Requirements

Type:
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Chapter:
Transfer of Assets

Program: MA

Subject:
Considering Transfers Made to Children

- P-3029.12
1. Disregard any transfer the individual makes to his or her blind or disabled son or daughter, as described in policy. Also disregard any transfer the individual makes to a trust established for the sole benefit of his or her blind or disabled child.
 2. Disregard the transfer of the individual's home to the individual's minor child, as described in policy.
 3. Disregard the transfer of the individual's home to his or her adult son or daughter, other than those described in step 1, according to policy.
 4. For transfers made to children not described in policy, evaluate the transfer based on the policy in this chapter.

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Section:

Technical Eligibility Requirements

Type:

PROCEDURES

Chapter:

Transfer of Assets

Program:

MA

Subject:

Considering Transfers Made to Siblings

- P-3029.13
1. Disregard the transfer to the individual's siblings of the individual's home subject to the conditions described in policy.
 2. For transfers made to siblings not described above, and for transfers of assets other than the home made to siblings, evaluate the transfer based on the policy found in this chapter.

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Section:
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Type:
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Chapter:
Transfer of Assets

Program: MA

Subject:
Considering Transfers Involving Trusts

- P-3029.15
1. Do not consider the conversion of an asset into the form of a trust to be a transfer of an asset to the extent that:
 - the trust is revocable; or
 - the trust is irrevocable, but the trustee is able to disperse funds from the trust to the individual.
 2. Consider the conversion of an asset into the form of an irrevocable trust to be a transfer of an asset to the extent that the trustee cannot disperse funds from the trust to or for the benefit of the individual under any circumstances.
 3. Consider as a separate transfer of assets an addition made to an irrevocable trust described in step 2 if the addition consists of:
 - funds added to the corpus of the trust by the individual, spouse, or other person or entity described in policy acting on the individual's behalf, to the extent that the funds cannot be paid to the individual under any circumstances; or
 - income generated by the corpus of the trust, to the extent that the income cannot be paid to the individual under any circumstances.
 4. Consider a payment made from a trust for a purpose other than to or for the benefit of the individual to be a transfer of assets if:
 - the trust is revocable; or
 - the trust is irrevocable, but the payment **could have been made** to or for the benefit of the individual.
 5. In the case of an irrevocable trust described in step 2, if the penalty period has expired and the individual is being granted Medicaid benefits, refer the case to the Attorney General's office for their review if the trust was established within the 60 month look-back period described in policy.
 6. Do not apply the transfer of assets penalty based on trusts involving the following grantors, if the trust arrangement meets the criteria described in policy:
 - disabled individuals under 65; and
 - disabled individuals of any age whose trust is managed by a non-profit organization.

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Subject:

Considering Transfers Involving Trusts

- P-3029.15
7. Refer cases described in step 6 to the Attorney General's office for their review if the case is being granted and the trust was established within the 60 month look-back period described in policy.
 8. If the Attorney General's office is able to dissolve the trust in cases described in steps 5 or 6, consider the funds in the trust to be an available asset.

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Subject:
Evaluating Transfers Made for Another Purpose

P-3029.16 Disregard any transfer made for a purpose other than to qualify for benefits. Either the institutionalized individual or his or her spouse may transfer an asset for a purpose other than to qualify the institutionalized individual for Medicaid benefits.

1. Undue Influence

If the transferor is still competent, require him or her to provide detailed information concerning the transfer.

Explain that his or her cooperation may be required if the Department initiates a legal action against the transferee.

If the transferor is no longer competent, require his or her conservator to provide the information concerning the transfer.

Make a preliminary decision about undue influence with Supervisor and Program Supervisor approval. Refer to the Resource Unit for investigation if there is insufficient information on which to base a decision.

If the decision is favorable to the transferor, do not impose a penalty period, but refer to the Resource Unit for investigation of the possibility of recovery.

