306.05 APPLYING THE TRANSFER PENALTY

Denial of coverage or services because assets were transferred for less than Fair Market Value is known as a transfer penalty. Under the DRA, transfer penalties are applied differently to institutionalized individuals and those applying for, or receiving, Home and Community Based Services.

The penalty period for an institutionalized applicant begins when the individual is receiving an institutional level of care for which he/she would be eligible if not for imposition of the transfer penalty. If the individual is otherwise eligible for Medicaid, he/she may receive Medicaid for all services except:

- Nursing facility services;
- Nursing facility services provided in an institution that is equivalent to that of nursing facility services;
- Home and Community Based Waiver Services

An application for Home and Community Based Services (HCBS) cannot trigger the start of a transfer penalty period. As indicated, a penalty can only start when an individual is receiving an institutional level of care for which he/she would be eligible if not for imposition of the transfer penalty. The transfer penalty does not allow an individual to enter into an HCBS waiver program; therefore, the start date for the penalty cannot be triggered and the individual remains ineligible as long as the transfer is within the 5-year look-back period.

If an individual or his/her spouse has a penalty as the result of a transfer, use the following guidelines to handle the imposition of the penalty:

- Nursing Home Assistance
  - Vendor payment (room and board) is denied or terminated for the duration of the penalty period;
  - Medicaid is approved for all other services.
- Home and Community Based Services
  - If Medicaid eligibility is dependent on participating in the waiver, the application is denied or the case is closed until the transfer is outside the 5-year look back period;
  - Can be approved in a Medicare Savings Program (QMB, SLMB, QI) if all other criteria are met.

306.05.01 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has multiple periods of institutionalization or has made multiple applications for Medicaid (unless the application was withdrawn), the look-back date is based on a baseline date that is the first date upon which the individual has both applied for Medicaid and is institutionalized.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.

For example, an individual enters a nursing facility in March 2010 but the application is denied for failure to provide requested information. Subsequent applications are filed July 2010, January 2011 and January 2012. The 5-year look-back date is based on the 03/2010 application date. Transfers that occur after 03/2010 will be considered under transfer policy but the look-back period is tied to the initial application date.

306.05.02 EFFECTIVE DATE OF PENALTY

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 an approved application for such services) that, were it not for the imposition of the penalty period would be covered by Medicaid.

Recipients are prohibited from transferring resources after approval. For transfers discovered after approval, the penalty is imposed beginning with the month following the rebuttal and adverse action period. An improper payment report will be prepared for any ineligible months before the penalty is imposed. If the penalty period has ended, the improper payment would cover all months of the penalty period.

For applications on or after 2-8-06, handled under DRA rules, 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 following the rebuttal and advance notice period.

Effective Date of Penalty (Continued)

Under the provisions of OBRA-93, 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.

306.05.03 PENALTY PERIOD

The number of months of ineligibility for an institutionalized individual shall be equal to:

- 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

- The average monthly cost to a private pay patient for nursing facility services in Mississippi. The average monthly cost to a private pay patient is calculated annually based on the average per diem rate from the Division of Medicaid's cost reports for the previous year. Rates are effective on July 1st each year. The "Transfer of Asset Divisor Rates" chart is located in the Appendix.

  In order to determine the correct transfer of assets divisor to use and how to determine the correct effective date of the penalty:
  - For LTC applicants/recipients – refer to policy described in 306.05.05 "Determining the Correct Transfer of Assets divisor to use for LTC Services in a Nursing Facility,"
  - For HCBS applicants/recipients – refer to policy described in 306.05.06 "Applying Transfer of Assets Penalty Periods to HCBS Waiver Applications and Active Cases."

306.05.04 DRA PROVISION - PARTIAL MONTH PENALTY

Under the DRA, 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. This is called a partial month penalty.

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 diem is calculated annually using the average daily cost to a private pay patient. Daily rates are located in the Appendix "Transfer of Assets Divisor Rates" chart.

DRA Provision – Partial Month Penalty (Continued)

Example

An individual makes an uncompensated transfer of $30,534.00 in April 2006. He applies for Medicaid coverage for long-term care services in September 2008. The transfer falls within the 5 year look back period.

