

MISSISSIPPI DIVISION OF MEDICAID

Eligibility Policy and Procedures Manual

306.05.06 APPLYING TRANSFER OF ASSETS PENALTY PERIODS TO HCBS WAIVER APPLICATIONS AND ACTIVE CASES

Transfer of assets penalty periods for HCBS waiver applications and active cases are applied differently than transfers for LTC services in a nursing facility. The *calculation* of a penalty period (using only the monthly divisor in effect at the time of the last case action) is the same, but when and how the penalty is applied varies, depending on when a transfer of assets is discovered, as outlined below:

1. For transfers discovered **during the application process**, the transfer penalty is a full 60-month period that begins with the 1st of the month of the transfer. A transfer has to be fully outside the 5-year look back period before eligibility can be established for transfers discovered at the time of application for HCBS. No transfer penalty divisor is used; the penalty is a straight 60-month period of ineligibility, beginning with the month of the transfer.
For example, an application for HCBS is filed 07/02/2014. A transfer occurred on 01/05/2012. The transfer penalty period is 01/01/2012 through 12/31/2016, a full 60 months from the month of the transfer. The application must be denied as a result of the transfer that occurred within the 5-year look back period. HCBS eligibility cannot begin prior to January 1, 2017.
2. **Do not use partial month penalties for HCBS.** Any partial month results in a full month of ineligibility for HCBS.
3. The **beginning date for transfers that occur prior to approval for HCBS, but are not discovered until after approval for HCBS**, is the beginning date of eligibility for HCBS.

For example, an application filed in 02/2012 was approved for HCBS effective 04/01/2012. After the approval it is discovered in 05/2014, that the client transferred property on 01/05/2012. The transfer divisor in effect as of the date of the last recorded case action (application, redetermination or special review recorded in MEDS) determines the length of the transfer penalty period as 3 months and 15 days. Since the client was already approved for HCBS and HCBS partial month transfers are calculated as full month transfers, the transfer penalty would begin 04/01/2012 and go through 07/31/2012 a full 4 months. An improper payment would be needed for the 4-month penalty.

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4. The **beginning date for transfers that occur after HCBS is approved** is the 1st of the month in which the transfer occurred.

For example, an application for HCBS filed is on 04/12/2012 and approved for HCBS effective 04/01/2012. The client transferred property after approval on 07/01/2012. The transfer was discovered in 05/2014. The divisor in effect as of the last recorded case action determines the length of the transfer penalty period as 3 months and 15 days. Since the client was already approved for HCBS when the transfer occurred and since HCBS partial month transfers are calculated as full month penalties, the transfer would begin the month of the transfer (07/2012) and end the last day of the month of the transfer penalty period. In this case the transfer penalty period would be 07/01/2012 through 10/31/2012 a full 4 months. An improper payment would be needed for the 4-month penalty.

5. **HCBS penalties result in total ineligibility for Medicaid.** Nursing home transfer penalties have the possibility of eligibility for all services other than vendor payment, but HCBS penalties do not allow the possibility of full Medicaid. However, the client can be approved in a Medicare Savings Program (QMB, SLMB, QI) during the HCBS penalty period, if all other criteria are met.
6. **In order to impose an HCBS transfer penalty, an application is either denied or a case is closed.**
 - a. HCBS penalty periods are not calculated in MEDS or entered into MEDS.
 - b. Stop payments are not entered into MMIS on HCBS.
 - c. Transfer penalties imposed for prior periods require an improper payment report, the same as transfers for LTC in a nursing facility.

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For example, client applied in 01/2011 and was approved for HCBS effective 01/2011. A transfer occurred in 02/2011 but not discovered until the redetermination created with a 01/01/2014 contact date. The transfer penalty is calculated using the divisor in effect 01/01/2014 and is determined to be 47 months + 9 days = 48 full months. The beginning date of the transfer is 02/01/2011 and continues through 01/31/2015. The case can be closed after allowing time for rebuttal and adverse action. An improper payment would be required beginning 02/01/2011 through the month in which the case actually closes. Eligibility could not be established prior to 02/01/2015 for HCBS purposes.

Applying HCBS Transfer Penalties

Occurrence of Transfer	Discovery of Transfer	Penalty begins with	Duration of Penalty
Within 5-year look back	During Application Process	First month of transfer *	Full 60 months
Prior to approval within 5-year look back	After HCBS approval	Beginning Date of HCBS eligibility	Calculated using transfer divisor in effect as of the date of the last recorded case action (application, redetermination or special recorded in MEDS)
After HCBS Approval	After HCBS approval	First month of transfer	Calculated using transfer divisor in effect as of the date of the last recorded case action (application, redetermination or special recorded in MEDS)

* The count starts with the 1st month of transfer, not the specific date within the month that the transfer occurred, i.e., if the transfer occurred on 03/19/2012, the count starts with March, rather than on March 19th.