

MISSISSIPPI DIVISION OF MEDICAID

Eligibility Policy and Procedures Manual

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300.01 INTRODUCTION TO RESOURCES

Medicaid uses the value of a person's resources as a factor in determining eligibility in most Aged, Blind and Disabled (ABD) categories of eligibility. It is generally expected that ABD individuals or couples whose resources exceed the limit will use the excess to meet their needs before becoming eligible for Medicaid.

The Medicare Catastrophic Coverage Act of 1988, (P.L.100-360), added provision 1902(r)(2) to the Medicaid statute which allows the state to apply income and resource rules to certain Medicaid coverage groups that are more liberal than the most closely related cash assistance group. For the ABD programs, the most closely associated cash assistance group is the Supplemental Security Income (SSI) program.

As a 1634 state, Mississippi is required to use SSI resource rules for ABD eligibility determinations. However, the state is allowed to apply resource rules to certain ABD coverage groups that are more liberal than the SSI program. The Division of Medicaid requested and received approval to liberalize resource policies for some ABD coverage groups. However, some coverage groups are exempt from liberalization under 1902(r)(2) because they are considered "deemed" cash assistance groups. These coverage groups continue to follow SSI resource rules.

The remainder of this section describes the treatment of resources in determining eligibility in the Aged, Blind and Disabled programs and discusses the use of strict SSI rules or liberalized resource policy, as applicable.

300.01.01 MAGI-RELATED PROGRAMS

The Affordable Care Act (ACA) prohibits a resource test for any MAGI-related category of eligibility. Prior to the ACA, the Division of Medicaid utilized the 1902(r)(2) provision to disregard all resources for the families and children's groups. As a result, the treatment of resources described herein applies only to ABD categories of eligibility with a resource test.

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300.01.02 GENERAL RESOURCE PRINCIPLES

The following general principles about resources should be noted:

1. Not everything a person owns is a resource.
2. Not all resources count against the limit.
 - a. The Social Security Act and other Federal laws require certain types and amounts of resources to be excluded.
 - b. If a resource is not specifically excluded, it is countable.
3. In certain situations, federal law requires other people to share financial responsibility for an individual or couple.
 - a. In those situations, Medicaid considers the resources of the other person(s) along with those actually belonging to the individual or couple.
4. If countable resources exceed the limit, an individual or couple is not eligible.

300.02 RESOURCE LIMITS

Federal law establishes a limit on the value of resources an individual or couple may own and still be eligible for Medicaid. Countable resources must not exceed the limit in effect for the applicable time period as indicated below:

EFFECTIVE	INDIVIDUAL	COUPLE
Prior to 01-01-1985	\$1,500	\$2,250
01-01-1985	\$1,600	\$2,400
01-01-1986	\$1,700	\$2,550
01-01-1987	\$1,800	\$2,700
01-01-1988	\$1,900	\$2,850
01-01-1989	\$2,000	\$3,000
07-01-1999	\$3,000	\$4,000
07-01-2000 ongoing	\$4,000	\$6,000

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SSI and Liberalized Limits

The individual/couple limits for groups subject to SSI resource limits remain \$2,000/\$3,000. The increased limits above are applicable to most coverage groups subject to liberalized resource policies.

300.02.01 COVERAGE GROUPS SUBJECT TO SSI RESOURCE LIMITS

SSI resource limits apply to the following coverage groups:

- SSI Retro Determinations
 - Unless the client must be placed in a liberalized coverage group for the retroactive period
- Former SSI Recipient Coverage Groups
 - Disabled Adult Child (DAC), Cost of Living (COL) and OBRA widows/widowers
- Katie Beckett Program
- Qualified Working Disabled Individuals (QWDI)
 - This reduced coverage group has resource limits that are twice the SSI limits

300.02.02 COVERAGE GROUPS SUBJECT TO LIBERALIZED RESOURCE LIMITS

Liberalized resource limits apply to the following coverage groups:

- Long-term Care coverage groups (LTC)
- Home and Community Based Waiver groups (HCBS)
- Healthier Mississippi Waiver (HM)
- Working Disabled (WD)
- Medicare Savings Programs (MSP) - See discussion on these reduced coverage groups below.

300.02.03 REDUCED COVERAGE GROUPS

The reduced coverage groups for non-institutional individuals have or had a resource limit that is twice the SSI-related resource limit. However, under liberalized policy, the Medicare Savings Programs (QMB, SLMB, and QI) have no assets test. The limit for QWDI remains \$4,000/\$6,000.

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COVERAGE GROUP	EFFECTIVE	INDIVIDUAL	COUPLE	MEDICAID PAYS
QMB Qualified Medicare Beneficiaries	07-01-1999	No Resource Limit	No Resource Limit	Medicare Cost Sharing Expenses
SLMB Specified Low-income Medicare Beneficiaries	07-01-1999	No Resource Limit	No Resource Limit	Medicare Part B Premium
QI Qualified Individuals	07-01-1999	No Resource Limit	No Resource Limit	Medicare Part B Premium
QWDI Qualified Working Disabled Individuals	07-01-1990	\$4,000	\$6,000	Medicare Part A Premium

300.02.04 RESOURCE LIMITS APPLICABLE TO INSTITUTIONAL GROUPS

For Medicaid coverage groups considered to be “institutional” coverage groups, the following set of resource limits apply:

- Effective 10-01-1989, Spousal Impoverishment resource rules (discussed in detail in the Institutional 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 01-01-1994, Spousal Impoverishment resource rules began to be applied to the HCBS Waiver programs.

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300.03 LIBERALIZED RESOURCE POLICY OVERVIEW

The following briefly describes the liberalized resource policies currently in effect. The liberalizations are described in greater detail in the discussion of each resource type:

- Spenddown of resources within a month to become eligible in that month, i.e., eligibility may be established effective the first day of the month, if the countable resources fall below the limit within the month.
- 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. Home property located in Mississippi, life estate and remainder interests, undivided heir interests, 16th Section land leaseholds, mineral rights or timber rights that are not under production and housing on government-owned land are excluded under liberalized policy.
- Income producing property is excluded 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 2 automobiles may be excluded for beneficiaries under the age of 19.
- 1 automobile for beneficiaries over age 19, (1 automobile per household couple) Any vehicle not used for transportation, that is permanently inoperable (junk vehicle) is excluded.
- Household goods are totally excluded and personal property up to \$5,000.00 in equity value is excluded.
- The cash value of whole life insurance is excluded if the combined face value of all life insurance policies on any one individual is \$10,000.00 or less.
- Burial spaces for family members are excluded as resources.
- Burial funds set aside in a revocable arrangement are subject to a \$6,000.00 limit effective 04-01-2001.

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- The current market value of real property is established using the county tax assessed true value as shown or calculated using the appropriate county property tax assessment notice.

300.04 SSI RESOURCE POLICY OVERVIEW

SSI policy specifies different exclusion limits or different ways to determine countable resources. If the resource policy has not been liberalized, SSI policy is applicable unless a subsequently issued federal statute or Medicaid regulation supersedes SSI policy.

SSI policies include:

- Eligibility is based on the individual's countable resources as of the first moment of the first day of the month and is applicable to the entire month. If resources exceed the limit as of the first moment of the first day of the month, the individual or couple is not eligible for that month. It is not possible to "spenddown" resources within a month to establish eligibility for that month under SSI resource policy.
- One automobile is automatically excluded regardless of value.
- The value of life estates and remainder interest in real property is a countable resource.
- The cash value of whole life insurance is excluded, if the combined face value of all policies on any individual is \$1,500 or less. The combined face value of these excluded policies is used as an offset in determining burial fund exclusion.

FIRST OF THE MONTH RULE FOR MAKING RESOURCE DETERMINATIONS

In the programs using SSI policy, resource determinations are made as of the first moment of a calendar month. Any increase or decrease in the value of resources during a month is considered as of the first moment of the month following the month the change occurred.

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Example: Tom Lee applies for assistance on March 30th. His only resource is 20 shares of XYZ stock that are worth \$800.00 on the date he applied. On April 30th, the value increased to \$1,000.00. His countable resource amount for April is \$800.00. The countable value for May is \$1,000.00.

Example: Rhonda Mooney applies for assistance on April 5th. On April 1st, her resources were \$500 in checking and \$700 in savings. On April 5th, her son gave her money, and she purchases a CD worth \$1,800. Her savings balance increased to \$750 on April 30th, but her checking balance dropped to \$350. For April, countable resources are \$1,200 (\$500 + \$700). For May, they are \$2,900 (\$1,800 + \$750 + \$350). The CD is not considered until May since it was acquired in the middle of the month.

NOTE: Do not consider as a resource any advance dated checks or advance posted direct deposit checks received prior to the month of normal receipt. If 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.

300.05 RESOURCE DEFINITIONS

TYPE	DEFINITIONS	EXAMPLES
RESOURCES (General Definition)	All assets, including real and personal property, which an individual or couple: <ul style="list-style-type: none">• Owns• Can apply toward basic needs of food, clothing and shelter, either directly or by conversion to cash, (if not already cash)• Are not legally restricted from use for support or maintenance.	Examples include, but are not limited to: <ul style="list-style-type: none">• Home• Land• Bank Accounts• Burial Assets• Life Insurance• Automobiles• Investments

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TYPE	DEFINITIONS	EXAMPLES
LIQUID RESOURCES	<p>Cash or items that are readily converted to cash (within 20 workdays).</p> <p>Liquidity or nonliquidity of a resource has no effect on a resource's countability.</p>	<p>Absent evidence to the contrary, assume the following types of resources to be liquid:</p> <ul style="list-style-type: none"> • Stock bonds and mutual fund shares • Checking and savings accounts, time deposits, CDs • US Savings Bonds, treasury bills • Mortgages and promissory notes <p>(NOTE: This is not an all-inclusive list of liquid resources)</p>
NON-LIQUID RESOURCES	<p>Are not cash and are not readily convertible to cash</p> <p>Liquidity or nonliquidity of a resource has no effect on a resource's countability.</p>	<p>Absent evidence to the contrary, assume the following resources to be nonliquid:</p> <ul style="list-style-type: none"> • Buildings, land and other real property rights • Vehicles • Farm machinery and livestock • Household goods and personal effects • Non-cash business property <p>(NOTE: This is not an all-inclusive list of non-liquid resources)</p>
REAL PROPERTY	Land, including buildings or immovable object attached permanently to the land.	
PERSONAL PROPERTY	Any property that is not real property.	Personal property includes: such items as: cash, jewelry, household goods, tools, life insurance, automobiles
EXCLUSION	A resource, or part of a resource's value, that is not considered in the eligibility determination.	

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TYPE	DEFINITIONS	EXAMPLES
COUNTABLE RESOURCES	Resources remaining after all exclusions are applied. **The value of a resource is the amount of an individual's or couple's equity in it. The current market value and debt on a resource must be verified to determine the equity value.	
CURRENT MARKET VALUE (CMV)	The amount a resource can reasonably be expected to sell for on the open market in the particular geographical area involved or the sale price, if sold for a higher amount.	
EQUITY VALUE	The current market value (CMV) minus any encumbrance (payoff amount).	A piece of property has a CMV of \$35,000. The mortgage payoff is \$20,000. The equity value is \$15,000.
ENCUMBRANCE	An encumbrance is a legally binding debt against a specific property. The debt reduces the value of the encumbered property but does not prevent the owner from transferring ownership (selling) to a third party. However, if the owner does sell it, the creditor will nearly always require payment from the proceeds of a sale.	
CONSERVED FUNDS	Funds or property being held for an individual by another person.	Daughter has \$30,000 in a bank in her name, but it is verified to be her parents' money and is used for their needs.

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300.06 INCOME VS RESOURCES

It is important to distinguish between resources and income to know which counting rules to use for any given month. The same item is not evaluated under two sets of counting rules for the same month; that is, one item cannot be counted as both income and a resource in the same month:

- **Income Counting Rules** – Items received in cash or in-kind during a month are evaluated under the income rules.
- **Resource Counting Rules** – Items retained for use in the month following the month of receipt are subject to evaluation under resource rules, as are all other items not defined as income.

300.06.01 DISTINGUISHING RESOURCES FROM INCOME

If an individual sells, exchanges, or replaces a resource, what he/she receives in return is not income; rather, it is a different form of resource. In order to distinguish resources from income, a determination must be on what has occurred and the monetary gain.

The monetary gain would be considered a resource when 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; or
- Was a cash or in-kind item for the replacement or repair of an excluded resource which is lost, damaged or stolen. (This is discussed further later in this chapter.)

NOTE: Dividends and interest are defined as returns on investments, stocks, bonds, and savings accounts, etc. Refer to the income section for handling.

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300.06.02 CONVERTED RESOURCES

If an individual sells, exchanges or replaces a resource, what he receives in return is a resource that has been converted from one type of resource to another.

Examples of converted resources are:

- A lot with equity value of \$5,000.00 is sold and the money is deposited into a money market account.
- A life insurance policy is cashed in, and the proceeds are used to purchase a pre-need burial contract.

Handling Changes in a Converted Resource

When a resource changes form, it may also change as follows:

- From an excluded resource to a countable one,
- From a countable resource to an excluded one or
- To something that is not considered a resource for Medicaid purposes.

Example: An excluded vehicle is sold, and proceeds are deposited into a checking account. The money received is a countable resource, rather than income.

Example: A life insurance policy with a face value of \$15,000.00 and a countable cash surrender value of \$1,000.00 is cashed in and the proceeds are used to purchase a cemetery plot which is excluded in the resource determination.

300.06.03 EVALUATION OF RECEIPT OF PROPERTY AS INCOME

When an individual first receives property (as a gift or inheritance, for instance, and not as a purchase or trade of one resource for another), the new property is subject to evaluation under the income rules for the month of receipt and under resource rules thereafter.

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300.07 FACTORS THAT MAKE PROPERTY A RESOURCE

Property of any kind, including cash, is a resource only if it meets all three criteria listed below:

RESOURCE CRITERIA	DESCRIPTION
OWNERSHIP INTEREST	An individual must have some form of ownership 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.
LEGAL RIGHT TO ACCESS (SPEND OR CONVERT) PROPERTY	<p>An individual must have a legal right to access property. Even with ownership interest, property cannot be a resource if the owner lacks the legal ability to access funds to spend or convert non-cash property into cash.</p> <p>The fact that an owner does not have physical possession of property does not mean it is not his resource. It is a resource if the owner still has the legal ability to spend it or convert it into cash.</p> <p>An individual has free access to, and unrestricted use of, property even when he can take actions only through an agent (such as a representative payee or conservator).</p>
LEGAL ABILITY TO USE FOR PERSONAL SUPPORT AND MAINTENANCE	Even with ownership interest and legal ability to access property, a <u>legal</u> restriction against the property's use for the owner's own support and maintenance means the property is not a resource.

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300.08 ACCESS TO RESOURCES

Unless an individual has been declared legally incompetent, he/she is assumed capable of managing his/her own affairs and his/her resources are considered. Competency does not affect consideration of resources.

300.08.01 INDIVIDUALS DECLARED LEGALLY INCOMPETENT

The following is applicable to individuals who have been declared legally incompetent:

Court Appointed Guardian or Conservator	No Court Appointed Guardian or Conservator
If the court has appointed a guardian or conservator, resources owned by the individual <u>are</u> considered available. Seeking court approval: <ul style="list-style-type: none">• Is not a legal restriction to the sale or disposal of the property;• Does not change the property's status as a countable resource to the individual.	If the court has not yet appointed a guardian or conservator, resources owned by the individual <u>are not</u> considered available. The individual does not have access to the resource until a guardian or conservator has been appointed.

300.08.02 TYPES OF ACCESS

Resources are accessible through an agent, litigation or a petition-conservatorship account under SSI and liberalized resource policy:

- **Access Via an Agent**

An individual is considered to have free access to, and unrestricted use of, property even when he can take those actions only through an agent, such as a representative payee or guardian.

Example: Joan Shoto receives Social Security. Her mother, Laura Shoto, is her representative payee and has Power of Attorney. The bank account is a countable resource to Joan because she has unlimited access through her mother.

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- **Access Only Via Litigation**

If there is a legal restriction, or a bar, to the sale or use of property, such as a co-owner legally blocks the sale of jointly-owned property, an individual is not required to undertake litigation to accomplish the sale or access. The property is not a resource under such circumstances in a month if a legal bar exists any time in the month.

Example: Shelley Lumpkin and her sister, Susan Smith, co-own a piece of property they inherited from their parents. Last year Susan took legal action to prevent Shelley from selling. Shelley is not required to enter into litigation to gain the ability to sell, so the property is not a resource to her.

- **Access Via Petition-Conservatorship Account**

Petitioning a court is different from undertaking litigation. Seeking court approval is not a legal restriction against use. Although the individual does not have access to the asset, the conservator does. Therefore, it is available for the individual's support and maintenance and is, therefore, that individual's resource. This is true despite the fact that the individual or his agent is required to petition the court to withdraw funds for the individual's support and maintenance.

The conservator will be allowed a period of time to petition the court. Once the conservator has verified a petition has been filed with the court, the regional office will follow-up to determine the outcome.

300.09 ASSETS VS RESOURCES

Not everything a person owns (assets) are resources for Medicaid purposes. As previously indicated, a resource is cash or other real or personal property that an individual (or spouse, if any):

1. Owns,
2. Has the right, authority or power to convert to cash, (if not already cash),
3. Is not legally restricted from using for his support or maintenance.

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However, in certain situations, an asset that is not a resource may become one at a later date or vice versa. The distinction is important since:

- An asset that is not a resource does not count against the resource limit (while a resource may count); and
- Proceeds from the sale or trade of a resource, i.e., the amount representing conversion of principal from one form to another, are also resources; however, what a person receives from a non-resource is subject to evaluation as income at the time of receipt.

Example: An individual is the beneficiary of a trust which is not his resource. Therefore, when the trust pays him his monthly allowance, he receives income.

