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RESOURCES

GENERAL

**A. ROLE OF
RESOURCES**

Medicaid uses the value of a person's resources as a factor in determining eligibility. The general expectation is that individuals or couples whose resources exceed the applicable limit will use the excess to meet their needs before becoming eligible for Medicaid.

Not everything a person owns is a resource and not all resources count against the statutory limit. The Social Security Act and other federal statutes require the exclusion of certain types and amounts of resources. Any assets that are resources but not specifically excluded are "countable.

If countable resources do not exceed the applicable limit, they have no effect on Medicaid eligibility. If countable resources do exceed the limit, an individual or couple is not eligible.

In certain situations, federal statutes requires other people to share financial responsibility for an individual or couple. In those situations, Medicaid considers resources of the other person(s) along with resources actually belonging to the individual or couple.

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B. RESOURCE LIMITS

Federal law establishes a limit on the value of the resources an individual or couple can own and still be eligible for full Medicaid benefits. Countable resources must not exceed the limits specified below for the applicable time period.

	<u>INDIVIDUAL LIMIT</u>	<u>COUPLE LIMIT</u>
Prior to 01-01-85	\$1500	\$2250
Effective 01-01-85	\$1600	\$2400
Effective 01-01-86	\$1700	\$2550
Effective 01-01-87	\$1800	\$2700
Effective 01-01-88	\$1900	\$2850
Effective 01-01-89	\$2000	\$3000
Effective 07-01-99	\$3000	\$4000
Effective 07-01-00	\$4000	\$6000

and continuing

These increased limits apply to coverage groups subject to liberalized resource policies. Groups subject to SSI resource limits remain \$2000/\$3000.

There are Medicaid coverage groups for noninstitutional individuals (living at home) with a resource limit that is twice as high as the SSI-related resource limit cited above:

- Effective 07-01-89, the resource limit for Qualified Medicare Beneficiaries (QMB) is \$4000 for an individual and \$6000 for a couple; however, Medicaid pays only Medicare cost-sharing expenses for QMB eligibles.
- Effective 07-01-90, the resource limit for Qualified Working Disabled Individuals (QWDI) is \$4000 for an individual and \$6000 for a couple; however, Medicaid pays only Medicare Part A premiums QWDI eligibles.

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- Effective 01-01-93, the resource limit for Specified Low-Income Medicare Beneficiaries is \$4000 for an individual and \$6000 for a couple; however, Medicaid pays only Medicare Part B premiums for SLMB eligibles.

Liberalized Policy

- Effective 07-01-99, there will be no resource test for the following reduced coverage groups: SLMB, QMB, QI-1 and QI-2.

For Medicaid coverage groups considered "institutional" coverage groups, a different set of resource limits apply:

- Effective 10-01-89, Spousal Impoverishment resource rules (outlined in the Institutionalization Section) apply to married couples whereby one spouse is in a medical facility while the other spouse remains at home. The Community Spouse is allowed a higher resource limit set by federal law and subject to increase each year.
- Effective 04-01-93, Spousal Impoverishment resource rules apply to the Hospice Care Coverage group.
- Effective 01-01-94, Spousal Impoverishment resource rules apply to the HCBS Waiver for the Physically Handicapped.

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GENERAL

**C. SSI RESOURCE
POLICY VS
LIBERALIZED**

**RESOURCE
POLICY**

As a 1634 State, Mississippi is required to use SSI resource rules for all eligibility determinations. However, Section 303 (e) of the Medicare Catastrophic Coverage Act (P.L. 100-360)

added 1902(r)(2) to the Medicaid statute that allows a State to employ income and resource methods that are more liberal than those of the most closely related cash assistance program (SSI) to certain MAO coverage groups. Exempted from this provision are coverage groups considered "deemed" cash assistance groups. The Division of Medicaid requested and received approval from HCFA to liberalize certain resource policies effective October 1, 1989, for the following coverage groups:

- Long Term Care Coverage Groups
- Long Term Care "At-Home" Coverage Groups
- Poverty Level Aged & Disabled (PLAD's)
- Qualified Medicare Beneficiaries (QMB's)
- Specified Low Income Medicare Beneficiaries (SLMB's)
- Working Disabled (WD's)

Liberalized resource policies do not apply to:

- SSI Retro Determinations (unless the client is placed in another coverage group for the retro period)
- Former SSI Recipient Coverage Groups
- Disabled Children Living At-Home
- Qualified Working Disabled Individuals (QWDI)

**1. Liberalized
Resource
Policies**

The following briefly describes the liberalized resource policies currently in effect. The liberalizations are described in greater detail in later subsections which discuss each type of resource.

- Spenddown of resources within a month to become eligible in that month;

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GENERAL

- Excess resources earmarked for payment of private pay in a nursing facility in month(s) prior to Medicaid eligibility are not considered countable resources.
- Income that accumulates pending Medicaid approval that results in excess resources can be excluded if this income is obligated for Medicaid Income purposes
- Certain property and types of ownership are totally excluded, regardless of value, for home property, life estate and remainder interests in any property, 16th Section land leaseholds, mineral rights or timber rights that are not under production and housing on government owned land
- Income Producing Property if it produces at least 6% of the equity value of the property
- Promissory Notes, Loans and Property agreements are excluded if the note produces a net annual return of 6% of the principal balance
- Up to two automobiles can be excluded
- Household goods are totally excluded and personal property up to \$5000 in equity value is excluded
- Life insurance is excluded if the face value of all life insurance policies on any one individual is \$10,000 or less
- Burial spaces for family members are excluded as resources, and
- Burial funds set aside in a revocable arrangement are subject to a \$3,000 limit. Effective 04/01/01, the limit is \$6,000.

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2. SSI Resource Policy

SSI policy, as it relates to the topics outlined above, specifies different exclusion limits or different ways to determine countable resources. The differences in the way each policy applies is outlined in the discussion of each resource type. If the resource policy has not been liberalized, then SSI policy is applicable, unless a subsequently issued federal statute or Medicaid regulation supersedes the SSI policy.

RESOURCES

GENERAL

D. VALUATION OF RESOURCES

For SSI purposes, the value of a resource is the amount of an individual's or couple's equity in it. Equity value is determined as follows:

1. Current Market Value

The current market value (CMV) of a resource is the going price for which it can reasonably be expected to sell on the open market in the particular geographic area involved.

If a resource sells for more than the CMV assigned to it, the CMV is equal to the sale price.

2. Equity Value

Equity value (EV) is the CMV of a resource minus any encumbrance on it.

An encumbrance is a legally binding debt against a specific property. Such a debt reduces the value of the encumbered property but does not have to prevent the property owner from transferring ownership (selling) to a third party. However, if the owner of encumbered property does sell it, the creditor will nearly always require debt satisfaction from the proceeds of sale.

RESOURCES

GENERAL

**E. OWNERSHIP
INTERESTS**

Ownership interests in property, whether real or personal, can occur in various types and forms. Since the type and form of ownership may affect the value of property and even its status as a resource, they are significant in determining resources eligibility.

**1. Types of
Ownership**

- a. Sole Ownership of (real or personal property means that only one person may sell, transfer or otherwise dispose of the property. However, sole ownership may be subject to conditions imposed by others as, for example, sole ownership of a remainder interest in property.
- b. Shared Ownership of (real or personal) property means that two or more people own it concurrently.
- c. Fee Simple Ownership, which relates only to real property, is completely free of conditions imposed by others.

Fee simple ownership means absolute and unqualified legal title to real property. The owner(s) has unconditional power of disposition of the property during his or her lifetime. Upon his or her death, property held in fee simple can always pass to the owner's heirs. Fee simple ownership may exist with respect to property owned jointly or solely.

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GENERAL

d. Less Than Fee Simple Ownership

- Life Estate - A life estate confers upon one or more persons (grantees) certain rights in a property for his/her/their lifetimes or the life of some other person. A life estate is a form of legal ownership and usually created through a deed or will or by operation of law. See B. below.
- Equitable Ownership - An equitable ownership interest is a form of ownership that exists without legal title to property. It can exist despite another party's having legal title (or no one's having it). Ownership in unprobated estates or trust property are examples of this type of ownership.

e. Property Rights Without Ownership

- A leasehold conveys a time-limited control of property but not ownership of it, such as 16th Section land leases.
- An incorporeal interest in property is a right to use the property but without any right to possess it or sell the property. These rights encompass mineral and timber rights and easements.

All of these types of ownership are discussed in greater detail in the "Types of Resources" policy subsection.

RESOURCES

GENERAL

2. General Rule

Absent evidence to the contrary, each owner of property owns only his/her share of the ownership interest vested in the individual. The total value of shared property is divided among all of the owners in direct proportion to the ownership share held by each. The exception to this general rule is for jointly owned bank accounts. For a joint checking or savings account or a jointly owned time deposit, all of the funds in the account belong to the Medicaid client.. Jointly owned bank accounts are held in equal shares if there is more than one client listed as a joint owner.

RESOURCES

IDENTIFYING RESOURCES

- A. RESOURCES VS. INCOME**
- It is important to distinguish between resources and income to know which rules to use for any given month. An item is not subject to both income and resources counting rules in the same month.
- 1. Income-Counting Rules**

Items received in case or in-kind during a month are evaluated under the income-counting rules.
 - 2. Resource-Counting Rules**

Items retained as of the first moment of the month following receipt are subject to evaluation under resource counting rules.
 - 3. Distinguishing Resources From Income**

In order to distinguish resources from income, a distinction must be made as to what has occurred, determine what was the monetary gain. The monetary gain would be considered a resource if it:

 - was an increase in value of an existing resource,
 - was for the receipt or replacement of a resource,
 - was from the conversion or sale of a resource,
 - was cash or in-kind item for the replacement or repair of an excluded resource which is lost, damaged, or stolen . Additional policy on this subject is discussed in detail later in this subsection.

RESOURCES

IDENTIFYING RESOURCES

**B. FACTORS THAT
MAKE PROPERTY
A RESOURCE**

Property of any kind, including cash, cannot be a resource in a month unless it meets all 3 criteria outlined below. The criteria outlined below is subject to change so a "nonresource" can become a resource and vice versa; i.e., a key factor can materialize or go out of existence.

**1. Ownership
Interest**

An individual must have some form of ownership interest in property in order for the property to be considered a resource. The fact that an individual has access to property, or has a legal right to use it, does not make it a resource if there is no ownership interest (such as homestead rights).

**2. Legal Right
to Access
(Spend or
Convert)
Property**

An individual must have a legal right to access property. Despite having an ownership interest, property cannot be a resource if the owner lacks the legal ability to access funds for spending or to convert noncash property into cash.

The fact that an owner does not have physical possession of property does not mean it is not his/her resource, provided the owner still has the legal ability to spend it or convert it to cash.

An individual has free access to, and unrestricted use of, property even when he/she can take those actions only through an agent; e.g., a representative payee, conservator, etc.

**3. Legal Ability
to Use For
Personal
Support and
Maintenance**

Even with ownership interest and legal ability to access property, a legal restriction against the property's use for the owner's own support and maintenance means the property is not his/her resource.

RESOURCES

IDENTIFYING RESOURCES

**C. CASH & IN-KIND
ITEMS RECEIVED
FOR THE REPAIR/
REPLACEMENT
OF LOST,
DAMAGED OR
STOLEN
EXCLUDED
RESOURCES**

Cash and in-kind receipts from any source for the replacement or repair of lost, damaged, or stolen excluded resources are themselves not treated as resources for 9 months from the date of their receipt.

For cash receipts, the initial 9-month period can be extended for a reasonable period up to an additional 9 months if the individual shows good cause why repair or replacement was not possible during the first 9 months.

Good cause is present if circumstances beyond the individual's control:

- prevent repair or replacement of the lost, damaged, or stolen property; or
- keep the individual from contracting for such repair or replacement.

An individual cannot qualify for an extension of the initial 9 month period unless he/she intends to use the funds for their designated purpose, i.e., repair or replacement of excluded resources. The good cause extension will terminate as of the date of any change of intent. The funds then become a resource the following month.

Effective February 15, 1996, for individuals who incurred damage to or loss of excluded resources as a result of a Presidentially-Declared major disaster, the 18-month period described above can be extended for up to an additional 12 months if evidence of good cause is presented.

**1. Source of
Funds**

There are no restrictions on where cash and/or in-kind items come from for purposes of this policy (e.g., it may come from an insurance company, a Federal or State agency, a public or private organization, or an individual).

RESOURCES

IDENTIFYING RESOURCES

However, funds received from the following sources are to be excluded in accordance with income/resource policy regarding these payments.

- the Disaster Relief and Emergency Assistance Act;
- some other Federal statute because of a presidentially-declared major disaster;
- comparable assistance received from a State or local government; or
- a disaster assistance organization.

2. Interest on Funds Not Treated as Resources

Interest earned by funds not treated as resources under this provision is not treated as income and resources for the period during which the funds themselves are not considered resources.

3. Funds for Temporary Housing

This policy applies to funds received for the purchase of temporary housing.

4. Personal Injury Payments

This policy does not apply to funds received on account of personal injury.

5. Evidence

Make sure the evidence shows the source, value, date(s), and intended purpose of the items received, including whether any cash received is for a purpose other than the replacement or repair of the lost, damaged, or stolen (and excluded) resource.

Obtain a copy of any evidence the individual has.

Of the individual cannot provide evidence that suffices for a determination, obtain the necessary information from the source of the payment(s). Do so by telephone, if possible, recording the facts on a Record of Contact.

RESOURCES

IDENTIFYING RESOURCES

**D. IDENTIFYING
EXCLUDED FUNDS
COMMINGLED
WITH NON-
EXCLUDED
FUNDS**

Otherwise excludable funds must be identifiable in order to be excluded.

Identifiability does not require that excluded funds be kept physically apart from other funds (e.g., in a separate bank account).

Always assume, when withdrawals are made from an account with commingled funds in it, that nonexcluded funds are withdrawn first, leaving as much of the excluded funds in the account as possible.

If excluded funds are withdrawn, the excluded funds left in the account can be added to only by deposits of subsequently received funds that are excluded under the same provision.

**1. One-Time
Receipt And
Deposit of
Excluded Funds**

An individual deposits a \$800 retroactive RSDI check in a checking account. The account already contains \$300 in nonexcluded funds.

- Of the new 1,100 balance, \$800 is excluded as retroactive RSDI excluded.
- The individual withdraws \$300. The remaining \$800 balance is still excluded.
- The individual withdraws another \$300, leaving a balance of \$500. All \$500 is excluded.
- The individual deposits \$500, creating a new balance of \$1,000. Only \$500 of the new balance is excluded.

RESOURCES

IDENTIFYING RESOURCES

**2. Periodic
Receipt and
Deposit of
Excluded Funds**

An individual deposits \$200 in excluded funds in a non-interest bearing checking account that already contains \$300 in non-excluded funds.

- The individual withdraws \$400. The remaining \$100 is excluded.
- The individual then deposits \$100 in nonexcluded funds. Of the resulting \$200 balance, \$100 is excluded.
- The individual next deposits \$100 in excludable funds. Of the new \$300 balance, \$200 is excluded.

RESOURCES

IDENTIFYING RESOURCES

- E. UNIFORM GIFTS TO MINORS ACT**
- Most States have adopted the Uniform Gifts to Minors Act (UGMA) which permits making to minors gifts which are free of tax burdens. The UGMA is sometimes called the Uniform Transfers to the Minors Act.
- Under UGMA legislation:
- an individual (donor) makes an irrevocable gift of money or other property to a minor (the donee)
 - the gift, plus any earnings it generates, is under the control of a custodian until the donee reaches the age of majority established by State law
 - the custodian has discretion to provide to the minor or spend for the minor's support, maintenance, benefit, or education as much of the assets as he/she deems equitable
 - the donee automatically receives control of the assets upon attainment of majority (age 21 in Mississippi).
- 1. Creation and Transfer of "Custodial" Property**
- According to Mississippi State Law, gifts that are valid under the Mississippi Uniform Transfer to Minors Act must reflect that the gift is being made under this Act. This means the gift(s) (annuity, C.D., property, life insurance, etc.) must be assigned in writing and substantially worded to show the custodian's name, minor's name and the designation that the gift is authorized under the Uniform Transfer to Minors Act (in Mississippi, Mississippi Code Ann. Section 91-20-19).
- 2. Donor Access**
- Since a custodian of UGMA assets cannot legally use any of the funds for his or her own personal benefit, they are not his or her resources. Similarly, once there is a gift under UGMA, additions to or earnings on the principal are not income to the custodian who has no right to use them for his/her own support and maintenance. (Additions to the principal may be income to the donor prior to becoming part of the UGMA principal). For example, if the donor is a deemor who receives rental income and adds it to a child's UGMA funds, consider the rental income as income for deeming purposes.

RESOURCES

IDENTIFYING RESOURCES

Gifts made under the UGMA may involve a countable transfer of resources to the donor, if applicable.

3. While Donee Remains A Minor

UGMA property, including any additions or earnings are not income to the minor;

The custodian's UGMA disbursements to the minor are income to the minor;

The custodian's UGMA disbursements on behalf of the minor may be income to the latter if used to make certain third party vendor payments.

4. When Donee Reaches Age 21

All UGMA property becomes available to the donee and subject to evaluation as income in the month of attainment of age 21 and a resource thereafter.

RESOURCES

TYPES OF RESOURCES

**A. CASH/
FINANCIAL
ACCOUNTS**

Cash consists of money which is on hand in the form of currency or coin. Foreign currency or coins are cash to the that they can be exchanged for U.S. currency. However, coin collections are not considered to be cash even though they are a resource. The value of coin collections is based on collector's value and is determined by a knowledgeable source. Refer to the discussion of Personal Property for the treatment of hobby collection.

While an individual's allegation of actual cash on hand is accepted without verification, he/she must be made aware that cash on hand includes amounts he has on his person, at home, or being held elsewhere.

**1. Checking/
Savings
Accounts**

Funds maintained in checking and savings accounts are usually payable on demand. When an individual has unrestricted access to an account, all of the funds in the account are considered as a resource to the owner of the account regardless of who deposited the funds.

Savings accounts pay interest unless the financial institution has a minimum balance requirement and the account does not meet this requirement.

NOW (Negotiable Order of Withdrawal) accounts are interest-bearing checking accounts. Super NOW accounts are money market checking accounts. They have higher rates than NOW accounts.

RESOURCES

TYPES OF RESOURCES

Money Market Deposit Accounts allow banks to compete with mutual fund money markets. They are interest-bearing checking accounts.

a. Development/Verification of Bank Accounts

Because of the high potential for error, it is important to fully investigate all of a client's allegations about bank accounts. Unless eligibility is being denied for another reason, a worker must search for leads into the possible existence of bank accounts. Skillful interviewing may produce leads which the interviewer can use to detect undisclosed resources. The interviewing process should include the following explanations to the applicant or his/her representative.

- (1) Information about all savings, checking or time deposits which show the client's name or the name of someone whose resources must be deemed to the client must be furnished regardless of the amount on deposit or in what capacity the name of the client or deemor appears on the account.
- (2) The client or representative is responsible for providing the needed information regarding bank accounts and this information is required even if the client does not consider any of the funds in the account to be his/hers.

Request the client's own records as verification of activity on the account and to establish account balances. If the client's records are unavailable, complete DOM-330 (Bank Clearance Form) and obtain an authorizing signature so the bank can be contacted.

Do not consider as a resource any amounts counted as income for the same month.

RESOURCES

TYPES OF RESOURCES

b. Special Development - Applicants

In the event an applicant fails to claim ownership of any type of bank account, either currently or within the previous two years, or if only one type of account is claimed, a special development is necessary to obtain additional information concerning the applicant's banking activities and determine whether there are undisclosed accounts through direct contact with financial institutions.

The first step in the special development is to question the applicant and/or representative concerning the applicant's past and present business activities.

1. Where does the applicant cash his/her checks?
2. Where does the applicant buy money orders?
3. Where has the applicant borrowed money in the past 2 years?
4. Where does the applicant pay his/her home mortgage or rental payment?
5. Where are the applicant's checks deposited?
6. Where does the applicant have a special account, such as a Christmas Club?
7. Where has the applicant set aside money for a special purpose or for an emergency?
8. Does applicant's name appear on any account which he/she considers to be someone else's?

If a financial institution is identified through questioning, verify the account by the client's records or DOM-330.

RESOURCES

TYPES OF RESOURCES

c. Banking Activity Handled Through Accounts Not Owned By Client

In cases where a client's funds are deposited and/or held in an account that does not belong to the client, i.e., the client's name does not appear on the account, a determination must be made as to whether the client has access to the funds. In so doing, it is necessary to obtain a statement from the account holder(s) regarding ownership of the funds on deposit. If the funds on deposit, or a portion thereof, are acknowledged as belonging to the client, the account is treated as a countable resource to the extent the funds belong to the client.

If the funds are not acknowledged as belonging to the client yet evidence indicates that funds belonging to the client are deposited and retained in the account, the possibility of a transfer of resources exists.

Note: Entitlement income deposited into an account which is not owned by a client does not alter the fact that the income belongs to the client and is used to determine eligibility and Medicaid Income (if applicable). Funds belonging to the client (including non-entitlement income) that are deposited into another account and not accessible to the client are subject to the transfer penalty.

**2. Joint
Checking/
Savings
Accounts**

When only one holder of a joint account is a client who has unrestricted access to the funds in the account, all of the of the funds in the account are presumed to be the client's. This presumption is made regardless of the source of the funds. If more than one account holder is a client, the joint account is divided equally among the eligible account holders.

RESOURCES

TYPES OF RESOURCES

If one or more account holders is a deemor (none of the account holders is a client), assume all of the funds in the account belong to the deemor(s) (equal shares if more than one deemor is on the account).