2. Foreseeable Needs Met

Consider the following factors as supportive of a conclusion that foreseeable needs were met:

- the transferor was in good health with no serious medical problems. If questionable, require medical reports from the individual's physician and send the information to the MRT for review;
- the transferor was fully self-supporting;

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P-3029.16 2. Foreseeable Needs Met (continued)

- the transferor was covered by private health benefits that paid for long-term care services.

Consider these to be factors tending to refute the claim that foreseeable needs were met:

- the transferor made the transfer despite suffering from a serious medical condition or after a sudden onset of disability;
- the transferor was not self-supporting;
- the transferor had no private health insurance benefits covering long-term care services;
- the transferor or his or her spouse was institutionalized when the transfer was made.

If the circumstances support a decision that foreseeable needs were met, disregard the transfer.

3. Transfer to or by Legal Owner

- Refer to chapter 4010 to evaluate this argument.
- If the argument is valid, disregard the transfer.

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Evaluating Transfers Made for Another Purpose

P-3029.16 4. Transferred Asset Would Not Affect Eligibility if Retained

Do not impose a penalty when the institutionalized individual would have been eligible for assistance if the individual or his or her spouse still had the transferred asset. Remember the exception to this rule regarding the transfer of the home or proceeds of a home equity loan, reverse mortgage or similar instrument that reduces equity in the home. To determine how retention of the asset would affect eligibility, determine if the transfer occurred before or after the start of the institutionalized spouse's first period of institutionalization.

- For transfers made before the individual was institutionalized:
 - * add the transferred asset to the assets used in the assessment of spousal assets;
 - * determine a new spousal share and a new CSPA based on the assessment including the transferred asset;
 - * add the assets left at the time of application to the transferred asset;
 - * if the result is equal to or less than the total of the new CSPA and the asset limit, the transferred asset would not affect eligibility if retained;
 - * if the result is greater than the total of the new CSPA and the asset limit, impose a penalty based on the total amount transferred.
- For transfers made after the individual was institutionalized:
 - * compare the total of the transferred asset plus any assets already protected to the CSPA established in the eligibility determination;
 - * if the total is equal to or less than the total of the CSPA and the asset limit, the transfer would not have affected eligibility;
 - * if the total is greater than the total of the CSPA and the asset limit, the individual is ineligible. A penalty is imposed based on the total amount transferred.
- For multiple transfers made before or after the individual was institutionalized, add all the transfers together before determining the intent of the transfer.

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Section:
Technical Eligibility Requirements

Type:
PROCEDURES

Chapter:
Transfer of Assets

Program: MA

Subject:
Evaluating Transfers Made For Another Purpose

P-3029.16 4. Transferred Asset Would not Affect Eligibility if Retained (continued)

- Remember that when either spouse transfers his or her home or the proceeds of a home equity loan, reverse mortgage or similar instrument the transfer cannot be considered to be made for reasons other than to qualify, and will result in the imposition of a penalty period, unless the transfer is made to certain persons described in policy.

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

- Do not impose a penalty when the spouse of the institutionalized individual transfers an asset after the first month of eligibility when it is determined that the asset is neither the home nor the proceeds of a home equity loan, reverse mortgage or similar instrument that reduces the spouse's equity in the home.
- Do not impose a penalty when it is determined that the spouse of an institutionalized individual transferred the home or the proceeds of a home equity loan, reverse mortgage or similar instrument to a qualifying individual as listed in policy.

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Section:
Technical Eligibility Requirements