300.09.01 RESOURCES WITH ZERO VALUE

Property does not cease to be a resource simply because it has no current market value. Even though there is no value to count, the property remains a resource for as long as it meets the definition of a resource.

If the property develops market value at a later time, this will be an increase in the value of a resource rather than receipt of income.

300.09.02 PROPERTY THAT IS NOT A RESOURCE

Any property (asset) that does not meet the above definition of a resource is not a resource, e.g., an individual who has an ownership interest in property, but is not legally able to transfer that interest to anyone else does not have a resource.

Example: An individual owns a block of stock with his brother. Although the form of ownership is one which would permit either to sell the property without the other's consent, the brothers have a legally binding agreement that one will not sell without consent of the other.

The individual's brother refuses his consent, making the stock a non-resource for the individual. If the brother subsequently agrees to sell, the stock would be evaluated under resource-counting rules beginning with the month following the month of consent. The value of the

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stock would **not** be counted as income to the individual in the month consent is given.

300.10 UNKNOWN ASSETS

An individual may be unaware of his/her ownership of an asset. If this is the case, the asset is not a resource for the period during which the individual is unaware of his ownership. Once the asset is discovered by the individual, the value, including any monies accumulated on it through the month of discovery, must be treated as follows:

- **Month of discovery** – The value of the unknown asset, including any monies (such as interest) that have accumulated on it through the month of discovery, is evaluated under regular income-counting rules.
- **Months after month of discovery** – For months after the month of discovery, the previously unknown asset is a resource and subject to usual resource counting rules.

When an individual alleges having been unaware of his/her ownership of an asset, obtain a signed statement from the individual. Also obtain any available supporting documentation including, but not limited to, signed statements from other individuals familiar with the situation, etc.

Example: While in the hospital, the recipient received a check for \$125.00 as a “get-well” gift from her neighbors. She was unaware of the gift. At the time, her affairs were being managed by her daughter who put the check in a desk drawer and failed to tell the recipient about it.

In the month the recipient learns of the existence of the check, the check is counted as income. In the following month, it is counted as a resource.

Example: As the result of contacting the tax assessor’s office, the specialist learns that the recipient has ownership interest in previously unreported property (undeveloped land). The property is co-owned with another individual who has always paid the property taxes. Contacts with the recipient and the other individual confirm the recipient’s allegations that he was unaware the original owner of the property

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had died and therefore, the recipient never knew that he had inherited an ownership interest. The value of the recipient's ownership interest is counted as income in the month he learned of the ownership interest and as a resource the following month.

NOTE: If the client is aware of an asset, but the representative is unaware and/or fails to report it, the asset is not treated as an unknown asset.

300.11 VALUATION OF RESOURCES

The value of a resource is the amount of an individual's or couple's equity in it. As indicated in the definitions section, the equity value (EV) of a resource is its current market value (CMV) less any encumbrance(s).

NOTE: The pay-off amount for each encumbrance on the property is used in the calculation of its equity value.

300.12 WHOSE RESOURCES TO COUNT

When eligibility is determined or re-determined, the resources of the following must be considered:

- Applicant/Recipient
- Spouse of the applicant/recipient
 - If the spouse is included in the household
 - Even if the spouse is not applying or is ineligible. (Exception: Institutionalized spouse with a community spouse. See Chapter 500.)
- Parent(s) of an applicant/recipient who is a child under age 18 living in the same household.

NOTE: There is no deeming of parental resources to the eligible child in the Katie Beckett Program or in any institutional group for the month of entry.

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301.01 OWNERSHIP INTEREST

Since the type and form of ownership may affect the value of real or personal property and even its status as a resource, ownership interests are significant in determining resource eligibility.

301.01.01 SOLE OWNERSHIP

Only one person owns the property (real or personal) and may sell, transfer or dispose of the property. However, sole ownership may be subject to conditions imposed by others, such as sole ownership of a remainder interest in property.

301.01.02 SHARED OWNERSHIP

Two or more people own the property (real or personal) together. Three different types of shared ownership are discussed below.

1. TENANCY IN COMMON

Two or more people have an undivided fractional interest in the whole property for the duration of the tenancy. These interests are not necessarily equal, i.e., two joint tenants do not necessarily each own half of the property.

One owner may dispose of his/her share without permission of the other owner(s) but cannot take these actions with respect to the entire property.

When one owner dies, his/her interest passes to his/her heirs or estate. There is no automatic right to survivorship for the surviving tenants-in-common

Example: Don, Charles and Fred Evans own property as tenants-in-common. Charles and Fred each own an undivided $\frac{1}{4}$ interest while Don owns the remaining $\frac{1}{2}$ interest. If Don Evans were to sell his $\frac{1}{2}$ interest to Stan Long, Mr. Long would be a tenant-in-common with Charles and Fred. If Mr. Long were then to die so that property passed to his 4 children, each of them would own $\frac{1}{8}$ interest as tenants-in-common with Charles and Fred, who would each continue to own $\frac{1}{4}$ interest.

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2. JOINT TENANCY

Each person has an undivided ownership interest and possession of the whole property for the duration of the tenancy. In effect, each owns all of the property.

Right to survivorship applies to the other owner(s) as follows:

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

3. TENANCY BY THE ENTIRETY

Exists only with married couples. While married, the wife and husband own the property as a unit and the property can only be disposed of if both give consent.

If divorced, the former spouses become tenants-in-common, and each can sell his/her share without the other's consent.

Right to survivorship applies:

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

Shared Ownership Provisions Under SSI and Liberalized Resource Policy

- Assume each owner owns only his fractional interest unless there is evidence otherwise.
- Divide the total value among the owners to match their percentage of ownership.
 - **If each of two owners owns $\frac{1}{2}$ interest in real property, divide by two.**
 - Equity Value \$50,000 – each has a resource worth \$25,000
 - **If there are two owners and one owns $\frac{1}{3}$ and the other $\frac{2}{3}$.**
 - Equity Value $\$90,000/3 = \$30,000$ for the person with $\frac{1}{3}$
 - $\$30,000 \times 2 = \$60,000$ for the person with $\frac{2}{3}$ interest

Exception(s):

- For joint bank accounts or time deposits, if one account holder is an applicant/recipient, the entire account is counted as his/hers. However, all of the funds belong to the individual in equal shares if there is more than one Medicaid applicant/recipient. This is discussed further later in this chapter.

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301.01.03 FEE SIMPLE PROPERTY OWNERSHIP

Relates only to real property and means possess absolute and unqualified legal title to real property. Fee simple ownership is completely free of conditions imposed by others. The owner has the unconditional power of disposition during his lifetime. Upon the owner's death, property held in fee simple can always pass to the owner's heirs. May exist with respect to property owned jointly or solely.

301.01.04 LESS THAN FEE SIMPLE (EQUITABLE) PROPERTY OWNERSHIP

Exists without legal title to property. Legal title may belong to another individual or to no one. Examples of equitable ownership include ownership in un-probated estates or trust property.

1. UN-PROBATED ESTATE OWNERSHIP

An individual may have an equitable ownership in an un-probated estate if he is an heir or relative of the deceased, receives income from the property or acquires rights through intestacy laws.

- Under **liberalized resource** policy, estates actively in process of probate are excluded. Under **SSI resource policy** an un-probated estate becomes a resource the month following the month in which it meets the definition of income.

2. TRUST PROPERTY OWNERSHIP

A trust is a right of property, established by a trustor or grantor. A Trustee holds legal title and manages the property for the benefit of a beneficiary. The beneficiary does not have legal title but does have an equitable ownership interest. Clearance procedures must be followed in determining how the trust affects eligibility.

3. LIFE ESTATE INTEREST OWNERSHIP

Individual has certain property rights during his/her life or someone else's life. These rights may be conditional. (See instructions below for handling a conditional life estate.) Legal document is required, such as will or deed. Unless the legal document restricts rights, the life estate owner has the right to possess, use, and obtain profits from the property (such as rents). Life estate interest can be sold and does not descend to heirs.

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Conditional Life Estate

A conditional clause establishes limitations on the life estate. For example, the grantor may reserve a life estate for as long as the grantor lives and maintains a home on the property.

- For deeds dated on or after February 8, 2006, consider the entire property transferred if the deed contains a conditional life estate clause. The transfer date will be the date of the deed.
- The life estate can be corrected if a revised deed is prepared removing the conditional clause with the grantor reserving a life estate without limitations. However, the transfer of the remainder interest, if it occurred within the 5-year look back period, must be considered if the grantor enters long-term care. Therefore, removing the conditional life estate clause may only shorten the transfer period.

Calculating Life Estate Value

When the value of a life estate interest needs to be determined, follow the procedures below:

- Verify the Current Market Value (CMV) of the property.
- Use the Unisex Life Estate and Remainder Interest Table to:
 1. Find the age of life estate owner as of their last birthday at the time of the transfer.
 2. Locate the factor in the Life Estate column that corresponds to the age.
 3. Multiply the CMV of the property by the life estate factor to obtain the value of the life estate.
 4. $\text{CMV of the property} \times \text{Life Estate Factor} = \text{CMV of the life estate}$

Example: Mr. Heath, now deceased, willed his daughter a life estate in property which he owned fee simple. The will also designated Mr. Heath's two sons as remaindermen. The daughter has the right to live on the property until her death, at which time, under the terms of her father's will, the property will pass to her brothers as joint tenants.

- If there are joint owners of a life estate, the CMV is divided by the number of owners to determine an individual's share. When one joint owner of the life estate dies, the surviving owner(s) increases their interest.
- If a couple has a life estate and one spouse dies, the remaining spouse is the sole owner of the life estate. When the remaining spouse dies, the

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person holding the remainder interest then has the right to possess and use the property.

- It is possible to have a life estate interest in a structure (house) and not the surrounding land. The CMV of the structure or whatever the tenant has the right to use as established by the deed or a will would be determined.

Life Estate Provisions Under Liberalized Resource Policy

Under liberalized policy a life estate is an excluded resource. The exclusion is not limited to property located in Mississippi. In addition, if the individual has a life estate interest in more than one piece of property, all are excluded. However, there are some exceptions to excluding a life estate:

- If a life estate is transferred or sold, eligibility for vendor payment or HCBS waiver services may be affected.
- A transfer of a life estate is sanctionable.

Example:

Jane Ayers took a life estate in her home in 1988. Now at age 97, she is applying for nursing home care. It is discovered she transferred her life estate interest to her son two years ago. Her age as of her last birthday at the time of the transfer was 95 and at that time the property had a CMV of \$250,000.

The uncompensated value is determined as follows:

- $\$250,000 \text{ (CMV)} \times .22887 \text{ (Life Estate Factor for Age 95)} = \$57,217.50$
(Uncompensated Value)

Life Estate Provisions Under the DRA

Under the DRA the purchase of a life estate in another individual's home on or after February 8, 2006, is a transfer of assets unless the purchaser resides in the home for at least 12 consecutive months after the date of purchase.

- Do not deduct vacations, overnight visits, and hospital stays from the one-year period as long as the home continued to be the individual's legal residence.
- Count the entire purchase price as an uncompensated transfer if the purchaser resides in the home for any period less than one year.

Also, the DRA provides that even if the life estate purchaser lives in the home for 12 consecutive months, the purchaser must not pay more than CMV for the life estate.

Any amount paid above CMV is considered a transfer and should be penalized according to the transfer policy. Verify the purchase price and calculate the CMV of the life estate. Any amount paid over the CMV of the life estate is considered a transfer.

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Life Estate Provisions Under SSI Resource Policy

Under strict SSI policy, the value of a life estate is a countable resource unless an exclusion exists.

NOTE: If there is joint ownership of a life estate, first determine the CMV of the entire property. Divide the CMV by the number of joint owners to determine the individual's share and then calculate the individual's life estate value as described above.

Example 1: 75-year-old Harry Thomas has a life estate in non-homestead property with a current market value of \$80,000. An exclusion for the property cannot be developed. Using the table, his life estate interest is valued as follows:

- $\$80,000 \text{ (CMV)} \times .52149 \text{ (factor for age 75)} = \$41,719.20$ (value of the life estate)

Example 2: 75-year-old Max Berry is living with his daughter due to illness, but states he intends to return home when health permits. Ten years ago, he transferred his home to his children retaining a life estate interest. An exclusion can be developed for the home property since his desire is to be able to return home.

4. REMAINDER INTEREST OWNERSHIP

The remainderman inherits property upon the death of the life estate holder and has no right to physical possession or use of the property until the life estate terminates. The remainderman interest can be sold before the termination of the life estate unless the document establishing it restricts this right. If the remainder interest is sold, the market value of it is likely to be reduced since such a sale is subject to the life estate interest.

Calculating Remainder Interest Value

CMV of the property x Remainder Factor = CMV of the Remainder Interest

1. Find the age of the life estate owner as of their last birthday at the time of the transfer.
2. Locate the factor in the Remainder column that corresponds to the life estate owner's age in the Unisex Life Estate and Remainder Interest Table.
3. Multiply the CMV of the property by the remainder factor to obtain the value of the remainder interest.

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Remainder Interest Provisions Under Liberalized Resource Policy

When the life estate holder dies, the remainder attains ownership of the resource, which must then be evaluated under the appropriate resource policy.

- Under liberalized policy, the remainder interest is excluded.
- However, in instances where a remainder interest is sold or transferred, eligibility for a per diem payment or HCBS waiver services may be affected. The Unisex Life Estate and Remainder Interest Table is used to determine the value of the remainder interest.

NOTE: When determining the amount of a transfer under liberalized policy, equity in the property must also be considered. If there is a loan against the property that is assumed by the remainderman as part of the agreement, the amount of the loan is compensation received by the life estate holder and would be deducted in determining the uncompensated value of the remainder interest. If the life estate owner retains the loan obligation, the full value of the remainder interest is the amount transferred

Remainder Interest Provisions Under SSI Resource Policy

The value of a remainder interest is countable unless a specific exclusion exists. The value of a remainder interest is determined in the same manner as a life estate.

Example: Applicant, Paul Jones, holds a remainder interest in property with a current market value of \$80,000. The life estate owner is his father who was 75-years old as of his last birthday. The value of Paul Jones' remainder interest is calculated from the table as follows:

- (CMV) \$80,000 x .47851 (Remainder factor for age 75) = \$38,280.80 (CMV of Remainder).

5. OWNERSHIP BY WILL OR DESCENT

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

Heirs by Will

- Have ownership or control of the property or their joint or common share.
- If the will has not been filed with the proper court and has not been probated, there is question of whether the will is legally binding. Legally, wills are supposed to be filed for probate; however, there is no time limit. Absent

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evidence to the contrary, assume the client owns the property in proportion, whereby he/she has the right to the will's directives

Heirs by Descent

- Acquire ownership interest to property by virtue of the heir's relationship to the deceased.
- Intestate 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 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 with 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 and sisters.
- Nieces and nephews become involved only if their parent who was a brother or sister to the deceased is also deceased. Their ownership interest is only in the share that their deceased parent held an interest in.
- Absent evidence to the contrary assumes an heir inherited property based on their laws of descent where the property is located.

6. TRANSFER ON DEATH DEED (TODD)

- Transfer on death deeds (TODDs) transfer property from the owner to the beneficiaries on death. The deed must be recorded with the chancery clerk prior to the transferor's death. Unlike a life estate interest, the conveyance can be revoked at any time by the grantor without needing the permission of the beneficiary, and the grantor has the right to sell or take liens on the full property. The property is also subject to claims of the grantor's creditors.
- The full value of the property is a resource to the grantor since they retain the right to revoke the TODD, sell the property, and take out loans.
- The property is not a resource to the beneficiary until the death of the grantor.
- A TODD is not considered a transfer of assets for Long Term Care.
- TODDs are subject to estate recovery.

301.01.05 PROPERTY RIGHTS WITH NO OWNERSHIP

1. LEASEHOLD OWNERSHIP

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Does not designate rights of ownership but conveys an individual control of the property so that he/she has use and possession for a specific period of time and usually for a specified rent, such as 16th section land leases.

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 renew leases on the land.

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.

2. INCORPOREAL INTEREST OWNERSHIP

There is no ownership of the physical property. However, the owner has certain rights to use the property without the right to dispose of property. Applies to mineral rights, timber rights and easements, which may be sold by the owner.

Mineral Rights

Ownership in natural resources, usually obtained from the ground, such as coal, oil, sulphur, sand or natural gas, etc., coming from the property.

Timber Rights

These rights permit one party to cut and remove trees from property owned by another, as designated by a contract with the owner of the land on which the timber stands.

Easements

Property right whereby one has the right to use the land of another person for a special purpose.

Calculating Leasehold and Incorporeal Interest Value

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Leaseholds and incorporeal interests may be countable resources under both SSI and liberalized resource policy if they have a cash value available to the individual upon disposition. However, in some cases these property rights are not saleable and would not be a countable resource. For example, an individual may own an easement to pass through another person's property to get to his/her own property. There would be little or no market for the sale of this property right. Timber rights to land which has been stripped of its trees or mineral rights to land with no viable natural resources would have little or no market value.

To verify the value of property ownerships such as mineral rights or timber rights, determine the CMV from 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 transferrable in order to determine if the property right is a countable resource.

Leasehold and Incorporeal Interest Exclusions Under Liberalized Policy

Under liberalized policy, 16th Section land leases and mineral rights, timber rights and leaseholds that are not under production are excluded in the resource determination regardless of value. If one of these types of ownership is income-producing, test for net annual return against the 6% income-producing rule when applicable.

301.01.06 OTHER RIGHTS TO 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/her 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 the right of survivorship clause in the property. The surviving spouse has homestead rights to the portion of the property that 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.

301.01.07 EVIDENCE OF REAL PROPERTY OWNERSHIP

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Property ownership must be verified. Obtain a copy of the official document used to verify ownership and file it in the case record. The following official records may be used to establish real property ownership:

- **Current Deed** – If the client does not have a copy of the current deed, a copy may be obtained from records in the Chancery Clerk's office in the county where the property is located. A deed 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" and "Et ux" beside the name on a tax receipt indicate joint or common ownership in some form.
- **Current Mortgage Statement** – Mortgages are recorded in the Chancery Clerk's office; however, the name of the mortgage holder must be known.
- **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.