A joint account holder has the right to provide evidence rebutting the ownership assumption of a joint checking/savings account if he/she disagrees with it.

a. **Rebuttal Statement**

If an individual wishes to rebut the applicable ownership assumption, document the following:

- who owns the funds;
- why there is a joint account;
- who has made deposits to and withdrawals from the account; and
- how withdrawals have been spent.

b. **Required Evidence**

In addition, inform the individual that he or she must submit the following evidence:

- a corroborating statement from each other account holder (if the only other account holder is incompetent or a minor, have the individual submit a corroborating statement from anyone aware of the circumstances surrounding establishment of the account);
- account records showing deposits, withdrawals and interest in the months for which ownership is at issue;

RESOURCES

TYPES OF RESOURCES

- if the individual owns none of the funds, evidence showing that he or she can no longer withdraw funds from the account;
- if the individual owns only a portion of the funds, evidence showing removal from the account of such funds, or removal of the funds owned by other account holder(s), and redesignation of the account.

c. **Determination**

Any funds that the evidence establishes were owned by the other account holder(s) , and that the individual can no longer withdraw from the account, were not and are not the individual's resources. However, such funds can be deemed available to the individual if the account holder to whom they belong is a deemor. Document the determination in file.

3. Time Deposits

A time deposit is a contract between an individual and a financial institution whereby the individual agrees to leave funds on deposit for a specified period (six months, two years, five years, etc.) and the financial institution agrees to pay interest at a specified rate for that period. Certificates of Deposit (C.D.s) and savings certificates are common forms of time deposits.

Withdrawal of a time deposit before the specified period expires incurs a penalty, which usually is imposed against the principal. This penalty does not prevent the time deposit from being a resource, but does reduce its value as a resource.

On rare occasions, the terms of a time deposit will prohibit early withdrawal altogether.

RESOURCES

TYPES OF RESOURCES

The assumptions regarding ownership of bank accounts apply to time deposits.

a. **Principal**

If the owner of a time deposit cannot under any circumstances withdraw it before it matures, it is not a resource. It becomes a resource (not income) on the date it matures, and may affect countable resources for the following month.

b. **Interest**

If the owner has no access to the interest before the deposit matures, accrued interest is not a resource and is income in the month the deposit matures (not before then).

c. **Resource Value**

The resource value of a time deposit at any given time is the amount the owner would receive upon withdrawing it at that time, excluding interest paid that month. Generally, this is:

- the amount originally deposited;
- plus accrued interest for all but the current month;
- minus any penalty specified on the certificate for early withdrawal.

RESOURCES

TYPES OF RESOURCES

4. **Patient Accounts** When a patient enters a nursing facility, it is probable that the patient will establish an account with the facility similar to a checking and/or savings account whereby the facility "holds" funds belonging to the patient. These accounts are referred to as patient accounts, accounts receivable or credit accounts. These accounts are treated in the same manner as a checking and savings account when the patient is a Medicaid client.
5. **Retirement Funds** Retirement funds include annuities or work related plans providing income when employment ends, such as a pension, disability or retirement plan administered by an employer or union. It also includes funds held in individual retirement accounts (IRA's) or plans for self-employed individuals, such as Keogh plans.

Note: The terms IRA and Keogh accounts refer only to retirement plans and do not identify the underlying investment vehicle, which can be a bank account, CD, mutual fund, etc. Develop IRA's and Keogh accounts in accordance with the policy that deals with the underlying investment vehicle.

If an applicant owns a retirement fund and is eligible for retirement benefits, the applicant **must** apply for those benefits under the utilization of other benefits provision. Retirement benefits are payments made to an individual at some regular interval (such as monthly) which result from entitlement to a retirement fund. The payments must be of uniform rate, principal and interest. These payments are counted as unearned income.

If an individual owns a retirement fund and is not eligible for periodic payments but has the option of withdrawing the funds, the retirement fund is counted as a resource the month the funds become available for withdrawal. The value of a retirement fund is the amount of money an individual can currently withdraw from the account. If there is a penalty assessed for early withdrawal, the value is the amount available after any penalties are deducted. If taxes are owed on the funds, any taxes are due are not deducted in determining the value of the retirement fund.

RESOURCES

TYPES OF RESOURCES

If an individual owns a retirement fund, as defined above, and is eligible for or is already receiving periodic payments from the funds, the value of the funds is not a resource.

If an individual must terminate employment in order to file for a retirement fund, the funds is not a resource.

If a claim for periodic payment is denied, and the client can withdraw the funds from his/her retirement fund, the value of the retirement fund is counted as a resource effective the month after the month of the denial notice for periodic payments.

**6. Contents
of a Safe
Deposit
Box**

Although not a financial account, safe deposit boxes are located at financial institutions and contents of a safe deposit box must be verified if the contents belong to an applicant or recipient. The applicant or recipient is responsible for listing the contents and a bank official's witness in writing serves as sufficient documentation of the contents. The treatment of the contents is contingent upon the type of item stored in the safe deposit box.

If a client has possessions stored in a safe deposit box belonging to another person, the worker must determine whether the client has access to the safe deposit box. A statement from the owner of the safe deposit box is required to determine access of the client. The worker must request that the owner state whether or not the client would be allowed access to the client's belongings in the safe deposit box. If so, handle as outlined above.

RESOURCES

TYPES OF RESOURCES

**B. REAL
PROPERTY
OWNERSHIP**

Real property is land, including buildings or immovable objects attached permanently to the land.

Real property ownership can consist of an interest in the title or a right to the use of the property without title to the property. Since the types of real property ownership may influence the individual's interest and his right of disposition, it is necessary to determine and document the type of ownership. The various types of ownership are discussed below.

**1. Sole vs.
Shared
Ownership**

Sole ownership of real property means that only one person may sell, transfer or otherwise dispose of the property. However, sole ownership may be subject to conditions imposed by others as, for example, sole ownership of a remainder interest in property.

Shared ownership of real property means that two or more people own it concurrently. The different types of shared ownership are:

a. Tenancy-In-Common

In tenancy-in-common, two or more persons each has an undivided fractional interest in the whole property for the duration of the tenancy. These interests are not necessarily equal; e.g., two joint tenants do not necessarily each own half of the property. One owner may sell, transfer or otherwise dispose of his or her share of the property without permission of the other owner(s) but cannot take these actions with respect to the entire property.

When a tenant-in-common dies, the surviving tenant(s) has no automatic survivorship rights to the deceased's ownership interest in the property. Upon a tenant's death, the deceased's interest passes to his or her estate or heirs.

RESOURCES

TYPES OF RESOURCES

For example: Don, Charles, and Fred Evans own property as tenants-in-common. Charles and Fred each owns an undivided one-fourth interest in the property while Don owns the remaining one-half interest. If Don Evans were to sell his half interest to Stanley Long, Mr. Long would become a tenant-in-common with Charles and Fred Evans. If Mr. Long were then to die so that his property passed to his four children, each of them would own a one-eighth interest as tenants-in-common with Charles and Fred who would each continue to own a one-fourth interest.

b. Joint Tenancy

In joint tenancy, each of two or more persons has one and the same undivided ownership interest and possession of the whole property for the duration of the tenancy. In effect, each owner owns all of the property.

Upon the death of one of only two joint tenants, the survivor becomes sole owner. On the death of one of three or more joint tenants, the survivors become joint tenants of the entire interest.

c. Tenancy By the Entirety

A tenancy by the entirety can exist only between the members of a married couple. The wife and husband as a unit own the entire property which can be sold only with the consent of both parties. However, if a marriage has been legally dissolved, the former spouses become tenants-in-common and one can sell his or her share without the consent of the other.

Upon the death of one tenant by the entirety, the survivor takes the whole.

RESOURCES

TYPES OF RESOURCES

Absent evidence to the contrary, each owner of shared property owns only his/her fractional interest in the property.

Divide the total value of the property among all the owners in direct proportion to the ownership share held by each.

**2. Ownership in
Fee Simple or
Less Than
Fee Simple**

Fee simple ownership means absolute and unqualified legal title to real property. The owner(s) has unconditional power of disposition of the property during his or her lifetime. Upon his or her death, property held in fee simple can always pass to the owner's heirs. Fee simple ownership may exist with respect to property owned jointly or solely.

Less than fee simple ownership in property involves the following types of property ownership:

a. Life Estate

A life estate conveys upon an individual or individuals for his lifetime certain rights in property. A life estate can be created by deed, will, or division of property. Its duration is measured by the lifetime of the tenant or of another person or by the occurrence of some specific event, such as remarriage of the tenant. The owner of a life estate has the right of possession, the right to use the property, the right to obtain profits from the property and the right to sell his/her life estate interest unless the contract establishing the life estate restrains one or more of the life estate holder's rights. The owner of a life estate does not have title to the property or the right to sell the property.

RESOURCES

TYPES OF RESOURCES

b. Remainder Interest

A life estate instrument often conveys property to one person for life (life estate owner) and to one or more (remaindermen) upon the expiration of the life estate.

A remainderman has an ownership interest in the physical property but without the right to possess and use the property until termination of the life estate.

Unless restricted by the instrument establishing the remainder interest, the remainderman is generally free to sell his/her interest in the physical property even before the life estate interest expires. In such cases, the market value of the remainder interest is likely to be reduced since such a sale is subject to the life estate interest.

c. Ownership By Will or Descent

An individual may have ownership interest in an unprobated estate acquired through a will or through the death of a relative who died intestate (without a will). The heir(s) may be sole owner or joint or common owners, etc.

- (1) Heirs by will have ownership and control of the property or their joint or common share; however, if the will has not been filed with the proper court nor probated there is a question as to whether the will is legally binding. Legally, wills are required to be filed for probate; however, there is no time limit placed on filing. Absent evidence to the contrary, assume the client owns the property in proportion whereby one has the right to the will's directives.

RESOURCES

TYPES OF RESOURCES

(2) Heirs by descent (intestate estates) acquire ownership interest in property by virtue of the heirs' relationship to the deceased.

- Interstate property of a deceased person with a spouse and children is shared equally by the surviving spouse and children. Grandchildren become involved in ownership interest in intestate property only when their parent, who was a child of the original owner, is deceased. The grandchildren's interest is only in the share that their deceased parent held in interest.
- Intestate property of an individual who had no spouse or children at the time of death descends equally to his parents and brothers and sisters. If the deceased's parents are also deceased, the property descends to his brothers or sisters. Nieces and nephews become involved only if their parent, who was brother or sister to the deceased, is deceased. Their ownership interest is only in the share that their deceased parent held an interest.

Absent evidence to the contrary, assume an heir inherited property based on their laws of descent.

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d. Other Rights to the Use of Real Property

(1) Homestead Rights

Under State law a surviving spouse (widow or widower) is entitled to the homestead on the real property used as the home at the time of the death of the spouse and to receive income from it for his lifetime. This is not a life estate interest in the property, but is quite similar. This situation occurs when spouses jointly or commonly own property without a right of survivorship clause in the property. The surviving spouse has homestead rights to the portion of the property which belonged to the deceased spouse. The surviving spouse would also own his/her own interest in the property. A homestead right does not have value and cannot be sold.

(2) Mineral Rights, Timber Rights, Easements, Leaseholds

- Mineral Rights - A mineral right is an ownership interest in certain natural resources such as coal, sulphur, petroleum, sand, natural gas, etc., which are usually obtained from the ground.
- Timber Rights - Timber rights permit an individual to cut and remove freestanding trees from property owned by another as designated by contract with the person holding title to the land on which the timber stands.

RESOURCES

TYPES OF RESOURCES

- Easements - An easement is a property right whereby one has the right to use of land of another person for a special purpose.
- Leasehold - A leasehold does not designate rights of ownership, but conveys to an individual the control of property for a definite period or duration, at the owner's will and usually for an agreed rent.

Note: Mineral rights, timber rights, easements, and leaseholds may all be countable resources if they have a cash value available to the individual upon disposition. In some cases, none of the above are saleable and therefore would not be a countable resource. For example, an individual may own an easement to pass through another's property to get to his own property. There would be little or no market for the sale of this property right. Also, a timber right to land that has been stripped of its trees would have little market value.

(3) 16th Section Land

16th section land or land acquired in lieu of 16th section land is land controlled by the State Board of Education under the general supervision of the State Land Commissioner. Generally each county Board of Supervisors has the authority to approve or re-new leases on the land.

RESOURCES

TYPES OF RESOURCES

An individual who leases such land does not own the property and has limited rights. The value of the lease decreases as the expiration date nears. Lease rights to 16th section or lieu lands are negotiable. These rights may be sold to another person provided the governing authority which approves such leases is agreeable to such a sale.

**3. Evidence of
Real Property
Ownership**

Property ownership must be verified for the case record. The following official records are utilized in establishing real property ownership:

- Current deed. If the client does not have a copy of the current deed, a copy must be obtained from records in the Chancery Clerk's Office in the county where the property is located.

Note: Any discrepancies which exist between a deed and a tax receipt must be resolved in order to determine the true ownership situation. Deeds must be recorded in the appropriate county office to be considered a true deed documenting ownership.

- Tax Assessment notice or most recent tax receipt. Tax records and receipts describe the property. Phrases such as "Et al" or "Et ux" beside the name on a tax receipt indicates joint or common ownership of some form.
- Current mortgage statement. Mortgages are recorded in the Chancery Clerk's Office; however, the name of the mortgage holder must be known.

RESOURCES

TYPES OF RESOURCES

- Report of title search.
- Wills, court records, or relationship documents which show rights of an heir to the property after death of the former owner.

Obtain a copy of the official record used to verify ownership for the case record. When ownership or ownership interest is verified, proceed with determining the current market value of the client's ownership interest.

4. Determining

**Current
Market
Value (CMV)
of Real
Property**

Real property which cannot be excluded must have its Current

Market Value (CMV) determined. The CMV is the amount for which the property can be expected to sell on the open market in the geographic area involved and under existing economic conditions. The CMV is established based upon either the most recent property tax assessment, or if the tax assessment method is not applicable as outlined below, upon an estimate of probable market value obtained from a knowledgeable source.

A CMV is assigned to real property using one of the methods listed below in order to obtain a "base" CMV. If property is disposed of for less than the CMV assigned to it, a possible transfer of resources exists. If property is sold on the open market for more than the "base" CMV, the CMV equals the sale price and not the "base" CMV.

RESOURCES

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a. Tax Assessment Notice

Obtain from the individual a copy of the most recently issued tax assessment notice for the property. Base the CMV on this assessment notice unless:

- the notice is more than a year old based on its date of issue (unless it specifies that it covers more than one year and it is no older than the number of years it covers);
- the notice pertains to a special purpose assessment (unless it also provides a fair market value assessment, which can be used);
- the assessment is under appeal;
- the assessment uses a fixed rate per acre method based on land usage, such as agricultural or industrial. (This does not refer to assessments where conditions dictate similar taxes for similar types of land, such as desert, swamp, landfills, etc.); or
- the notice provides either no assessment ratio or only a range, e.g., between 25 and 50 percent (unless the individual would be ineligible using even the top of the range).

A tax assessed value divided by the county tax assessment ratio is the CMV based on the assessment.

For example, if the tax assessed value is \$500 and the assessment ratio is 15%, the CMV is \$3333 based on the assessment.

RESOURCES

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Note: Property in Mississippi is assessed at 10% for home property and 15% for non-home property. Class 1 property, as reflected on the tax receipt, is home property assessed at 10%. Class 2 property is non-home property assessed at 15%. (Note: Class 2 property may adjoin home property and therefore be included in the definition of home property.)

b. Knowledgeable Source Estimate

If the tax assessment method cannot be used, have the client obtain an estimate of the property's CMV from a knowledgeable source. Knowledgeable sources include, but are not limited to:

- real estate brokers;
- the local office of the Farmer's Home Administration (for rural land);
- the local office of the Agricultural Stabilization and Conservation Service (for rural land);
- banks, savings and loan associations, mortgage companies, and similar lending institutions;
- an official of the local property tax jurisdiction (be sure to obtain the individual's estimate rather than the office's assessment);
- the County Agricultural Extension Service; and
- the Bureau of Land Management, the U. S. Geological Survey or any mining company that holds leases (such as for mineral rights CMV).

RESOURCES

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The estimate must show, in addition to the estimate itself:

- the name of the person providing the estimate;
- the name, address and telephone number of the business or agency for whom the person providing the estimate works;
- the basis for the estimate, to include such things as a description of the property and its condition and, where appropriate, the value of similar property in the same area; and
- the period to which the estimate applies (which should correspond to the period for which it is being requested).

If the client is incapable of obtaining an estimate, lend assistance. If obtaining an estimate by phone, be sure to record all pertinent facts in file.

If the validity of an estimate furnished by the individual is in doubt, obtain an estimate from an additional knowledgeable source.

c. CMV Rebuttals

If the individual disagrees with CMV evidence that he or she submits or that the worker obtains, and the difference is material to eligibility, prepare a rebuttal determination. The determination must take into account:

- **all the evidence previously in file** (the individual's original allegation, any tax assessment notices, and any estimates from knowledgeable sources);

RESOURCES

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- any **additional** evidence the individual wishes to submit, including evidence that the individual's ownership interest in the property is worth less than the total value of the property divided by the number of owners; and
- any other facts the Regional Office has about the property or about market conditions where it is located.

The rebuttal determination must be supported by a preponderance of the evidence (which may require one or more additional estimates from knowledgeable sources).

5. Determining CMV of Life Estates & Remainder Interests

Determine the value of life estate interests as follows:

Determine Current Market Value as described in "Determining Current Market Value of Real Property" for the property as a whole.

Note: It is possible to own a life estate in a structure (house) only and not the surrounding land. If this is the case, determine CMV for only the structure or for whatever the life estate tenant has the right to use as established in a deed or will.

Effective 2-8-07, the purchase of a life estate in another individual's home is a countable transfer unless the purchaser resides in the home for at least one year from date of the purchase.

- Determine the individual's age as of his/her last birthday and find the age on the Life Estate and Remainder Interest Table located in the Appendix.
- Multiply the figure in the Life Estate column for the individual's age by the CMV of the property to determine the value of the life estate.

RESOURCES

TYPES OF RESOURCES

If there is a joint ownership of a life estate, first determine the CMV in the entire property. Divide the CMV of the entire piece of property by the number of joint owners to determine the individual's share. Determine the individual's life estate value as outlined above.

When one joint owner of a life estate dies, the surviving owners increase their interest. Life estates do not descend. For example, if a couple owns a life estate and one spouse dies, the remaining spouse is the sole owner of the life estate.

Determine the value of a remainder interest in the same manner used to compute a life estate interest except refer to the "Remainder" column of the Life Estate and Remainder Interest Table located in the Appendix to obtain the figure to use for multiplying by the CMV. Use the life estate tenants age when referring to the "Remainder" column.

**6. Determining
CMV of Other
Types of
Ownership**

For other types of property ownership, such as mineral rights or timber rights, determine the CMV through a knowledgeable source. If the property right is under production, it is necessary to obtain a copy of the land lease to determine if the lease is transferable in order to determine if the property right is a countable resource.

**7. Treatment of
Real Property
As A Resource**

Absent evidence to the contrary, real property is presumed to be disposable at the CMV established. The portion of the resource that is "countable" as a resource is determined by:

- Establishing client's ownership interest, then
- Obtaining CMV, then
- Determine the client's Equity Value (EV).

RESOURCES

TYPES OF RESOURCES

The client's EV in real property is the amount "countable" as a resource unless:

- The property is excluded under Real Property Exclusion; and/or
- The property is excluded under "liberalized" resource policy.

**8. Liberalized
Real Property
Exclusions**

Under "liberalized" resource policy applicable to:

- LTC coverage groups,
- LTC "At-Home" coverage groups (Hospice & HCBS Handicapped Groups),
- PLAD, SLMB and QMB coverage groups, the following types of real property ownerships are excluded regardless of value:
 - Life Estate and Remainder interests in any property or properties.
 - Undivided Heir interests in any property
 - 16th Section Land Leases
 - Mineral Rights, Timber Rights or Leaseholds that are not under production. If these types of ownerships are income-producing, test the net annual return against the 6% income-producing property rule.

RESOURCES

TYPES OF RESOURCES

**C. REAL
PROPERTY-
HOME/
NON-HOME**

Real property is generally classified as either home property or non-home property. There are exclusions that apply only to property classified as "home" property and other real property exclusions that can apply to either home and/or non-home property.

**1. Home
Property**

An individual's home, regardless of value, is an excluded resource.

Note: For applications filed on or after January 1, 2006, there is a disqualification for Long Term Care for individuals with equity interest in their home of greater than \$500,000. This provision will not prevent an individual from using a reverse mortgage or home equity loan to reduce the total equity interest in the home. The disqualification period means that the homeowner can qualify for Medicaid for all services other than payment of institutional care services either in a facility or HCBS waiver as long as the home equity exceeds the limit. Undue hardship can be found to exist if a lien or legal impediment exists whereby the homeowner is unable to access the equity.

An individual's home is property in which he or she has an ownership interest and that serves as his her principal place of residence. It can include:

- the shelter in which he or she lives;
- the land on which the shelter is located; and
- related buildings on such land, or the shelter in which he or she lives; or the land on which the shelter is located; and/or related buildings on such land.

An individual's principal place of residence is the dwelling the individual considers his or her established or principal home and to which, if absent, he or she intends to return. It can be real or personal property, fixed or mobile, and located on land or water.

For purposes of excluding "the land on which the shelter is located" it is not necessary that the individual own

RESOURCES

TYPES OF RESOURCES

shelter itself.