Therefore, the uncompensated transfer amount of $30,534.00 is divided by the average monthly rate of $4,600.00 (in effect at the time) and equals 6.64 months. The full 6 month penalty runs from September 1, 2008 (the month eligibility is requested) through February 28, 2009 with a partial month penalty calculated for March 2009. The penalty calculation is as follows:

Step 1: $30,534.00 uncompensated transfer amount divided by $4,600.00 average monthly private pay rate = 6.64 months in the penalty period

Step 2: $4,600.00 average monthly private pay rate (x) 6 six full months penalty period = $27,600.00 penalty amount for six months

Step 3: $30,534.00 uncompensated transfer amount (less) $27,600.00 penalty amount for 6 full months = $2,934.00 partial month penalty amount

Step 4: $2,934.00 partial month penalty amount (divided by) $151.00 daily rate (in effect at the time) = 19.43 days or 19 days for partial month penalty

The month of March 2009 will have 19 days that a vendor payment will not be made to the nursing facility. Vendor payments will begin on day 20. Thus the total penalty period for the transfer of $30,534.00 will be September 1, 2008 through March 19, 2009.

306.05.05 DETERMINING THE CORRECT TRANSFER OF ASSETS DIVISOR TO USE FOR LONG TERM CARE (LTC) SERVICES IN A NURSING FACILITY

A transfer of assets penalty period for new applications is calculated using the monthly and daily transfer rate (divisor) in effect at the time of application. However, when a transfer is discovered after approval of an application, it is not always appropriate to use the divisor in effect at the time of application for active cases. For active cases, use the divisor in effect on the date of the most recent or current case action, as outlined below. A *case action* is considered initiated when the action is recorded in the system, i.e., the date the contact is created in the system to take action on the case associated with the transfer.

1. **New applications** – use the divisor in effect as of the date of application.
   For example, a new LTC application is received 06/30/2014. Use the transfer divisor in effect June 2014 of $5,700 to calculate a transfer period associated with the application, regardless of when the application is registered or approved in the system.

2. **Redeterminations** - use the divisor in effect at the time the redetermination contact is created to calculate a transfer penalty associated with the redetermination of an active case.
   For example, a redetermination contact is created on 07/02/2014 on an active LTC case whose initial application for LTC was in 2009. A transfer that occurred in May 2013 is discovered during the redetermination process. Use the divisor in effect for July 2014 of $5,920 for both the ongoing penalty period that begins after the rebuttal and advance notice period ends and for the improper payment period that begins in May, 2013 and continues through the month prior to the month the penalty is implemented in the system.
   For example, assume the redetermination contact in the above example was created for a QMB recipient (eligible since 2009) entering LTC in June, 2014 but the redetermination contact is created 07/02/2014. Use the divisor in effect for July 2014 of $5,920 for the transfer penalty that will begin effective 06/01/2014 (the month of entry into LTC and the month the recipient is otherwise eligible for LTC). No improper payment is involved since there is no prior LTC eligibility.

Determining the Correct Transfer of Assets Divisor to Use For Long Term Care (LTC) Services in a Nursing Facility (Continued)

3. **Special Reviews –** use the divisor in effect at the time the special review contact is created to calculate a transfer penalty associated with the special review.

   For example, a LTC recipient, active since December 2010, transfers an asset in January 2013 but the transfer is not discovered until July 2014. The most recent redetermination contact was created in December 2013, but a special review contact must be created to impose an ongoing transfer penalty. The special review contact is created 07/07/2014. Use the divisor in effect for July 2014 of $5,920 for both the improper payment period and the ongoing penalty period that must be created in the system after the rebuttal and advance notice period ends.

4. **If a case action in the system is not needed to remedy a transfer,** use the divisor in effect at the time of the most recent application, redetermination or special review of the case.

   For example, a transfer is discovered on an active case but the penalty will not be ongoing so there is no case action created in the system. An improper payment will address the entire transfer period. In this instance, use the divisor in effect as of the last recorded case action.

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.

Applying Transfer of Assets Penalty Periods to HCBS Waiver Applications and Active Cases (Continued)

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.

Applying Transfer of Assets Penalty Periods to HCBS Waiver Applications and Active Cases (Continued)

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.

306.05.07 DETERMINING THE PENALTY WHEN 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 average 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.

306.05.08 DETERMINING THE PENALTY WHEN 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 its 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 the average private pay rate using the rules of either LTC or HCBS to apply the penalty.

NOTE: The penalty period for transfers occurring on or after February 8, 2006, and within the five year look-back period will begin the month that eligibility is requested or the first month eligibility is determined if the individual is not eligible in the month eligibility is requested.