301.01.08 VERIFYING CURRENT MARKET VALUE (CMV)

Once ownership or ownership interest of property has been verified, determine the current market value (CMV) of the client's ownership interest based on the coverage group of the applicant or recipient and whether liberalized or SSI resource policy is applicable.

CMV UNDER LIBERALIZED POLICY

Establish the CMV of real property based on the county property tax assessment using the tax assessed true value as shown or calculated using the county tax receipt or more recent tax assessment notice. Use the most recently issued county tax receipt or tax assessment notice unless a CMV must be established for an earlier time period, such as to establish CMV of property transferred in a prior period.

If the county tax receipt or other tax assessment notice does not reflect the true value, calculate the true value:

- The tax assessed value of real property divided by the tax assessment ratio is the true value based on the assessment. Class 1 property is home property and

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Class 2 property is non-home property. Class 2 property may adjoin home property and therefore be included in the definition of home property.

- Property in Mississippi is assessed at 10% for Class 1 (home) property and 15% for Class 2 (non-home) property.
- The assessed value divided by the applicable assessment ratio is used to arrive at the true value of property. For example, Class 1 (home) property has an assessed value of \$5,000. Divide \$5,000 by 10%. The true value is \$50,000 based on the county tax assessment.
- County tax assessors must revalue real property every 4 years according to the Mississippi Department of Revenue.

The CMV of real property under liberalized policy is initially valued using the tax assessed true value; however, if the applicant or recipient disagrees with the tax assessed true value, a knowledgeable source statement must be obtained by the applicant or recipient and used to establish CMV. Refer to CMV under SSI Policy below for the knowledgeable source estimate method of establishing CMV.

CMV UNDER SSI POLICY

To establish CMV using SSI policy, obtain a knowledgeable source estimate.

Knowledgeable sources include, but are not limited to, the following:

- Real estate brokers
- Local office of the Farmer's Home Administration (for rural land)
- 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)
- County Agricultural Extension Service,
- Licensed Mississippi real estate appraisers, and
- Bureau of Land Management, the US Geological Survey or any mining company that holds leases (such as for CMV of mineral rights)

If the validity of an estimate provided by the applicant or recipient is questionable, an additional estimate must be obtained from another knowledgeable source and should include the following information:

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- The estimated value
- 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 corresponds to the period for which it is being requested).

Note: Assistance must be provided if an applicant or recipient is incapable of obtaining the estimate. If the estimate is obtained by telephone, the specialist must record the required information in the case record.

301.01.08A CMV REBUTTAL

When CMV has an impact on eligibility and the applicant or recipient disagrees with the CMV evidence the specialist has obtained, a rebuttal determination must be made and must take into account:

1. All the evidence previously in the file, including but not limited to the individual's original allegation, any tax assessment notices and any estimates from knowledgeable sources,
2. Any additional evidence the individual wishes to submit, including but not limited to 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
3. Any other facts the RO has about the property or about market conditions where it is located.

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

301.01.08B DEVELOP EQUITY VALUE

For both SSI and liberalized policy, the allegation of an encumbrance on the property (any legal debt, such as a mortgage, lien, loan, purchase contract, etc.) must be supported with evidence of:

- The original amount owed

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- The outstanding principal balance; and
- The schedule and number of payments due on the principal balance.

A copy of the note or agreement establishing the encumbrance must be provided or obtained as verification of equity value.

The CMV less any legally binding debts against the property is the countable equity value for real property that cannot be excluded under any real property exclusion.

302.01 NON-COUNTABLE RESOURCES

Resources discussed in this section can be either totally excluded in the resource determination or counted, in part or in whole, depending on the type of resource or case circumstances. The treatment of resources that may be determined non-countable under liberalized policy and SSI policy are discussed below.

302.02 RETIREMENT FUNDS

Retirement funds are annuities or work-related plans that are designed to provide income when employment ends. These funds can be held with a company or held privately at a bank or other financial institution. Listed below are some examples:

- Pensions, disability, or retirement plans administered by an employer or union
- 401K
- Individual Retirement Account (IRA)
- Keogh plans (plans for self-employed individuals)
- Some profit sharing plans

TREATMENT OF RETIREMENT FUNDS UNDER SSI AND LIBERALIZED RESOURCE POLICY IRAs and KEOGH Plans

The terms IRA and Keogh refer only to the type of retirement account and do not identify the underlying investment vehicle for the account, which may be a bank account, Certificate of Deposit, mutual fund, etc. If retirement benefits are being received out of such accounts, the principal is not considered a resource. Otherwise, develop IRAs and Keogh accounts according to the resource policy applicable to the underlying investment vehicle.

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Eligible for Periodic Payments

Retirement benefits are payments made at some regular interval (i.e., monthly) and result from entitlement to a retirement fund. Periodic payments must be of uniform rate, principal and interest (principal must equal or exceed amount of interest) and are counted as unearned income.

- If an individual owns a retirement fund, determine whether he/she is eligible for periodic payments.
- If so, he/she may apply for those benefits and must report any award of benefits. If he/she has a choice of periodic payments or a lump sum, advise on the effect to eligibility a lump sum compared to the benefit payments.

Not Eligible for Periodic Payments

If an individual owns a retirement fund and is not eligible for periodic payments, determine whether he can make a lump sum withdrawal. If he can withdraw any of the retirement fund, the value of the fund is a resource in the month the funds become available for withdrawal.

Determining the Value of a Retirement Fund

The value of the retirement fund is the amount that can currently be withdrawn. If there is a penalty for early withdrawal, the fund's value is the amount available after the penalty is deducted. However, any taxes which may be due are not deductible in determining the fund's value.

When to Treat a Retirement Fund as a Resource

A retirement fund is a resource when the individual has the option of withdrawing a lump sum, even if he/she is not eligible for periodic payments. When this is the case,

- If the individual applies for periodic payments and is denied, the value of the fund becomes a countable resource the month after the month the periodic payments are denied.
- A delay in payment beyond the individual's control (e.g., an organization's processing time) does not mean the fund is not a resource since the individual is legally able to obtain the money.

When Not to Treat a Retirement Fund as a Resource

A retirement fund is not a resource:

- When a person must terminate employment to obtain payment.
- When a person is eligible for and receiving periodic payments.

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NOTES:

- **Deeming Exclusion** - Retirement funds owned by an ineligible spouse or parent are excluded from resources for deeming purposes.
- **Previously Unavailable Funds** - A previously unavailable retirement fund is subject to resource rules in the month after the month the funds first become available.

302.03 LOANS, PROMISSORY NOTES & PROPERTY AGREEMENTS

This section provides resource policies that primarily apply when the client or spouse is the creditor (lender or seller) and is, therefore, the owner of a loan agreement, promissory note or a property agreement. The principal amounts of these items are evaluated under appropriate SSI or liberalized resource policy.

TERM	DEFINITION
Bona Fide Agreement	An agreement which is legally valid and made in good faith.
Negotiable Agreement	A type of agreement where legal title or the amount of the agreement can be transferred (sold) to another party. Generally, promissory notes, loan agreements and personal and real property agreements can be sold to a third party. An agreement may be assumed to be non-negotiable if there is a legal bar to its sale.
Loan	A transaction in which 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.
Informal Loan	With formal loans (e.g., commercial), there is rarely a question about whether the loan agreement is bona fide. An informal loan is a loan between individuals who are not in the business of lending money or providing credit. An informal loan must be written and is bona fide if: <ul style="list-style-type: none">• It is legally binding under state law• It was in effect at the time of the transaction (money given with no obligation to repay cannot become a loan at a later date)• There is an acknowledgement of an obligation to repay, with or without interest, by the lender and the borrower• There is a plan or schedule for repayment and the borrower's express intent to repay by pledging real or anticipated future income.• The repayment plan is feasible.

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Promissory Note	Written, unconditional agreement where one person promises to pay another party a specific amount at a specific time (or on demand). It can be repayment for goods, money loaned or services rendered.
Property Agreement	An agreement where a piece of property is used to secure payment of a debt or performance of services within a specified period of time. Other names for property agreements include: <ul style="list-style-type: none">• Mortgages• Real estate or land contracts• Contracts for deed• Deeds of trust• Personal property agreements, e.g., pledges of crops, fixtures, inventory, etc., are known as chattel mortgages

Property Agreements Prior to Settlement

A person holding a contract for sale of real estate (seller or creditor) owns **two** items until the settlement of the sale is completed:

1. The real estate, which is not a resource since it cannot be sold while encumbered by the contract, and.
2. The value of the contractual agreement.

Determining the Value of a Contract

The status and value of a contract, i.e., loan agreement, promissory note or property agreement, must be evaluated to determine if it is a resource under appropriate SSI or liberalized resource policy.

302.03.01 TREATMENT OF LOANS, PROMISSORY NOTES & PROPERTY AGREEMENTS

SSI RESOURCE POLICY

Individual is the seller or creditor:

- Obtain a copy of the agreement for the file. Assume, absent evidence to the contrary, that the written agreement is bona fide and negotiable.
 - A bona fide, negotiable agreement is a resource valued at the outstanding principal balance. The goods or money represented in the agreement are not a resource because they are not accessible.
 - The debtor's payments against the principal are a conversion of a resource, not income. The interest portion received by the lender is unearned income. If retained, principal and interest are counted as the lender's resource the month following the month of receipt.

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Example: Debtor pays \$500 per month - \$350 toward principal and \$150 in interest. The \$350 is a converted resource. The \$150 is unearned income.

- If including the original principal balance (the amount owed to the creditor when the agreement was established) causes ineligibility on resources, obtain verification of the outstanding principal balance, i.e., the balance in the month for which a determination is being made.
- If including the outstanding principal balance causes ineligibility on resources, inform the individual that we will use the outstanding principal balance in determining resources unless he submits:
 - Evidence of a legal bar to the sale of the agreement; or
 - An estimate from a knowledgeable source (in the business of making estimates, such as banks, other financial institutions, private investors, real estate brokers, etc.) showing that the CMV of the agreement is less than its outstanding principal balance. The estimate must show name, title, and address of the source.

Agreements determined to be Non-Bona Fide or Non-Negotiable

- A non-bona fide or non-negotiable agreement is not a resource under SSI policy
- The principal and interest paid to the lender are income, not a resource
- The goods or money represented in the agreement may be a resource to the seller if the seller/creditor has access for his/her own use

LIBERALIZED RESOURCE POLICY

Individual is the seller or creditor:

- Obtain a copy of the agreement for the file. Assume, absent evidence to the contrary, that the written agreement is bona fide and negotiable.
- Determine if the bona fide, negotiable note or agreement produces at least 6% net annual return of the principal balance.
 - Loans, promissory notes 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 must be received by the client/spouse and counted as income in order for the exclusion to apply.

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- If the above criteria are not met, the note or agreement cannot be excluded as a resource. The resource value is the outstanding principal balance.
- Even though the 6% rule is in effect and establishes a minimum acceptable payment when compared to the principal balance, the following conditions must also be met for a resource exclusion:
 - For all institutionalized individuals in SSI or liberalized programs, the repayment terms of the agreement must be actuarially sound.
 - The payments must be of uniform rate, principal and interest, during the term of the agreement, with no deferred or balloon payments; and
 - The agreement must prohibit cancellation of the debt upon the death of the lender.

The institutional client or spouse must reasonably expect to receive 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.

Handling Agreements that Do Not Meet Requirements

- For **non-institutional** cases assessed under liberalized resource policy, a non-bona fide or non-negotiable agreement is not a resource.
 - Principal and interest payments are income to the seller/creditor.
 - The goods or money represented in the agreement may be a resource if the seller/creditor has access for his/her own use.
- For **institutional** cases, funds used to purchase promissory notes, loans or mortgages that do not meet the 6% rule, are not actuarially sound or are not bona fide or negotiable will be considered a transfer of assets valued as the entire outstanding balance due as of the date of the application for long-term care for contracts dated on or after February 8, 2006.

Documenting Loans

- A loan to a relative that is immediately declared “uncollectable” is not a loan at all. It is 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 uncollectable.

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- 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 repaid as required by the contract. If the loan is not being repaid, the lender is required to take legal action against the borrower to enforce the contract requirements. If no action is taken by the lender, he may be subject to a transfer penalty.

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SSI AND LIBERALIZED RESOURCE POLICY:

Individual is the the Borrower

For the borrower under SSI and liberalized resource policy:

- If the agreement is bona fide and negotiable, cash paid by the lender to the borrower is not income; however, cash retained (or property received) may be a resource to the borrower the month following the month of receipt.
- If the agreement is non-bona fide or non-negotiable, cash paid by the lender to the borrower is income in the month received by the borrower and retained cash (or property received) may be a resource to the borrower the following month.

302.04 INHERITANCES AND UNPROBATED ESTATES

TREATMENT UNDER SSI RESOURCE POLICY

UNPROBATED ESTATES

Under SSI resource policy, an ownership interest in an unprobated estate may be a resource if an individual:

- Is an heir of the deceased; or
- Receives income from the property; or
- Under state intestacy laws has acquired rights in the property due to the death of the deceased.

An ownership interest in an unprobated estate exists if:

- Documents such as a will or court records indicate an individual is an heir; or
- An individual has the use of, or income from, a deceased person's property; or
- Documents verify, or the individual alleges, a relationship to the deceased that awards him a share under the state's intestacy laws; or
- The inheritance, use of income and distributions are not contested.

INHERITANCES

An inheritance is cash, a right, or a noncash item(s), received as the result of a person's death. An inheritance is not a resource until the month following the month it meets the definition of income, i.e., it has a value and can be used, either directly or

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by sale or conversion, to meet basic needs. Thereafter, if retained, the property is evaluated as a resource.

TREATMENT UNDER LIBERALIZED RESOURCE POLICY

UNPROBATED ESTATES

Estates in the process of probate are excluded from the resource determination.

INHERITANCES

An inheritance is cash, a right, or a noncash item(s), received as the result of a person's death. An inheritance is not a resource until the month following the month it meets the definition of income, i.e., it has a value and can be used, either directly or by sale or conversion, to meet basic needs. Thereafter, if retained, the property is evaluated as a resource.

If an applicant or recipient in a long-term care program refuses or transfers an inheritance, the individual may be subject to penalty under the transfer of assets provisions.

302.05 REAL PROPERTY EXCLUSIONS

The value of the resources in this section may be excluded, in part or in whole, when determining eligibility.

302.05.01 HOME PROPERTY

An individual's home is property he/she has ownership interest in and is his/her principal place of residence. It may include:

- The shelter he/she lives in.
- The land on which the shelter is located.
- All buildings on the land.

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Principal Place of Residence

- A principal place of residence is the dwelling that an individual considers his/her principal home. It may be:
 - Real or personal property
 - Fixed or mobile
 - Located on land or water

Example: If a person owns and resides in a houseboat on a lake, the boat may qualify as home property.
- If a person owns land and intends to reside on it, it may be considered home property if there is no other principal place of residence.
- If a person owns the land, but not the shelter, the land is considered the residence.

Example: A person owns the land he/she lives on, but lives in a mobile home owned by his/her parents.
- If a person owns the shelter, but not the land, the shelter is the residence.

Example: A person owns the mobile home but rents the lot on which it is located.

Home Exclusion

- The home exclusion applies to:
 - The shelter in which the individual lives
 - All buildings on the property
 - The land on which the shelter is located **and** any land adjoining it as long as it is not separated by land that neither the individual or spouse has an ownership interest in.
 - Easements and public rights of way (utility lines, roads, etc.) do not separate other land from the home plot.

Home Out-Of-State

If an applicant's home property is located out-of-state, policy governing state residency applies. It is not permissible for the individual to intend to return to his principal place of residence out-of-state and at the same time intend to reside in Mississippi. If the applicant intends to return home to another state, he cannot be considered a Mississippi resident for Medicaid eligibility purposes. If the applicant intends to reside in Mississippi, a home out-of-state cannot be excluded as his principal place of residence.

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Evidence of Home Property Ownership

Ownership of home property can be verified by one or more items of evidence such as:

- Tax assessment notice
- Recent tax bill
- Current mortgage statement
- Deed
- Report of title search
- Evidence of heirship in an unprobated estate such as 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
- Title and current registration for mobile homes

TREATMENT OF HOME PROPERTY UNDER SSI RESOURCE POLICY

An individual's home, regardless of value, is an excluded resource if the individual:

- Resides in the home or
- Is absent and intends to return to the home

Example: An individual is residing with his/her children due to an illness but intends to go home when health permits. The intent is based on the person's desire to return home.

No Intent to Return to Home

If the individual leaves the home and does not intend to return home to it, it is no longer considered the person's principal place of residence. The home exclusion no longer applies as of the date the individual leaves with the intent not to return or the date the individual no longer intends to return. The month after there is no intent to return, the property will be considered a countable resource unless another exclusion develops.

A home can be excluded without an intent to return, if:

- A spouse or dependent relative of an institutionalized individual continues to reside in the home while the individual is institutionalized.
 - Dependency may be financial or medical
 - Relatives may include child, step-child, grandchild, parent, step-parent, grandparent, sibling, step-sibling, half sibling, aunt, uncle, cousin niece, nephew, in-laws; or
- Sale of the home would cause an undue hardship to a co-owner due to loss of housing.

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Obtain a statement from the dependent relative or the co-owner to apply either of the above exclusions.

Multiple Residences

Only one residence can be excluded as home property. If there are multiple residences, determine the principal place of residence, considering such points as how much time is spent at each residence; where the individual is registered to vote; and which address the individual uses for mail and tax purposes.

TREATMENT OF HOME PROPERTY UNDER LIBERALIZED RESOURCE POLICY

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 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 most advantageous to the client.

Equity Interest Disqualification (Substantial Home Equity Provision)

For long-term care applications and renewals filed on or after January 1, 2006, there is a disqualification for individuals with equity interest in their home of greater than \$500,000. Beginning in 2011, the home equity limit is subject to increase. Refer to the Chart of Institutional Need Standards in the Appendix for the current limit. 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.