EXAMPLE: If an individual lives on his or her own land in someone else's trailer, the land meets the definition of home and is excluded.

a. Land

The home exclusion applies not only to the plot of land on which the home is located, but to any land that adjoins it.

Land adjoins the home plot if not completely separated from it by land in which neither the individual nor his or her spouse has an ownership interest.

Easements and public rights of way (utility lines, roads, etc.) do not separate other land from the home plot.

b. Buildings

The home exclusion applies to all buildings on land excluded per a. above.

c. Home Ceases to be Home

Property ceases to be the principal place of residence - and, therefore, to be excludable as the home - as of the date that the individual, having left it, does not intend to return to it.

Such property, if not excluded under another provision, will be included in determining countable resources as of the first of the following month.

d. Exceptions to Home Ceasing to be Home

Even if the individual leaves the home without the intent to return, the property remains an excluded resource for as long as:

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- (1) A spouse or dependent relative of the individual continues to live there while the individual is institutionalized. Dependency may be of any kind (financial, medical, etc.) Relative means:
- child, stepchild, or grandchild;
 - parent, stepparent, or grandparent;
 - aunt, uncle, niece, or nephew;
 - brother or sister, stepbrother or step-sister, half brother or half sister;
 - cousin; or
 - in-law
- (2) Sale of the home would cause undue hardship, due to loss of housing, to a co-owner of the property (Repeated in Real Property Exclusions).

Obtain a signed statement from the dependent relative or co-owner to apply either exclusion.

Only one residence can be excluded as home property. If there are multiple residences, obtain the client's statement concerning such points as:

- how much time is spent at each residence;
- where he or she is registered to vote; and
- which address he/she uses as a mailing address or for tax purposes.

Determine the principal place of residence accordingly and document the case record.

RESOURCES

TYPES OF RESOURCES

Note: If an applicant's home property is located out of state, policy governing residency requires that a determination be made regarding the intent of the applicant to reside in Mississippi. It is not permissible for an individual to intend to return home to a principal place of residence located out of state for the purpose of the home exclusion and at the same time intend to reside permanently in Mississippi for the purpose of a residence determination. If an applicant intends to return home to property in another state, the he/she cannot be considered a Mississippi resident. If an applicant intends to reside in Mississippi, he/she cannot intend to return home to property located out of state.

**2. "Liberalized"
Home Property
Exclusion**

Under "liberalized" resource policy, home property can be excluded regardless of intent to return home or whether a dependent relative lives on the property. Each client entitled to liberalized policy is allowed one home that can be excluded regardless of its use. If more than one residence is owned, exclude the property that would be to the client's advantage.

The liberalized home property exclusion applies to clients in the following coverage groups:

- LTC
- LTC "At-Home" (Hospice, HCBS Handicapped)
- PLAD, QMB, SLMB

**3. Evidence of
Home Property
Ownership**

Verify ownership of home property by obtaining copies of one or more items of evidence.

- tax assessment notice;
- recent tax bill;
- current mortgage statement;
- deed; and

RESOURCES

TYPES OF RESOURCES

- report of title search;
- evidence of heirship in an unprobated estate (e.g., receipt of income from the property, a will, or evidence of relationship recognizable under State intestate distribution laws in cases where the home is unprobated property). and
- title and current registration for mobile homes

**4. Home
Replacement
Exclusion**

When an individual sells an excluded home, the proceeds of the sale are excluded resources if the individual:

- plans to use them to buy another excluded home, and
- does so within 3 full calendar months of receiving them. This is 3 full months following the month the proceeds are received.

If the individual receives the proceeds under an installment contract, the contract is an excluded resource for as long as the individual:

- plans to use the entire downpayment and the entire principal portion of a given installment payment to buy another excluded home; and
- does so within 3 full calendar months of receiving such down payment or installment payment.

The proceeds of the sale are the net amount the seller receives at settlement. If paid in installments, the proceeds consist of any down payment and that portion of any subsequent payment that is not interest.

RESOURCES

TYPES OF RESOURCES

Use of proceeds to buy another excluded home includes payment of any costs that stem from the purchase. These include, but are not necessarily limited to:

- down payment;
- settlement costs;
- loan processing fees and points;
- moving expenses;
- necessary repairs to or replacements of the new home's structure or fixtures (e.g., roof, furnace, plumbing, built-in appliances) that are identified and documented prior to occupancy; and
- mortgage payments

Use of proceeds to pay other costs will warrant their exclusion if such costs are identified and documented prior to occupancy and stem directly from the purchase or occupancy of the new home.

Document the file with a copy of the settlement sheet, contract for sale and/or other evidence that shows the new proceeds and how paid or payable.

If the home is not replaced within the allowable 3 month period, the proceeds are a countable resource retroactive to the month following the month of receipt.

The exclusion does not apply to that portion of the proceeds of the sale of the original home that is in excess of the costs of the purchase and occupancy of the substitute home.

RESOURCES

TYPES OF RESOURCES

**5. Non-Home
Real
Property**

Non-home real property consists of land and buildings or immovable objects (including some mobile homes) that are attached permanently to the land and that do not meet the definition of a home.

Document ownership of all non-home property using the same evidence used for home property.

Non-home property is a countable resource unless excludable under "Real Property Exclusions" outlined in the following subsection or as "Income Producing Property," also discussed later in this section.

RESOURCES

TYPES OF RESOURCES

**D. REAL
PROPERTY
EXCLUSIONS**

The types of exclusions described below can apply to home/non-home property as appropriate. Each exclusion can apply to any type of ownership interest.

**1. Jointly Owned
Real Property
Whose Sale
Would
Cause
Undue
Hardship**

Effective April 1, 1988, the value of an individual's owner-interest in jointly owned real property is an excluded resource for as long as sale of the property would cause undue hardship, due to loss of housing, to a co-owner.

Undue hardship would result if such co-owner:

- uses the property as his/her principal place of residence;
- would have to move if the property were sold; and
- has no other readily available housing.

Verify joint ownership and obtain a signed statement from the client and joint owner which documents undue hardship.

The exclusion ends when any one of the above conditions no longer applies.

**2. Exclusion of
Real Property
Due to
Reasonable
Efforts to
Sell**

Effective April 1, 1988, real property can be excluded from resources provided the owner makes reasonable efforts to sell it and those efforts have been unsuccessful. The specific requirements listed below must be met in order this exclusion to apply.

a. Reasonable Efforts to Sell

Reasonable efforts to sell real property consist of taking all necessary steps to sell it through media serving the geographic area in which the property is located. For purposes of this provision, reasonable efforts specifically mean that:

RESOURCES

TYPES OF RESOURCES

- (1) Within 30 days of signing Form DOM-320A, Agreement to Sell Property, the owner(s) must:
 - a. List the property with an agent; or
 - b. Begin to advertise in at least one of the appropriate local media, place a "For Sale" sign on the property (if permitted), begin to conduct open houses or otherwise show the property to interested parties on a continuing basis, and attempt any other appropriate methods of sale; and
 - (2) Except for gaps of no more than 1 week, the owner must maintain efforts of the type listed in 1. above; and
 - (3) The owner does not reject any reasonable offer to buy the property and accepts the burden of demonstrating to Medicaid's satisfaction that an offer was rejected because it was not reasonable.
- b. Reasonable Offer to Buy

Assume that an offer to buy property at a particular price is reasonable if it is at least two-thirds of the estimated current market value (CMV) unless the owner proves otherwise (e.g., provides convincing evidence of a different CMV).

RESOURCES

TYPES OF RESOURCES

c. Good Cause

Good cause exists when circumstances beyond an individual's control prevent his or her taking the required action to accomplish reasonable efforts to sell. If good cause exists for the failure to meet any of the criteria specified in "Reasonable Efforts to Sell", the exclusion can continue, provided action is taken to resume efforts to sell.

d. Failure to Make Reasonable Efforts

Unless there is good cause, failure to meet any of the criteria specified in "Reasonable Efforts to Sell" means that:

1. An individual is not making reasonable efforts to sell the property;
2. The individual's countable resources include the value of the property beginning with the month following the month in which reasonable efforts to sell stop; and
3. The individual will be charged with an improper payment, if applicable.

e. Initial Verification of Efforts to Sell

The effort to sell must be documented in the case record within the 30 day time period for applying the exclusion by requiring all appropriate proof such as:

1. Copy of the listing agreement with the real estate agency in current use;
2. Dated advertisement(s) indicating the property is for sale;

RESOURCES

TYPES OF RESOURCES

3. Contracts with local media to advertise the property;
4. A photograph of the "For Sale" sign on the property;
5. Any other relevant items.

f. Effective Date of Exclusion

If the appropriate proof is submitted, the exclusion is applied back to the first of the month in which the effort to sell was initiated.

If the effort to sell was in existence prior to the date of application, the exclusion can be applied retroactively provided the effort is documented and DOM-320A is signed.

If the effort to sell is just beginning, the exclusion applies effective with the first of the month DOM-320A is signed (provided it is signed within 30 days).

If not signed within 30 days, the exclusion applies as of the first of the month the effort to sell is initiated.

g. Follow-Up Contacts

Contacts must be scheduled at 90-day intervals until the property is sold or the exclusion ends. Follow-up contacts may be by telephone to determine the efforts being made to accomplish the sale and to document whether there has been any offer to buy since the prior contact. If an offer to buy has been refused, a statement must be submitted explaining the refusal. Note: the refusal of an offer to buy must be evaluated under the "Reasonable Offer to Buy" guidelines. If the refusal is unacceptable, the exclusion ends beginning with or retroactive to the month after the month of the refusal to sell.

RESOURCES

TYPES OF RESOURCES

If the reasonable efforts to sell are not continuing at each follow-up contact, determine if good cause exists. If good cause does not exist, the exclusion ends beginning with or retroactive to the month after the month the reasonable efforts stopped.

3. Interests of Individual Indians in Trust or Restricted Lands

In determining the resources of an individual (and spouse, if any) who is of Indian descent from a federally recognized Indian tribe, any interests of the individual (or spouse) in trust or restricted lands are excluded from resources.

If an individual Indian alleges an interest in trust or restricted land:

- obtain for the file a copy of any document or documents that might identify it as such; and/or
- verify the allegation with the appropriate Indian agency.

If verification is by phone, document the file.

RESOURCES

TYPES OF RESOURCES

**E. REAL OR
PERSONAL
INCOME-
PRODUCING
PROPERTY**

The Social Security Act provides for the exclusion from resources of certain real and personal property if essential to an individual's means of self-support.

The income generated by income-producing property is not excluded under this provision. Income is either earned or unearned, depending on the type of income producing property that is involved.

The different types of income-producing property include:

- Property Essential to Self-Support,
- Property Used to Produce Goods or Services,
- Nonbusiness Income Producing Property, and
- Liberalized Income Producing Property

Each of these types of property and its use and applicable exclusions are discussed below.

**1. Current
Use
Requirement**

Property must be in current use in the type of activity that qualifies it as income-producing in order to be excluded. Current use is evaluated on a monthly basis. Property not in current use can be excluded only if:

- it has been in use; and
- there is expectation that the use will resume.

Resumption of use must be expected within 12 months of last use. This 12 month period can be extended for an additional 12 months if nonuse is due to a disabling condition:

RESOURCES

TYPES OF RESOURCES

- a. If property is not in current use, obtain the client or spouse's statement as to:
- the date of last use;
 - the reason(s) the property is not in use; and
 - when the individual expects to resume the self-support activity, if at all.

Explain that property can be excluded for up to 12 months if resumption of the self-support activity can reasonably be expected to occur within that time.

If the individual does not intend to resume the self-support activity, the property is a countable resource for the month after the month of last use.

If, after property has been excluded because an individual intends to resume self-support activity, the individual decides not to resume such activity, the exclusion ceases to apply as of the date of the change of intent. Thus, unless excluded under another provision, the property is a resource for the following month:

- b. If an individual alleges that self-support property is not in current use because of a disabling condition, obtain the individual's signed statement as to:
- the nature of the condition;
 - the date he or she ceased the self-support activity; and
 - when he or she intends to resume the activity, if at all.

Prepare a special determination as to whether up to an additional 12 months will be allowed for resuming use of the property.

RESOURCES

TYPES OF RESOURCES

**2. Property
Essential to
Self-Support
Exclusion
Applies to
All MAO
Coverage
Groups**

The properties described in a., b., and c., below are excluded as essential to self-support regardless of value or rate of return. However, they must be in current use or, if not in use for reasons beyond the individual's control, there must be a reasonable expectation that the required use will resume.

a. Trade or Business Property

This includes the necessary capital and operating assets of a business, e.g., real property, buildings, inventory, equipment, machinery, livestock, motor vehicles. Effective May 1, 1990, any and all property that is used in a trade or business is excluded as a resource, regardless of value. Prior to 05/01/90, the \$6000/6% rule, as outlined in "Limits on Income Producing Property," must be met for trade or business property.

When a client or spouse owns a trade or business, document the following information:

- a description of the trade or business;
- a description of the assets of the trade or business;
- the number of years it has been operating;
- the identity of any co-owners;
- the estimated gross and net earnings of the trade or business for the current tax year.

RESOURCES

TYPES OF RESOURCES

Obtain a copy of the business tax return (i.e., Form 1040 and the appropriate schedules) for the tax year prior to the application or redetermination. Use the return to determine the net earnings from self-employment and validity of the trade or business. The following can be particularly helpful:

- Schedule C, Profit or Loss from Business or Profession;
- Schedule SE, Computation of Social Security Self-Employment;
- Schedule F, Farm Income and Expenses;
- Form 4562, Depreciation and Amortization; and
- Form 1065, U. S. Partnership Return of Income.

If the current tax return is not available, obtain a copy of the latest tax return available.

b. Government Permits

Government permits represent authority granted by a government agency to engage in income producing activity. Examples are commercial fishing permits granted by a State Commerce Commission and tobacco crop allotments issued by the U. S. Department of Agriculture.

If a client or spouse owns government license, permit, or other property that represents government authority to engage in an income producing activity, and that has value as a resource, document the following information:

RESOURCES

TYPES OF RESOURCES

- the type of license, permit or other property;
- the name of the issuing agency, if appropriate;
- whether the law requires such license, permit, or property for engaging in the income producing activity at issue; and
- how the license, permit, or other property is being used; or
- if it is not being used, why not.

c. Personal Property Used By An Employee

Personal property used by an employee for work is excluded from resources beginning May 1, 1990. For periods before that date such items were excluded if they were required by the individual's employer. Excluded items include tools, safety equipment, uniforms, etc.

If a client or spouse owning items that are used in his or work as an employee; or, for months of eligibility before May 1, 1990, that his or her employer required he or she provide as a condition or employment, obtain his or her statement to include:

- the name, address, and telephone number of the employer;
- a general description of the items;
- a general description of his or her duties; and
- whether the items are currently being used.

RESOURCES

TYPES OF RESOURCES

**3. Property
Used To
Produce
Goods/
Services
(SSI Policy)**

For MAO Coverage Groups subject to SSI policy, up to \$6,000 of the equity value of nonbusiness property used to produce goods or services essential to daily activities is excluded from resources.

There is no requirement that the property produce a certain rate of return. The property must be in current use or, if it is not in use for reasons beyond the individual's control, there must be a reasonable expectation that the required use will resume.

Any portion of the property's equity value in excess of \$6,000 is not excluded under this provision.

Nonbusiness property essential to self-support can be real or personal property but not cash or bank accounts. It produces goods or services essential to daily activities if, for example, it is used to:

- grow produce or livestock solely for personal consumption in the individual's household; or
- perform activities essential to the production of food solely for home consumption.

NOTE: While this category of property may encompass a vehicle used solely in a nonbusiness self-support activity (e.g., a garden tractor, or a boat used for subsistence fishing), it does not include any vehicle that qualifies as an automobile.

When a client or spouse owns property that he or she uses to produce goods or services necessary for daily activities, document the following:

- a description of the property;
- how it is used; and
- an estimate of its CMV and any encumbrances on it.

RESOURCES

TYPES OF RESOURCES

**4. Nonbusiness
Income-
Producing
Property
(SSI Policy)**

Up to \$6,000 of the equity value of nonbusiness income producing property (and business income producing property for months of eligibility before May 1, 1990) can be excluded from resources if the property produces a net annual return equal to at least 6% of the excluded equity.

Any portion of the property's equity value in excess of \$6,000 is not excluded under this provision.

If the property produces less than a 6% return, the exclusion can apply only if:

- the lower return is for reasons beyond the individual's control (e.g., crop failure or illness); and
- there is a reasonable expectation that the property will again produce a 6% return.

Otherwise, none of the EV is excluded under this provision.

If an individual owns more than one piece of income producing property:

- the 6% return requirement applies individually to each; and
- the \$6,000 EV limit applies to the total EV exceeds \$6,000 that portion of the total EV in excess of \$6,000 is not excluded under this provision.

a. Nonbusiness Income-Property Defined

Property includes land which produces rents or other land-use fees (e.g., nonliquid notes or mortgages, ownership or timber rights, mineral or oil exploration) or other nonliquid property which provides rental or other income, but is not used as part of a trade or business.

RESOURCES

TYPES OF RESOURCES

b. Verification Required

When a client or spouse owns nonbusiness property which produces income, document the following:

- The number of years the individual has owned the property;
- The owner and/or co-owners of the property;
- A description of the property and how it is used;
- The estimated CMV of the property and any encumbrances on the property; and
- The estimated net and gross income for the current tax year.

Nonbusiness property is generally reported on Schedule E (Supplemental Income Schedule) of Form 1040. Obtain a copy of the tax return for the year prior to filing the application or redetermination. The Schedule E provides income information, a description of the property, use of the property, and the value of the property.

When no tax returns are available, obtain other evidence from the individual which establishes that the property is producing income. For example, if an individual is leasing land for mineral or oil exploration, he/she should have a copy of the lease agreement for the period in question.

RESOURCES

TYPES OF RESOURCES

c. Development When Rate of Return is Less Than 6%

When income from income producing property has declined below 6%, document the file with the following:

- Obtain an explanation for the decline in earnings for the year in question;
- Obtain evidence of prior years' earnings (e.g., tax returns for at least 2 years prior to the current taxable year) to establish whether the activity has produced a 6 percent rate of return before;
- If evidence establishes that the earnings decline is for reasons beyond the individual's control, allow up to 24 months from the end of the tax year in which the earnings went below 6% to meet the 6% requirement;
- Set up a 12-month tickler to check on the individual's progress with the business. The individual can have the additional 12 months to achieve the 6% rate of return if he/she is actively pursuing the activity. If, at the 12-month interval, the individual has ceased to actively pursue the activity the value of the property counts as a resource the month following the month of review; and
- If the property is still not producing at least a 6 percent return at the end of the 24-month period, discontinue the exclusion. The value of property counts as a resource the month following the month the 24-month period expires.

RESOURCES

TYPES OF RESOURCES

**5. Liberalized
Income-
Producing
Property
Policy**

For MAO Coverage Groups subject to liberalized resource policy, effective 10-01-89, the \$6000 resource cap for income producing property is lifted. Property can be considered income-producing if it produces a net annual return of at least 6% of the Equity Value (EV) of the property.

- Property essential to Self-Support, as defined in policy, is excluded regardless of value or rate of return so the 6% of EV rule does not apply,
- Property used to produce goods or services as defined in policy, is not required to have a rate of return so the 6% of EV rule does not apply. Property that qualifies as used to produce goods or services can therefore be excluded regardless of value or rate of return, and
- Nonbusiness income-producing property must produce a net annual return of 6% of the EV for each property. If multiple properties are involved, each must be evaluated under the 6% of EV rule.

Refer to the discussion of each type of property exclusion for the verification requirements that apply to SSI and liberalized policies.

NOTE: Property that a client sells via a property agreement must meet the 6% net annual return criteria and the agreement must be actuarially sound in order to avoid a possible transfer of resources penalty. Refer to the discussion of "Promissory Notes, Loans & Property Agreements" later in this subsection.

RESOURCES

TYPES OF RESOURCES

**F. PERSONAL
PROPERTY**

Personal property is any property that is not real property. The term encompasses such things as household goods, jewelry, automobiles, life insurance, burial funds.

**1. Household
Goods &
Personal
Effects**

Household goods are items of personal property customarily found in the home and used in connection with the maintenance, use and occupancy of the premises (such furniture, appliances, carpets, etc).

Personal effects are those items of personal property worn or carried by an individual (clothing, jewelry, hobby items, etc.)

An item of unusual value is one whose CMV exceeds \$500.

a. SSI Policy

A general exclusion of up to \$2,000 applies to the total equity value of household goods and personal effects other than those excluded regardless of value. Any portion of the total equity in excess of \$2,000 is not excluded under this provision.

Exception: Some items of personal property are excluded regardless of value. They are:

- One wedding ring and one engagement ring per individual are excluded regardless of value.
- Prosthetic devices, wheelchairs, hospital beds, dialysis machines and other items required by a person's physical condition are excluded regardless of value if they are not used extensively and primarily by other members of the household.

Items of unusual value that may not be excludable are: expensive china/silver/glassware, antiques, art works, hobby collections, jewelry, etc.

RESOURCES

TYPES OF RESOURCES

If the client or other evidence indicates ownership of items of unusual value worth more than \$500, establish CMV by a knowledgeable source. Use CMV and not replacement value in determining the value.

Where it is determined that the verified CMV of all items of unusual value is more than \$500, the total CMV of all other durable household goods and personal effects must be considered in arriving at the countable equity value.

