

MISSISSIPPI DIVISION OF MEDICAID

Eligibility Policy and Procedures Manual

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306.01 TRANSFER OF ASSETS POLICY - OBRA-93 AND DRA 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 revised by the Deficit Reduction Act of 2005, effective February 8, 2006.

306.01.01 DEFINITIONS APPLICABLE TO TRANSFERS OF ASSETS

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

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 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.

Spouses—This is a person who is considered legally married to an individual under the laws of Mississippi.

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Definitions Applicable to Transfers of Assets (Continued)

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 taken to direct the assets elsewhere by:

- The individual or the individual's spouse;
- A person, including a court or administrative body, with legal authority to act in place 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 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
- Refusal to take legal action to obtain a court ordered payment that is not being paid, such as child support or alimony.

The above actions could result in an uncompensated transfer of assets. However, the specific circumstances of each case must be examined in order to determine if a transfer has occurred.

Resources - For purposes of this section, the definition of resources is the same definition used by the Supplemental Security Income (SSI) program, except that home property loses its exclusion if home property is transferred or home ownership interest is reduced for institutionalized individuals. In determining whether a transfer of assets 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. This is discussed in more detail elsewhere in this chapter.

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Definitions Applicable to Transfers of Assets (Continued)

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. This is discussed in more detail in the chapter on income.

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.

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 consideration for eligibility purposes is void.

An exception to this requirement exists for trusts discussed in “Exceptions to Treatment of Trusts” in the Trust section. 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 DOM’s claim is satisfied.