This disqualification period means that the homeowner who is in long-term care can qualify for all Medicaid services except payment to the nursing facility for room and board (the per diem payment) as long as equity interest exceeds the home equity limit. If Medicaid eligibility is dependent upon participation in the HCBS waiver, the individual is ineligible for full Medicaid services as long as equity in the home exceeds the limit; however, a Medicare Savings Program can be approved if criteria are met.

The disqualification period will not apply to an individual who has a spouse, child under age 21 or adult disabled child living in the home.

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Excess Home Equity and the Transfer of Assets Provision

If the applicant or recipient has excess home equity that results in disqualification and a transfer of assets is also discovered, the penalties do not run concurrently. The transfer penalty cannot apply because the individual is not “otherwise eligible” with a home equity disqualification. However, if a transfer of assets penalty is in effect when excess home equity determined (such as when home equity increases above the limit), the penalties for both the transfer and the excess home equity can run concurrently.

Undue Hardship Due to Excess Home Equity

Prior to disqualification for excess home equity, the individual has the right to request undue hardship. DOM-314, Notice of Right to Request Undue Hardship Due to Home Equity Value, must be issued allowing a 15-day response time for the individual to submit a written request for undue hardship. MEDS will prompt the Specialist to complete the DOM-314 form if the applicant or recipient is otherwise eligible for Medicaid on all factors other than excess home equity. If the applicant/recipient is ineligible on factors other than excess home equity, use of the DOM-314 is not required.

- If a written request for undue hardship is not received within the allotted time, MEDS will impose the disqualification upon disposition of the case.
- If a written request for undue hardship is received, the Regional Office will submit the written request along with the RO’s recommendation to approve or deny the request to the Central Office through normal supervisory channels. If the request is accepted, the disqualification is not imposed.
- Undue hardship can be found to exist if a lien or legal impediment exists causing the individual to be unable to access the equity. In addition, undue hardship may exist if the individual has no family members or no one capable of handling the sale of the property because the family member(s) are aged or disabled and incapable of assisting the Medicaid applicant/recipient.

Reverse Mortgages

A reverse mortgage is an agreement in which a lending company makes a lump sum (subject to being counted as a resource the month following month of receipt); available line of credit (subject to being counted as a resource the month following month of receipt); or regular payments (treated as loan proceeds) to a homeowner during a specific period of time. The amount of payment is determined by the amount

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of equity the homeowner has in the home. The homeowner is allowed to remain in the home until his/her death. At that time, the home is sold and/or the lender is repaid. Reverse mortgages are available to homeowners age 62 or older who own a debt-free or nearly debt-free home. Funds received from a reverse mortgage in any form that are transferred, either in the month of receipt or subsequent months, are subject to a transfer penalty unless an allowable exception applies (such as spousal transfers). Equity value does not decrease until the applicant or recipient receives the money from a loan.

302.05.02 HOME REPLACEMENT FUNDS

If an individual sells an excluded home, the proceeds may be an excluded resource if he:

- Plans to buy another excluded home and
- Buys the home within 3 full calendar months following the month the proceeds are received.

Installment Sales Contract

If the proceeds from the sale of an excluded home are received under an installment sales contract, the contract is excluded if the individual:

- Plans to use the entire down payment and the entire principal portion of a given installment payment to buy another excluded home and
- Purchases the new home within 3 full calendar months following the month the down payment or installment payment is received.

TREATMENT OF HOME REPLACEMENT FUNDS UNDER SSI AND LIBERALIZED RESOURCE POLICY

The case record must contain a signed statement from the individual/authorized representative of the intent to purchase a new home.

Proceeds From the Sale

The proceeds of the sale include the following:

- Lump sum – The net amount the seller receives at closing/settlement
- Installments – Down payment and principal portion of any installment payment

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Verification may include copy of closing/settlement papers, contract for sale, copy of installment contract and amortization schedule or other evidence that shows the new proceeds and how paid or payable.

Use of Proceeds

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

- Down payment
- Closing/settlement costs
- Moving expenses
- Loan processing fees and points
- Necessary repairs and replacement of the new home's structures and fixtures costs, if identified and documented before the new home is occupied and stem directly from the purchase or occupancy of the new home. This may include roof, heating and cooling, plumbing, built-in appliances, etc.
- 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.

Verification may include copy of closing statement, copy of loan application, copy of home inspection reports, receipts for moving and repairs.

Proceeds Not Re-Invested in a Timely Manner

If the home is not replaced within the allowable 3-month period, the unused proceeds are a countable resource retroactive to the month following the month of receipt as follows:

- **Lump sum** – the exclusion of the unused funds is revoked retroactively to the date of receipt
- **Installment contract** – the exclusion of the contract itself and the unused portion of any installments received are revoked retroactively to the date the unused proceeds were received.
 - The exclusion of an installment contract, once revoked, will be reinstated if the individual intends to and does use the entire principal portion of a subsequent installment payment toward the purchase of another excluded home within 3 full calendar months of receiving such installment payment.

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 new home.

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NOTE: If replacement funds have been received for a damaged or destroyed home, refer to Section 302.10.03, “Cash or In-Kind Items Received for the Repair or Replacement of Lost, Damaged or Stolen Excluded Resources” and when applicable, Section 302.10.05, “Presidentially Declared Major Disasters”.

302.05.03 JOINTLY OWNED PROPERTY WHOSE SALE WOULD CAUSE UNDUE HARDSHIP

The value of an individual’s ownership interest in the jointly owned property is an excluded resource for as long as the sale of the property would cause an undue hardship, due to loss of housing, to a co-owner.

TREATMENT UNDER SSI AND LIBERALIZED RESOURCE POLICY

Undue hardship would result if the co-owner:

- Uses the property as his/her principal place of residence
- Would have to move if the property were sold
- Has no other readily available housing

Verify joint ownership and obtain a signed statement from the client and joint owner which documents the undue hardship. Hardship must be updated at every review. The exclusion ends when any one of the above conditions no longer exists.

Example: Mr. Allen and his son jointly own a piece of land. The son and his family live on the property and have no other place to live. Mr. Allen applies for Medicaid. The property is excluded because the sale would cause an undue hardship to his son. However, if the son owned another house nearby which was vacant and habitable, there would be other available housing. Under these circumstances, undue hardship would not exist, and the value of Mr. Allen’s interest would be countable.

302.05.04 EXCLUSION OF REAL PROPERTY DUE TO REASONABLE EFFORTS TO SELL

Real property may be excluded from resources if the owner is making reasonable efforts to sell it and those efforts have been unsuccessful. The individual must maintain their efforts to sell unless good cause, i.e., circumstances beyond the individual’s control prevent his taking the required actions to accomplish reasonable

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efforts to sell, exists. In addition, the individual must accept a reasonable offer for the property.

TREATMENT UNDER SSI AND LIBERALIZED RESOURCE POLICY

The specific requirements listed below must be met in order for this exclusion to apply:

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. Reasonable efforts specifically mean that:
 - Within 30 days of signing Form-320A, Agreement to Sell Property, the owner(s) must:
 - List the property with an agent; **or**
 - 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
- Except for gaps of no more than 1 week, the owner must maintain efforts of the type listed above; and
- 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.

Reasonable Offer to Buy

- Assume that an offer to buy the property at a particular price is reasonable if at least two-thirds of the estimated current market value (CMV) is or will be received. The CMV is established by obtaining a knowledgeable source estimate of the property as outlined in 301.01.08, Verifying Current Market Value.

Good Cause

Good cause exists when circumstances beyond an individual’s control prevent the required action to accomplish reasonable efforts to sell. If good cause exists for failure to meet any of the criteria specified above, the exclusion can continue provided action is taken to resume efforts to sell.

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Examples of good cause include:

- No offer to buy is received
- A legitimate offer does not result in a sale
- Escrow begins, but closing does not take place within the disposal period
- Incapacitating illness or injury, such as the individual becomes homebound or hospitalized for a prolonged period due to illness or injury and cannot take steps necessary to sell the property or to arrange for someone to sell it on his behalf

Example: Sandy Patterson is a Medicaid recipient whose property has been excluded due to a bona fide effort to sell. She accepted a reasonable offer for the property; however, the buyer backed out of the deal at closing. Ms. Patterson immediately started sales efforts again. Good cause exists.

Failure To Make Reasonable Efforts

Unless there is good cause, failure to meet any of the criteria specified under “Reasonable Efforts to Sell” and “Reasonable Offer to Buy” means that:

- An individual is not making reasonable efforts to sell the property and is not accepting a reasonable offer to buy;
- 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 or the month following the month the owner failed to accept a reasonable offer to buy; and
- The individual will be charged with an improper payment, if applicable.

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 proof such as:

- Copy of the listing agreement with the real estate agent in current use;
- Dated advertisement(s) indicating the property is for sale;
- Contracts with local media to advertise the property;
- A photograph of the “For Sale” sign on the property, in conjunction with other efforts;
- Any other relevant items.

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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 a reasonable 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 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 month a reasonable effort to sell is initiated.

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 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.

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.

302.06 INTERESTS OF INDIVIDUAL INDIANS IN TRUST OR RESTRICTED LANDS

Certain types of Indian-specific property are excluded from being considered as resources in determining Medicaid eligibility for an individual who is an Indian. These excluded resources include the following:

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Property Connected to the Political Relationship between Indian Tribes and the Federal Government

- Any Indian trust or restricted land, or any other property under the supervision of the Secretary of the Interior located on a reservation, including any federally recognized Indian Tribe's reservation, pueblo or colony, and including Indian allotments on or near a reservation as designated and approved by the Bureau of Indian Affairs of the Department of the Interior. This exclusion includes Individual Indian Monies (IIM) accounts, which are under the supervision of the Secretary of the Interior and considered to be inaccessible.
- Property located within the most recent boundaries of a prior Federal reservation, including former reservations in Oklahoma and Alaska Native regions established by the Alaska Native Claims Settlement Act. The Tribe, through the Department of the Interior, can provide verification to identify such property.
- Ownership interest in rents, leases, royalties or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally protected rights. Monies received from the lease or sale of these natural resources remain excluded while in an IIM account.

Property with Unique Indian Significance

- Property with unique Indian significance such as ownership interest in or usage rights to items not covered under the above provisions that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or traditional lifestyle according to Tribal law or custom.

While the above identified assets are excluded in determining eligibility, if the assets are converted to a non-excluded asset, they become countable. For instance, money in an IIM account is excluded; however, once the money is removed from the IIM account it becomes a countable asset.

NOTE: Money received by Indians from the lease or sale of natural resources, and rent or lease income, resulting from the exercise of federally protected rights on excluded Indian property, is considered an asset conversion. Therefore, this money is not considered income, but is an excluded resource in the month the money is received (This is true even if the money is taken out of the IIM account in the same month it was deposited into the account). If some or all of the money is retained at the end of

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the month in which received, it is either counted or excluded based on the type of resource in which the money is retained after month of receipt.

This exclusion includes distributions of per capita judgment funds or property earnings held in trust for a Tribe by the Secretary of the Interior. However, this does not include local Tribal funds that a Tribe distributes to individuals on a per capita basis, but which have not been held in trust by the Secretary of the Interior (e.g., tribally managed gaming revenues, which are countable income).

302.07 PERSONAL PROPERTY

Personal property, discussed in this section, includes automobiles, life insurance, household goods and personal effects and burial funds.

302.07.01 AUTOMOBILES

An automobile is any registered or unregistered vehicle used for transportation. Vehicles used for transportation can be motorized, animal drawn or even an animal. A vehicle not used for transportation is not an automobile but may be a countable resource. A temporarily inoperable vehicle normally used for transportation meets the definition of an automobile.

If an exclusion cannot be developed for a vehicle, verify the current market value. The CMV is the average price an automobile of that particular year, make and model and condition would sell for on the open market (to a private individual) in the particular geographic area involved. Use the most recent NADA Official Car Guide or Older Car Guide to determine the CMV using the average trade-in value. If there is debt on the vehicle, determine the equity value.

If the client states the CMV is not representative of the value of the vehicle, he must be given the opportunity to provide a value rebuttal from another knowledgeable source, such as a used car/truck dealer, automobile insurance company, classic car appraiser, etc.

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Examples of Automobiles

- Car or truck
- Boat
- Motorcycle
- All-terrain vehicle
- Horse-drawn carriage
- Horse

The following are not vehicles for purposes of this exclusion:

- Permanently inoperable (junk) vehicle
- Vehicle used exclusively for recreation, such as boats, motorcycles, RVs, dirt bikes, golf carts, etc.

Leased vehicles are not considered in the resource determination, as the Individual does not own the vehicle.

302.07.01A TREATMENT OF AUTOMOBILES UNDER SSI RESOURCE POLICY

SSI Automobile Exclusion: Effective April 2005, one automobile may be excluded, regardless of value, if is used for transportation of the individual, spouse and/or a household member. Unless there is evidence to the contrary, assume the automobile is used for transportation.

If multiple automobiles are involved:

- Apply the exclusion to automobiles owned by the recipient and/or deemor in a way that is most advantageous to the applicant/recipient. That is, apply the exclusion to the automobile with the greater equity value.
- For any automobile that cannot be excluded wholly under this provision or another provision (e.g., property essential to self-support, etc.), the equity value is countable toward the resource limit.

NOTE: Effective July 1, 2019, adults in Long-term Care, HCBS, Healthier MS Waiver and Working Disabled are subject to the above SSI automobile exclusion policy.

Treatment of Other Vehicles Under SSI Policy: The equity value of junk cars and vehicles used only for recreation is a resource. The personal effects exclusion does not apply to such vehicles.

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302.07.01B TREATMENT OF AUTOMOBILES UNDER LIBERALIZED RESOURCE

Automobile Exclusion for Individuals Under Age 19: Effective July 1, 2019, two vehicles may be excluded, regardless of value, if used for transportation of the individual under age 19, spouse and/or a household member. Unless there is evidence to the contrary, assume the vehicles are used for transportation.

If multiple vehicles are involved:

- Apply the exclusions to automobiles owned by the child recipient and/or parent/spouse deemor in a way that is most advantageous to the applicant or recipient child. That is, apply the exclusions to the vehicles with the greater equity value.
- For any automobile that cannot be excluded wholly under this provision or another provision (e.g., property essential to self-support, etc.), the equity value is countable toward the resource limit.

NOTE: Effective July 1, 2019, the above liberalized automobile exclusion. Is applicable to the eligibility of children, i.e., individuals under age 19, in Long-term Care, HCBS, Healthier MS Waiver and Working Disabled.

302.07.02 LIFE INSURANCE

A life insurance policy is a contract. The purchaser (owner) pays premiums to the company (insurer). In return, the insurer agrees to pay a specified sum to a designated person(s), known as a beneficiary, upon the death of the insured individual. The owner and the insured may or may not be the same person. The policy should state the owner's name, if different from the insured. Below are some common terms associated with life insurance:

TERM	DEFINITION
Face Value	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:

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TERM	DEFINITION
	<ul style="list-style-type: none">• The FV of any dividend addition, which is added after the policy is issued;• 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 others.
Cash Surrender Value	An insurance policy's cash surrender value (CSV) is a form of equity value that it acquires over time. The owner of the 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	Dividends are shares of any surplus insurance company earnings, which can be applied to premiums due or paid by check or by an addition or accumulation to an existing policy.
Dividend Additions	Dividend additions are the amount of insurance purchased with dividends added to the policy, increasing its death benefit and CSV. The table of CSVs that comes with a policy does not reflect the added CSV of any dividends.
Dividend Accumulations	Dividend accumulations are dividends that the policy owner has constructively received but left in the custody of the insurer to accumulate 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 for burial), they are a countable resource.

Verification of Life Insurance

Obtain documentary evidence to verify the value of life insurance when the client/spouse reports ownership of whole life insurance(s) on any individual with a total FV exceeding the appropriate program exclusion limit: \$1500 (SSI) or \$10,000 (Liberalized). The individual or authorized representative must provide a copy of all the life insurance policies and the most recent dividend statement for each one. The items should verify the following:

- Face Value

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- Owner
- Insured
- Beneficiary(ies)
- Whether any dividends are paid, whether they are accumulations, additions, applied to premiums or paid to the owner
- Current amount of accumulations, if any
- Whether the policy generates cash surrender value and if so, the current CSV (including the CSV of any dividend additions and any loans on the policy which reduce the CSV.)

If the policy does not reveal all needed information, use DOM-331, Request for Information Concerning Insurance, signed by the applicant to obtain information from the insurance company. After exclusions are developed, any remaining cash value must be considered in the eligibility determination. The cash surrender value of any policy that cannot be excluded is countable toward the resource limit.

Types of Life Insurance

Generally, the types of life insurance policies are:

- Term Life Insurance - Usually in effect for a specific length of time such as 20 years or length of employment; Does not accrue cash value
- Whole Life Insurance - Remains in effect unless the premiums are not paid or the policy matures; Accrues cash value
- Burial Insurance - The terms of the contract prevent the proceeds from being used for anything other than the burial expenses of the insured

302.07.02A OWNER VS BENEFICIARY OF LIFE INSURANCE

There is a distinct difference between being the owner of the policy and the beneficiary:

Owner

The owner is the one who has control of the policy. An individual may own life insurance on himself or another person. The owner may take such actions as:

- Cash in a policy

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- Take a loan against the cash value
- Change ownership to another person
- Change the beneficiary

The value of life insurance policies owned by an individual must be considered in the eligibility determination process.

Beneficiary

The beneficiary is the individual(s) who receive the proceeds of the policy at the insured individual's death. One person may be both the owner and the beneficiary.

Example: Jim Jones purchases a \$10,000 life insurance policy on his mother, Jane Williams, and is the beneficiary upon her death.

302.07.02B TREATMENT OF LIFE INSURANCE UNDER SSI RESOURCE POLICY

Under SSI Resource Policy:

- Term life insurance policies do not have cash value and are excluded
- Burial policies are excluded
- For all other policies determine the total Face Value (FV) of the policies owned by the individual

NOTE: Do not include the Face Value of any dividend additions in determining whether a policy is a countable or excluded resource.