As a interim step in the developmental process, conclude, absent evidence to the contrary, that the CMV of all other durable household goods and personal effects is \$1,000. Add this amount to the CMV of those items that are of "unusual value." Deduct \$2,000 from this figure and add the remainder to the total value of all other includable resources. If the estimated CMV of countable household goods and personal effects does not exceed the applicable resource limit for an individual or couple, no further development is necessary. If the estimate exceeds the applicable resource limit, further development is necessary to establish the actual CMV and equity value of the countable household goods and personal effects. As with items of unusual value, any reasonable or practical method should be used to establish CMV. In regard to equity development, the claimant's records may be used; but if there is any doubt about the documentation, third party verification of any alleged legal debts against the property should be made. Combine the established equity value of the items of unusual interest and durable household goods and personal effects. The excess over \$2,000, if any, is added to other includable resources in determining whether the applicable individual or couple resource limit is exceeded.

RESOURCES

TYPES OF RESOURCES

b. Liberalized Policy

For MAO Coverage Groups subject to liberalized resource policy, effective 10-01-89, household goods are totally excluded regardless of value and personal property up to \$5000 in EV is excluded. For example, a Recreational Vehicle (RV) is personal property rather than an automobile. The RV can be excluded if the EV is \$5000 or less. Follow SSI policy for items totally excluded and the steps to take in documenting value.

2. Automobiles

For SSI purposes, "automobile" means any vehicle used for transportation. It thus can include, in addition to cars and trucks: boats, snowmobiles, animal-drawn vehicles, and even animals, whether registered or not. A vehicle not used for transportation is not an automobile but may be a countable resource. A vehicle temporarily out of service may still be an automobile.

The CMV of an automobile is the average price an automobile of that particular year, make, model and condition will sell for on the open market (to a private individual) in the particular geographic area involved. Use the N.A.D.A. Official Used Car Guide or Older Car Guide. Use as the automobiles CMV the average trade-in value shown for it in the most recently published guide. If the client wishes to rebut the N.A.D.A. value, he/she can obtain a knowledgeable source statement.

a. SSI Policy

One automobile is excluded regardless of value if, for the individual or a member of the individual's household, it is:

- necessary for employment;
- necessary for the treatment of a specific or regular medical problem;

RESOURCES

TYPES OF RESOURCES

- modified for operation by, or the transportation of, a handicapped person; or
- necessary, because of climate, terrain, distance or similar factors, for the performance of essential daily activities.

If no automobile is totally excluded up to \$4,500 of the CMV of one automobile is excluded. If the CMV exceeds \$4,500, the excess counts as a resource unless the automobile can be excluded under some other provision. Equity value is not a consideration for purposes of this exclusion.

Any automobile an individual owns in addition to the one wholly or partly excluded (up to \$4,500 CMV) and which cannot be excluded under the income-producing property provision is a resource in the amount of its equity value.

The exclusion applies in the manner most advantageous to the individual.

If one of two cars can be excluded as necessary for medical treatment, and the other will be a countable resource, the exclusion applies to the car with the greater equity value regardless of which car is used to obtain medical treatment.

For example, a client owns two cars. One has a CMV of \$8,000 and an equity value of \$500. The other, which has been paid off, has a CMV and equity value of \$2,500. Neither can be excluded based on use.

Applying the \$4,500 exclusion to the car with the \$8,000 CMV would leave \$3,500 of the CMV of that car as a countable resource. It also would leave the \$2,500 equity value of the other car as a countable resource.

RESOURCES

TYPES OF RESOURCES

Applying the \$4,500 exclusion to the car with the \$2,500 CMV excludes that car entirely, leaving only the \$500 equity value of the other car to be included among countable resources. Therefore, the exclusion applies to the car with the \$2,500 CMV.

b. Liberalized Policy

For MAO Coverage Groups subject to liberalized resource policy, effective 10-01-89, up to two automobiles can be excluded totally or up to \$4,500 CMV. Any vehicle that is not used for transportation due to the inoperable condition of the car (junk car) can be totally excluded as a resource.

AUTOMOBILE CHART

<u>SSI POLICY</u>	<u>LIBERALIZED POLICY</u>
Exclude 1 car due to use, or	Exclude up to 2 cars due to use, or
Exclude 1 car up to \$4,500 CMV, or	Exclude up to 2 cars up to \$4500 CMV, or
Count EV as a resource if this is more advantageous to 1 car.	Exclude 1 for use and 1 up to \$4500 CMV, or
Additional cars, count EV	Count EV as a resource if this is more advantageous for up to 2 cars
	Additional cars, count EV

Note: If counting EV is chosen, the full EV is shown as a countable resource. EV is not an exclusion and can never be applied against the \$4500.

RESOURCES

TYPES OF RESOURCES

3. Life Insurance

A life insurance policy is a contract. Its purchaser (the owner pays premiums to the company that provides the insurance (the insurer). In return, the insurer agrees to pay a specified sum to a designated beneficiary upon the death of the insured (the person on whom, or on whose life, the policy exists).

Face value (FV) is the amount of basic death benefit contracted for at the time the policy is purchased. The face page of the policy may show it as such or as the "amount of insurance," "the amount of this policy," "the sum insured," etc. A policy's FV does not include:

- the FV of any dividend addition, which is added after the policy is issued (see 5. below);
- additional sums payable in the event of accidental death or because of other special provisions; or
- the amount(s) of term insurance, when a policy provides whole life coverage for one family member and term coverage for the other(s).

A policy's cash surrender value (CSV) is a form of equity value that it acquires over time. The owner of a policy can obtain its CSV only by turning the policy in for cancellation before it matures or the insured dies. A loan against a policy reduces its CSV.

Dividends (shares of any surplus insurance company earnings) can be applied to premiums due or paid by check or by an addition or accumulation to an existing policy. Dividend additions are amounts of insurance purchased with dividends and added to the policy, increasing its death benefit and CSV. The table of CSV's that comes with a policy does not reflect the added CSV of any dividend additions.

RESOURCES

TYPES OF RESOURCES

Dividend accumulations are dividends that the policy owner has constructively received but left in the custody of the insurer to accumulate at interest. They are not a value of the policy; the policy owner can obtain them without affecting FV or CSV. Dividend accumulations cannot be excluded from resources under the life insurance exclusion, even if the policy that pays the accumulations is excluded from resources. Unless they can be excluded under another provision (e.g., as set aside from burial), they are a countable resource.

a. SSI Policy

A life insurance policy is a resource if it generates a CSV. Its value as a resource is the amount of the CSV.

A life insurance policy is an excluded resource if its FV and the FV of any other life insurance policies the individual owns on the same insured total \$1,500 or less. However, the FV of some policies does not count toward this \$1,500 total (see below).

Do not include the FV of dividend additions in determining whether a policy is a countable or excludable resource. If the policy is a countable resource, we include the CSV of dividend additions in determining the resource value of the policy.

In determining whether the total FV of the life insurance policies an individual owns on a given insured is \$1,500 or less, the FV of the following are not taken into account.

- burial insurance policies; and
- term insurance policies that do not generate a CSV.

RESOURCES

TYPES OF RESOURCES

The maximum of \$1,500 that can be excluded as set aside for the burial expenses of an individual must be reduced by the FV of:

- any insurance policy on the life of the individual that is excluded under this provision; and
- any burial insurance policy for the burial expenses of the individual.

This includes the FV of a life insurance policy for which a funeral provider has been made the irrevocable beneficiary, if the policy owner has irrevocably waived his or her right to, and cannot obtain, any CSV the policy may generate.

Ask the individual to submit all the life insurance policies owned by the client and/or spouse/parent(s) and the most recent annual dividend statement issued for each policy. Use these records to verify:

- the owner;
- the insured;
- the FV;
- whether the policy pays dividends and, if it does, what option the individual selected for their disposition (i.e., accumulations, additions, applied to premiums, paid by check); and
- if dividend accumulations, their current amount.

RESOURCES

TYPES OF RESOURCES

- whether the policy generates a CSV and, if it does,
- the current CSV (including the CSV of any dividend additions and any loans on the policy which reduce the CSV).

If examination of a policy does not reveal needed information, contact the insurance company via DOM-331, Request for Information Concerning Insurance, after obtain an authorizing signature.

NOTE: Several insurance companies have begun offering a new provision that allows a terminally ill person (or in some cases, individuals permanently confined to a medical institution) an option to receive the proceeds (or a portion thereof) of their life insurance policy while still living. This type of provision has been called a "living needs benefit program."

If an individual has a life insurance policy that allows them to receive their death benefit while living and the individual meets the insurance company's requirements for receiving such proceeds, they will not be required to file for such proceeds. If, however, the individual does file and receive the benefits, the payment will be considered income in the month it is received and available as a resource to the extent remaining into following months.

b. Liberalized Policy

For MAO Coverage Groups subject to liberalized resource policy, effective 07-01-99, replace the SSI exclusion limit of \$1500 with a \$10,000 exclusion limit. All other SSI policy applies except that limit is increased to \$10,000. From 10-01-89 to 06-30-99, the exclusion limit was \$5,000.

RESOURCES

TYPES OF RESOURCES

4. Burial Spaces

A burial space or agreement which represents the purchase of a burial space held for the burial of the individual, his or her spouse, or any other member of his or her immediate family is an excluded resource, regardless of value.

The burial space exclusion is in addition to, and has no effect on, the burial funds exclusion.

For purposes of this exclusion, burial spaces include burial plots, gravesites, crypts, mausoleums, urns, niches, and other customary and traditional repositories for the remains of the deceased person.

The exclusion also includes necessary and reasonable improvements or additions to such spaces including, but not limited to, vaults, headstones, markers, plaques, or burial containers and arrangements for opening and closing or the gravesite.

SSI policy defines an individual's immediate family (for this exclusion) as parents (including adoptive parents and stepparents), minor or adult children (including adoptive and stepchildren), and siblings (brothers and sisters including adoptive and stepsiblings). Immediate family also includes the spouses of the above named relatives provided the marriage is still in effect (not divorced).

For Medicaid cases eligible for the liberalized policy provisions, effective 10-01-89, an individual's immediate family includes all of the relatives included in SSI's definition and extends to family members with any degree of relationship.

For both policies, if a burial space is being held by a funeral provider in accordance with a burial agreement, whether revocable or irrevocable, then the value of the burial space or burial space item is excluded under the burial space exclusion.

RESOURCES

TYPES OF RESOURCES

5. Burial
Funds

Burial funds are:

- revocable burial contracts;
- revocable burial trusts;
- other revocable burial arrangements (including the value of certain installment sales contracts for burial spaces);
- cash;
- financial accounts (e.g., savings or checking accounts); or
- other financial instruments with a definite cash value (e.g., stocks, bonds, certificate of deposit, etc.).

These funds must be clearly designated for the client's or spouse's burial, cremation or other burial-related expenses. Property other than that listed in this definition will not be considered burial funds and may not be excluded under the burial funds provision. For example, a car, real property, livestock, etc. are not burial funds.

Burial funds cannot be commingled with other resources not intended for burial. The burial fund exclusion applies only if funds set aside for burial expenses are kept separate from all other resources not intended for burial. If excluded burial funds are mixed with resources not intended for burial, the exclusion will not apply to any portion of the funds. It is possible to have excluded and nonexcluded funds commingled provided all funds are intended for burial, but it is not permissible to have burial/nonburial funds commingled.

RESOURCES

TYPES OF RESOURCES

a. SSI Policy

SSI policy allows up to \$1500 in funds set aside for the burial of the individual, and up to an additional \$1500 in funds set aside for burial of the individual's spouse (eligible or ineligible).

b. Liberalized Policy

For Medicaid cases eligible for the liberalized policy provisions, effective 10-01-89, there is a \$3000 maximum that can be excluded for burial of the individual, and up to \$3000 allowed for burial of the individual's spouse (eligible or ineligible).

Effective 04-01-01, the maximum that can be excluded for burial of the individual is \$6,000 and up to \$6,000 is allowed for burial of the spouse (eligible or ineligible).

c. Reductions in Maximum Exclusions

The maximum \$1,500 or \$6,000 that can be excluded is reduced by:

- the face value of any life insurance policy on the individual (or spouse, if applicable), if such policy is excluded under the life insurance exclusion; and
- any amount held in an irrevocable trust, burial contract, or other irrevocable arrangement for the individual's (or spouse's) burial expenses except to the extent that it represents excludable burial spaces.

RESOURCES

TYPES OF RESOURCES

d. Irrevocable Burial Arrangements

Irrevocable burial arrangements are not resources and are not subject to the \$1,500 or \$6,000 maximums; however, irrevocable burial arrangements reduce the amount of the burial fund exclusion allowed. Burial insurance is considered an irrevocable arrangement.

The value of the burial arrangements purchased must be equal to the value of the vehicle that funds it, such as the value of the prepayment, life insurance or annuity that is irrevocably assigned to the funeral home.

If the value of the burial arrangement is not equal to the value of the prepayment, a penalty may be assessed under the transfer of assets provision for institutionalized clients.

e. Designation of Burial Funds & Effective Date

Burial funds may be designated as such by:

- An indication on the burial funds document such as a revocable burial contract or the title on a bank account. Whenever burial funds are already clearly set aside as burial funds, no separate signed statement or further designation is required.
- Completion of DOM-321B, Designation of Burial Funds form. This form provides documentation of the value and owner of the resource, the person for whom the funds are intended, the form in which the funds are held, and the date the funds were set aside for burial.

RESOURCES

TYPES OF RESOURCES

Once the date that burial funds were considered set aside for burial has been established, the exclusion can be effective as of:

- The first of the month of application or the first month or retroactive eligibility if the intent to designate was after 11/01/82; or,
- October 1, 1989, is the first possible month to exclude up to \$3,00 under the liberalized resource policy provision.
- April 1, 2001, is the first possible month to exclude up to \$6,000 for burial.

f. Changes in Burial Exclusion Amounts

Interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements are excluded as income and resources if left to accumulate and become part of the separate burial fund. However, once a burial fund is excluded, it may not always remain excluded. Changes in the individual's circumstances may raise or lower the amount that can be excluded for burial, such as:

- The purchase of additional life insurance with cash surrender value may change the allowable exclusion. Similarly, cashing in life insurance may raise or lower the allowable exclusion.
- The face amount of life insurance may change, thereby changing the allowable exclusion.
- An irrevocable burial contract may be purchased, thereby reducing the allowable burial exclusion.

RESOURCES

TYPES OF RESOURCES

- Deposits made to bank accounts designated for burial will change the allowable exclusion.
- If the amount designated is less than the maximum exclusion amount, the individual may add additional funds to the burial fund to bring up the original amount to the maximum exclusion amount.

g. Documentation Requirements

Document the case record by use of DOM-321A, Burial Assets Exclusion Worksheet, for each case involving application of the burial fund exclusion. A separate worksheet is required for each person eligible to receive an exclusion, which includes:

- an eligible
- a spouse (eligible or ineligible)
- an eligible child
- parent(s) (eligible or ineligible)

Burial funds in excess of the exclusion limit are countable resources.

RESOURCES

TYPES OF RESOURCES

The burial fund exclusion, once applied, must be reevaluated whenever a change becomes known that would affect the exclusion amount or at each redetermination. It is not necessary for the client/representative to sign a new statement, Form DOM-321B, unless there is a new or revised designation of fund(s). It is necessary to verify the value of the fund(s) designated for burial to determine if the exclusion amount has changed. If there is a change in the amount of the exclusion, a new Form DOM-321A must be prepared. If there is no change from the previous excluded amount, the previous DOM-321A should be updated.

Note: A decrease in the value of any excluded funds will be subject to a penalty for misuse, which is outlined below.

h. Misuse of Burial Funds

If a client or spouse uses funds (including interest) which were excluded under the burial fund exclusion for any purpose other than expenses connected with the burial, cremation, etc., of the individual or the individual's spouse for whom the funds were set aside, any future benefits payable to the eligible individual (and spouse, if any) must be offset by an amount equal to the amount of funds used for some other purpose.

The penalty for misuse applies only if the client would have excess resources without the exclusion.

For Medicaid purposes, count misused burial funds as income the next possible month after the month in which the misuse is discovered. The misused funds will be included as income in the eligibility computations; however, for institutionalized recipients, misused burial funds are not counted as income in the Medicaid Income computation unless the funds are "available to the recipient."

RESOURCES

TYPES OF RESOURCES

Upon discovery of the misuse of excluded burial funds, the worker will obtain verification (which may be in the form of a statement from the client and/or representative) that all or a portion of the funds have been used for another purpose other than burial. The worker will then determine the effect the misuse will have on eligibility based on income. If ineligibility results, the case will be closed in accordance with ongoing policy, i.e., advance notice issued, etc. If the misuse of burial funds does not result in excess income and the funds are not available to the client to include in the Medicaid Income computation (if applicable), no action is required other than documenting the case record.

RESOURCES

TYPES OF RESOURCES

**G. INVESTMENTS
CONTRACTS**

Other common investment vehicles include stocks and bonds and contracts refer to promissory notes, loans and property agreements.

1. Stocks

Shares of stock represent ownership in a business corporation. Their value shifts with demand and may fluctuate widely. The following guidelines apply to all stocks, including preferred stocks, warrants and rights, and options to purchase stocks.

- Absent evidence to the contrary, assume that each owner owns an equal share of the value of the stock.
- Absent evidence to the contrary, assume that the owner of shares of stock can sell them at will at current value.
- Broker fees do not reduce the value that stocks have as resources.

Verify ownership by viewing the stock certificate or most recent statement of account (including dividend account) from the firm that issued or is holding the stock. Document the file with a photocopy. If the individual does not have this documentation, have him/her obtain a statement from the firm. Provide assistance as needed.

a. Publicly Traded Stock

The CMV of a stock is its closing price on the last business day of the preceding month.

The values of over-the-counter stocks are shown on a "bid" and "asked" basis. For example, "18 bid, 19 asked." Use the bid price as the CMV.

The "par value" or "stated value" shown on some stock certificates is not the market value of the stock.

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The closing price of a stock on a given day can usually be found in the next day's regular or financial newspaper.

As a last resort, contact a local securities firm. Record the appropriate closing price and the source of the information on a Record of Contact.

b. Stock That Is Not Publicly Traded

The stock of some corporations is held within close groups and traded very infrequently. The sale of such stock is often handled privately and subject to restrictions. As a rule, it cannot be converted to cash within 20 working days.

The burden of proof for establishing the value of this kind of stock is on the individual. The preferred evidence is a letter or other written statement from the firm's accountants giving their best estimate of the stock's value and the basis for the estimate, e.g.:

- most recent sale,
- most recent offer from outsiders,
- CMV of assets less debts on them,
- cessation of activity and sale of assets,
- bankruptcy, etc.

Keep the statement or a photocopy of it in the file.

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c. Common Stock

Common stock usually is held in the form of a certificate registered in the owner's name. Dividends usually are paid quarterly and may vary with company earnings.

- "Listed" stocks are those listed on the NYSE, AMEX, or on one of the regional exchanges such as Boston, Philadelphia, or Chicago.
- Over-the-counter (OTC) stocks, which include "penny" stocks, are not listed on the major exchanges. They usually are reported in the National Association of Security Dealers Automated Quotations (NASDAQ) system.

d. Preferred Stock

Preferred stock receives preference with respect to dividends and, in case of bankruptcy, the distribution of assets. Preferred stock dividends:

- are paid at a fixed rate;
- must be paid before common stock dividends can be paid; and
- must be made up later, when not paid timely, whereas common stock dividends may be skipped.

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e. Reading Stock Quotations

Stock tables vary little from publication to publication. The following quote is typical, showing from left to right:

- the standard abbreviation of the name of the company (Philadelphia Electric in this case), followed by "pf" for preferred stock on the second line;
- the dividend amount;
- the price-to-earnings ratio;
- sales volume, in thousands;
- the day's high, low, and closing prices (22 3/4 = \$22.75); and
- the change in price from the previous day.

NAME	DIV	PE	SALES	HIGH	LOW	LAST	CHG
Phil El	2.20	9	4323	22 7/8	22 5/8	22 3/4	- 1/8
Phil E pf	4.30	-	50	42 3/4	42 3/4	42 3/4	-

2. Options

An option is the right to sell or buy something at a specified price by a specified date. The "something" is usually stock, but there are options on interest rates, stock market indexes, commodity futures, and other items as well. An option to sell is call a "put." An option to buy is a "call." The value of an option depends on:

- the length of the contract (3, 6, or 9 months);

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- the difference between the CMV of the item and the price at which the put permits it to be sold or the call permits it to be bought; and
- the volatility of the item (how much its CMV is expected to fluctuate).

a. Buying & Selling Options

Options can be sold through a broker. If the CMV of an item goes up in relation to a call price, the value of the option increases. If it goes down, the value of the option decreases. The reverse is true for a put.

b. Reading Option Quotations

There are several exchanges across the country that list option prices for about 300 stocks; the Chicago Board of Options Exchanges (CBOE), AMEX, the Philadelphia Stock Exchange, and the Pacific Stock Exchange. Transactions on these exchanges are listed in financial publications and many newspapers.

Although a stock option contract controls 100 shares of stock, options are quoted on the price per share. If a contract sells for \$300, the cost per share is \$3. Options come due and are quoted for each January, April, July and October.

The following example is a typical options quotation and shows, from left to right:

- the name of the stock (Tandy), the expiration month (April) and per-share price of the option (\$30) for a put option on line 2);
- the number of contracts sold (996 on line 2);

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- the high, low, and closing prices for a contract (\$56.25, \$25, and \$37.50, respectively, on line 2); and
- the net change in the value of the contract (\$6.25).

Name, Expiration Date, and Price Change	Sales	High	Week's Low	Last	Net
Tandy Apr. 30	1317	4 3/4	2 3/4	3 1/8	-1/8
Apr. 30p	996	9/16	1/4	3/8	-1/16

3. Mutual Fund Shares

A mutual fund is a company whose primary business is buying and selling securities and other investments. Shares in a mutual fund represent ownership in the investments held by the fund.