Type:
PROCEDURES

Chapter:
Transfer of Assets

Program: MA

Subject:
Evaluating Intent to Receive Fair Value or Other Valuable Consideration

- P-3029.17
1. Disregard the transfer if the transferor intended to transfer the asset at fair market value. Consider the following factors when evaluating this argument:
 - Did circumstances at the time of the transfer prevent the transferor from getting a better price for the asset?
 - Was the transferee a friend or relative of the individual? If not, give more credibility to the claim that the transferor attempted to obtain the best price possible.
 - Did the transferor make a bonafide effort to get the best price possible?
 - Did the transferor use all reasonable means to market the asset?
 2. Disregard the transfer if the transferor intended to make the transfer for other valuable consideration, as defined in policy.
 - Make sure the transferor received services or payment for services of the type provided by a homemaker or a home health aide. If the transferee provided the services personally, make sure that he or she was living with the transferor while providing the services.
 - Make sure these services eliminated the need to institutionalize the transferor for at least two years. Obtain a medical report attesting to the transferor's need for institutionalization without the services.
 - Refer the case to the Medical Review Team at Central Office for a determination regarding the validity of the claim that the transferee provided other valuable consideration.
 - Make sure that the value of the other valuable consideration is at least equal to the value of the transferred asset. Otherwise, compute a period of ineligibility, as described at P-3029.30.

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P-3029.18

Section:
 Technical Eligibility Requirements

Type:
 PROCEDURES

Chapter:
 Transfer of Assets

Program: **MA**

Subject:
 Determining Undue Hardship

P-3029.18 Undue Hardship Claim Process

1. Refer to P-3029.25 regarding procedures for notifying the individual of:
 - the Department's preliminary decision that an improper transfer of assets has occurred; and
 - the time limit for the individual to claim undue hardship; and
 - the time limit for the Department to notify the individual of its final decision and to explain the individual's appeal rights.
2. Allow the LTCF in which the individual is residing to file an undue hardship claim if the individual has given his or her permission.

Criteria for Undue Hardship

After consulting with the supervisor, do not impose a penalty period if:

- the institutionalized individual has been threatened with eviction from an LTCF or medical institution and the individual has exhausted all legal methods to prevent the eviction; or
- the medical provider has threatened to terminate home and community-based services provided under a Medicaid waiver; and
- the transferee no longer has the asset and has no other assets of comparable value to pay the cost of care; and
- there is no other family member or other individual or organization willing and able to provide care to the individual.

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Section:
Technical Eligibility Requirements

Type:
PROCEDURES

Chapter:
Transfer of Assets

Program: MA

Subject:
Determining Fair Market Value

- P-3029.20
1. To determine fair market value of an asset, use sources such as, but not limited to:
 - NADA "blue" book of trade-in values for automobiles;
 - real estate conveyance records;
 - marketing appraisals;
 - bank records;
 - passbooks;
 - records of stock transactions;
 - property appraisals performed by the Department;
 - tax assessment records.
 2. Determine if fair market value was received in the transfer by comparing the compensation received with the fair market value of the asset transferred.
 - check whether the compensation was received at, after, or before the date of the transfer;
 - if the compensation was received before the date of the transfer, check to see if it is of a type which is countable without a legally enforceable agreement;
 - if a legally enforceable agreement is required to count the compensation, gather the information needed, review the circumstances with the supervisor and program supervisor, and document the decision in the case record.
 3. If fair market value was received, stop here.
 4. If fair market value was not received, evaluate the transfer based on the policy described in this chapter.

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Section:
Technical Eligibility Requirements

Type:
PROCEDURES

Chapter:
Transfer of Assets

Program: MA

Subject:
Making a Preliminary Decision and Allowing a Rebuttal

- P-3029.25
1. Make sure that you have, at least, the following information to determine that a transfer has been made:
 - the type of asset transferred;
 - how the asset was transferred;
 - the date the transfer occurred.
 2. If you do not have enough information to determine that the institutionalized individual or his or her spouse has actually disposed of the asset, discuss the situation with your supervisor, and deny or discontinue assistance based on insufficient information, if appropriate. If you do have enough information, continue with step 3.
 3. After discussion with the Supervisor and obtaining supervisory approval, make a preliminary decision to impose a penalty period when the facts lead to the conclusion that a transfer of assets is one which calls for such penalty.
 4. Provide written notice (W-495A) to the institutionalized individual and to his or her spouse when the spouse is the transferor containing:
 - the decision; and
 - the reasons for the decision; and
 - the right to rebut the decision of the Department within 10 days.
 5. Give interpretive help if requested. Extend the ten day deadline if the individual so requests and the request is reasonable.
 6. Review any material presented in rebuttal with the Supervisor to determine if it supports a change in decision.
 7. Take into consideration all evidence presented, including the transferor's statement as to the reason for the transfer. Allow the individual to claim undue hardship, and evaluate this claim with the Supervisor if the individual makes this claim (Cross Reference: 3029.25).