- A life insurance policy is excluded if its Face Value and the FV of any other life insurance policies the individual owns on the same insured person total \$1,500 or less.
 - Even if a policy is excluded, any accumulated dividends are countable toward the resource limit unless they are excluded under another provision such as set aside for burial.
- If the policy is a countable resource, the cash surrender values (CSV, dividend additions, dividend accumulations, outstanding loan amounts reducing the CSV) of the policies must be verified and considered in the eligibility determination.

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- The countable cash surrender values of the policies and accumulations are countable toward the resource limit unless they can be excluded as burial assets.
- Refer to the income section for treatment of life insurance policy dividends.

Example: Lyn Reno is the owner of four life insurance policies. Two have Face Values of \$500 and two have Face Values of \$250. The total of all FVs is \$1500 so the policies are excluded.

Example: Jerry Mann is the owner of three life insurance policies insuring his spouse. The Face Value of each one is \$750. The total Face Value is \$2,250. The specialist must determine the cash values of the policies and count them toward the resource limit unless a burial exclusion is developed.

Example: Roger West is the owner of two life insurance policies on his spouse. One is whole life with a Face Value of \$1,200 and the other is term life with a Face Value of \$10,000. The term life policy has no cash value and is excluded. The whole life policy is excluded because the Face Value is less than \$1,500.

302.07.02C TREATMENT OF LIFE INSURANCE UNDER LIBERALIZED RESOURCE POLICY

Under Liberalized Resource Policy:

- Term life insurance policies do not have cash value and are excluded
- Burial policies are excluded
- For all other policies determine the total Face Value (FV) of the policies owned by the individual

NOTE: Do not include the Face Value of any dividend additions in determining whether a policy is a countable or excluded resource.

- A life insurance policy is excluded if its Face Value and the FV of any other life insurance policies the individual owns on the same insured person total \$10,000 or less.

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- Even if a policy is excluded, any accumulated dividends are countable toward the resource limit unless they are excluded under another provision such as set aside for burial.
- If the policy is a countable resource, the cash surrender values (CSV, dividend additions, dividend accumulations, outstanding loan amounts reducing the CSV) of the policies must be verified and considered in the eligibility determination.
 - The countable cash surrender values of the policies and accumulations are countable toward the resource limit unless they can be excluded as a burial asset.
- Refer to the income section for treatment of life insurance policy dividends.

Example: Lane Ryan is the owner of four life insurance policies. Two have Face Values of \$1,500 and two have Face Values of \$750. The total Face Value is \$4,500 so the policies are excluded.

Example: Jennifer Madison is the owner of three life insurance policies on her spouse, with Face Values of \$750, \$2,500 and \$12,000. The total Face Values are \$15,250. The specialist must determine the cash surrender values of the policies and count them toward the resource limit unless a burial exclusion is developed.

Example: Roberta Warren is the owner of two life insurance policies on her spouse. One is whole life with a Face Value of \$8,500 and the other is term life with a Face Value of \$25,000. The term life policy has no cash surrender value and is excluded. The whole life policy is excluded because the Face Value is less than \$10,000.

302.07.02D ACCELERATED LIFE INSURANCE PAYMENTS

Accelerated life insurance payments are proceeds paid to a policyholder before death. Plans vary from company to company; however, all involve early payout of some or all of the proceeds of the policy. Most of the plans fall into three basic types depending on the circumstances that cause the payments to be accelerated:

Long-term Care Model	Allows payments if the policyholder requires an extended stay in a care facility or, in some instances, healthcare services at home.
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Dread Disease or Catastrophic Illness Model	Allows payments if the policyholder suffers from a specified covered disease or illness such as cancer or AIDS.
Terminal Illness Model	Allows payments following the diagnosis of a terminal illness where death is likely to occur within a specified timeframe.

Some companies call these payments “living needs” or “accelerated death” payments. Depending on the plan, the receipt of payments may reduce the FV of the policy by the amount of the payments and may reduce the CSV in a proportionate manner. In other cases, a lien may be attached to the policy in the amount of the payments that results in a proportionate reduction in the CSV.

Treatment of Accelerated Life Insurance Payments Under SSI and Liberalized Policy

If an individual has a life insurance policy that allows them to receive their death benefit while living and the individual meets the requirements set by the insurance company to receive such proceeds, they are not required to file for the proceeds.

If the individual does file and receives the benefits, the payment will be considered as follows:

- **Month of receipt** – consider as income
- **Following Month** - Any money remaining the following month is considered a resource.

302.07.02E LIFE INSURANCE ENDOWMENT POLICIES

A life insurance policy’s primary function is to pay out upon the death of the insured. A life insurance endowment policy does not do that; rather it serves as an investment medium with a maturity date or date certain payout, i.e., 5 years from purchase, at which time a benefit is paid to a designated beneficiary. The possible death of the “insured” individual before the maturity date is a secondary consideration. These policies should be treated as annuities.

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302.07.03 HOUSEHOLD GOODS AND PERSONAL EFFECTS

Household goods are personal property found in the home and used in connection with normal maintenance, use and residency of a home. They include:

- Furniture
- Appliances
- Television sets
- Carpets
- Cooking and eating utensils
- Dishes

Personal effects are personal property that is worn or carried by an individual or that have an intimate relation to him or her. They include:

- Clothing
- Jewelry
- Personal care items
- Prosthetic devices
- Educational or recreational items
 - Books
 - Musical instruments

302.07.03A OTHER PERSONAL PROPERTY

Personal property which cannot be excluded as household goods or personal effects must be considered as a resource under either SSI or liberalized resource policy, as discussed in the following sections.

302.07.03B TREATMENT UNDER SSI RESOURCE POLICY+

Household Goods and Personal Effects

Household goods and personal effects, as defined above, are excluded in resource determinations, regardless of their dollar value.

Property Acquired for its Value or as an Investment

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Personal property that an individual acquires or holds because of its value or as an investment:

- Is a countable resource;
- Is not considered as household goods or personal effects for purposes of exclusion

Other Personal Property

When ownership of other personal property is alleged and the property is not excludable as household goods or personal effects:

- Verify the Current Market Value (CMV) of the item using any reliable evidence such as a recent sales slip, an appraisal of the item or an estimate from a knowledgeable source. Be aware that insurance appraisals and amounts of insurance often reflect replacement value rather than CMV.
- Determine the Equity Value (CMV less payoff) when there is an encumbrance on the item to arrive at the amount of countable resources.

Example: A recreational vehicle (RV) used for vacations and other recreational activities is classified as personal property. The RV does not meet criteria to be an automobile, nor does it meet the definition of household goods or personal effects for exclusion. If the CMV of the RV is \$10,000 and the payoff is \$5,000, under SSI resource policy the equity value of \$5,000 is counted as a resource.

302.07.03C TREATMENT UNDER LIBERALIZED RESOURCE POLICY

Household Goods and Personal Effects

Under liberalized policy, household goods and personal effects, as defined above, are excluded in resource determinations regardless of their dollar value.

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Property Acquired for its Value or as an Investment

Personal property that an individual acquires or holds because of its value or as an investment:

- Is a countable resource when its equity value exceeds \$5,000;
- Is not considered to be household goods or personal effects for purposes of exclusion.

Other Personal Property

When ownership of other personal property is alleged and the property is not excludable as household goods or personal effects, under liberalized resource policy:

- Up to \$5,000 in EV is excluded for other personal property.
 - Verify the Current Market Value (CMV) of the item using any reliable evidence such as a recent sales slip, an appraisal of the item or an estimate from a knowledgeable source. Be aware that insurance appraisals and amounts of insurance often reflect replacement value rather than CMV.
 - Determine the Equity Value (CMV less payoff) if there is an encumbrance on the item
 - Exclude the item if the EV is \$5,000 or less. If the EV exceeds \$5,000, count the value that exceeds \$5,000 as a resource.

Example: A recreational vehicle (RV) used for vacations and other recreational activities is classified as personal property. If the CMV of the RV is \$20,000 and the payoff is \$12,000, the countable resource value of the RV is \$3,000. $\$20,000$ less $\$12,000 = \$8,000$ EV. The EV less the \$5,000 exclusion limit = \$3,000. Only the amount that exceeds the exclusion limit of \$5,000 is countable as a resource.

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302.07.04 DEATH BENEFITS FOR LAST ILLNESS AND BURIAL EXPENSES

Death benefits are received because of another person's death. Examples include:

- Life insurance proceeds
- Social Security death benefits
- Burial benefits from the Railroad or Veterans Administration
- Inheritances
- Gifts from relatives, friends or the community to help with expenses

NOTE: Recurring survivor benefits from a pension or retirement plan or the Social Security Administration are not death benefits.

Last illness and burial expenses include: related hospital and medical expenses; funeral, burial plot and interment expenses; and other related expenses.

Death benefits provided to an individual are income to the extent that the total amount exceeds the expenses of the deceased's last illness and burial expenses paid by the individual. Death benefits which are not income are also not a resource for one month following the month of receipt. If retained, the second month following receipt, death benefits are resources.

302.07.04A TREATMENT UNDER SSI AND LIBERALIZED RESOURCE POLICY

Death Benefits

If death benefits are not considered income, then:

- Month of receipt – excluded
- Month after receipt – excluded
- Second Month following receipt – countable resource, if retained

Exception: If the death benefits are repayment for expenses already paid, they are considered resources the month after receipt, if retained.

Example: When her uncle passed away, Beth Smith received \$4,000 as beneficiary of his life insurance policy. She received it in July and anticipates spending the entire amount on his last illness and burial expenses. She has

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already received bills totaling \$900 that she paid. On August 1, she received a funeral bill for \$2,900 and a few days later received a cash gift of \$500 which she also intends to apply toward last illness and burial expenses. She pays the \$2,900 funeral bill in August and intends to use the remainder of the life insurance to pay some hospital expenses.

Treatment: Neither the \$4,000 received in July nor the \$500 received in August is unearned income since it is all expected to be used for burial or last illness expenses. She used \$900 of the \$4,000 in July. As of August 1, she had \$3,100 that is not a resource for August. During August she paid the \$2,900 bill and then had \$200 left. However, the \$500 she receives in August gives her \$700 to use for hospital expenses. She must spend \$200 in August for burial or last illness expenses; otherwise, the \$200 will count as a resource September 1. Any portion of the \$500 remaining as of October 1 will be counted as a resource.

Example: Jane Smith has total countable resources of \$1,980 consisting of a \$1,000 savings account and \$980 in checking. Her brother died in late October. In November she receives \$3,000 as beneficiary of her brother's life insurance. She has last illness and burial expenses of \$2,750 to pay. There are no other bills.

Treatment: Of the \$3,000 Ms. Smith received, \$250 is unearned income in November because the last illness and burial expenses are only \$2,750. The \$2,750 is not considered unearned income and will not be a resource until January 1, if she still has it at that time. Any of the \$250 remaining will be a resource for December.

302.07.05 BURIAL-RELATED RESOURCES

There are two different types of burial-related resources: burial spaces and burial funds. This section will discuss the distinction between the two and treatment under SSI and liberalized resource policy.

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302.07.05A BURIAL SPACES

Burial spaces are spaces or items that are used to contain the remains of a deceased person. These include:

- Cemetery plots, crypts, mausoleums, cremation niches
- Caskets, urns
- Headstones or other grave markers
- Burial containers (burial vaults or grave liners)
- Expenses related to the opening and closing of the grave site
- Perpetual care expenses

302.07.05A1 TREATMENT OF BURIAL SPACES UNDER SSI AND LIBERALIZED RESOURCE POLICY

Burial Spaces – SSI And Liberalized Resource Policy

A burial space or an agreement which represents the purchase of a burial space held for the burial of the individual, his or her spouse, or a 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.

SSI Exclusion:

Burial spaces may be excluded if intended for use of:

- Individual
- Spouse
- Immediate family
 - Parents – biological or adoptive
 - Children – biological, adoptive or step
 - Siblings – biological, half or step
 - Spouses of the above, if currently married. Divorce negates the relationship.

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Liberalized Exclusion:

Liberalized policy includes all of the relatives in the SSI definition above and extends to family members of any degree of relationship.

Notes:

- To be “held for” the burial of an individual, the item must be paid for in full - if not paid for in full, the amount paid is considered a **burial fund** rather than a burial space
- Only one item serving the same purpose may be excluded per person. For example, exclude a casket and vault for the same person, but not a casket and an urn
- No limit exists on the value that may be excluded
- Taxes paid on burial spaces are also excluded
- 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(s) is excluded under the burial space exclusion.

302.07.05B BURIAL FUNDS

Burial funds are items clearly designated for an individual’s burial. They include:

- Revocable burial contracts
- Revocable burial trusts
- Other revocable burial arrangements (Including installment sales contracts for burial spaces)
- Cash
- Financial accounts such as checking, saving or CDs
- Stocks or bonds
- Life insurance cash value

Burial funds must be clearly designated for the eligible individual’s burial, cremation or other burial-related expenses, i.e., flowers, clothing, transportation, etc.

Property other than that listed above 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.

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Designation of Burial Funds

Burial funds may be designated 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, provides the information required to document a burial fund, i.e., owner, value and form of funds, date set aside for burial, etc.

Once a fund is designated, it remains a burial fund until eligibility terminates or the individual uses the funds for another purpose, in which case a penalty may apply. See discussion of Misuse of Burial Funds later in this section.

Documentation of Burial Exclusion

DOM-321A, Burial Assets Exclusion Worksheet, is used to document the case record when the burial asset exclusion is applied. A separate worksheet is required for each person eligible to receive an exclusion, which includes:

- Eligible individual,
- Eligible or ineligible spouse,
- Eligible child
- Eligible or ineligible parent(s)

Effective Date

The burial fund may be excluded retroactively to the date the individual originally designated the funds for burial. Accept the individual's allegation of the date the funds were first considered set aside for burial (even prior to application) unless there is evidence the funds were used and replaced after that date.

Example: Mr. Hoover applies on May 1 and signs DOM-321B designating a CD for burial. He set the account up two years ago for his burial. He is seeking coverage for February, March and April. The exclusion may be given for those months.

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Commingled Funds

Burial funds cannot be commingled with other resources which are not intended for burial. The burial fund exclusion applies only if funds set aside for burial expenses are kept separate from non-burial funds. 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 non-excluded funds commingled provided all funds are intended for burial. It is not permissible, however, to have burial and non-burial funds commingled.

Example: Mr. Brennan has a bank account with a balance of \$2,000. He plans to use \$1,500 for burial and the remaining \$500 for other non-burial expenses. The burial exclusion may not be applied to this bank account. Mr. Brennan may want to consider opening another account for the \$500. If he does so, he must provide verification and DOM-321B must be completed to document the burial exclusion.

Designated Burial Funds vs Excluded Funds

Any amount may be designated for burial; however, only the amount up to the applicable maximum exclusion may be excluded. Once the amount of the designated burial funds equals the applicable maximum, the only additions to it that can be excluded are appreciation and interest.

However, until the maximum has been reached, additional amounts can be excluded if the individual designates them for burial expenses. Interest is not included in determining if the maximum has been reached.

EXCLUSION OF BURIAL FUNDS UNDER SSI POLICY

SSI policy allows up to \$1,500 in funds set aside for the burial of the individual and up to an additional \$1,500 in funds set aside for burial of the individual's eligible or ineligible spouse.

Example: Mr. Brown designates \$1,500 in a bank account for burial. The entire amount may be excluded.

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Example: Mr. Brown designates an account with a \$2,000 balance for burial. Since \$1,500 is the maximum exclusion, the remaining designated funds are not excluded and count toward the resource limit.

EXCLUSION OF BURIAL FUNDS UNDER LIBERALIZED POLICY

Under liberalized policy, the maximum that can be excluded for burial of the individual is \$6,000. In addition, up to \$6,000 is allowed for burial of the eligible or ineligible spouse.

TREATMENT OF BURIAL FUNDS UNDER SSI AND LIBERALIZED POLICY

Reductions in Maximum Exclusions

The \$1,500 or \$6,000 maximum exclusion is reduced by:

- Any amount held in an irrevocable trust or burial contract or other revocable arrangement for the individual or spouse, if applicable, except to the extent it represents excludable burial spaces.
- Face Value of any excluded life insurance policy on the individual or spouse, if applicable

Example (SSI): Greta Mann has a savings account designated for burial. It has a balance of \$2,000. She also has an irrevocable burial contract with Hartfield Funeral Home that represents burial space items worth \$2,500 and burial funds of \$1,500. The burial fund portion of the burial contract totally offsets the \$1,500 SSI burial exclusion: $\$1,500 - \$1,500 = 0$; therefore, the entire \$2,000 balance in the savings account is not excluded and counts toward the resource limit.

Example (Liberalized)

Greta Mann has an excluded life insurance policy with a Face Value of \$5,000. She also has a savings account with a balance of \$4,000 that she designates for burial. The \$6,000

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burial exclusion is partially offset by the Face Value of her policy: \$6,000-\$5,000 = \$1,000. Therefore, \$1,000 of her savings may be excluded and the remaining \$3,000 in non-excluded burial funds is a countable resource.

Irrevocable Burial Arrangements

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

Value of Burial Arrangements Equal to Value of Pre-Payment

The value of the irrevocable burial arrangements purchased by the individual must be equal to the value of the funding source used to make the purchase, e.g., cash prepayment, life insurance or annuity 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.

Changes in Burial Exclusion Amounts

The maximum amount that can be excluded when a burial fund is initially designated is \$1,500 under SSI resource rules or \$6,000 under liberalized policy. 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.

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. In addition, cashing in life insurance may raise or lower the allowable exclusion.

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

NOTE: A decrease in the value of any excluded burial funds will be subject to a penalty for misuse, which is discussed later in this section.