The term "mutual fund" encompasses a wide range of investments. Basically, it is a pool of assets (stocks, bonds, etc.) managed by the investment company. A mutual fund represents ownership interest in this pool as opposed to a particular stock or bond.

The development guidelines for stocks also apply to mutual fund shares. Many newspapers contain a separate table showing the values of funds not traded on an exchange.

a. Growth Funds

The primary objective of these funds, also known as performance funds and hedge funds, is aggressive long term growth of investment rather than current income. Dividends typically are low.

b. Income Funds

The objective is current income through high dividends and interest, as opposed to capital gains.

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c. Balanced Funds

The objective is a balance of growth and income.

d. Municipal Bond Fund

The fund invests in tax-exempt bonds and the interest is passed along to holders on a tax-exempt basis.

e. Money Market Funds

The fund invests in conservative vehicles such as T-Bills and bank certificates. The minimum investment usually is \$1,000, but may be less. Income may fluctuate daily based on interest rates. Money market funds often have a check-writing feature.

f. Buying & Selling Mutual Funds

"Load" funds are sold through a broker who collects a commission. "No-load" funds usually are purchased directly from the fund (no commission) and often are advertised in newspapers and magazines.

g. Reading Mutual Fund Quotations

The format of the following table is typical of those shown in newspapers and financial publications, showing from left to right:

- the names of the funds available for each management group (in this case, four funds managed by the Fund Founders Group);
- the high and low values for the preceding 52-week period;

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- the most recent closing price;
- the change over the previous week; and
- the fund's income and capital gains totals for the previous 12 months.

Fund Founders Group	52 Weeks	Close	Change	Week's Income*	Gains	Capitol
H L						
Growth n.	8.77	6.28	6.37	-0.08	0.157	2.505
Income n.	15.18	13.72	13.87	+0.01	1.273	0.232
Mutual	11.56	9.74	9.98	-0.07	0.426	0.706
Special n.	37.11	22.88	23.54	-0.13	1.900	1.395

n = no-load
 * = last 12 months

4. Municipal, Corporate & Government Bonds

A bond is a written obligation to pay a sum of money at a specified future date. Bonds are negotiable and transferable.

Municipal, corporate, and government bonds are negotiable and transferable. Therefore, their value as a resource is their CMV. Their redemption value, available only at maturity, is immaterial.

Development and documentation instructions for stocks also apply to bonds.

a. Corporate Bonds

Corporate bonds are the obligation of a private corporation. Corporations sell corporate bonds to raise capital. There are two (2) types:

- **debentures**, which are backed by the issuer's full faith and credit; and
- **mortgage backed** bonds, which are backed by a lien on the company's assets.

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Corporate bonds are issued in 2 forms:

- **registered**, which pay interest to their registered owner; and
- **bearer** or **coupon** bonds, which pay it to whomever holds the bond.

Convertible bonds are debentures that can be exchanged for a specified number of shares of a company's stock. Junk bonds are high risk bonds.

A UIT is a package of bonds in a portfolio. One can buy shares of the package for \$1 to \$1,000 per share with a minimum investment of \$750 to \$5,000, depending on the trust. The interest rate usually is fixed at purchase and does not change. Units usually are sold or redeemed through the trust sponsor.

Zero coupon bonds usually are issued by corporations. They do not pay current interest; accrued interest is paid at maturity. The U. S. Government does not issue zero coupon bonds directly. However, see TIGER and CATS (U. S. Securities).

Corporate bonds usually pay a fixed rate of interest for a fixed period of time (annually, semi-annually or quarterly).

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b. Municipal Bonds

Municipal bonds are to city, county and State governments and authorities what corporate bonds are to corporations. They are exempt from Federal taxes and often are exempt from State and local taxes as well. Most municipal bonds are one of two general types:

- general obligation bonds, which are backed by the full faith and credit of the issuing municipality and supported by the taxing power; and
- revenue bonds, which are backed by the project being financed and the revenue or user fees it generates.

Other types of municipals are; limited-tax bonds, anticipation notes, industrial development bonds, and life-care bonds.

c. Government Bonds/U. S. Securities

Government bonds, as distinct from a U. S. Savings Bond, is a transferable obligation issued or backed by the Federal Government.

T-Bills are short-term obligations that require a minimum investment of \$10,000. Certificates are not issued for T-Bills; they are registered in book form at the Treasury Department and receipts are provided as proof of purchase. T-Bills can be sold before maturity.

Treasury notes and bonds are similar to T-Bills but have longer maturities and a lower minimum investment requirement. They have been registered in book entry form since July 1986 but were sometimes issued as bearer bonds before then.

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Tiger and Cats are Government securities issued with a zero coupon concept. The broker removes the interest coupons from the security and sells it at a big discount with a long maturity. Accrued interest is then paid at maturity. These bonds can be sold before maturity.

Some of the Federal agencies with charters to issue securities are:

- the Federal Home Loan Bank Board;
- the Federal Home Loan Mortgage Corporation (FREDDIE MAC);
- The Export-Import Bank; and
- the Government National Mortgage Association (GINNIE MAE).

Minimum investment requirements range from \$1,000 to \$25,000.

d. Buying & Selling Bonds

Bonds usually are bought and sold through brokers, securities dealers, or other investors. They may sell for more or less than their face value or purchase price, depending on a variety of factors.

e. Reading Bond Quotations

The following is a typical bond quotation, showing from left to right:

- the name of the issuer (AT & T);
- the bond's nominal or coupon rate (3 7/8 percent);

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- the last two digits of the year in which the bond matures (1990);
- the current yield (5.6 percent);
- the number of bonds traded during the year (54,000);
- the highest, lowest, and last price of the bond for the period covered by the quotation (bond prices are quoted on a par of 100, so the last price of 69 1/4 equals \$692.50).
- the net change in the bond price:

	CURRENT	SALES			
ISSUE YIELD	1000'S HIGH	LOW	CLOSE	CHG	
AT&T	5.6	54	69 3/4	69 1/4	69 1/4 - 3/8
3 7/8, 90					

5. U. S. Savings Bonds

U. S. Savings Bonds are obligations of the Federal Government. Unlike other government bonds, they are not transferable; they can only be sold back to the Federal Government.

U. S. Savings Bonds cannot be redeemed for six months after the issue date specified on the face of the bond.

The individual in whose name a U. S. Savings Bond is registered owns it. The Social Security Number shown on a bond is not proof of ownership.

The co-owners of a U. S. Savings Bond own equal shares of the redemption value of the bond.

U. S. Savings Bonds are not resources during the 6-month mandatory retention period. They are resources (not income) as of the first moment of the seventh month.

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Verify ownership by viewing and photocopying any bonds in which a client or spouse has an ownership interest. Use the name(s) shown on the bond to determine ownership.

Use the Table of Redemption Values for U. S. Savings Bonds to determine value or obtain the value by telephone from a local bank and record it on a Record of Contract. The bank will need the series, denomination, date of purchase and/or issue date.

Exception: After the 6-month retention period, the redemption value of a series H or HH bond is its face value.

Physical possession of a U. S. Savings Bond is a requirement for redeeming it. If a person other than the client/spouse will not relinquish possession of a bond, it is not an available resource. A transfer of assets may exist unless a successful rebuttal of ownership is offered.

6. Promissory
or **Notes, Loans,**
property) **& Property**
loan, or **Agreements**

The context of the instructions in this section is the client spouse as the creditor (lender of money, seller of and, therefore, as the owner of the promissory note, property agreement.

A promissory note is a written unconditional agreement whereby one party promises to pay a specified sum of money at a specified time (or on demand) to another party. It may be given in return for goods, money loaned, or services rendered.

A loan is a transaction whereby one party advances money to or on behalf of another party, who promises to repay the lender in full, with or without interest. The loan agreement must be enforceable under State law and be in writing. A written loan agreement is a form of promissory note.

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A property agreement is a pledge or security of particular property for the payment of a debt or the performance of some other obligation within a specified period. Property agreements on real estate generally are referred to as mortgages but also may be called land contracts, contracts for deed, deeds of trust, and so on. Personal property agreements-e.g., pledges of crops, fixtures, inventory, etc.-are commonly known as chattel mortgages.

When an individual enters into a contract for the sale of real estate, he or she owns two items until the settlement of the sale is completed; the real estate and the contract. The real estate is not a resource because the individual cannot sell it. The contract is a property agreement whose status and value as a resource must be determined in accordance with this section.

a. SSI Policy

Assume that the value of a promissory note, loan or property agreement as a resource is its outstanding principal balance unless the individual furnishes reliable evidence that it has a CMV of less than that (or no CMV at all).

Obtain a copy of the agreement for the file.

Obtain evidence of the outstanding principal balance if including the original balance in countable resources causes ineligibility.

If including the outstanding principal balance in countable resources causes ineligibility, inform the individual that we will use the outstanding principal balance in determining resources unless he or she submits:

- evidence of a legal bar to the sale of the agreement; or

RESOURCES

TYPES OF RESOURCES

- an estimate from a knowledgeable source, showing that the CMV of the agreement is less than its outstanding principal balance.

Knowledgeable sources include anyone regularly engaged in the business of making such evaluations: e.g., banks or other financial institutions, private investors or real estate brokers. The estimate must show the name, title, and address of the source.

b. Liberalized Policy

For MAO Coverage Groups subject to liberalized resource policy, effective 10-01-89, promissory notes, loans and property agreements can be excluded as a resource if the note, loan or agreement produces at least a 6% net annual return of the principal balance. The income produce must be received by the client/spouse and counted as income in order for the exclusion to apply.

NOTE: All Promissory Notes, Loan and Property Agreements (SSI or Liberalized) must be determined to be actuarially sound in the same manner as annuities (outlined in OBRA-93 Trust/Transfers of Assets policy). Even though the 6% rule is in effect that sets a minimum acceptable payment when compared to the principal balance, an additional step is required to determine if the client (or spouse) will reasonably be expected to receive the full payoff of the note or loan during his/her lifetime. As with annuities, the average number of years of life expectancy remaining (based on the Annuity Life Expectancy Charts) must coincide with the payout of the Promissory Note or Loan. If the note or loan is not acceptable, then the amount that is not expected to be paid out is treated as a transfer of resources the same as it is for annuities.

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TYPES OF RESOURCES

A “loan” to a relative that is immediately declared “uncollectible” isn’t a loan at all; it’s a transfer of assets for less than fair market value. A financial institution that has no direct interest in the original transaction cannot verify that the “loan” is uncollectible. An uncollectible loan must be documented in the form of a legally binding and enforceable contract with the rate of interest specified and a repayment schedule. Documentation is required on a regular basis to verify that the loan is being required by the contract. If the “loan” isn’t being repaid, the lender is required to take legal action against the lendee to enforce the contract requirements.

As with annuities, a balloon payment does not meet the standards of being actuarially sound. The payments must be of uniform rate, principal and interest, during the life expectancy of the individual and no cancellation of the balance upon the death of the lender.

Funds used to purchase a promissory note, loan, or mortgage that are not actuarially sound will be considered a transfer based on the outstanding balance due as of the date of the application for long-term care.

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TRUSTS/TRANSFERS OF ASSETS

**A. TRUST
POLICIES**

The following is a discussion of the treatment of income and resources which have been placed in or are being distributed from trusts, guardianships or conservatorships. Trusts are classified as follows:

- OBRA-93 Trusts - applicable to trusts established on or after August 11, 1993, which is the date mandated by OBRA-93 federal legislation. OBRA-93 Trusts must meet certain criteria. If OBRA-93 criteria is not met, refer to the appropriate trust policy.
- Medicaid Qualifying Trusts - applicable to trusts established on or after March 1, 1987 through August 10, 1993 that meet MQT criteria. If MQT criteria is not met, defer to Standard Trust policy.
- Standard Trusts - applicable to trusts established prior to March 1, 1987 and/or trusts that do not meet the criteria of OBRA-93 or MQT trusts regardless of the date established.

Trusts, guardianships/conservatorships must be referred to the State Office for clearance whenever a client or spouse either creates a trust or is the beneficiary of one. All pertinent material must be included.

**B. TRUST
DEFINITIONS**

The following definitions apply to any/all types of trusts.

1. Trust

A trust is a property interest whereby property is held by an individual (trustee) subject to a fiduciary duty to use the property for the benefit of another (the beneficiary).

2. Grantor

A grantor (also called a settlor or trustor) is a person who creates a trust. An individual may be a grantor if an agent, or other individual legally empowered to act on his/her behalf (e.g., a legal guardian, person acting under a power of attorney or conservator), establishes the trust with funds or property that belong to the individual. The terms grantor, trustor, and settlor may be used interchangeably.

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TRUSTS/TRANSFERS OF ASSETS

C. **OBRA-93
TRUST
POLICY**

Section 13611 of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) amended Section 1917(d) of the Social Security Act to revise the treatment of trusts effective with trusts established after the date of enactment of OBRA-93, which was August 10, 1993. Trusts established before this date, but added to or otherwise augmented after this date are treated under OBRA-93 Trust rules.

Trusts that do not meet the criteria for OBRA-93 trusts or trusts established prior to 08/10/93 must be reviewed under the appropriate trust policy.

OBRA-93 Transfer of Assets policy is used in conjunction with OBRA-93 Trust policy.

1. **Definitions**

- a. Trust -- For purposes of this section, a trust is any arrangement in which a grantor transfers property to a trustee or trustees with the intention that it be held, managed, or administered by the trustee(s) for the benefit of the grantor or certain designated individuals (beneficiaries). The trust must be valid under State law and manifested by a valid trust instrument or agreement. A trustee holds a fiduciary responsibility to hold or manage the trust's corpus and income for the benefit of the beneficiaries. The term "trust" also includes any legal instrument or device that is similar to a trust. It does not cover trusts established by will. Such trusts must be dealt with using Standard Trust policy.
- b. Legal Instrument or Device Similar to Trust -- This is any legal instrument, device, or arrangement which may not be called a trust under State law but which is similar to a trust. That is, it involves a grantor who transfers property to an individual or entity with fiduciary obligations (considered a trustee for purposes of this section). The grantor makes the transfer with the intention that it be held, managed, or administered by the individual or entity for the benefit of the grantor or others. This can include (but is not limited to) escrow accounts, investment accounts,

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TRUSTS/TRANSFERS OF ASSETS

- pension funds, and other similar devices managed by an individual or entity with fiduciary obligations.
- c. Trustee -- A trustee is any individual, individuals, or entity (such as an insurance company or bank) that manages a trust or similar device and has fiduciary responsibilities.
- d. Grantor -- A grantor is any individual who creates a trust. For purposes of this section, the term "grantor" includes:
- The individual;
 - The individual's spouse;
 - A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; and
 - A person, including a court or administrative body, acting at the direction or upon the request of the individual, or the individual's spouse.
- e. Revocable Trust -- A revocable trust is a trust which can under State law be revoked by the grantor. A trust which provides that the trust can only be modified or terminated by a court is considered to be a revocable trust, since the grantor (or his/her representative) can petition the court to terminate the trust. Also, a trust which is called irrevocable but which terminates if some action is taken by the grantor is a revocable trust for purposes of this instruction. For example, a trust may require a trustee to terminate a trust and disburse the funds to the grantor if the grantor leaves a nursing facility and returns home. Such a trust is considered to be revocable.

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- f. Irrevocable Trust -- An irrevocable trust is a trust which cannot, in any way, be revoked by the grantor.
- g. Beneficiary -- A beneficiary is any individual or individuals designated in the trust instrument as benefiting in some way from the trust, excluding the trustee or any other individual whose benefit consists only of reasonable fees or payments for managing or administering the trust. The beneficiary can be the grantor himself, another individual or individuals, or a combination of any of these parties.
- h. Payment -- For purposes of this section a payment from a trust is any disbursement from the corpus of the trust or from income generated by the trust which benefits the party receiving it. A payment may include actual cash, as well as noncash or property disbursements, such as the right to use and occupy real property.
- i. Annuity -- An annuity is a right to receive fixed, periodic payments, either for life or a term of years.

**2. OBRA-93
Trust
Provisions**

This section applies to any individual who establishes a trust and who is an applicant for or recipient of Medicaid. An individual is considered to have established a trust if his or her assets (regardless of how little) were used to form part or all of the corpus of the trust and if any of the parties described as a grantor established the trust, other than by will.

When a trust corpus includes assets of another person or persons as well as assets of the individual, the rules in this section apply only to the portion of the trust attributable to the assets of the individual. Thus, in determining countable income and resources in the trust for eligibility and post-eligibility purposes, you must prorate any amounts of income and resources, based on the proportion of the individual's assets in the trust to those of other persons.

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TRUSTS/TRANSFERS OF ASSETS

The rules set forth in this section apply to trusts without regard to:

- The purpose for which the trust is established;
- Whether the trustee(s), has or exercises any discretion under the trust;
- Any restrictions on when or whether distributions can be made from the trust; or
- Any restrictions on the use of distributions from the trust.

This means that any trust which meets the basic definition of a trust can be counted in determining eligibility for Medicaid. No clause or requirement in the trust, no matter how specifically it applies to Medicaid or other Federal or State programs (i.e., an exculpatory clause), precludes a trust from being considered under these rules. Note: Exceptions to the countability of trusts as a resource do exist and are outlined later in the section.

**3. Treatment
of Revocable
OBRA-93
Trusts**

In the case of a revocable trust:

- The entire corpus of the trust is counted as an available resource to the individual;
- Any payments from the trust made to or for the benefit of the individual are counted as income to the individual;
- Any payments from the trust which are not made to or for the benefit of the individual are considered assets disposed of for less than fair market value. Refer to OBRA-93 Transfer of Assets policy.

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TRUSTS/TRANSFERS OF ASSETS

When a portion of a revocable trust is treated as a transfer of assets for less than fair market value, the look-back period described in OBRA-93 Transfer policy is extended from the usual 36 months to 60 months.

Note: Home property placed in a revocable trust loses its excluded status if the client is in an institution.

**4. Treatment
of Irrevocable
Trust -
Payment
Can Be
Made
Under
Terms
of Trust**

In the case of an irrevocable trust, where there are any circumstances under which payment can be made to or for the benefit of the individual from all or a portion of the trust, the following rules apply to that portion:

- Payments from income or from the corpus made to or for the benefit of the individual are treated as income to the individual;
- Income on the corpus of the trust which could be paid to or for the benefit of the individual is treated as a resource available to the individual;
- The portion of the corpus that could be paid to or for the benefit of the individual is treated as a resource available to the individual; and,
- Payments from income or from the corpus that are made but not to or for the benefit of the individual are treated as a transfer of assets for less than fair market value. A 36 month look back period for transfers of assets applies.

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TRUSTS/TRANSFERS OF ASSETS

5. **Treatment
of Irrevocable
Trusts-
Payment
Cannot Be
Made Under
Terms of
Trust**

When all or a portion of the corpus or income on the corpus of a trust cannot be paid to the individual, treat all or any such portion or income as a transfer of assets under OBRA-93 Transfer policy.

In treating these portions as a transfer of assets, the date of the transfer is considered to be:

- The date the trust was established; or,
- If later, the date on which payment to the individual was foreclosed.

In determining for transfer of assets purposes the value of the portion of the trust which cannot be paid to the individual, do not subtract from the value of the trust any payments made, for whatever purposes, after the date the trust was established or, if later, the date payment to the individual was foreclosed.

If the trustee or the grantor adds funds to that portion of the trust after these dates, the addition of those funds is considered to be a new transfer of assets, effective on the date the funds are added to that portion of the trust.

Thus, in treating portions of a trust which cannot be paid to an individual, the value of the transferred amount is no less than its value on the date the trust is established or payment is foreclosed. When additional funds are added to this portion of the trust, those funds are treated as a new transfer of assets for less than fair market value.

When that portion of a trust which cannot be paid to an individual is treated as a transfer of assets for less than fair market value, **the usual 36 month look-back period is extended to 60 months.**

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TRUSTS/TRANSFERS OF ASSETS

**6. Payments
Made From
Revocable or
Irrevocable
Trusts**

Payments are considered to be made to the individual when any amount from the trust, including an amount from the corpus or income produced by the corpus, is paid directly to the individual or to someone acting on his/her behalf, e.g., a guardian or legal representative.

Payments made for the benefit of the individual are payments of any sort, including an amount from the corpus or income produced by the corpus, paid to another person or entity such that the individual derives some benefit from the payment. For example, such payments could include purchase of clothing or other items, such as a radio or television, for the individual. Also, such payments could include payment for services the individual may require, or care, whether medical or personal, that the individual may need. Payments to maintain a home are also payments for the benefit of the individual.

Note: A payment to or for the benefit of the individual is counted under this provision only if such a payment is ordinarily counted as income under the SSI program. For example, payments made on behalf of an individual for medical care are not counted in determining income eligibility under the SSI program. Thus, such payments are not counted as income under the trust provision.

**7. Circumstances
Under
Which
Payments
Can/Cannot
Be Made**

In determining whether payments can or cannot be made from a trust to or for an individual, take into account any restrictions on payments, such as use restrictions, exculpatory clauses, or limits on trustee discretion that may be included in the trust.

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For example, if an irrevocable trust provides that the trustee can disburse only \$1,000 to or for the individual out of a \$20,000 trust, only the \$1,000 is treated as a payment that could be made. The remaining \$19,000 is treated as an amount which cannot, under any circumstances, be paid to or for the benefit of the individual. On the other hand, if a trust contains \$50,000 that the trustee can pay to the grantor only in the event that the grantor needs, for example, a heart transplant, this full amount is considered as payment that could be made under some circumstances, even though the likelihood of payment is remote. Similarly, if a payment cannot be made until some point in the distant future, it is still payment that can be made under some circumstances.