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Making a Preliminary Decision and Allowing a Rebuttal

- P-3029.25
8. Weigh the evidence presented in the rebuttal in accordance with policy, noting particularly:
 - provision for foreseeable needs;
 - unusual or unexpected circumstances;
 - further information which affects the computation of fair value.
 9. Record the analysis and result of the rebuttal.
 10. Notify the individual of the interim decision in writing (W-495B) within ten days.
 11. If the individual has not rebutted, and has not claimed undue hardship, complete and send the final decision notice (W-495C) to the individual when you dispose of the case.
 12. If the individual has either rebutted or claimed undue hardship, and his or her claim is being denied, complete and send final decision notice (W-495C) to the individual when you dispose of the case.

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Section:
Technical Eligibility Requirements

Type:
PROCEDURES

Chapter:
Transfer of Assets

Program: MA

Subject:
Calculating and Imposing the Penalty Period

- P-3029.30
1. Calculate the penalty period using the steps that follow.
 2. Start with the fair market value of the transferred asset.
 3. Deduct from the fair market value any compensation received which is acceptable per policy.
 4. Divide the remainder by the average monthly cost of care to a private patient in a LTCF. This figure is \$7,905.00 from 7/1/05 through 6/30/06 and \$8,646.00 on or after 7/1/06.
 - For applicants, base the cost on the appropriate figure as of the month of application;
 - For recipients, base the cost on the appropriate figure as of the month of institutionalization, if the transfer occurred while the individual was receiving Medicaid in the community, and the transfer did not affect eligibility at that point in time;
 - For recipients, base the cost on the appropriate figure as of the month of the transfer, if the transfer involves either the home or proceeds from a home equity loan transferred by the spouse while the institutionalized individual is receiving Medicaid, or any asset transferred by an institutionalized individual while receiving Medicaid.
 5. The result of the calculation above will be a whole number representing the number of whole months of the penalty period and/or a fraction representing a partial month.
 6. Use the partial amount to determine the last day of the penalty period by the following method:
 - multiply the fraction that represents the partial month described in step 5 by the number of days in the month in which the penalty period expires;
 - for penalties beginning as of the first day of a month (for persons receiving LTC Medicaid at the time of the transfer), the resulting whole number is the day of the month on which the penalty period expires;
 - for penalties beginning as of the first date the individual would otherwise be eligible (for persons not receiving LTC Medicaid at the time of the transfer), the resulting whole number represents the additional number of days the individual is ineligible.

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PROCEDURES

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Subject:
Calculating and Imposing the Penalty Period

- P-3029.30
7. For transfers made by individuals receiving LTC Medicaid at the time of the transfer, if only one transfer occurs, begin the penalty period as of the first day of the month in which the individual makes the transfer for less than fair market value. If the institutionalized individual is receiving LTC Medicaid and his or her spouse makes an improper transfer, start the penalty period as of the first day of the month in which the spouse makes the transfer.
 8. For transfers made by persons who were not recipients of LTC Medicaid at the time of the transfer (i.e. non-applicants, Medicaid applicants or community Medicaid recipients), if only one transfer has occurred, begin the penalty period as of the date on which the individual would be otherwise eligible for LTC Medicaid. If the person making the improper transfer is the institutionalized individual's spouse, start the penalty period as of the date on which the individual would be otherwise eligible for LTC Medicaid.
 9. For two or more transfers:
 - total the uncompensated values of the transfers and treat them as one transfer;
 - compute a penalty period by dividing the total uncompensated value by the appropriate figure from step 4;
 - start the penalty period with the first day of the month of the first transfer or the first date the individual would be otherwise eligible for LTC Medicaid (the later of these two dates), as explained in steps 7 and 8. Make sure this penalty period is not part of a previous one;
 - if a transfer occurs during a penalty period resulting from a previous transfer, begin the penalty period resulting from this subsequent transfer as of the first day immediately following the last day of the prior penalty period.
 10. If part or all of the transferred asset is returned to the individual:
 - adjust the amount of the uncompensated value by subtracting the amount returned from the amount transferred. Recalculate the length of the penalty period;
 - consider the amount returned to have still been available to the individual during the time it was in the name of the transferee;
 - do not consider the individual to be otherwise eligible until he or she

