

MISSISSIPPI DIVISION OF MEDICAID

Eligibility Policy and Procedures Manual

306.07 EXCEPTIONS TO TRANSFERS

306.07.01 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:

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

Sufficient documentary information must be provided to make a determination that (1) the child resided in the home for the required length of time. This may include statements from knowledgeable individuals when other verification is not available. (2) Whether the child provided care which enabled the parent to remain at home. If the child was employed outside the home, the arrangements for care while the child was away must be determined.

306.07.02 Non-Home Property

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

- Assets transferred to the individual's spouse or to another for the sole benefit of the individual's spouse;
- Assets transferred from the individual's spouse to another for the sole benefit of the individual's spouse;
- Assets transferred to the individual's child under age 21 or a disabled or blind adult child. If the disabled adult child is not receiving a social security disability payment, a disability determination is required;
- Assets transferred to a Special Needs Trust established solely for the benefit of a disabled applicant less than 65 years of age.

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Non-Home Property (Continued)

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. An individual shall not be ineligible for medical assistance if an acceptable rebuttal is submitted and a satisfactory showing is made to the Division of Medicaid that:

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

306.07.03 Undue Hardship Provision

Undue hardship exists when:

- Application of the transfer penalty would deprive the individual of medical care such that his/her health or his/her life would be endangered.
- Application of the transfer penalty would deprive the individual of food, clothing shelter, or other necessities of life and cause severe deprivation.
- The applicant or spouse or representative has exhausted all legal action to have the transferred assets that caused the penalty returned.