**8. Placement
of Excluded
Assets In
Trust**

Section 1917(e) of the Act provides that, for trust and transfer purposes, assets include both income and resources. Section 1917(e) of the Act further provides that income has the meaning given the term in Section 1612 of the Act and resources has the meaning given that term in Section 1613 of the Act (income and resources as defined in SSI policy). The only exception is that for institutionalized individuals, the home is not an excluded resource.

Thus, transferring an excluded asset (either income or a resource, with the exception of the home of an institutionalized individual) for less than fair market value does not result in a penalty under the transfer provisions because the excluded asset is not an asset for transfer purposes. Similarly, placement of an excluded asset in a trust does not change the excluded nature of that asset; it remains excluded. The only exception is the home of an institutionalized individual. Because Section 1917(e) of the Act provides that the home is not an excluded resource for institutional individuals, transfer of title to the home of an institutionalized individual in a trust (revocable or irrevocable) results in the home becoming a countable resource.

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9. **Exceptions
to Treatment
of Trusts
Under Trust
Provisions**

The rules concerning treatment of trusts do not apply to any of the following trusts, i.e., the trusts discussed below are treated differently in determining eligibility for Medicaid. Funds entering and leaving these trusts are generally treated according to SSI rules or more liberal rules under Section 1902(r)(2) of the Act, as appropriate.

As is noted in each exception below, one common feature of all of the excepted trusts is a requirement that the trust provide that upon the death of the individual, any funds remaining in the trust go to the Division of Medicaid, up to the amount paid in Medicaid benefits on the individual's behalf.

- a. Special Needs Trusts -- A trust containing the assets of an individual under age 65 who is disabled (as defined by the SSI program) and which is established **for the sole benefit of** the individual by a parent, grandparent, legal guardian of the individual, or a court is often referred to as a special needs trust. To qualify for an exception to the rules in this section, the trust must contain a provision stating that, upon the death of the individual, the State receives all amounts remaining in the trust, up to an amount equal to the total amount of medical assistance paid on behalf of the individual. In addition to the assets of the individual, the trust may also contain the assets of individuals other than the disabled individual.

When a trust is established for a disabled individual under age 65, the exception for the trust discussed above continues even after the individual becomes age 65. However, such a trust cannot be added to or otherwise augmented after the individual reaches age 65. Any such addition or augmentation after age 65 involves assets that were not the assets of an individual under age 65. Thus, those assets are not subject to the exemption discussed in this section.

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To qualify for this exception, the trust must be established for a disabled individual, as defined under the SSI Program. When the individual in question is receiving either title II or SSI benefits as a disabled individual, accept the disability determination made for those programs. If the individual is not receiving those benefits, make a determination concerning the individual's disability.

Establishment of a trust as described above does not constitute a transfer of assets for less than fair market value if the transfer is made into a trust established solely for the benefit of a disabled individual under age 65. However, if the trust is not solely for the benefit of the disabled person or if the disabled person is over age 65 transfer penalties may apply.

- b. Pooled Trusts -- A pooled trust is a trust containing the assets of a disabled individual as defined by the SSI Program in Section 1614(a)(3) of the Act, that meets the following conditions:
- The trust is established and managed by a non-profit association;
 - A separate account is maintained for each beneficiary of the trust but for purposes of investment and management of funds the trust pools the funds in these accounts;
 - Accounts in the trust are established solely for the benefit of disabled individuals by the individual, by the parent, grandparent, legal guardian of the individual, or by a court; and,

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- To the extent that any amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the Division of Medicaid the amount remaining in the account up to an amount equal to the total amount of medical assistance paid on behalf of the beneficiary. To meet this requirement, the trust must include a provision specifically providing for such payment.

To qualify as an excepted trust, the trust account must be established for a disabled individual, as defined in Section 1614(a)(3) of the Act. When the individual in question is receiving either title II or SSI benefits as a disabled individual, accept the disability determination made for those programs. If the individual is not receiving those benefits, make a determination concerning the individual's disability.

- c. Income Trusts - This type of trust established for the benefit of the individual is limited to institutionalized clients and must meet the following requirements:
 - The trust is composed only of pension, Social Security, and other income to the individual, including accumulated interest in the trust; and,
 - Upon the death of the individual, the Division of Medicaid receives all amounts remaining in the trust, up to an amount equal to the total medical assistance paid on behalf of the individual. To qualify for this exception, the trust must include a provision to this effect.

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To qualify for this exception, the trust must be composed only of income to the individual, from whatever source. The trust may contain accumulated income, i.e., income that has not been paid out of the trust. However, no resources, as defined by SSI, may be used to establish or augment the trust. Inclusion of resources voids this exception.

An individual's total income must go into the Income Trust each month. The only exception is for the types of VA payments that are not considered income, i.e., VA Reduced Pension benefits, VA Aid & Attendance payments and VA Pension payments attributed to Unreimbursed Medical Expenses.

The difference between an individual's total income and an amount that is \$1 less than the current institutional income limit funds the Income Trust. The only allowable expenses from the amount funding the trust each month are actual expenses associated with establishing/maintaining the trust. Trustee's fees, if granted, are limited to \$10 per month and are intended to cover bank charges associated with maintaining a trust account.

From the amount released from an Income Trust (\$1 less than the institutional limit), the usual income deductions apply in the order allowed in post-eligibility (Medicaid Income) budgeting.

Trusts that are not properly funded into an Income Trust account do not meet the criteria for a trust exception.

When an Income Trust is no longer needed due to the client's death, ineligibility or some other change, refer the case to the State Office for a determination of the amount owed from the trust.

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**10. Undue
Hardship
Provision**

When application of the OBRA-93 Trust provisions would work an undue hardship, the provisions will not apply.

Undue hardship exists when application of the trust provisions would deprive the individual of medical care such that his/her health or his/her life would be endangered. Undue hardship also exists when application of the trust provisions would deprive the individual of food, clothing, shelter, or other necessities of life.

Undue hardship does not exist when application of the trust provisions merely causes the individual inconvenience or when such application might restrict his or her lifestyle but would not put him or her at risk of serious deprivation.

Hardship will not be found if the resource was transferred to a person who was handling the financial affairs of the client or to the spouse or children of a person handling the financial affairs of the client unless the client demonstrates that payments cannot be obtained from the funds of the person who handled the financial affairs to pay for long-term care services. Undue hardship exists when a client has exhausted all legal action to have transferred assets that caused a penalty period returned to the client.

Each case situation must be reviewed individually to determine if undue hardship exists. Generally, this provision is limited to financially and medically needy individuals with no possible means of accessing funds placed in trust.

11. Annuities

Section 1917(d)(6) of the Act provides that the term "trust" includes an annuity to the extent and in such manner as the HCFA Secretary specifies. This subsection describes how annuities are treated under the OBRA-93 trust/transfer provisions.

When an individual purchases an annuity, he or she generally pays to the entity issuing the annuity (e.g., a bank or insurance company) a lump sum of money, in return for which he or she is promised regular payments of income in certain amounts. These payments may continue for a fixed period of time (for

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example, 10 years) or for as long as the individual (or another designated beneficiary) lives, thus creating an ongoing income stream. The annuity may or may not include a remainder clause under which, if the annuitant dies, the contracting entity converts whatever is remaining in the annuity into a lump sum and pays it to a designated beneficiary.

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Annuities, although usually purchased in order to provide a source of income for retirement, are occasionally used to shelter assets so that individuals purchasing them can become eligible for Medicaid. In order to avoid penalizing annuities validly purchased as part of a retirement plan but to capture those annuities which abusively shelter assets, a determination must be made with regard to the ultimate purpose of the annuity (i.e., whether the purchase of the annuity constitutes a transfer of assets for less than fair market value). If the expected return on the annuity is commensurate with a reasonable estimate of the life expectancy of the beneficiary, the annuity can be deemed actuarially sound.

To make this determination, use the following life expectancy tables, compiled from information published by the Office of the Actuary of the Social Security Administration. The average number of years of expected life remaining for the individual must coincide with the life of the annuity. If the individual is not reasonably expected to live longer than the guarantee period of the annuity, the individual will not receive fair market value for the annuity based on the projected return. In this case, the annuity is not actuarially sound and a transfer of assets for less than fair market value has taken place, subjecting the individual to a penalty. The penalty is assessed based on a transfer of assets for less than fair market value that is considered to have occurred at the time the annuity was purchased.

For example, if a male at age 65 purchases a \$10,000 annuity to be paid over the course of 10 years, his life expectancy according to the table is 14.96 years. Thus, the annuity is actuarially sound. However, if a male at age 80 purchases the same annuity for \$10,000 to be paid over the course of 10 years, his life expectancy is only 6.98 years. Thus, a payout of the annuity for approximately 3 years is considered a transfer of assets for less than fair market value and that amount is subject to penalty.

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A balloon payment annuity does not meet the standards of being actuarially sound. The annuity payments must be of uniform rate, principal and interest, during the life expectancy of the individual.

FORMULA TO USE TO DETERMINE UNCOMPENSATED VALUE (UV) OF ANNUITIES

1. **TAKE PURCHASE PRICE) PAYMENT SCHEDULE = ANNUAL RATE**
2. **USE LIFE EXPECTANCY (LE) TABLE & SUBTRACT # OF LE YEARS FROM THE PAYOUT YEARS (PAYMENT SCHEDULE) = DIFFERENCE**
3. **MULTIPLY DIFFERENCE X ANNUAL RATE = UV**

Effective February 8, 2006, the applicant and the community spouse must disclose to the Division of Medicaid any interest that either of them has in an annuity or similar financial instrument. The Division of Medicaid must be the primary beneficiary to such an annuity unless there is a community spouse or minor or disabled child, Medicaid must be the secondary beneficiary. The primary beneficiaries are prohibited from disposing of the remainder for less than fair market value. If the annuity is not actuarially sound and/or the individual refuses to make the Division of Medicaid primary or secondary beneficiary, the total value of the annuity will be treated as a transfer of assets.

Annuities purchased on or after February 8, 2006, will be subject to estate recovery.

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LIFE EXPECTANCY TABLE - MALES

<u>AGE</u>	<u>LIFE</u> <u>EXPECTANCY</u>	<u>AGE</u>	<u>LIFE</u> <u>EXPECTANCY</u>	<u>AGE</u>	<u>LIFE</u> <u>EXPECTANCY</u>
0	73.26	41	35.03	82	6.31
1	72.85	42	34.13	83	5.92
2	71.89	43	33.24	84	5.55
3	70.92	44	32.35	85	5.20
4	69.94	45	31.46	86	4.86
5	68.96	46	30.59	87	4.55
6	67.98	47	29.71	88	4.26
7	66.99	48	28.85	89	3.98
8	66.01	49	27.99	90	3.73
9	65.02	50	27.13	91	3.49
10	64.03	51	26.28	92	3.27
11	63.04	52	25.44	93	3.06
12	62.05	53	24.61	94	2.88
13	61.06	54	23.78	95	2.71
14	60.08	55	22.97	96	2.55
15	59.11	56	22.17	97	2.41
16	58.16	57	21.37	98	2.29
17	57.21	58	20.60	99	2.17
18	56.27	59	19.83	100	2.05
19	55.34	60	19.07	101	1.94
20	54.41	61	18.33	102	1.84
21	53.48	62	17.60	103	1.74
22	52.56	63	16.89	104	1.64
23	51.64	64	16.19	105	1.55
24	50.72	65	15.52	106	1.46
25	49.79	66	14.86	107	1.37
26	48.86	67	14.23	108	1.29
27	47.93	68	13.61	109	1.21
28	47.00	69	13.00	110	1.14
29	46.07	70	12.41	111	1.06
30	45.14	71	11.82	112	0.99
31	44.21	72	11.24	113	0.93
32	43.28	73	10.67	114	0.86
33	42.36	74	10.12	115	0.80
34	41.43	75	9.58	116	0.74
35	40.51	76	9.06	117	0.69
36	39.59	77	8.56	118	0.63
37	38.67	78	8.07	119	0.58
38	37.76	79	7.61		
39	36.85	80	7.16		
40	35.94	81	6.72		

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LIFE EXPECTANCY TABLE - FEMALES

<u>AGE</u>	<u>LIFE</u> <u>EXPECTANCY</u>	<u>AGE</u>	<u>LIFE</u> <u>EXPECTANCY</u>	<u>AGE</u>	<u>LIFE</u> <u>EXPECTANCY</u>
0	79.26	41	39.92	82	8.04
1	78.78	42	38.98	83	7.54
2	77.82	43	38.05	84	7.05
3	76.84	44	37.12	85	6.59
4	75.86	45	36.19	86	6.15
5	74.87	46	35.26	87	5.74
6	73.89	47	34.34	88	5.34
7	72.90	48	33.43	89	4.97
8	71.91	49	32.52	90	4.63
9	70.92	50	31.61	91	4.31
10	69.93	51	30.72	92	4.01
11	68.94	52	29.82	93	3.73
12	67.95	53	28.94	94	3.48
13	66.96	54	28.06	95	3.26
14	65.98	55	27.19	96	3.05
15	65.00	56	26.34	97	2.87
16	64.02	57	25.49	98	2.70
17	63.04	58	24.64	99	2.54
18	62.07	59	23.81	100	2.39
19	61.10	60	22.99	101	2.25
20	60.13	61	22.18	102	2.11
21	59.16	62	21.38	103	1.98
22	58.19	63	20.60	104	1.86
23	57.22	64	19.82	105	1.74
24	56.24	65	19.06	106	1.63
25	55.27	66	18.31	107	1.52
26	54.30	67	17.58	108	1.41
27	53.33	68	16.85	109	1.32
28	52.36	69	16.14	110	1.22
29	51.39	70	15.44	111	1.13
30	50.43	71	14.75	112	1.05
31	49.46	72	14.06	113	0.97
32	48.50	73	13.40	114	0.89
33	47.53	74	12.74	115	0.82
34	46.57	75	12.09	116	0.75
35	45.62	76	11.46	117	0.69
36	44.66	77	10.85	118	0.63
37	43.71	78	10.25	119	0.58
38	42.76	79	9.67		
39	41.81	80	9.11		
40	40.86	81	8.57		

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**D. OBRA-93 and
DRA-2005
TRANSFER
POLICY**

Section 13611 of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66), herein referred to as OBRA-93, amended Section 1917(c)(1) of the Social Security Act to revise transfer of assets policy previously described in the Medicare Catastrophic Coverage Act (MCCA) of 1988 (P.L. 100-360). Assets disposed of on or before the enactment of OBRA-93, which was August 10, 1993, will be evaluated under MCCA policy. Assets disposed of on or after August 11, 1993 will be evaluated under policy mandated by OBRA-93 and described below. Policy will remain the same except where Deficit Reduction Act (DRA) changes are indicated.

**1. Definitions
(Applicable
to Transfers
& Trusts)**

OBRA-93 added and amended the following definitions of terms used in conjunction with transfer and trust policy.

- a. Individual -- As used in this instruction, the term "individual" includes the individual himself or herself, as well as:
- The individual's spouse, where the spouse is acting in the place of or on behalf of the individual;
 - A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; and
 - Any person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.
- b. Spouse -- This is a person who is considered legally married to an individual under the laws of Mississippi.

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- c. Assets -- For purposes of this section, assets include all income and resources of the individual and of the individual's spouse. This includes income or resources which the individual or the individual's spouse is entitled to but does not receive because of any action by:
- The individual or the individual's spouse;
 - 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
 - Any person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

For purposes of this section, the term "assets an individual or spouse is entitled to" includes assets to which the individual is entitled or would be entitled if action had not been taken to avoid receiving the assets.

The following are examples of actions which would cause income or resources not to be received:

- Irrevocably waiving pension income;
- Waiving the right to receive an inheritance;
- Not accepting or accessing injury settlements;
- Tort settlements which are diverted by the defendant into a trust or similar device to be held for the benefit of an individual who is a plaintiff; and

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- Refusal to take legal action to obtain a court ordered payment that is not being paid, such as child support or alimony.

The specific circumstances of each case must be examined before deciding whether an uncompensated transfer occurred.

- d. Resources -- For purposes of this section, the definition of resources is the same definition used by the Supplemental Security Income (SSI) program, except that the home is not excluded for institutionalized individuals. In determining whether a transfer of assets or a trust involves an SSI-countable resource, use those resource exclusions and disregards used by the SSI program, except for the exclusion of the home for institutionalized individuals.
- e. Income -- For purposes of this section, the definition of income is the same definition used by the SSI program. In determining whether a transfer of assets involves SSI-countable income, take into account those income exclusions and disregards used by the SSI program.
- f. For the Sole Benefit of -- A transfer is considered to be for the sole benefit of a spouse, blind or disabled child, or a disabled individual if the transfer is arranged in such a way that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future.

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Similarly, a trust is considered to be established for the sole benefit of a spouse, blind or disabled child, or disabled individual if the trust benefits no one but that individual, whether at the time the trust is established or any time in the future. However, the trust may provide for reasonable compensation for a trustee or trustees to manage the trust, as well as for reasonable costs associated with investing or otherwise managing the funds or property in the trust.

A transfer, transfer instrument, or trust that provides for funds or property to pass to a beneficiary who is not the spouse, blind or disabled child, or disabled individual is not considered to be established for the sole benefit of one of these individuals. In order for a transfer or trust to be considered to be for the sole benefit of one of these individuals, the instrument or document must provide for the spending of the funds involved for the benefit of the individual on a basis that is actuarially sound based on the life expectancy of the individual involved. When the instrument or document does not so provide, any potential exemption from penalty or consideration for eligibility purposes is void.

An exception to this requirement exists for trusts discussed in "Exemptions to Treatment of Trusts." Under these exceptions, the trust instrument must provide that any funds remaining in the trust upon the death of the individual must go to the Division of Medicaid, up to the amount of Medicaid benefits paid on the individual's behalf. When these exceptions require that the trust be for the sole benefit of an individual, the restriction discussed in the previous paragraph does not apply when the trust instrument designates the Division of Medicaid as the recipient of funds from the trust. Also, the trust may provide for disbursement of funds to other beneficiaries, provided the trust does not permit such disbursements until the State's claim is satisfied.

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2. **Transfer
Penalty
Definitions**

Under the transfer of assets provisions in Section 1917(c) of the Act, as amended by OBRA 1993, coverage of certain Medicaid services to otherwise eligible institutionalized individuals who transfer (or whose spouses transfer) assets for less than fair market value must be denied. The following definitions apply to transfers of assets.

- a. Fair Market Value -- Fair market value is an estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred. Value is based on criteria used in appraising the value of assets for the purpose of determining Medicaid eligibility.

Note: For an asset to be considered transferred for fair market value or to be considered to be transferred for valuable consideration, the compensation received for the asset must be in a tangible form with intrinsic value. A transfer for love and consideration, for example, is not considered a transfer for fair market value. Also, while relatives and family members legitimately can be paid for care they provide to the individual, Medicaid presumes that services provided for free at the time were intended to be provided without compensation. Thus, a transfer to a relative for care provided for free in the past is a transfer of assets for less than fair market value. However, an individual can rebut this presumption with tangible evidence that is acceptable, such as a written repayment schedule agreed to at the time services were provided.

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

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- c. Uncompensated Value -- The uncompensated value is the difference between the fair market at the time of transfer (less any outstanding loans, mortgages, or other encumbrances on the asset) and the amount received for the asset.
- d. Institutionalized Individual -- An institutionalized individual is an individual who is:
- An inpatient in a nursing facility;
 - An inpatient in a medical institution for whom payment is based on a level of care provided in a nursing facility; or
 - An inpatient in an ICF-MR facility
3. **Effective Date of OBRA-93 Transfer Policy** This section applies to all transfers which are made on or after August 11, 1993. Transfers made before August 11, 1993, are treated under policy in effect prior to OBRA-93. While this section applies to transfers made on or after August 11, 1993, penalties for transfers for less than fair market value under OBRA-93, cannot be applied to services provided before October 1, 1993. Instead, for the period prior to October 1, 1993, apply pre-OBRA-1993 rules regarding transfers of assets to transfers made on or after August 11, 1993, and before October 1, 1993.
4. **Effective Date of DRA-2005 Transfer Policy** The effective date of all DRA changes is February 8, 2006. Assets disposed of on or after February 8, 2006 will be evaluated under OBRA-93 except for the changes mandated by DRA-2005. DRA changes will be indicated for each section.
5. **Individuals To Whom Transfer of Assets Applies** Apply these provisions when an institutionalized individual or the individual's spouse disposes of assets for less than fair market value on or after the look-back date explained below.
- For purposes of this section, assets transferred by a parent, guardian, court or administrative body, or anyone acting in place of or on behalf of or at the request or direction of the individual or spouse, are considered to be transferred by the individual or spouse.