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Type:
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Chapter:
Transfer of Assets

Program: MA

Subject:
Calculating and Imposing the Penalty Period

P-3029.30 10. (continued)

reduces assets to the Medicaid asset limit. Begin the penalty period then.

11. When a case involving a transfer of assets is being denied for another reason, or is being withdrawn, calculate the penalty period if you have sufficient information and document the case record as described in P-3029.40.
12. To prevent payment of LTCF or community based services when regular Medicaid is granted to an individual subject to a transfer of assets penalty, be sure that the MANC screen is completed after the application is finalized.
13. Enter a date in the LTC Authorization Date field on the INST screen equal to the first day following the day the penalty period expires.
14. If an individual has a spouse who is already subject to a penalty for an improper transfer, apportion the length of the remaining penalty period as follows if both spouses are institutionalized and would otherwise be eligible for the payment of LTC services under the Medicaid program:
 - Determine the time remaining in the penalty period with respect to the individual's spouse and note it in the case record and on the narrative screen.
 - Divide this number by two and set penalty periods of equal lengths for each spouse beginning as of the first day on which the second spouse is institutionalized and would otherwise be eligible for LTC payments under the Medicaid program.
 - If one spouse leaves the institution or is discontinued from the Medicaid program before serving out his or her portion of the penalty period, add the time remaining in his or her penalty period to that of the other spouse's penalty period.

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P-3029.40

Section:
Technical Eligibility Requirements

Type:
PROCEDURES

Chapter:
Transfer of Assets

Program: MA

Subject:
Documenting Transfers

- P-3029.40
1. Document the details of every asset transfer investigated in determination of eligibility.
 2. Note for the record:
 - the type of asset transferred;
 - the date of the transfer;
 - the names of the transferor and transferee;
 - the type and amount of compensation, if any;
 - the reason for the transfer;
 - any disputes about ownership of the asset.
 3. If there is a dispute about ownership, determine and document:
 - who has physical possession;
 - who originally purchased the asset;
 - who paid any ongoing expenses of the asset;
 - why, and under what conditions an asset is held by one individual for another.
 4. Complete a W495 on every transfer case which is investigated regardless of whether the result is eligibility or ineligibility.
 5. File one copy in the case record, send a copy to the Director of Fraud and Recoveries, C.O., and place the third copy in the special file against which future applications will be checked.
 6. Stamp the folder so the case record will not be destroyed.

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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

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4030.05

Section:

Treatment of Assets

Type:

POLICY

Chapter:

Treatment of Specific Types

Program:

AFDC

AABD

MA

Subject:

Bank Accounts

FS

4030.05 A. Types of Bank Accounts

Bank accounts include the following. This list is not all inclusive.

1. Savings account;
2. Checking account;
3. Credit union account;
4. Certificate of deposit;
6. Patient account at long-term care facility;
7. Children's school account;
8. Trustee account;
9. Custodial account.

B. Checking Account

That part of a checking account to be considered as a counted asset during a given month is calculated by subtracting the actual amount of income the assistance unit deposits into the account that month from the highest balance in the account for that month.

C. Income Versus Assets

Money which is received as income during a month and deposited into an account during the month is not considered an asset for that month, unless the source of the money is:

1. an income tax refund; or
2. cash received upon the transfer or sale of property; or
3. a security deposit returned by the landlord.

D. Excluded Accounts -- Working Individuals with Disabilities

The following assets are excluded in determining the Medicaid eligibility of working individuals with disabilities (Cross Reference: 2540.85):

1. retirement and medical savings accounts established pursuant to 26 USC 220 and held by either the individual or his or her spouse; and
2. accounts held by the individual or spouse and designated by such person as being held for the purpose of buying goods or services that will increase the employability of the individual. Such accounts are subject to the approval of the Department.