Reevaluation of Burial Funds

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 to sign a new DOM-321B unless there is a new or revised designation of funds. If there is a change in the amount of the exclusion, a new DOM-321A, Burial Assets Exclusion Worksheet, must be prepared. Otherwise, the most recent DOM-321A should be updated.

At each redetermination:

- Verify the requirements for exclusion are still being met
- Verify the current value of the fund
- Determine if increased value is interest or another type of addition
- If the fund contains both excluded and non-excluded amounts, use the formula below to determine the excludable portion:

Original exclusion amount ÷ Original fund amount x Present fund amount = Excluded Portion

Example: An individual, subject to SSI rules, designated \$2000 (original fund amount) as a burial fund, \$1500 (original exclusion amount) was excluded and \$500

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is non-excluded. At the most recent review, the account had grown to \$2200 (present fund amount) due to accumulated interest.

The excluded amount is \$1650. $(1500 \div 2000 \times 2200 = 1650)$

Misuse of Burial Funds

If funds, including interest, that were excluded under the burial fund exclusion are used for any purpose other than burial expenses for the designated individual, a penalty for misuse is imposed only if the client would have excess resources without the burial exclusion.

Upon discovery of the misuse of excluded burial funds, the specialist will obtain verification (which may be in the form of a statement from the client or representative) that all or a portion of the funds have been used for another purpose other than burial. The specialist will then determine the effect the misuse will have on eligibility.

Penalty for Misuse

If the client would have excess resources without the burial fund exclusion, the amount used inappropriately is counted 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 computation; however, misused burial funds are not counted as income in the Medicaid Income computation for the institutionalized individual unless the funds are available to the recipient.

If the misused funds include non-excluded burial funds, assume the funds were used in this order:

- Non-excluded interest
- Non-excluded designated amount
- Excluded interest
- Excluded designated amount

The penalty only applies to excluded interest and designated amounts.

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 because the client's resources would not exceed limit even if the burial funds

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were not excluded or if applicable, the funds are not available to the client to include in the Medicaid Income computation, no action is required other than documenting the case record.

DOM-321B is required to re-designate funds when there is a change in the amount of funds originally designated, not including accumulated interest or appreciation. If eligibility is lost, the burial fund exclusion must be developed if the individual reapplies later.

Example: Jennifer Shows originally designated \$1,500 as a burial fund. Interest accumulated and the account grew to \$1,750. In May, she withdrew \$500 to repair her car. If her other resources plus the \$1,750 burial fund, which is now non-excluded, exceed the program resource limit, the penalty applies.

In addition, she must re-designate the amount of funds for burial because the amount in the account (\$1,250) is now below the original amount designated. In the alternative, she could add \$250 to the account and the original designation would be accurate; however, any penalty would still apply.

302.07.05C PRE-NEED BURIAL CONTRACTS

A pre-need burial contract is an agreement between an individual and a funeral home where the buyer pays in advance for his or another person's burial arrangements. If an applicant's resources exceed the allowable limit, he is allowed to establish a pre-need contract to reduce his resources below the limit.

Pre-Need Burial Contracts Including Burial Spaces and Burial Funds

Many pre-need contracts include both burial space and burial fund items. Expenses related to the burial space include: casket, vault, opening/closing costs at the cemetery. Expenses related to the burial fund include: embalming, clothing, visitation room, transportation, flowers.

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There are two types of pre-need burial contracts: revocable and irrevocable. Each is described below, as well as, how they are treated in the eligibility determination. Payment for a contract has taken place when an applicant/recipient transfers a liquid resource to the funeral provider or when specific life insurance policies have been designated on the pre-need burial contract.

A liquid resource designated, but not transferred to the funeral provider as payment for a contract, is counted as an available resource. A resource cannot be designated for future payment of a pre-need contract and that resource be excluded as a resource.

REVOCABLE PRE-NEED BURIAL CONTRACTS

Revocable contracts may be sold, or the money may be refunded. They are considered resources; however, a full or partial exclusion may be developed:

Revocable Contracts That Are Paid in Full

If the value of all the items is provided, both the burial space and the burial fund exclusion may be developed. If the value of the burial space items is not provided, only the burial fund exclusion may be developed.

Revocable Contracts That Are Not Paid in Full

Only the burial fund exclusion may be developed unless the contract verifies the burial space items are paid for and the burial funds items are being paid on.

Revocable Pre-Need Contracts - SSI and Liberalized Resource Policy

Verification

- Copy of contract
- Statement from provider of service

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Treatment

- Revocable pre-need burial contracts are considered a resource. A burial exclusion may be developed. DOM-321B must be completed and signed
- **If the contract is paid in full:**
 - Any portion of the contract clearly representing burial spaces may be excluded entirely, regardless of value
 - Up to \$1,500 (SSI) or \$6,000 (Liberalized) of the remaining portion of the contract may be excluded as a burial fund
- If the contract is not paid in full, it should be treated as a burial fund unless it is verified that the burial spaces themselves are paid in full and considered “held for” the individual

Example: Mr. Allen applies for Medicaid. He has just purchased a revocable contract at Land of Lakes Funeral Home. The contract verifies it is paid in full and includes the following:

\$1,500	Casket
\$1,000	Vault
\$1,000	Headstone
\$500	Opening/closing costs
\$200	Embalming
\$300	Visitation Room
\$1,000	Funeral service

Because the contract is paid in full, the first four items, which are burial space items, may be excluded under the burial space exclusion. The remaining \$1,500 may be excluded under the burial fund exclusion.

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IRREVOCABLE PRE-NEED BURIAL CONTRACTS

Irrevocable Pre-Need Contracts - SSI and Liberalized Resource Policy

Irrevocable contracts are not a resource since the money cannot be refunded or the contract sold without significant hardship.

Verification

- Copy of contract
- Contact with service provider

Treatment

If the contract is irrevocable:

- It is not a resource to the individual
- It is not considered a resource retroactive to the date it was purchased
- The portion that represents burial funds offsets the burial fund exclusion amount (\$1,500 SSI/ \$6,000 liberalized)
- If the contract is not paid in full, the portion paid represents burial funds and is excluded up to the maximum

Example: Mrs. Appleton applies for Medicaid. She has a savings account worth \$5,500 and a life insurance policy with a Face Value of \$20,000 and Cash Surrender Value of \$800 that she had designated for her burial. Since her resources exceed the limit, she uses \$4,500 of her savings to purchase an irrevocable pre-need burial contract. A copy of the contract verifies she paid \$1,500 for the casket, \$1,000 for the vault, \$500 for the opening/closing of the grave and \$1,500 for the funeral. Since the contract is irrevocable, it is not a resource and not countable.

Treatment of Example under SSI Rules

The \$1,500 in the contract for the funeral totally offsets the \$1,500 burial fund maximum. The \$800 CSV of life insurance the client designated for burial becomes a countable resource. Her countable resources are: savings - \$1,000, CSV of life insurance - \$800 = \$1,800 countable resources.

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Treatment of Example under Liberalized Rules

The \$1,500 in the contract for the funeral plus \$800 CSV from the life insurance policy the client designated for burial totals \$2,300 in designated burial funds. Her countable resources are: savings - \$1,000.

302.07.05D LIFE INSURANCE FUNDED BURIAL CONTRACTS

A life insurance funded burial contract involves an individual purchasing a life insurance policy on his own and then assigning, revocably or irrevocably, either the proceeds or ownership of the policy to a funeral provider. The purpose of the assignment is to fund a burial contract. Life insurance funded burial contracts are not considered burial insurance.

Effect of the Assignment of Ownership on Burial Exclusion

- **Revocable Assignment**
 - The burial space exclusion does not apply because the items are not paid for until the death of the individual and therefore are not being “held for” the individual
 - The burial fund exclusion may apply. The resource value of the burial contract is equal to the Cash Surrender Value of the life insurance, subject to the maximum burial funds exclusion amount.
- **Irrevocable Assignment**
 - The burial space exclusion may apply if the values of the items are provided.
 - The life insurance policy is not a resource because the individual no longer owns it
 - The contract is not a resource because the individual no longer owns it
 - The value of the burial fund items offsets the value of any other burial funds items up to the allowable maximum

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Effect of the Assignment of Proceeds on Burial Exclusion

When life insurance proceeds are assigned, the burial space exclusion does not apply because the provider will not be paid until the death of the individual and spaces are not being “held for” the individual. The resource value of the contract is the cash surrender value of the life insurance policy.

If the Face Value of all life insurance policies for the individual total \$1,500/\$6,000 or less, exclude the CSV under the life insurance exclusion. If the FVs total more the \$1,500/\$6,000, verify and count the CSV toward the resource limit. The burial fund exclusion may apply.

302.08 EXCLUSION OF PROPERTY ESSENTIAL FOR SELF-SUPPORT

The exclusion of property essential to self-support may apply to real or personal property. All property 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. Resources excluded under this provision generally fall into four categories:

1. Property Essential to Self-Support - Exclude Regardless of Value or Rate of Return (SSI and Liberalized)
2. Property Used to Produce Goods and Services - Exclude Up to \$6000 Equity Regardless of Rate of Return (SSI)
3. Non-Business, Income-Producing Property - Exclude Up to \$6000 Equity if it Produces a 6% Rate of Return (SSI)
4. Essential Property Exclusion - Liberalized Policy

NOTE: 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 involved.

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302.08.01 CURRENT USE REQUIREMENT

The property must be in current use in the type of activity that qualifies it for exclusion under this provision. Current use is evaluated on a monthly basis. Property not in current use may 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 non-use is due to a disabling condition. Explain to the client that the 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.

No Intent or Change of Intent to Resume Self Support Activity

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 there is a change of intent after the exclusion has been applied, the exclusion no longer applies as of the date of the change of intent. The property becomes a resource for the following month unless a different exclusion is met.

Not in Current Use - General

If property is not in current use, obtain a statement in regard 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

Not in Current Use - Disability

If an individual alleges that self-support property is not in current use because of a disabling condition, obtain a statement in regard to:

- The nature of the condition
- The date the self-support activity ceased and
- When the individual intends to resume the activity, if at all

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

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302.08.02 PROPERTY ESSENTIAL FOR SELF-SUPPORT - EXCLUDED REGARDLESS OF VALUE OR RATE OF RETURN

The properties essential to self-support described in this section include necessary capital and operating assets of a business, e.g., real property, buildings, inventory, equipment, machinery, livestock, motor vehicles, etc. They must be in current use or if not in current use due to circumstances beyond the individual's control, there must be a reasonable expectation that the required use will resume. The following types of properties essential to self-support are excluded regardless of value or rate of return:

- Property used in a trade or business
- Government permits which represent authority to engage in an income-producing activity
- Personal property used by an employee in his work

302.08.02A PROPERTY USED IN A TRADE OR BUSINESS

Property essential to self-support used in a trade or business is excluded from resources, regardless of the value or rate of return. This is applicable to programs subject to both SSI and liberalized resource policy.

Procedure - SSI and Liberalized Resource Policy

When the individual alleges owning a trade or business property, obtain a statement in regard to:

- Description of the trade or business
- Description of the assets of the trade or business
- The number of years the business has been operated
- Names of any co-owners
- Estimated gross and net earnings of the trade or business for the current tax year

Verification:

Obtain a copy of the current year tax return (Form 1040 with schedules and attachments). Use the return to determine the net self-employment earnings and validity of the trade or business. If the current year return is not available, obtain the latest return available.

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302.08.02B GOVERNMENT PERMITS

Government permits represent authority granted by a government agency to engage in an income-producing activity. Examples are commercial fishing permits or tobacco crop allotments.

Procedure - SSI and Liberalized Resource Policy

When the individual alleges owning a government license, permit or other property which represents government authority to engage in an income producing activity, and which has value as a resource, obtain a statement regarding the information below:

- Type of license, permit or other property
- Name of the issuing agency, if appropriate
- If license is required for engaging in this activity
- How the license, permit or property is being used or
- If not being used, why not

Verification: Obtain a copy of the license, permit and/or other documents.

302.08.02C PERSONAL PROPERTY USED BY AN EMPLOYEE FOR WORK

Personal property used by an employee for work is excluded from resources. Excluded items include tools, safety equipment, uniforms, etc.

Procedure – SSI and Liberalized Resource Policy

If the individual alleges owning items that are used in his work as an employee, obtain a statement regarding the following:

- Name, address and telephone number of employer
- General description of the job duties and the items
- Whether the items are currently in use

Verification: Absent evidence to the contrary, accept the individual's statement

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302.08.03 PROPERTY USED TO PRODUCE GOODS OR SERVICES – UP TO \$6000 EQUITY EXCLUDED REGARDLESS OF RATE OF RETURN (SSI)

- This exclusion applies to non-business property, real or personal property (but not cash or bank accounts), used to produce goods or services essential to daily living
- No specified rate of return is required
- Property must be in use or, if not in use for reasons beyond the individual's control, there must be a reasonable expectation that the required use will return
- If the equity value of the property exceeds \$6000, the excess is not excluded; it is countable toward the resource limit

Example: If the resource is valued at \$7000, then \$6000 is excluded and \$1000 is counted.

Procedure – SSI Resource Policy

Examples of Non-Business Property – Real or Personal

- Property used to grow produce or livestock raised solely for personal consumption in the individual's household
- Property used in activities essential to the production of food for home consumption – such as a tractor used for plowing or a boat for subsistence fishing

NOTE: This does not include any vehicle that qualifies as an automobile

When an individual alleges owning property that he uses to produce goods or services necessary for daily activities, obtain a statement giving:

- A description of the property
- How it is used
- Estimate of the CMV and any legal encumbrances

Verification:

Absent evidence to the contrary, accept the client's statement

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302.08.04 NON-BUSINESS, INCOME-PRODUCING PROPERTY – UP TO \$6000 EQUITY EXCLUDED IF RATE OF RETURN IS 6% (SSI)

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

Procedure – SSI Resource Policy

When an individual alleges owning non-business real property that produces income, document the following:

- The number of years he has owned the property
- Any co-owners of the property
- A description of the property
- The estimated CMV of the property and any encumbrances
- The estimated net and gross income from the property for the current tax year

Verification:

- Establish that the property is producing income:
 - If available, obtain a copy of the tax return for the year prior to filing the application or redetermination.
 - When no tax returns are available, obtain other evidence, e.g., a person leasing land for mineral or oil exploration should have a copy of the lease agreement for the period in question.
- Verify the equity value of the property

Treatment

- This exclusion applies to non-business, income-producing property
- Up to \$6000 of the equity value can be excluded from resources if the property produces a net annual return equal to at least 6% of the excluded equity value
- Any equity that exceeds \$6000 counts toward the resource limit
- If the net annual return is less than 6%, the entire equity value is counted

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Procedure – SSI Resource Policy

Example: At review, Mr. Cameron reports that he lives in an apartment and is renting out his formerly excluded home, which has an equity value of \$13,000. Even if the property produces a 6% net annual return, \$7000 of his equity cannot be excluded and counts as a resource under SSI policy.

Exceptions

If the property produces less than a 6% net annual return, the exclusion may be allowed only if the following apply; otherwise, none of the EV is excluded under this provision:

- Lower return that is beyond the individual's control, such as
 - Crop failure
 - Fire
 - Illness
- There is a reasonable expectation that the property will again produce a 6% return

Development When Rate of Return is Less than 6%

- If earnings decline for reasons beyond the client's control, up to 24 months is allowed for resumption of a 6% net annual rate of return. This 24-month period begins with the first day of the tax year following the one in which the rate dropped below 6%.
- Set 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% net annual rate of return if he is actively pursuing the activity.
- If the individual has stopped actively pursuing the activity, the value of the property counts as a resource the month following the review.
- If the property is still not producing at least a 6 percent net annual return at the end of the 24-month period, discontinue the exclusion. The value of the property counts as a resource the month following the month the 24-month period ends.

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Procedure – SSI Resource Policy

Multiple Properties

If an individual owns more than one piece of property:

- The 6% return rule applies individually to each piece
- The \$6000 equity value limit applies to the combined equity values of properties meeting the 6% return rule

If all the properties meet the 6% test, but total EV exceeds \$6000, that portion of the total in excess of \$6000 is not excluded under this provision.

Example: Mr. Green has a piece of land on which he grows corn for sale at market. The equity value of the land is \$7000.

1. He nets \$500 per year in sales. $\$500 \div \$7000 = 7.14\%$; therefore, \$6000 of the EV is excluded and \$1000 counts as a resource.
2. Last year his crop was struck by lightning and caught on fire. He made no money but expects to plant and sell again next year at the regular rate. The \$6000 may still be excluded because Mr. Green had no control over the fire. His 24-month period begins January 1 of the tax year following the year in which the loss occurred. A tickler is set to check on his progress in 12 months.

Example: Mr. Green owns three non-connected acres of pastureland. He rents them to different horse and cattle owners for \$500 per year each. The land has equity values of \$2000, \$3500 and \$1200 for a total of \$6700.

- 6% rule: $\$500 \div \$2000 = 25\%$ return
 $\$500 \div \$3500 = 14\%$ return
 $\$500 \div \$1200 = 42\%$ return

Since the 6% rule is met, \$6000 is excluded and \$700 is countable

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302.08.05 ESSENTIAL PROPERTY EXCLUSION - LIBERALIZED POLICY

Under liberalized resource policy, the essential property exclusion is applied as follows:

Property Essential to Self-Support Under Liberalized Policy

As previously indicated, property essential to self-support, defined as property used in a trade or business, government permits and personal property used by an employee for his job, is excluded regardless of value or rate of return. The procedures for documentation and verification for each type are discussed in Section 302.08.02 above.

Property Used to Produce Goods or Services Under Liberalized Policy

The \$6000 exclusion cap is lifted under liberalized policy; therefore, property used to produce goods or services essential to daily living is also excluded regardless of value or rate of return. The procedures for documentation and verification of this type of property are discussed in Section 302.08.03.

Non-Business, Income-Producing Property Under Liberalized Policy

With the \$6000 exclusion cap lifted under liberalized policy, non-business, income-producing property must produce a net annual return of 6% of the EV of each property. If multiple properties are involved, each must be evaluated under the 6% rule. The procedures for documentation and verification of this type of property are discussed in Section 302.08.04.