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6. **Look Back Period**
- The look-back period for transfers other than transfers to a trust is a date that is 36 months from the date the individual both is an institutionalized individual and has applied for Medicaid.
- For example:
- 12/94 - enters nursing facility
 - 02/95 - applies & 36 month look-back begins
 - 11/94 - transfer occurs & penalty begins
- The look-back period for assets transferred into certain trusts is 60 months from the date an individual is both institutionalized and has applied for Medicaid. This means that the transfer of assets penalty can apply to the total value of assets placed in a trust (subject to evaluation of trust policy) within 60 months from the time the trust is established and the individual enters an institution and applies for Medicaid.
- NOTE: The 36 month look-back period described above does not become fully effective until August 11, 1996. Prior to that date, a 36 month look-back period actually begins at some time before the date transfers are covered by these rules. While the 36 month look-back period is effective for transfers made on or after August 11, 1993, any transfers actually made before that date are treated under the rules described in pre OBRA-93 policy. Thus, the look back period is phased in over the 36 month period ending August 11, 1996.
- Effective February 8, 2006, DRA-2005 changed the look back period to 5 years (60 months). Transfers made prior to February 8, 2006, will be evaluated using the 3 year look back period. The 5 year look back period will be phased in over the 60 month period ending February 8, 2011.
7. **Multiple Periods of Institutionalization and Multiple Applications**
- When an individual has multiple periods of institutionalization or has made multiple applications for Medicaid (unless the application was withdrawn), the look-back date is based on a baseline date that is the first date upon which the individual has both applied for Medicaid and is institutionalized. Each individual has only one look-back date, regardless of the number of periods of institutionalization, applications for Medicaid (the exception is a withdrawn application), periods of eligibility or transfers of assets.

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8. **Effective Date of Penalty**
- The date of the penalty period is the first day of the first month during or after which assets have been transferred for less than fair market value and which does not occur in any other periods of ineligibility under this policy.
- Effective February 8, 2006, the date of the penalty will begin with the later of:
- The first day of a month during which assets have been transferred for less than fair market value; or
 - The date on which the individual is eligible for medical assistance based on all factors of eligibility being met and is receiving institutional level of care services (based on approved application for such services) that, were it not for the imposition of the penalty period would be covered by Medicaid.
- For applications on or after 2-8-06, the penalty will begin the month that Long Term Care services are requested if the individual is otherwise eligible for Medicaid. If an individual is already eligible for Long Term Care Services and a transfer of assets is discovered, the penalty will begin the month of the transfer.
9. **Penalty Period**
- The number of months of ineligibility for an institutionalized individual shall be equal to:
- a. the total, cumulative uncompensated value (UV) of all assets transferred by the individual (or individual's spouse) on or after the look back period divided by:
 - b. the average monthly cost to a private pay patient nursing facility services in Mississippi. The current average private rate is \$4600 effective 02-08-06. From 03/01/03 – 02/07/06, the average private rate was \$3100. From 04/01/99 – 02/28/03, the average private rate was \$2600. From 10/01/93 - 03/31/99, the average private rate was \$2000. When the amount of the transfer is less than the average monthly cost of nursing facility care, a penalty is imposed for less than a full month. Rounding down or otherwise disregarding any fractional part of an ineligibility period when determining the penalty period is not allowed effective 02/08/06. The average daily per

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diem rate of \$151 is used in determining the partial month penalty period.

10. Determining the Period of Ineligibility-Penalty Periods Overlap

All countable transfers occurring during the look-back period are totaled and the penalty period determined by dividing the total UV by the private pay rate. The first month of the transfer penalty period is the month in which the first countable transfer occurred. Transfers that occur after a penalty period is in effect are added in full to the end of the penalty period currently in effect. There is no limit on the number of months a transfer penalty can be imposed. The penalty period is always determined by the total UV calculated during the look back period.

11. Determining the Period of Ineligibility-Penalty Periods Do Not Overlap

When multiple transfers are made so that the penalty periods for each do not overlap, treat each transfer as a separate event with it's own penalty period. Exception: Consecutive transfers that occur on a regular basis must be calculated together. For example, an individual gave a relative \$5,199.00 in April and \$5,199.00 in May. The two gifts are added together and divided by \$2,600 causing a 3 month penalty for April, May and June.

12. Treatment of Income As Asset

Income, in addition to resources, is considered to be an asset for transfer (and trust) purposes. Thus, when an individual's income is given or assigned in some manner to another person, such a gift or assignment can be considered a transfer of assets for less than fair market value.

In determining whether income has been transferred, do not attempt to ascertain in detail the individual's spending habits during the 36 or 60 month look-back period. Absent some reason to believe otherwise, assume that ordinary household income was legitimately spent on the normal costs of daily living.

However, you should attempt to determine whether the individual has transferred lump sum payments actually received in a month. Such payments, while counted as income in the month received for eligibility purposes, are counted as resources in the following month if they were retained. Disposal of such lump sum payments before they can be counted as resources could constitute an uncompensated transfer of assets. Also attempt to determine

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whether amounts of regularly scheduled income or lump sum payments, which the individual would otherwise have received, have been transferred. Normally, such a transfer takes the form of a transfer of the right to receive income. For example, a private pension may be diverted to a trust and no longer paid to the individual.

When a single lump sum is transferred (e.g., a stock dividend check is given to another person in the month in which it is received by the individual), the penalty period is calculated on the basis of the value of the lump sum payment.

When a stream of income, (i.e., income received in a regular basis, such as a pension) or the right to a stream of income is transferred, calculate the penalty period as you would for a single lump sum. Using this method, a penalty period is imposed for each income payment. When the transfer involves a right to income (as opposed to periodic transfers of income the individual owns) make a determination of the total amount of income expected to be transferred during the individual's life, based on an actuarial projection of the individual's life expectancy, and calculate the penalty on the basis of the projected total income.

13. **Transfer
Penalty
for Jointly
Held
Assets**

In the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset.

Under this provision, merely placing another person's name on an account or asset as a joint owner might not constitute a transfer of assets subject, of course, to the specific circumstances of the situation. In such a situation, the individual may still possess ownership rights to the account or asset and thus have the right to withdraw all of the funds in the account or possess the asset at any time. Thus, the account or asset is still considered to belong to the individual.

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However, actual withdrawal of funds from the account or removal of the asset by the other person removes the funds or property from the control of the individual and so constitutes a transfer of assets. Also, if placing another person's name on the account or asset actually limits the individual's right to sell or otherwise dispose of the asset (e.g., the addition of another person's name requires that the person agree to the sale or disposal of the asset where no such agreement was necessary before), such placement constitutes a transfer of assets.

Use regular Medicaid rules to determine what portion of a jointly held asset is presumed to belong to an applicant or recipient. This portion is subject to a transfer penalty if it is withdrawn by a joint owner.

14. Exceptions to Transfers of Home Property

The transfer penalty will not apply to the transfer of home property by an institutionalized individual to the following family members of such individual:

- a. The individual's spouse or child under age 21 or a disabled or blind adult child; or
- b. a sibling who is part owner of the home who lived in the home for one (1) year before the individual entered a nursing facility; or
- c. a child who lived in the home for up to two (2) years before the individual entered a nursing facility and provided care to the individual which permitted the individual to remain at home.

15. Exceptions to Transfers of Non-Home Property

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

- a. Assets transferred to the individual's spouse or to another for the sole benefit of the individual's spouse;
- b. Assets transferred from the individual's spouse to another for the sole benefit of the individual's spouse;
- c. Assets transferred to the individual's child under age 21 or a disabled or blind adult child;

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- d. Assets transferred to a trust established solely for the benefit of a disabled individual under 65 years of age.

In determining whether an asset was transferred for the sole benefit of a spouse, child, or disabled individual, ensure that the transfer was accomplished via a written instrument of transfer (e.g., a trust document) which legally binds the parties to a specified course of action and which clearly sets out the conditions under which the transfer was made, as well as who can benefit from the transfer. A transfer without such a document cannot be said to have been made for the sole benefit of the spouse, child, or disabled individual, since there is no way to establish, without a document, that only the specified individuals will benefit from the transfer.

**16. Additional
Exceptions
(Acceptable
Rebuttals)**

An individual shall not be ineligible for medical assistance if a satisfactory showing is made to the Division of Medicaid that:

1. the individual intended to dispose of the assets either at fair market value or for other valuable consideration;
2. the assets were transferred exclusively for a purpose other than to qualify for medical assistance;
3. all assets transferred for less than fair market value have been returned to the individual; or
4. the Division of Medicaid determines that denial of eligibility would work an undue hardship on the individual.

**17. Undue
Hardship**

Undue hardship means depriving the individual of medical care such that the individual's health or life would be endangered, or of food, or clothing, shelter, or other necessities of life such that the individual would be at risk of serious deprivation. Undue hardship does not exist when the application of a transfer penalty merely causes an individual or individual's family member(s) inconvenience or restricts their lifestyle. Undue hardship does not exist when the individual transferred the assets to the community spouse

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and the community spouse refuses to cooperate in making the resource available to the individual. Hardship will not be found if the resource was transferred to a person who was handling the financial affairs of the client or to the spouse or children of a person handling the financial affairs of the client unless the client demonstrates that payments cannot be obtained from the funds of the person who handled the financial affairs to pay for long-term care services.

Undue hardship also exists when a client has exhausted all legal action to have transferred assets that caused a penalty period returned to the client.

Undue hardship does not exist when application of the transfer of assets provisions merely causes the individual inconvenience or when such application might restrict his or her lifestyle but would not put him/her at risk of serious deprivation.

Each case situation must be reviewed individually to determine if undue hardship exists. Generally, this provision is limited to financially and medically needy individuals with no possible means of recovering the asset(s) transferred.

Effective February 8, 2006, an undue hardship waiver may be requested by the facility in which the person resides on behalf of the individual if the facility has the individual's consent, or their personal representative's consent. The hardship waiver is for the recipient not the hardship of the facility.

**18. Transfers of
Assets &
Spousal
Impoverishment
Provisions**

Section 1924 of the Act sets forth the requirements for treatment of income and resources where there is an individual in a medical institution with a spouse still living in the community. This section of the Act provides for apportioning income and resources between the institutional spouse and the community spouse so that the community spouse does not become impoverished because the individual is in a medical institution.

The exceptions to the transfer of assets penalties regarding interspousal transfers and transfers to a third party for the sole

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benefit of a spouse apply even under the spousal impoverishment provisions. Thus, the institutional spouse can transfer unlimited assets to the community spouse or to a third party for the sole benefit of the community spouse.

When transfers between spouses are involved, the unlimited transfer exception should have little effect on the eligibility determination, primarily because resources belonging to both spouses are combined in determining eligibility for the institutionalized spouse. Thus, resources transferred to a community spouse are still to be considered available to the institutionalized spouse for eligibility purposes.

The exception for transfers to a third party for the sole benefit of the spouse may have greater impact on eligibility because resources may potentially be placed beyond the reach of either spouse and thus can not be counted for eligibility purposes. However, for the exception to be applicable, the definition of what is for the sole benefit of the spouse must be fully met. This definition is fairly restrictive, in that it requires that any funds transferred be spent for the benefit of the spouse within a time-frame actuarially commensurate with the spouse's life expectancy. If this requirement is not met, the exemption is void, and a transfer to a third party may then be subject to a transfer penalty.

**19. Notice of
Transfer of
Resources**

The client will be notified via DOM-322, Notice of Transfer of Assets, regarding countable transfers and the penalty period. The notice will allow the client or representative 10 present evidence to show that the transfer should not count. Evidence should include a written rebuttal plus any pertinent documentary evidence. If no rebuttal is offered, the penalty will be applied and the appropriate adverse action notice issued to deny or terminate payment of nursing home services only. The individual remains eligible for all other Medicaid services if the transfer penalty is the only factor of ineligibility. If the individual is ineligible on other factors as well as the transfer, the application or case must be denied or terminated.

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Note: Notice to the client via DOM-322 is required whenever a transfer is being charged. This is true even if the penalty period is expired and the action to be taken is an improper payment. DOM-322 must be issued prior to submitting an improper payment in order to allow the client the chance to rebut the transfer.

20. **Rebuttal Process** Written rebuttals along with the Regional Office decision regarding acceptability are to be submitted to the Area Supervisor prior to issuing final notice to the client. The material submitted to State Office should include the rebuttal, a copy of DOM-322 issued to the client, and a summary of the circumstances surrounding the transfer. The Area Supervisor will issue a memorandum to the Regional Office explaining the final decision on the transfer.
21. **Return of a Transferred Resource** If a transferred resource is returned to or if compensation is received by the institutionalized individual, the UV is no longer an issue or is reduced as of the date of the return. The resource or compensation is evaluated according to normal resource rules in the month of the return. Any portion of a transferred resource that is not returned continues to count as UV which means the penalty period must be re-evaluated.
22. **Recalculation of a Penalty Period** A penalty period must be recalculated from the month a portion of the resource is returned or additional compensation is received.
23. **Transfer Penalty Involving SSI Months** The transfer penalty can be imposed during months that an individual receives SSI or is SSI eligible in a nursing home. Notices for SSI eligibles must not be sent verifying eligibility for nursing facility services until the possibility of any transfers have been developed.

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**E. MEDICAID
QUALIFYING
TRUSTS**

Section 9506 of the Consolidated Omnibus Reconciliation Act of 1985 (P.L. 99-272) established the "Medicaid Qualifying Trust" (MQT) provision. An MQT is defined in federal statute as "a trust, or similar legal device, established (other than by will) by an individual (or an individual's spouse) under which the individual may be the beneficiary of all or part of the payments from the trust and the distribution of such payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the individual."

If a trust meets the definition of an MQT, then federal law states the amounts from the trust deemed available to a grantor is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the grantor, assuming the full exercise of discretion by the Trustee(s) for the distribution of the maximum amount to the grantor.

The MQT provision applies without regard to whether or not the MQT is irrevocable or is established for purposes other than to qualify for medical assistance or whether or not the discretion of the trustee(s) is actually exercised.

The effective date for application of the MQT provision is March 1, 1987. Any trust or similar legal device established on or after this date is subject to MQT rules. The MQT provision also applies to SSI recipients, as discussed in Section B, Special Handling of SSI cases.

**1. Policy
Principles**

In determining whether an MQT exists, look for these 3 main components:

- The grantor is the Medicaid client or his representative (e.g., spouse, parent, guardian or conservator or anyone holding power of attorney for the client);

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- The trust was established with property belonging to the client; and
- The client is at least one of the beneficiaries of the trust.

The client is considered to be the grantor even if the trust was established pursuant to court order issued upon the petition of the client or his representative. In this situation, the court acts as the client's agent in establishing the trust.

It is not necessary that there be a trust agreement, as defined by State law, for MQT policies to apply. MQT policies also apply to "similar legal devices," or arrangements having all of the characteristics of an MQT except there is no actual trust instrument. Examples of such devices might be escrow accounts, savings accounts, pension funds, annuities, investment accounts and other accounts managed by agents with fiduciary obligations.

The MQT provision does not apply to trust agreements established by a will. These trusts are treated as standard trusts. If, however, a client inherits resources and in turn establishes a trust, then the MQT provision could apply.

2. Resource Treatment of MQT's

Each trust document must be reviewed individually to determine the resource treatment of the trust but in general:

- a. For revocable MQT's, the entire corpus is an available resource to the client. Resources comprising the corpus are subject to the individual resource exclusions since the client can access these resources except for the exclusion of the home for institutionalized recipients. Home property loses its excluded status when transferred to an MQT.

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- b. For irrevocable MQT's the countable amount of the corpus is the maximum amount the trustee can disburse to (or for the benefit of) the client, using his full discretionary powers under the terms of the trust. If the trustee has unrestricted access to the corpus and has discretionary power to disburse the entire corpus to the client (or to use it for the client's benefits), then the entire corpus is an available resource to the client. Resources transferred to such a trust lose individual resource consideration. For example, home property transferred to such a trust can no longer be excluded as home property but is included in the value of the corpus.
 - c. If the trust does not specify an amount for distribution from the corpus of the trust or from the income produced by the corpus, but the trustee has access to and use of both corpus and income, the entire amount is an available resource to the client.
 - d. If the trust permits a specified amount of trust income to be distributed to the client (or to be used for his benefit), but these distributions are not made, the client's countable resources increase cumulatively by the undistributed amount.
- 3. Income Treatment of MQT's**
- a. Amounts of trust income distributed to the client are counted as income when distributed.
 - b. Amounts of trust income distributed to third parties for the client's benefit (including payments for medical services) are countable income when distributed.
 - c. Exculpatory Clauses which limit the authority of a trustee to distribute funds from a trust if such distribution would jeopardize eligibility for government programs are ignored for MQT purposes if the language explicitly or implicitly links the trustee's discretion to Medicaid requirements.

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- 4. MQT's Transfer of Assets Policy**

If the MQT is irrevocable, a transfer of resources has occurred if the resources are no longer available to the client. Resources rendered unavailable are subject to the transfer penalty based on the value of the unavailable resources without consideration of whether the resource would have been excluded under ongoing policy.

- 5. MQT's Undue Hardship**

The MQT provision may be waived if an undue hardship exists. This means Medicaid should not be denied to an individual under this provision if the individual would be forced to go without life sustaining services because the trust funds cannot be released. This does not include situations where the trustee simply chooses not to make the trust funds available.

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F. STANDARD TRUSTS

A standard trust is one that does not meet the definition of a Medicaid Qualifying Trust. Trusts or conservatorships established prior to 03/01/87 or testamentary trusts where the Medicaid client is the beneficiary are standard trusts. In all such cases listed below, a copy of the trust agreement or court documents must be obtained for review.

1. Medicaid Client is Trustee

Generally, a person who is appointed as a trustee cannot use any of the funds in the trust for his/her own benefit. Thus, an individual can be a trustee of a valuable trust and not be able to receive money from the trust since he/she has no access to the funds for his/her personal use. Under such circumstances, the trust is not a resource to the Trustee.

If, however, the eligible individual (client) is the trustee and has the legal ability to revoke the trust and use the money for his own benefit, consider the trust a resource to the client. This is true regardless of whose funds were originally deposited into the trust. Also, consider the trust a resource to the client if either the client or living-with spouse (eligible or ineligible) is the person who created the trust and has the right to dissolve it and use the funds for his own benefit. Where the trust principal is considered a resource to the trustee, any withdrawals made from the trust by the trustee are not income to him since the monies have already been counted as a resource. In this situation, any income which is earned from the trust principal (e.g., interest or dividends) is considered income to the client/trustee.

2. Medicaid Client is Beneficiary

If a client is the beneficiary of a trust and the client's access to the trust principal is restricted, meaning only the trustee or court can invade the principal, the principal of the trust does not count as a resource to the client. If the trust is not a resource, payments made to or on behalf of an eligible individual are counted as income.

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If the beneficiary has unrestricted access to the principal of the trust, the trust is counted as a resource. In this situation, payments from the trust to the beneficiary are not counted as income since it has already been counted as a resource. The payments from the trust are a conversion of a resource.

The authority for discretion by the trustee in the use of trust funds, including invasion of the principal for support and maintenance of the beneficiary, does not mean that the principal is available to the client/beneficiary and, as such, should not be counted as a resource. Only the income or resource(s) that are available to the client via the trustee's discretion can be counted for purposes of determining eligibility.

In cases where the trustee has "full discretion" in the use of trust funds, the trustee determines the beneficiary's access. Before eligibility can be determined in cases of this nature, the trustee must specify, by way of a written and signed statement for the case record, what arrangements exist or will be made to release funds or resource for the client's use. As outlined above, any payments made to or on behalf of the client are counted as income unless the trustee states the client has unrestricted access to use of trust funds in which case the funds are a countable resource.

3. Conservatorships (Prior to 03-01-87)

Conservators and legal guardians are court appointed and are usually court controlled. These types of legal arrangements are initiated when the competence of an individual is at issue. Technically, a legal guardian is appointed to serve over an individual and the individual's resources whereas a conservator is appointed only to handle an individual's resources. Regardless of either legal term used, an application or active case involving a conservator or legal guardian is handled as outlined below.

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In the absence of evidence to the contrary, conserved liquid and non-liquid resources held by a guardian or conservator on behalf of a Medicaid applicant or recipient are countable resources to the applicant/recipient. If the guardian/conservator manages and controls the conserved funds, the funds are considered available to the client. The fact that the guardian/conservator controls the funds (e.g., makes the actual withdrawals) does not alter the attribution of the resource to the client. Since the guardian/conservator legally acts on behalf of the incompetent individual, it is the same as if the individual is controlling or managing the resource.

"Evidence to the contrary" that may indicate a client does not have total access to conserved resources held by a guardian/conservator is a court order which specified the disbursement of funds and/or disposal of resources. If the court order or decree specifies the amount and frequency of funds which may be disbursed or restricts the disposal of resources, the court's decision in such matters determines the client's access. A "silent" court order, meaning one that does not specify disposition and/or availability of conserved resources, is not considered evidence to the contrary. Therefore, conserved funds controlled by a silent court order are considered available to the client.

In addition, the fact that a guardian/conservator must first petition the court in order to dispose of resources or disburse funds does not constitute "evidence to the contrary." In fact, State law requires such a petition in guardian/conservator cases making petitioning a standard practice. In all cases where petitioning is required, the conserved resources are considered available to the client unless or until the court is petitioned and rules as to the availability/disposition of assets.

When a signed and dated petition is presented as evidence that the court has been petitioned for disbursement of funds and/or disposal of resources, the petition is sufficient to exclude the resource(s) in question until the court renders a decision in the matter.

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**4. Eligibility
Determinations
Involving
Conservatorships**

To determine how to handle a case involving a legal guardian or conservator, it is necessary to obtain a copy of the original decree appointing an individual as guardian or conservator in addition, obtain copies of any legal documents which may have subsequently been issued by the court to amend or change the original decree, if any have been issued. If a guardianship or conservatorship is in the process of being established, the client's resources are considered available until court documents are presented as outlined below:

- If the court order specifies disbursement of funds, any payments made to or on behalf of the client count as unearned income to the client.
- If the court order does not specify the disbursement of any non-liquid resources conserved by the court, consider the funds as a countable resource.
- If the court order specifies that conserved non-liquid resources, such as property, may be disposed of for the benefit of the client, consider the property, etc., as a countable resource. If the court order is silent on the subject of disposal of non-liquid resources, consider the resources countable unless or until the court is petitioned for disposal.
- A court order may specify the disbursement of liquid resources and not mention disposal of any conserved non-liquid resources or vice versa. In such a case, abide by the court's decision regarding the disbursement or disposal issue specified and count as a resource the unspecified resource. For example, a conservatorship court order specifies the release of \$100 per month from a savings account with a \$5000

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balance and fails to mention the disposal of 50 acres of property owned by the client. In such a case, the \$100 would be counted as income while the balance of the account is excluded as a resource. The property would be a countable resource until the court is petitioned for the purpose of disposing of the property.