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Section:				Type:
	Treatment of Assets			POLICY
Chapter:				Program:
	Treatment of Specific Types			MA
Subject :				
	Entrance Fees for Continuing Care Retirement Communities			

4030.18 Entrance fees for Continuing Care Retirement Communities (CCRC's) or Life Care Communities (LCC's) must be evaluated as assets in determining eligibility if:

- A. the individual can use the fees to pay for care when other income and assets are insufficient; and
- B. the individual is eligible for a refund at death or on leaving the CCRC, so long as the fee does not confer an ownership interest in the CCRC.

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Treatment of Specific Types

Program:

MA

Subject:

Home Property

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:

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Chapter:

Treatment of Specific Types

Program:

MA

Subject:

Home Property

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 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.

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Program:

MA

Subject:

Home Property

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 is 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; and
 - 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)

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Chapter:

Treatment of Specific Types

Program:

FS

Subject:

Home Property

4030.20 | 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.

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Section: Treatment of Assets	Type: POLICY
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Chapter: Treatment of Specific Types	Program: AFDC AABD MA FS
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Subject: Life Use	
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4030.35 A. Status of Life Use as an Asset

1. Life use is an asset to the extent that it can be sold by the life tenant.
2. Life use can be an excluded, inaccessible, or counted asset depending on the situation, as follows:
 - a. life use is an excluded asset for as long as the life tenant is residing in the home. The exclusion continues if the life tenant is temporarily absent from the home but intends to return.
 - b. life use is an inaccessible asset if the life tenant leaves the home and is unable to find someone willing or able to purchase the life use.
 - c. proceeds from the sale of life use are a counted asset as of the month the life tenant sells the life use.

B. Value of Life Use

The Department computes the value of life use by taking into account the following factors:

1. life tenant's status as sole or joint owner of the home; and
2. life tenant's age and sex; and
3. life tenant's equity in the home; and
4. life expectancy of the life tenant.

C. Income Derived from Life Use

If life use is an inaccessible asset, as described above and the life tenant is collecting rent derived from the life use, the rent is considered income (cross reference: 5050, Treatment of Specific Types).

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

Chapter: **Program:** **AFDC**
 Treatment of Specific Types **AABD**

Subject: **MA**
 Loans **FS**

4030.40 | 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.

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Section:				Type:
	Treatment of Assets			POLICY
Chapter:				Program:
	Treatment of Specific Types			MA
Subject :				
	Annuities			

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

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 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.

B. Treatment of Annuity Purchases

The purchase of an annuity 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 (Treatment of Annuities).

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Section: **Type:**
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Chapter: **Program:**
Treatment of Specific Types **AFDC**

Subject: **MA**
Motor Vehicles **FS**

4030.55 The Department evaluates each motor vehicle owned by every member of the assistance unit in terms of the vehicle's status as an excluded, inaccessible, or counted asset.

A. Fair Market Value

1. The fair market value of a motor vehicle is the "Average Trade-in Value" listed in the National Automobile Official Dealers (NADA) Used Car Guide, or, for older models, the Appraisal Guide unless the assistance unit proves otherwise.
2. The fair market value of a motor vehicle is not increased if the vehicle is specially equipped with apparatus for the handicapped.
3. The fair market value of a motor vehicle is not increased by adding the value of low mileage or other factors such as optional equipment.
4. The assistance unit may contest the value given by the Department by presenting documentation from a reliable source regarding the actual value of the motor vehicle. The Department adjusts its computation accordingly if appropriate.

B. Motor Vehicle Used as a Home

A registered camper, trailer or mobile home is excluded as home property if the assistance unit is using it as principal residence.

C. AFDC and FMA

1. Up to \$1,500 of the equity value of one motor vehicle per assistance unit is excluded. The amount of the equity value in excess of \$1,500 is counted toward the asset limit.
2. If the assistance unit owns more than one motor vehicle, the \$1,500 exclusion is applied to the vehicle that has the highest equity value.