NOTE: Property that a client sells via a property settlement 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 for the institutional client as discussed in Section 302.03.02.

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302.09 RESOURCES SET ASIDE AS PART OF A PLAN TO ACHIEVE SELF- SUPPORT (PASS)

The Social Security Act authorizes the exclusion of income and resources of an individual who has a disability or is blind (but not aged) when the individual needs the income and resources to fulfill a Plan to Achieve Self-Support (PASS) approved by the Social Security Administration. Resources set aside as parts of an approved PASS are excluded.

302.10 ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACCOUNTS

An ABLE (Achieving a Better Life Experience) account is a type of tax-advantaged account that certain disabled individuals can use to:

- Save money that is tax-exempt,
- Withdraw the funds to use for certain qualified disability expenses, and
- Experience limited impact on eligibility for Medicaid and SSI.

ABLE accounts are established and maintained by a State or State agency. In Mississippi, SB 2311 passed during the 2017 legislative session established the Mississippi ABLE Program to be administered through the Mississippi Department of Rehabilitation Services (MDRS) with an implementation date of July 1, 2018. MDRS has full responsibility for the ABLE program, including making the assessment on whether the individual is eligible to open an ABLE account. DOM's responsibility, in regard to ABLE Accounts, is to use the policy and procedures discussed here to make Medicaid determinations that involve applicants or recipients who have ABLE accounts.

The treatment of contributions to, and withdrawals or distributions from, ABLE accounts, as well as the post-eligibility and post-death treatment of ABLE account funds for Medicaid purposes are discussed in this section.

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Designated Beneficiary

The designated beneficiary is the eligible individual who establishes and owns the ABLE account. To be an eligible individual, meaning a person who can open an ABLE account, the State Able Program will determine if the individual is:

- Eligible for SSI based on disability or blindness that began before age 26; or
- Entitled to disability insurance benefits (DIB), childhood disability benefits (CDB), or disabled widow's or widower's benefits (DWB) based on disability that began before age 26; or
- An agent under power of attorney or if none, a parent or guardian, has certified, that he/she has a medically determinable impairment meeting certain criteria or is blind and the disability or blindness occurred before age 26. **NOTE:** As noted, the criteria above are used by the State ABLE Program (in MS the responsible agency is MDRS) to determine eligibility for opening an ABLE account that is subject to IRS tax exemptions. The above criteria do not establish Medicaid eligibility. An individual, applying or eligible for Medicaid, who has an ABLE account, must meet all established criteria to qualify for Medicaid, including a determination of disability as specified in Section 102, Non-Financial Requirements. An individual cannot be considered disabled for Medicaid purposes by way of the disability certification used to open an ABLE account.
- A person with signature authority (an agent acting under power of attorney or if none, the parent or guardian) can establish and administer an ABLE account for a designated beneficiary who is a minor child or otherwise incapable of managing the account. However, the designated beneficiary is the owner of the ABLE account, regardless of whether someone else has signature authority over it.
- An eligible individual can open an ABLE account through an ABLE Program in any state that has a qualified ABLE program; however, the eligible individual can be the designated beneficiary of only one ABLE account.

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Treatment of ABLE Account Distributions

For ABD purposes, verification of the ABLE account must be obtained along with documentation of account activity (distributions) at the time of application and annual review. Distributions, as discussed below, must be accounted for to determine if distributions were used (or are being retained unspent) for a “qualified disability expense (QDE)” that permits the distributions to be excluded as a resource for ABD.

For MAGI, ABLE accounts must be reported. Distributions used for the intended purpose are non-taxable. Accept the client’s statement regarding taxable income from ABLE account distributions for MAGI.

Contributions

A contribution is the deposit of funds into an ABLE account. Contributions to an ABLE account can come from the designated beneficiary of the ABLE account from his/her own income or resources, a third party, a trust, estate, partnership, association, company or corporation. The maximum yearly limit for contributions to an ABLE account is the annual gift tax exemption amount (\$15,000 in 2019). An individual who is working may contribute an additional amount not exceeding their income or the federal poverty level, whichever is less. Monitoring the maximum yearly limit for contributions is solely the responsibility of MDRS.

Contributions to an ABLE account and earnings (interest, dividends, etc.) an ABLE account receives are excluded as income to the designated beneficiary. This includes income distributions from a Special Needs Trust or Pooled Trust that is deposited into an ABLE account of the SNT or pooled trust beneficiary.

Do not use contributions made to an ABLE account as a deduction from the countable income (wages, benefit payments, pensions, support payments, etc.) of the person who makes the contribution, whether it is the Medicaid-eligible individual and/or a spouse or parent deemor. A person cannot use direct deposit of income into an ABLE account to avoid income being counted. Income received is still income. The contribution to the ABLE account is not income.

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NOTE: A contribution from a third party to an ABLE account may affect the eligibility of the third party, if applicable. For example, a grandfather contributes money from his savings to the ABLE account of his grandson. If the grandfather later applies for Medicaid for long-term care and the contribution was made within the 5-year lookback or in any subsequent period, a transfer of assets may apply since the contribution is not exempt for the purpose of determining Medicaid eligibility for the grandfather.

ABLE Account Balances

ABLE account balances are fully excluded as a resource for Medicaid purposes.

For purpose of SSI payments, account balances up to \$100,000 are excluded from resources. If the SSI recipient has a balance that exceeds the limit, SSI payments are suspended without a time limit as long as the person remains otherwise eligible. However, SSI Medicaid is not affected. SSI is required to continue the individual's Medicaid eligibility as if the person continued to receive SSI cash benefits. If the individual becomes ineligible for SSI due to the ABLE account balance and any other reason, SSI eligibility is terminated, and the individual must apply for Medicaid-only through DOM to have eligibility determined.

Distributions

A distribution is the withdrawal or issuance of funds from an ABLE account and must be to or for the benefit of the designated beneficiary. Distributions do not count as income of the designated beneficiary; instead, they are a conversion of a non-countable resource to another form of resource that is counted or excluded as follows:

- Qualified Disability Expenses (QDE's) are related to the blindness or disability of the designated beneficiary and are for the benefit of the designated beneficiary. In general, a QDE includes, but is not limited to, the types of expenses shown below:
 - Education,
 - Housing (mortgage, property insurance, property taxes, rent and utilities, i.e., heating fuel, gas, electricity, water, sewer and garbage removal),
 - Transportation,
 - Employment training and support,

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- Assistive technology and related services,
 - Health, prevention and wellness,
 - Financial management and administrative services,
 - Legal fees,
 - ABLE account oversight and monitoring,
 - Funeral and burial expenses, and
 - Basic living expenses.
- Distributions from an ABLE account are not countable as a resource for ABD purposes if used for QDEs in the month of the distribution and if retained beyond the month the distribution is made, the distributions are not counted provided they are subsequently used for an expense that is considered to be a QDE, as cited above. Continue to disregard ABLE account distributions retained after the month of receipt unless the distribution was used for a non-qualifying expense. For example: A Medicaid recipient with an ABLE account receives a distribution in August but does not spend it. The retained distribution is not counted as a resource. The recipient spends the money in December for a QDE so the distribution is not counted as a resource in any month. If the distribution had been spent in December for a non-QDE, it would have been a countable resource for December (conversion of a resource, as outlined in the policy manual, section 300.06.02).
 - For ABD determinations, if distributions exceed total QDE's, determine whether the distribution is being retained unspent, such as retained in a separate account, or if distributions were spent on a non-QDE. If spent on a non-QDE, handle according to above and count as a resource in the month the distribution was used for a non-QDE.
 - For MAGI, distributions from an ABLE account used for QDEs are not included in the beneficiary's taxable income. However, the taxable portion of a distribution used for a non-QDE is countable as income for MAGI determinations.

ABLE Account Distributions and the Medicaid Income Calculation

ABLE account distributions that are used for a QDE are disregarded from an individual's total income used to calculate Medicaid Income. If the distribution is not used for a QDE, it is a resource in the month the funds are misspent as stated above. ABLE account distributions are not income.

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Estate Recovery

Effective July 1, 2025, ABLE accounts are exempt from Estate Recovery under state law.

302.11 RETAINED CASH PAYMENTS

The treatments of retained cash payments are discussed below:

302.11.01 RETROACTIVE SUPPLEMENTAL SECURITY INCOME (SSI) AND RETIREMENT, SURVIVORS AND DISABILITY INSURANCE (RSDI)

The unspent portion of retroactive SSI benefits and RSDI benefits is excluded from resources for nine (9) calendar months following the month in which the individual receives the benefits.

- **Retroactive SSI** - Retroactive SSI benefits are SSI benefits issued in any month after the calendar month for which they are paid. Thus, benefits for January that are issued in February are retroactive.
- **Retroactive Social Security Benefits (RSDI)** - Retroactive RSDI benefits are those issued in any month that is at least two calendar months after the calendar month for which they are paid. Thus, RSDI benefits for January that are issued in February are not retroactive, but RSDI benefits for January that are issued in March are retroactive.

302.11.02 DEDICATED ACCOUNTS FOR PAST-DUE BENEFITS DUE TO INDIVIDUALS UNDER AGE 18 WHO HAVE A REPRESENTATIVE PAYEE

Exclude past due SSI, underpayments, accrued interest or other earnings in a dedicated financial institution account set up for an individual under age 18 who has a representative payee. This exclusion does not apply if funds are co-mingled. If the past due benefits are not deposited into a dedicated account,

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the exclusion is time-limited and is the lesser of 9 months or until the funds are deposited into the dedicated account.

302.11.03 CASH OR IN-KIND ITEMS RECEIVED FOR THE REPAIR OR REPLACEMENT OF LOST, DAMAGED OR STOLEN EXCLUDED RESOURCES

Cash receipts or in-kind items from any source for the replacement or repair of lost, damaged or stolen excluded resources are not treated as resources for a certain amount of time.

302.11.03A PROCEDURE – SSI AND LIBERALIZED RESOURCE POLICY

Exclusion Period

Cash receipts are not considered resources for 9 months from the date of receipt. This may be extended up to 9 more months if the individual verifies good cause for the repair or replacement not being completed within the first 9-month period.

Source of Funds

There are no restrictions on where the cash receipts come from for purposes of this policy, e.g., they may come from an insurance company, a federal or state agency, a public or private organization or an individual.

- **Temporary Housing** - This policy applies to funds received for the purchase of temporary housing.
- **Personal Injury Payments** - This policy does not apply to funds received on account of personal injury.

Disaster Assistance Payments - Refer to Section 302.11.04 for the discussion on Disaster Assistance Payments. These payments must be handled in accordance with income/resource policy applicable to them.

Good Cause

Good cause exists if circumstances beyond the individual's control:

- Prevent the repair or replacement of the lost, damaged or stolen property
- Keep the individual from contracting for such repair or replacement

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

NOTE: When the damage or loss is the result of a presidentially-declared major disaster, the exclusion may be extended for an additional 12-months. Refer to Section 302.11.05 for further information.

Interest on Funds Not Treated as Resources

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

Evidence

Obtain a copy of any evidence the individual has. If the individual cannot obtain sufficient evidence to make a determination about exclusion of the funds, obtain the necessary information from the payment source. Do so by telephone, if possible, and record the facts in the case record.

Make sure the evidence documents:

- The source of the items or funds
- The value
- The date(s) received

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- The intended purpose of the funds or items received, including
 - Whether any cash received is for a purpose other than replacement or repair of the lost, damaged, or stolen (and excluded) resource.

If good cause is alleged, obtain a statement from the individual describing the circumstances and any corroborating evidence that may be available.

302.11.04 DISASTER ASSISTANCE

Disaster Assistance includes assistance received from the following sources:

- The Disaster Relief and Emergency Act (PL 100-707)
- Another federal statute because of a presidentially declared major disaster
- A state or local government's comparable assistance
- A disaster assistance organization

If the disaster assistance funds are excluded from income, the unspent amount is also excluded from resources. Interest earned on funds excluded in this provision is excluded from income and resources.

302.11.05 PRESIDENTIALLY DECLARED MAJOR DISASTERS

Some catastrophes (such as hurricanes) cause such wide-spread destruction that the President of the United States declares them major disasters. Effective 2/25/96, the exclusion period may be extended for individuals who incurred damage or loss of excluded resources under certain circumstances.

The 18-month period (9-month initial period plus the 9-month good cause extension) may be extended up to an additional 12 months. Such an extension may be granted if:

- The excluded resource is located within the geographical area of the disaster area (this area is defined in the presidential order)
- The individual intends to repair or replace the excluded resource
- The individual presents evidence of good cause

302.11.06 NETHERLAND WUV PAYMENTS TO VICTIMS OF PERSECUTION

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The Netherlands Act on Benefits for Victims of Persecution 1940 – 1945, WUV (Wet Uitkering Vervolgingslachtoffers) provides payments to individuals who were victims of persecution during World War I during German and Japanese occupation of the Netherlands and the Netherlands East Indies (now the Republic of Indonesia). The unspent WUV payments made by the Dutch government are excluded from resources and the interest earned on unspent WUV payments is excluded from income.

302.11.07 GERMAN REPARATIONS PAYMENTS

German reparations payments are made to:

- Certain survivors of the Holocaust under the Federal Republic of Germany's laws for compensation of National Socialist Persecution (German Restitution Act) or the German Reunification Act of 1990

These payments may be made periodically or in a lump sum. Unspent German reparations payments are excluded from income and resources. Interest earned on unspent payments is excluded from income.

302.11.08 AUSTRIAN SOCIAL INSURANCE PAYMENTS

The nationwide class action lawsuit, Bondy v. Sullivan, involved Austrian social insurance payments that were based on wage credits granted under Paragraphs 500-506 of the Austrian General Social Insurance Act. These paragraphs grant credits to individuals who suffered a loss; that is, were imprisoned, unemployed or forced to flee Austria, during the period of March 1933 to May 1945 for political, religious or ethnic reasons.

Unspent Austrian social insurance payments based, in whole or in part, on wage credits granted under Paragraphs 500-506 of the Austrian General Social Insurance Act are excluded from resources and the interest earned on unspent Austrian social insurance payments is excluded from income. Austrian social insurance payments not based on wage credits granted under these paragraphs are not excluded from resources under this provision.

302.11.09 BENEFITS EXCLUDED FROM BOTH INCOME AND RESOURCES BY A FEDERAL STATUTE OTHER THAN TITLE XVI

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Federal statutes other than Title XVI specify many income and resources exclusions. Examples of these are discussed below:

302.11.09A AGENT ORANGE SETTLEMENT PAYMENTS

There is no limit to the length of time unspent Agent Orange settlement funds are excluded from resources. Interest earned on conserved payments is excluded as income.

302.11.09B VICTIMS COMPENSATION

Some states establish funds to assist victims of crimes. Unspent payments received from such a fund are excluded for 9 months if received for expenses incurred or losses suffered because of crime, e.g., lost wages, medical expenses incurred due to injuries, etc. Interest earned on unspent victims' compensation payments is not excluded from income or resources.

302.11.09C RELOCATION ASSISTANCE PAYMENTS

Relocation assistance is sometimes provided to persons displaced by projects which acquire real property. Relocation assistance may be provided under local, state or federal programs. Such payments may be excluded for certain lengths of time. The length of the exclusion depends on the source:

- **State and Local Program Assistance** – unspent funds are excluded from resources for 9 months
- **Federal Assistance** – There is no time limit on the exclusion for assistance provided under the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970

Interest earned on unspent payments is not excluded from income or resources.

302.11.09D FEDERAL TAX REFUNDS AND ADVANCED TAX CREDITS

Unspent federal tax refunds and advanced tax credits are excluded from resources for twelve (12) calendar months following the month the refund or

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payment is received. Interest earned on any unspent tax funds is excluded as income.

302.11.09E RADIATION EXPOSURE COMPENSATION TRUST FUND PAYMENTS

The Radiation Exposure Compensation Trust Fund (RECTF) authorized the Department of Justice to make compensation payments to individuals (or their survivors) that were found to have contracted certain diseases after exposure. The payments will be made as a one-time lump sum. Unspent payments are excluded from resources. Interest earned on unspent payments is excluded income.

302.11.09F GIFTS OF DOMESTIC AIRLINE TICKETS

The value of a ticket for domestic travel received by an individual (or spouse) is not a resource if the ticket is:

- Received as a gift
- Not converted to cash, i.e., cashed in, sold, etc.
- Excluded from income

302.11.10 IDENTIFYING EXCLUDED FUNDS THAT HAVE BEEN CO-MINGLED WITH NON-EXCLUDED FUNDS

Otherwise excludable funds must be identifiable in order to be excluded. This does not require them to be separate from other funds (such as in a separate bank account).

When withdrawals are made from co-mingled funds, always assume non-excludable 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 only be added to by:

- Deposits of subsequent funds excluded under the same provision
- Excluded interest

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One-Time Receipt and Deposit of Excluded Funds

Example: An individual deposits an \$800 retroactive RSDI check in a checking account. The account already contains \$300 in non-excluded funds.

- Of the new \$1,100 balance, \$800 is an excluded retroactive RSDI payment
- The individual withdraws \$300. The remaining \$800 is still excluded
- The individual withdraws another \$300, leaving the \$500 balance excluded
- The individual deposits \$500, creating a new \$1000 balance. Only \$500 of the new balance is excluded.

Periodic Receipt and Deposit of Excluded Funds

Example: 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 non-excluded funds. Of the resulting \$200 balance, \$100 remains excluded
- The individual next deposits \$100 in excludable funds. Of the resulting \$300 balance, \$200 is now excluded.

303.01 COUNTABLE RESOURCES

In this section the treatment and verification of resources which are countable under SSI and liberalized resource policy are discussed.

303.02 CASH

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Cash is a countable resource and is defined as money on hand that is in the form of coin or currency.