- Court orders that are not specific on the availability of conserved resources result in the availability of the conserved resources to the client until the month the court is petitioned for use of the conserved funds or resources. A valid petition will exclude the resource provided the petition requests the court to rule as to the disposal and/or disbursement of conserved resources. The exclusion will apply until the court rules in the matter at which time the case must be reviewed in light of the court decision.

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**G. MEDICARE
CATASTROPHIC
COVERAGE
ACT (MCCA)
TRANSFER
POLICY**

The Medicare Catastrophic Coverage Act of 1988 (MCCA) repealed the transfer of resources penalty for noninstitutionalized individuals. New transfer of resources policy created under the MCCA applies only to institutionalized individuals, as defined below, who transfer resources on or after July 1, 1988 through August 10, 1993. Transfers that occur after August 10, 1993 are evaluated under OBRA-93 transfer policy.

An institutionalized individual is an individual who is a nursing facility inpatient, an inpatient at a medical institution receiving a nursing facility level of care; or, a recipient of home and community based waiver services. ICF-MR residents are not included in this definition.

The transfer penalty resulting in ineligibility, as defined below, applies to nursing facility services, medical institution services where the level of care provided is equivalent to nursing facility care. An institutionalized individual remains eligible for all other Medicaid services while a transfer penalty is in effect, provided eligibility is met on all other factors.

**1. Transfer
Penalty**

An institutionalized individual who, at any time during the 30-month period immediately before the individual's application for medical assistance, disposed of resources for less than fair market value shall be ineligible for nursing facility services beginning with the month in which resources were transferred. An institutionalized individual is also prohibited from transferring resources during the period of institutionalization, unless an exception applies.

Effective 10/01/89, the transfer penalty also applies to a community spouse who transfers resources within the 30-month period preceding application and/or during the time his/her spouse remains institutionalized. A transfer of resources by a community spouse to another individual will result in a transfer penalty applying to the institutionalized spouse.

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2. **The Penalty Period** The period of ineligibility shall be equal to the lesser of:
- a. 30 months, or
 - b. the number of months required to deplete the uncompensated value (UV) based on the total UV of the transferred resources divided by the average monthly cost of nursing facility services to a private pay patient. The cost is specified below.
3. **30-Month Penalty** The 30-month period is calculated using the month of a transfer as the first month continuing through the 30th consecutive month, provided the transfer occurred on or after July 1, 1988. The 30-month period of ineligibility is imposed unless the UV/private-pay calculation results in a period of ineligibility less than 30-months.
4. **Private Pay Calculation** This calculation is based on a Statewide average private pay cost of \$1456.00 per month. In calculating the period of ineligibility, divide the UV by \$1456.00 to determine the number of months that an individual will be ineligible for nursing home services. All calculations are rounded down to the nearest whole number.
- For example: If the total UV is \$20,000, then \$20,000 divided by \$1456 = 13.73. The period of ineligibility would be 13 months, which is less than the 30-month penalty.
5. **Determining the Period of Ineligibility** The month of the transfer is always month one of the period of ineligibility. As a result, the penalty period may be expired or near expiration as of the month of application. For example, a transfer with UV of \$5000 occurs 07-05-88. Using the private-pay calculation, the period of ineligibility for a nursing home vendor payment is 3 months, or, July-September. If application is filed October 1, 1988 or after, the penalty period will have expired, although eligibility for all other Medicaid services is possible in the retroactive period.

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If the UV does not result in ineligibility for at least one month, the transfer will not count. For example, if the transfer is for \$1000 which is less than the average private pay rate, no penalty applies for the month of the transfer.

Each transfer is evaluated based on the month the transfer occurred. If more than one transfer occurs in the same month, the UV is combined and the penalty period calculated on total UV for a particular month. If transfers crossover into different months, each transfer is evaluated separately and UV is not combined. The possible results would be overlapping penalty periods.

The private-pay calculation is never prorated based on the number of days in a month that the individual is institutionalized. The full month private-pay average is used to calculate the penalty period regardless of the number of days the individual is actually in the facility.

**6. Exceptions to
Transfer of
Home
Property**

The transfer penalty will not apply to the transfer of home property by an institutionalized individual to the following family members of such individual:

- a. the individual's spouse or child under age 21 or a disabled or blind adult child; or
- b. a sibling who is part owner of the home who lived in the home for one (1) year before the individual entered a nursing facility; or
- c. a child who lived in the home for up to two (2) years before the individual entered a nursing facility and provided care to the individual which permitted the individual to remain at home.

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**7. Exception to
Transfer of
Any Type of
Resource
Other Than
the Home**

The transfer penalty will not apply to the transfer of any type of resource in the following situations:

- a. Resources are transferred to or from the individual's spouse. Effective 10-01-89, a transfer of assets from a community spouse to another individual will result in a penalty charged to the institutionalized spouse.
- b. Resources are transferred to the institutionalized individual's child who is disabled or blind.
- c. Satisfactory evidence is presented to show that the individual intended to dispose of the resource(s) either at fair market value or for other valuable consideration, or, that resource(s) were transferred exclusively for a purpose other than to qualify for Medicaid.
- d. Denial of eligibility would result in undue hardship.
- e. The resource was excluded under ongoing policy at the time of the transfer.
- f. The resource was transferred by an individual other than the institutionalized applicant/recipient and that person had no legal authorization to act in the applicant or recipient's behalf at the time of the transfer.

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- 8. Notice of Transfer of Resources** The client will be notified via DOM-322A, Notice of Transfer of Resources, regarding countable transfers and the penalty period. The notice will allow the client or representative 10 days to present evidence to show that the transfer should not count. Evidence should include a written rebuttal plus any pertinent documentary evidence. If no rebuttal is offered, the penalty will be applied and the appropriate adverse action notice issued to deny or terminate payment of nursing home services only. The individual remains eligible for all other Medicaid services if the transfer penalty is the only factor of ineligibility. If the individual is ineligible on other factors as well as the transfer, the application or case must be denied or terminated.
- 9. Rebuttal Process** Written rebuttals along with the Regional Office decision regarding acceptability are to be submitted to the Area Supervisor prior to issuing final notice to the client. The material submitted to State Office should include the rebuttal, a copy of DOM-322A issued to the client, and a summary of the circumstances surrounding the transfer. The Area Supervisor will issue a memorandum to the Regional Office explaining the final decision on the transfer.
- 10. Acceptable Rebuttals** Factors which may indicate that a transfer was made for some purpose other than establishing Medicaid eligibility are listed below. The presence of one or more of the following factors may result in an acceptable rebuttal. This list is not all-inclusive:
- a. The occurrence after a transfer of resources of one or more of the following:
 - (1) Traumatic onset (e.g., traffic accident) of disability or blindness.
 - (2) Diagnosis of previously undetected disabling condition.

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- (3) Unexpected loss of other resources which would have precluded Medicaid eligibility.
- (4) Unexpected loss of income (including deemed income) which would have precluded Medicaid eligibility.

In general, if the client was healthy and/or financially secure at the time of the transfer, with no expectation of future Medicaid need, then an acceptable rebuttal may be established.

- b. Total countable resources that would have been below the resource limit at all times from the month of transfer through the present month even if the transferred resource had been retained.
- c. Court-ordered transfer.
- d. Resource(s) sold at less than current market value in order to obtain cash quickly to meet expenses or repay a legal debt.

11. Undue Hardship

The transfer penalty can be waived if a period of ineligibility would result in undue hardship for the institutionalized individual. Undue hardship exists if a Medicaid denial of nursing home care would result in the individual's inability to obtain medical care. Each case situation must be reviewed individually to determine if undue hardship exists but the provision is geared toward financially and medically needy individuals with no possible means of recovering their transferred resource(s).

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- 12. Return of a Transferred Resource** If a transferred resource is returned to or if compensation is received by the institutionalized individual, the UV is no longer an issue or is reduced as of the date of the return. The resource or compensation is evaluated according to normal resource rules in the month of the return. Any portion of a transferred resource that is not returned continues to count as UV which means the penalty period must be re-evaluated.
- 13. Recalculation Of A Penalty Period** A penalty period must be recalculated from the month a portion of the resource is returned or additional compensation is received.
- For example: A transfer of \$10,000 occurred in 10/88 resulting in a 6-month penalty period, or October 1988 - March 1989. In January 1989, \$5,000 is returned to the institutionalized individual. The penalty period is then recalculated using UV of \$5,000 transferred in 10/88 which results in a revised period of ineligibility for the 3 months of October 1988 - December 1988.
- If the full resource is returned, normal resource rules apply the month of the transfer.
- 14. Transfer Penalty Involving SSI Months** The transfer penalty can be imposed during months that an individual receives SSI or is SSI eligible in a nursing home.
- For example: A MAO application is filed in December 1988. The applicant entered the nursing home in October 1988 as an SSI eligible and SSI eligibility continued until 12/31/88. A transfer is discovered during the MAO application processing that occurred in 10/88 and results in a 4-month period of ineligibility. The penalty can be imposed for October 1988 - January 1989 even though 10/88 - 12/88 are months of SSI eligibility. This would mean that no vendor payment would be authorized for the 4-month penalty period.
- As a result, workers will need to postpone sending notices on an SSI to MAO applicant advising of eligibility based on SSI until eligibility for MAO is determined which excludes any transfers for the SSI months.

RESOURCES

RESOURCE COMPUTATIONS

- A. SSI FIRST OF MONTH RULE**
- For cases subject to SSI policy, eligibility with respect to resources is a determination made as of the first moment of each calendar month and applicable to the entire month. Subsequent changes have no effect until the following month's resource determination. Thus, resource eligibility or ineligibility exists for an entire month at a time.
- 1. Resource Eligible**
- If resources of an individual or couple are within the applicable limit as of the first day of the month, the individual or couple is eligible based on resources for that month. This does not affect the definition of income in any way. Continue to count the receipt of money/assets as income in the month received and as a resource in the following month. However, consider only what the client owns in the way of countable resources on the first day of any given month in determining eligibility based on resources.
- 2. Resource Ineligible**
- If resources of an individual or couple exceed the applicable resource limit as of the first day of the month, the individual or couple will not be eligible for that month and will not be able to establish eligibility based on resources for that month. Eligibility cannot be established during the time excess resources are retained and through the month the individual's/couple's resources are reduced to within the limit. It is not possible to "spenddown" resources within a month in order to establish eligibility for that month under SSI policy.
- 3. Advance Dated Checks/ Deposits**
- Do not consider as a resource any advance dated checks or advance posted direct deposit checks received prior to the month of normal receipt. To the extent retained, funds from such checks will be considered a resource as of the first moment of the first day of the month following the month in which the check is normally paid.

RESOURCES

RESOURCE COMPUTATIONS

**B. RESOURCE
SPENDDOWN
(LIBERALIZED
POLICY)**

For cases subject to liberalized resource policy, effective 10-01-89, eligibility can exist for an entire month when an individual or couple meets the resource test during the month. This allows an applicant to "spenddown" resources in a month to become eligible for that month. Under the liberalized spenddown provision, resources can be reduced within the applicable limit and as long as resources remain within the limit for that month, eligibility can be established.

Do not allow payment of expenses that will be returned, refunded or reimbursed as legitimate spenddown expenses when calculating resources for a given month. Client owned resources spent for reimbursable expenses count as an available resource in the month paid. Do allow outstanding checks/payments as an expense if proof is provided that the payment was authorized during the spenddown month and the expense is non-reimbursable.

Note: The spenddown provision implies that an individual spends down to the resource limit or below during a month and remains at or below the limit for the remainder of the month. When determining eligibility for a prior period and reviewing the resource situation for a full month, the individual or couple must have depleted resources to an acceptable level and remained eligible for that month for a true spenddown to have occurred. For example: An individual had \$5000 in a bank account on the first of the month and spent \$3000 on a pre-paid burial contract on the 5th of the month. However, on the 20th, he sold his car, which was excluded as a resource for \$2500. The \$2500 then becomes a resource (conversion of a resource) in the same month and unless the individual spends the excess \$2500 by the end of the month, eligibility cannot be established for that month.

RESOURCES

RESOURCE COMPUTATIONS

1. **Resources
Earmarked
for Private
Pay of LTC**

Under liberalized resource policy, effective 10-01-89, if excess liquid resources are earmarked for payment of private pay expenses for month(s) prior to a month of Medicaid Eligibility, these excess resources can be excluded as a resource for any potential Medicaid months since these funds are obligated.

If Medicaid will cover any months that have been paid as private pay by the client, the amount subject to reimbursement is a resource in the month paid.

For example: A LTC applicant enters a nursing home in June and applies for Medicaid in August. The applicant's bank account is \$6000, but \$4500 is earmarked for private pay for June/July. Medicaid is needed for August 1. Since the \$4500 is obligated for months prior to Medicaid eligibility, it can be excluded as a resource in determining eligibility for August forward provided the earmarked funds are used to pay for the intended private pay expenses.

2. **Accumulated
Income
Earmarked
as Medicaid
Income**

Under liberalized resource policy, effective 10-01-89, income that accumulates while a Medicaid application is in process and that is obligated for payment of Medicaid Income for months that will be covered by Medicaid can be excluded as a resource if excess resources result from accumulating income.

For example: A LTC applicant enters a nursing home in August and applies for Medicaid in October requesting benefits retroactive to August. The client's income is \$1200 per month. In November when the case is being worked up, the bank balance is \$5000. Medicaid Income for September and October would be \$2312 ($\$1200 - \$44 = \1156×2). November's income of \$1200 can be backed out of the balance plus the \$2312 obligated for September/October Medicaid Income, thus leaving \$1488 as a countable resource for November.

RESOURCES

RESOURCE COMPUTATIONS

C. DEEMING OF
RESOURCES

For SSI/Medicaid purposes, an individual's resources is deemed to include any resources of an ineligible spouse or ineligible parent(s). Resources are deemed whether or not they are actually available. Deeming only applies in household situations, i.e., it only applies to an eligible with an ineligible spouse or parent(s).

In deeming resources from one spouse to the other, consider only the resources of those two individuals. In deeming resources from a parent to a child, consider only the resources of the parent. Where there is more than one eligible "child," the resources available for deeming are shared equally among the eligible "children;" for example, if there are two eligible children and \$500 in parental resources must be deemed to them, deem \$250 to each child.

Do not include the resources of the stepparent who is not legally liable for support of the child under State law in the deeming process.

Exception to deeming of resources: Pension funds owned by an ineligible spouse or parent(s) are excluded from resources for deeming purposes. This exclusion applies in order for an ineligible spouse or parent to provide for their own future support. Pension funds are defined as monies held in a retirement fund under a plan administered by an employer or union, or an individual retirement account (IRA) or Keogh account as described by the Internal Revenue Code. This exclusion is effective September 1, 1987 and cannot be excluded prior to this date.

1. Spouse to
Spouse
Deeming

Total countable resources are the combination of the resources of the eligible individual and ineligible spouse after all applicable resource exclusions are applied.

Total countable resources are compared with the resource limitation for a couple. If the amount of the resources does not exceed the limit, the applicant/recipient meets the resource eligibility requirement. If countable resources exceed the limit, the applicant/recipient is ineligible.

RESOURCES

RESOURCE COMPUTATIONS

Verify and document the ineligible spouse's resources as required for an eligible individual.

If an eligible individual and eligible spouse are not living together, the resources of both members (whether owned separately by each or jointly by both) are combined only for the month of separation. Each member of the couple is treated as an eligible individual beginning with the month after the month of separation, i.e., no longer living in the same household, and the resource limit for each is the individual resource limit.

**2. Deeming &
Changes in
Marital
Status**

When a change in marital status occurs, a new resource limit is established and a new resource determination is made for the first month in which the new resource limit (individual or couple) is effective as a result of the change.

Make a new resource determination for the first month in which a new resource limit (individual/couple) is effective as a result of a change in marital status. For example, if two eligible individuals marry in February, a new resource determination would be required for March, since these two individuals become a couple effective the first day of March as a result of the marriage.

For SSI/Medicaid purposes, the marital relationship of a couple can be ended by death, divorce or annulment. If a marriage ends by death, divorce, or annulment in the same month the marriage began, treat the marriage as though it had not occurred. Beginning with the month following the month of the death of one member of a couple, the surviving member will be an eligible individual if all other eligibility requirements are met. If the marital relationship of a couple terminates by divorce or annulment, each member of the couple should be treated as an individual effective the first day of the month following the month the couple no longer lives in the same household.

RESOURCES

RESOURCE COMPUTATIONS

**3. Parent to
Child
Deeming**

In determining eligibility for a child (under 18 or 21 if a student) who lives with his parent(s), the resources of the child include the value of the countable resources of the parent(s) or parent/stepparent to the extent that the resources of the parent(s) or parent/stepparent exceed the resource limit of:

- an individual, if one parent lives in the household; or
- a couple, if two parents live in the household.

Do not include the resources of the stepparent in the deeming process.

The value of parental resources is subject to deeming whether or not those resources are available to the child.

If there is more than one eligible child under age 18 (or under 21 if a student) in the household, equally divide the value of the deemed resources among those children.

If an eligible child is later determined ineligible for any reason or is no longer subject to deeming (e.g., after attainment of age 18), divide the value of the deemed resources among the remaining eligible children, effective with the first month the child is ineligible or no longer subject to deeming.

A child's total countable resources are the combination of the value of the deemed resources and the nonexcluded resources of the child.

A child's countable resources are compared with the resource limit for an individual with no spouse. If the resources do not exceed the limit, the child meets the resource eligibility requirement. If countable resources exceed the limit, the child is ineligible because of excess resources.

RESOURCES

RESOURCE COMPUTATIONS

**4. Multiple
Deeming**

When more than one eligible individual lives in the same household and there is a parent-child relationship, a multiple deeming situation may exist.

If a child under age 18 (or under 21 if a student) lives in the same household with a parent(s) applying for Medicaid or an eligible parent(s), determine the countable resources of the parent(s).

If the parent(s) meets the resource eligibility requirement, do not deem the value of any parental resources to the child.

If the parent(s) does not meet the resource eligibility requirements, follow the usual parent-to-child resource deeming rules to determine the value of the deemed parental resources.

RESOURCES

RESOURCE COMPUTATIONS

A. GENERAL

**VERIFICATION
REQUIREMENTS**

Generally, resources must be verified for any month for which

you must determine eligibility. Specifically, for initial applications, verify the value of resources for the month of application and each of the month(s) of possible retroactive eligibility. Verify month(s) subsequent to the month of application as necessary.

For redeterminations, verify as needed the value of resources for up to 3 months prior to the review month. It is permissible for resources to be developed as of the last month for which verification is available for regular reviews rather than requiring resource balances for the review month.

If a client appeals a denial related to a particular resource the evidence in file must clearly establish the value of that resource. It must do so even if the issue under appeal is not the value itself (e.g., when the issue under appeal is ownership). This requirement ensures that at each level in the appeals process, the file contains complete documentation of the resource in question.

**1. Exceptions
to General
Requirements**

Do not verify the value of resources for a given month if:

- the resource is totally excluded, regardless of its value
(exception: obtain a tax receipt for property owned by a nursing home client subject to Estate Recovery)
- the alleged value of total countable resources exceeds the applicable limit for that month; or
- the individual is ineligible for that month for a reason other than excess resources.

**2. Development
of Equity
Value**

Develop the equity value of a resource (liquid or nonliquid) when an individual alleges a debt against it and the difference between equity and CMV could mean the difference between eligibility and ineligibility.

RESOURCES

RESOURCE COMPUTATIONS

Verify, at a minimum, the outstanding principal balance, the rate of interest and the schedule and amount of payments (to permit the projection of increases in equity). Obtain a copy of the agreement or note that establishes the debt. If this does not provide all the information needed, use other records of the individual, the creditor, or both.

RESOURCES

RESOURCE COMPUTATIONS

B. FREQUENCY OF VERIFICATION REQUIREMENTS

At a minimum, resources owned by a client are verified at the time of application and at each regular review scheduled annually. However, circumstances may warrant reverification of resource(s) at shorter intervals. The following describes situations which mandate reverification of resources at shorter intervals than annually but it is not an all-inclusive list. Any reported changes in resources or discovery of changes in resources may warrant verification or reverification.

1. Resources Within \$100 of Applicable Limit

Individuals/Couples determined eligible for Medicaid who own countable resources valued within \$100 of the applicable limit must have resources renewed/verified every 6 months rather than annually. The purpose of the 6-month (special) review will be to verify the value of countable resources in order to determine if the individual/couple remains eligible based on resources. A tickler must be utilized to control the timing of the required review of cases with countable resources close to the resource limit.

2. Long Term Care Recipients in Medicare Beds

Individuals who are placed in Medicare certified nursing facilities are not required to pay any of their income toward the cost of their care which means that income may be allowed to accumulate and result in excess resources during the first 100 days of possible Medicare coverage. This means that it is necessary to reverify resources during the period of Medicare coverage to check for possible excess resources.

3. Cases With VA Income That Is Not Countable

Client cases, especially long term care cases, that receive excess income that is not countable as income must be monitored closely for excess resources. The amount of the monthly income that is not being counted will determine frequency a review/reverification is deemed necessary.