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Chapter: Treatment of Specific Types	Program: AFDC FMA AABD MAABD
Subject: Non-home Property	

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;
 - 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: 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. Non-home property that was the recipient's primary residence prior to

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

entering the nursing home is excluded for as long as the individual is making a bona fide effort to sell it.

c. 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 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; or

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. 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.

f. 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; and

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)

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

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

2. Other Non-home Property

a. All other non-home property is excluded for as long as the individual is making a bona fide effort to sell it.

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;

(2) the assistance unit owns the property;

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

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

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.

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

Chapter: **Treatment of Specific Types** **Program:** **FS**

Subject: **Pension Plans and Certain Retirement Accounts**

- 4030.66 A. The cash value of certain retirement savings and pension plans is excluded. These plans include, but are not limited to:
- 1. 457 plans (plans for state and local governments and other tax-exempt organizations);
 - 2. 401(k) plans;
 - 3. Federal Employee Thrift Savings plans;
 - 4. Section 403(b) plans (tax-sheltered annuities provided for employees of tax-exempt organizations and state and local educational organizations);
 - 5. Section 501(c)(18) plans (retirement plans for union members consisting of employee contributions to certain trusts that must have been established before June 25, 1959); and
 - 6. Keogh plans that involve a contractual obligation with someone who is not a household member.
- B. Funds held in individual retirement accounts (IRAs) and Keogh plans which do not involve the household member in a contractual relationship with individuals who are not household members are counted as assets. (Cross Reference: UPM 4020.15)
- C. In counting assets for households with IRAs or countable Keogh plans, include the total cash value of the account or plan minus the amount of the penalty (if any) that would result due to the early withdrawal of the entire amount in the account or the plan.

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Section: Treatment of Assets	Type: POLICY
Chapter: Treatment of Specific Types	Program: AFDC AABD MA
Subject: Trusts	

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

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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

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- 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 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 chapters 3028 and 3029, if the payments are for any other purpose.

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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 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

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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 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:

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Program: AFDC
AABD
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FS

Subject:
Home Property

P-4030.20 All Programs

1. Except as described below, exclude the value of home property for as long as the assistance unit maintains the home as principal residence.
2. If the assistance unit leaves the home, determine whether the absence is temporary and whether the unit intends to return.
3. Consider the property as home property as long as the assistance unit intends to return.

AFDC and AABD

1. Inform the assistance unit of the Department's lien policy for home property.
2. When granting assistance, send a referral to the Resource Unit for implementation of the lien policy if the assistance unit owns home property.
 - For AFDC cases, indicate when the unit will have received four cumulative months of assistance.
 - For AABD cases, indicate the effective date of the award.

MA

1. If the individual owns home property and enters a long-term care facility, continue to exclude the property as long as a relative specified in policy is lawfully residing in the home. This is true regardless of whether the individual can reasonably be expected to return home.
2. If the individual owns home property and enters a long-term care facility, and there is no relative lawfully residing in the home, determine whether the individual can reasonably be expected to return home by using the criteria described in policy.
3. If the individual can reasonably be expected to return home, exclude the property as home property.

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P-4030.20 MA (continued)

4. Set a tickler for six months from the later of the following dates to reassess the individual's expectation to return home:
 - effective date of assistance; or
 - date of the individual's admission to the long-term care facility.See step 6.
5. If the individual cannot reasonably be expected to return home, consider the property to be non-home property. Stop here, and follow the procedures describing the treatment of non-home property contained in this chapter.
6. Review the case every six months, or more frequently, if necessary, to reassess the individual's expectation to return to the home.
7. Continue to exclude the home as home property as long as the individual can reasonably be expected to return home.
8. If the individual cannot reasonably be expected to return home, refer to the procedures describing the treatment of non-home property.

MA – Effect of Substantial Home Equity on Payments for Nursing Facility and Other Long-Term Care Services for Applications Made on or after 1/1/06

1. An individual with an equity interest in their home of less than or equal to \$750,000. See steps 1-8 above.
2. Consider an individual with an equity interest in their home of greater than \$750,000 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:
 - 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.

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P-4030.20 MA – Effect of Substantial Home Equity on Payments for Nursing Facility and Other Long-Term Care Services for Applications Made on or after 1/1/06 (continued)

3. Disregard equity limit in step 2 if:
 - a. the individual can demonstrate, to the satisfaction of the Department, that they cannot obtain a reverse mortgage, home equity loan or similar instrument; or
 - b. the individual is 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.
4. 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.
5. For individuals granted eligibility based on applications made on or after January 1, 2006, review the equity requirement at the time of their first redetermination.

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Program: AFDC
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Subject:
Non-Home Property

- P-4030.40
1. If an assistance unit owns non-home property, inform the unit of the Department's policy concerning non-home property, including the security mortgage and lien requirements.
 2. Refer the case to the Resources Unit, which:
 - computes the unit's equity in the home; and
 - makes sure the unit is making a good-faith effort to sell; and
 - obtains a security mortgage, or places a lien, if required.
 3. Do not authorize benefits on behalf of the unit unless the Resource Unit reports that the unit has complied with the procedural requirements listed in policy.
 4. If the unit is applying for or receiving benefits under the AABD or MAABD programs, including Qualified Medicare Beneficiary or a Specified Low Income Medicare Beneficiary, exclude the non-home property for as long as the unit is making a good-faith effort to sell the property.
 5. Under the AFDC and FMA programs, find out whether or not the assistance unit has already used its exclusion period for non-home property, as described in policy. If it has, consider the property as a counted asset. If not, see step 6.
 6. Exclude the assistance unit's equity in non-home property for the number of months described in policy.
 - Begin the exclusion period according to the conditions described in policy.
 - If the unit has previously used part of its exclusion for non-home property, exclude the property for the number of "free" months remaining to the unit.
 7. Remember that the assistance unit must be making a bona fide effort to sell the property.
 8. At the time assistance is authorized, inform the unit that the exclusion of non-home property will end as of the appropriate date.

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- P-4030.40 | 9. If an individual applying for or receiving MAABD leaves his or her home and enters a long-term care facility, consider the home to be non-home property if:
- there are no relatives as described in policy who are lawfully residing in the home; and
 - the individual cannot reasonably be expected to return to the home.
10. 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, consider the individual 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:
- 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.
11. Disregard equity limit in step 10 if:
- a. the individual can demonstrate, to the satisfaction of the Department, that they cannot obtain a reverse mortgage, home equity loan or similar instrument; or
 - b. the individual is 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.
12. 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.
13. Notify the individual in writing that a lien is being placed against all his or her real property if the individual is institutionalized, as described in step 9.

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P-4030.40 | 14. Refer to Section 1570 if:

- the individual contests the Department's decision to place a lien against the property; and
- the Department's decision regarding the lien is based on a finding that the individual cannot reasonably be expected to return home.

| 15. Notify the Resources Unit to remove the lien, if one has been placed against the property, if:

- the Fair Hearing decision upholds the individual; or
- the individual returns to the home.

| 16. Consider property described in step 9 to be home property under the conditions described in step 15.

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Subject :				
	Annuities			

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1. At the time of application, provide the applicant/recipient with form W-1540, "Annuities and Your Eligibility for Long-Term Care Medical Services" that explains the requirement to designate the Department of Social Services as the remainder beneficiary on any annuities.
 2. At the time of grant, issue form W-1542, "Notification of Requirement to Designate Beneficiary" to the recipient and a W-1541 "Notification of Right to Preferred Beneficiary Status" to the issuer of the annuity.
 3. Set a tickler for 30 days.
 4. Evaluate the status of the change in beneficiary no later than 30 days from the date that the form W-1542 is sent:
 - a. If the beneficiary has been changed, no additional action is necessary.
 - b. If the beneficiary has not been changed, take action to discontinue long-term care medical services.