- Accept the client's allegation of cash on hand, regardless of amount – do not ask to see or count cash.
- Explain to the individual that cash on hand includes amounts he has on his person or at home.
 - In addition, it includes cash belonging to him which is kept elsewhere, such as in a safety deposit box or by another individual.
- Foreign currency or coins are cash to the extent they can be exchanged for U. S. currency

NOTE: Coin collections are not considered cash, even though they are a resource. The value of coin collections is based on a collector's value and determined by knowledgeable source estimate. Refer to Section 302.07.03 for treatment of other personal property.

303.03 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. (Refer to 303.01.02A for a discussion of joint ownership.)

A fiduciary or trustee is authorized to act on behalf of or for the benefit of another person. A fiduciary's right to withdraw funds is the same as the account owner's right to withdraw them.

Types of Checking Accounts

There are different types of checking accounts. NOW (Negotiable Order of Withdrawal) accounts are interest-bearing checking accounts. Super NOW accounts are money market checking accounts with higher rates of interest than NOW accounts. Money Market Deposit Accounts (MMDA) are interest-bearing checking accounts, which allow banks to compete with mutual fund money markets.

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Fraud and Abuse Module (FAM)

Section 1940 of the Social Security Act and Mississippi state law requires the electronic verification of liquid assets held in financial institutions for purposes of determining Medicaid eligibility for applicants and beneficiaries in programs with an asset test, i.e., Aged, Blind, and Disabled (ABD) Medicaid programs. DOM implemented the Asset Verification System (AVS) in November 2018. AVS was incorporated into the Fraud and Abuse Module (FAM) in 2022. The FAM contractor will perform electronic matches with financial institutions to detect and verify bank accounts based on identifiers including Social Security Numbers for the following COEs:

CHECKING/SAVINGS ACCOUNTS

- 010 – Nursing Home under 300%
- 011 – Long-term Hospitalization – Under 300%
- 012 – Swing Bed – under 300%
- 013 – Nursing Home – would be SSI if at home
- 014 – Long-term Hospitalization – would be SSI if at home
- 015 – Swing Bed – would be SSI if at home
- 019 – Katie Beckett Program
- 025 – Working Disabled
- 045 – Healthy MS Waiver
- 062 – HCBS Assisted Living
- 063 – HCBS Elderly/Disabled
- 064 – HCBS ID/DD
- 065 – HCBS Independent Living
- 066 – TBI (Traumatic Brain Injury)
- 094 – Disabled Adult Child (DAC)
- 095 – Widow(er) 60+ eligibility
- 096 – Widow(er) 50+ eligibility
- At each application and redetermination, a request will be submitted through Fraud and Abuse Module (FAM) for information on an individual's financial accounts. Fraud Abuse Module (FAM) must be used as a primary data source when verifying resources. A separate request for verification is issued to the client only when the FAM response must be treated as lead data discussed below under "Consent." FAM will search for open and closed accounts (declared and undisclosed), including the 5-year look back period for long-term care cases.

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- NOTE: SSI-only in institutions (COE-005) are exempt from the DOM FAM process since SSI conducts their own AVS process for SSI applicants and beneficiaries. The development process for 005 is unchanged.

Consent

The agency is required to have consent to access FAM for a person whose assets are considered in the eligibility determination for ABD programs. This includes the applicant or beneficiary (or their representative), a deemor spouse or parent and a community spouse for spousal impoverishment purposes. The ABD application form contains the FAM consent language and consent by the applicant or beneficiary is presumed by the submission of a signed ABD application or renewal form. However, there are instances where FAM response data must be treated as lead information that requires separate verification prior to using the data. In the following instances the Specialist will request bank statements or other verification via written Requests for Information.

- FAM detects an undisclosed account owned in full or in part by the applicant or beneficiary.
- FAM detects an account, declared or undisclosed, owned in full or in part by the deemor spouse or parent or community spouse without the name of the applicant or beneficiary on the account.
- FAM response(s) indicates ineligibility based on accounts declared or undisclosed,
- FAM response(s) are inconsistent with declared information, even if the applicant or beneficiary would be eligible or remain eligible using the FAM data.

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Deny an application or recipient if consent or separate verification of FAM response data is not provided from all individuals whose assets are considered in the eligibility determination or if a written request to revoke consent to access FAM is received. Do not request FAM if consent is not provided or after a request to revoke consent is received.

FAM Requests

For applications in an asset-tested category of eligibility, a request for Asset Verification must be made in MEDS using FAM. On initial application for long-term care, request 60 months of AVS information to allow the lookback for transfers. For all other COEs request the last 3 months of AVS information.

At annual review for COE's with an asset test, a request for Asset Verification is automated with the registration of a redetermination contact in MEDS.

If it is determined that the Financial Institution reported by applicant or beneficiary does not participate in FAM, the Specialist will have to request bank statements or other verification.

FAM Response(s)

Initial FAM responses provide information on both disclosed and undisclosed financial accounts. Financial institutions have a 15-day response timeframe and the FAM contractor will follow up with the FI on all requests that are over 15 days from the date the request was made. Users are notified of a response once a day in the morning.

NOTE: Users are not to contact participating Financial Institutions directly regarding any FAM response(s).

- If an account is located due to a match on the data entered by the Specialist, the automated FAM will return monthly balances on both opened and closed accounts held by the applicant/beneficiary at any time within the requested time frame.
- The monthly balances reported are those which existed as of 12:01 a.m. on the first day of the month(s) requested.

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- Use the balances reported on the FAM when approving eligibility. If there is no FAM response or no account found in the FAM process within 5 business days, Specialists must request resource information on accounts reported on the application from the applicant/recipient, i.e., anniversary bank statements and other information as needed.

For renewals, the last verified balance can be used if FAM does not return in 5 business days. This only applies to accounts that participate in the FAM system.

If a FAM response is received prior to taking action on the case, consider the response in making the eligibility decision, resolving any discrepancies. If FAM information is received after disposition on the case, treat the FAM information as a change and take action accordingly.

- When the 5-year (60-month) look-back is applicable, the Specialist will review the FAM response and identify any significant changes in the monthly balances reported. Bank statements for the affected time period should be requested from the client for further review to ensure that there are no transfers of assets. If more information is necessary, additional bank statements may be requested.

FAM is an eligibility verification tool. It is not always the end of the verification process. More information may be required from the applicant to complete the verification processes. Not all financial institutions participate in FAM as it is not a federal requirement. FI's who voluntarily participate will provide balances for:

- Checking
- Savings
- Certificate of Deposit (CD)
- Money Market
- IRA
- Keogh
- Christmas Club
- Trust
- Annuity, etc.

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Note: FAM responses are not used for applicants and beneficiaries who have a Special Needs Trust. Request bank statements in accordance with policy for this type of account.

Unacceptable Use of FAM

The FAM may not be used for any of the following:

- To obtain or attempt to obtain from FAM any information which the user has not been authorized to access.
- The creation or transmission of unauthorized information, unauthorized requests for information or information that is knowingly erroneous.
- Deliberate unauthorized access to facilities or services accessible via the FAM or AVS Portal.

NOTE: No employee is authorized to attempt to access the FAM or AVS Portal from a home computer.

Development of Bank Accounts

There is a high potential for error in developing bank accounts; therefore, it is important for the specialist to fully investigate all of a client's allegations about bank accounts. Unless eligibility is being denied for another reason, the specialist must search for leads into the possible existence of bank accounts.

Skillful questioning may produce leads which can be used to detect undisclosed resources.

It is important that the following explanations be made to the applicant or representative:

- Information about all savings accounts, checking accounts 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 devisor appears on the account. or
 - Any special purpose for which the account was established, or
 - Whether or not the client considers any of the funds to belong to him.

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Verification of Bank Accounts

- FAM is used as the primary data source for verification of bank accounts unless FAM data must be used as lead information as outlined in the FAM discussion above. In instances where FAM must be treated as lead data:
 - Request the client's own records as verification of activity on an account and to establish account balances.
 - The DOM-330 can be used to supplement incomplete information or records provided by the client to establish the existence of accounts and verify account activity.

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

Treatment of Bank Accounts

- Assume the person designated as the owner in the account title owns all the funds in the account. (Refer to 303.02.02A for joint bank accounts.)
- Absent evidence to the contrary, assume that the person shown as the owner in the account title has the legal right to withdraw funds and use them for support and maintenance.

Evidence to the Contrary

Example: An account is titled "In trust for John Jones and Mary Smith, subject to sole order of John Jones, balance at death of either to belong to survivor". Since John alone has unrestricted access, none of the funds in the account could be considered Mary's resources unless John is her fiduciary, or his resources are deemed available to her.

Example: An account is titled "George Dahey, restricted Individual Indian Money Account". Mr. Dahey cannot withdraw funds from the account without the authorization of the Bureau of Indian Affairs. Therefore, the account is not his resource.

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Special Development for Applicants

Use the special development procedures below for all applications and any existing cases which have not been developed previously to document additional information on banking activities and possible undisclosed accounts.

Step One: Obtain Information About the Applicant's Past and Present Business Activities

Ask the applicant about past and present business activities:

- Where does the applicant cash or deposit checks?
- Where does the applicant buy money orders?
- Where or from whom has the applicant borrowed money in the past five years?
- Has the applicant ever owned a home or land? If so, where is it located? Was it sold or given away?
- Does the applicant have a special savings account or a Christmas Club?
- Does the applicant's name appear on any account which the applicant considers belonging to someone else?
- Does the applicant have money set aside money for emergencies? If so, how much?

Step Two: Obtain Verification of Accounts

If a financial institution is identified through questioning, verify accounts by using the FAM, client's records or DOM-330, Request for Financial Information, as appropriate.

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303.03.01 JOINT CHECKING/SAVINGS ACCOUNTS

Except for account ownership, all instructions in 303.01.02 apply to joint bank accounts. The information in this section pertains only to ownership of joint bank accounts.

303.03.02 OWNERSHIP ASSUMPTIONS FOR JOINT ACCOUNTS

Assume ownership as follows when the client has unrestricted access to the account:

Ownership When Medicaid Client is Joint Owner with an Ineligible Individual(s)

Count the total value of the account when the Medicaid applicant/recipient holds funds jointly with an ineligible individual(s), regardless of the source of the funds.

Ownership When More Than One Medicaid Client is an Account Holder

Count an equal share of the account if two or more Medicaid applicants/recipients are holders of the same joint account, regardless of the source of the funds. If the account is also jointly held with ineligible individuals, do not allow a share of the funds to ineligible individuals.

Deemors

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

Explanations to Client

Individuals with joint bank accounts should be informed of:

- The applicable assumption of ownership;
- The right to provide evidence rebutting the ownership assumption, if he or she disagrees with it.

303.03.03 REBUTTAL OF JOINT CHECKING/SAVINGS ACCOUNTS

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An applicant or recipient may rebut ownership of part or all of the funds in a jointly held account. The client is responsible for providing verification to support this claim.

If an applicant or recipient wishes to rebut the applicable ownership assumption, the client and each joint owner must submit corroborating statements and necessary verification to document the following for the months for which ownership is an issue:

NOTE: If the only other account holder is incompetent or a minor, obtain a corroborating statement from anyone aware of the circumstances surrounding establishment of the account.

- Bank name, account number, names of account holders
- Ownership of the funds, including amounts if partial ownership is claimed
- Reasons for establishing a joint account
- Who has made deposits to and withdrawals from the account
- Verification of the deposits, withdrawals and interest, e.g., pay stub, award letter, cancelled checks, account records, etc.
- How the withdrawals have been spent
- If the client owns none of the funds, evidence showing that he/she can no longer withdraw funds from the account
- If the client owns only a portion of the funds, evidence showing removal of the client's funds from the account or removal of the funds owned by the other account holder(s) and redesignation of the account

Document the determination in the record.

Any funds that the evidence establishes were owned by the other account holder(s), and that the client can no longer withdraw from the account, were not and are not the client's resources. That is, rebuttal is both retrospective and prospective. However, these funds can be deemed to be available to the client if the account holder to whom the funds belong is a deemor.

Rebuttal Procedures

If an applicant or recipient wishes to rebut the applicable ownership assumption, the client and each joint owner must submit corroborating statements and

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necessary verification to document the following for the months for which ownership is an issue:

NOTE: If the only other account holder is incompetent or a minor, obtain a corroborating statement from anyone aware of the circumstances surrounding establishment of the account.

- Bank name, account number, names of account holders
- Ownership of the funds, including amounts if partial ownership is claimed
- Reasons for establishing a joint account
- Who has made deposits to and withdrawals from the account
- Verification of the deposits, withdrawals and interest, e.g., pay stub, award letter, cancelled checks, account records, etc.
- How the withdrawals have been spent
- If the client owns none of the funds, evidence showing that he/she can no longer withdraw funds from the account
- If the client owns only a portion of the funds, evidence showing removal of the client's funds from the account or removal of the funds owned by the other account holder(s) and redesignation of the account

Document the determination in the record.

Any funds that the evidence establishes were owned by the other account holder(s), and that the client can no longer withdraw from the account, were not and are not the client's resources. That is, rebuttal is both retrospective and prospective. However, these funds can be deemed to be available to the client if the account holder to whom the funds belong is a deemor.

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303.03.04 FUNDS HELD IN ANOTHER INDIVIDUAL'S ACCOUNT

Count the value of funds deposited or held for an applicant/recipient in an account that does not have the client's name on it if:

- The holder(s) of the account agrees that the funds on deposit, or a portion thereof, belong to the applicant/recipient, and
- The funds are available to the client.

If some or all of the funds are acknowledged as belonging to the client and are available, the account is treated as a countable resource to the extent the funds belong to the client.

Documentation will include written statements from the client and the holder(s) of the account.

NOTE: Entitlement income deposited into an account which is not owned by the client does not alter the fact that the income belongs to the client and is used to determine the client's eligibility and Medicaid Income, if applicable.

Applicant or Recipient is in Long-term Care in a Nursing Facility or HCBS Waiver Program

Funds belonging to the applicant or recipient, including non-entitlement income, transferred and held in another individual's account are subject to the transfer of assets provision as follows:

- Determine if funds were transferred to a non-allowable individual, i.e., someone who does not meet an exception as defined in 306.07, Exceptions to Transfers. If funds are held by a non-allowable individual, use the applicable rule defined below.
 - If funds are used to pay for the applicant's or recipient's long-term care in a nursing facility or home care for HCBS, including private sitters, the funds are presumed to be accessible and are countable as a resource,
 - If funds are not being used to pay for the applicant's or recipient's care and funds are determined to be non-accessible, a transfer of assets exists.
- Refer to 306.02, Transfer Penalty Definitions for additional information on resources transferred to another individual that are used to pay for long-term care.

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303.03.05 DIRECT EXPRESS DEBIT CARDS

Direct Express is a federal benefit payment program. The Direct Express (DE) program was established by the US Department of Treasury to electronically pay federal benefits such as Social Security, VA, and Civil Service. Monthly federal benefits of a recipient who has no bank account or otherwise chooses the debit card option are deposited to the direct express debit card account.

- Individuals cannot add additional funds to the account.
- Account owner receives a Direct Express debit card to use deposited benefits to make purchases, get cash and pay bills.
- Individuals can obtain balance information online and at certain ATMs.

Unused funds that accumulate in an account and are treated as a countable resource. Accumulation should be minimal since a federal benefit is the only deposit that can be made to the account.

Self-attestation of a direct express debit card account balance will be accepted when **both** of the following conditions exist:

- The account is one in which a federal or state benefit is deposited, and no additional deposits can be made to the account by the individual, **and**
- The balance of all countable resources, including the attested federal or state account balance, is under the applicable Medicaid resource limit by \$300 or more. The countable balance is determined by subtracting the amount of any income deposited into the account within the month from the attested balance.

If the above criteria are met, self-attestation of the direct express debit card account balance may be accepted. If both criteria are not met, documentary verification must be obtained to determine the balance with one exception: The declared amount can be accepted when the client attests the balance in the direct express debit card account alone exceeds the applicable resource limit.

Direct Express balances cannot be obtained through FAM. A new attestation of the Direct Express balance must be obtained at review.

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IMPORTANT NOTE: When other verifications must be requested by 307/309 to determine eligibility, also request verification of the direct deposit account balance to avoid potential timeliness delays on the case. If the verification is provided, use the verified amount in the determination. However, if the verification is not provided and both criteria for self-attestation are met, the attested debit card balance can be used in the resource determination. That is, do not deny eligibility when documentary verification of the debit card balance is not provided **if** both criteria for self-attestation are met, and all other required verifications are received. However, if documentation of the account balance is provided, it must be used.

303.04 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 of time (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 and savings certificates are common forms of time deposits.

NOTE: The assumptions regarding ownership of bank accounts, discussed in the previous section, also apply to time deposits.

Early Withdrawal

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

Treatment

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:

- Amount originally deposited
- Plus, accrued interest for all but the current month and

Minus any penalty for early withdrawal

Early Withdrawal Prohibited

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On rare occasions, the terms of a time deposit may prohibit early withdrawal altogether. When early withdrawal is prohibited, handle principal and interest as follows:

Treatment

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

Interest – If the owner has no access to the interest before the deposit matures, accrued interest is also not a resource. Do not count the interest as income in the month the deposit matures, but as a resource the month after maturity.

303.05 CONSERVATOR ACCOUNTS

The term “conservatorship account” refers to a financial account in which a person or institution has been appointed by a court to manage and preserve the assets of an individual which are held in the account.

Treatment

Absent evidence to the contrary, the funds are available for the individual’s support and maintenance and are countable as that person’s resource. For verification of the account, refer to the court order establishing it.

NOTE: The fact that an individual has to petition the court for withdrawal of funds does not mean the funds may be assumed to be unavailable.

The denial of a request for withdrawal of funds by the court does not necessarily mean the funds in the account are unavailable for the individual’s support or maintenance.

A history of the petitions for and approvals and denials of funds may reveal the court approves petitions to withdraw funds to provide maintenance and support and

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only denies non-essential items or that the court's denial of a request is the exception rather than the rule. In either instance, the funds are considered an available resource.

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303.06 PATIENT ACCOUNTS

A nursing home patient account is a financial account set up by the nursing home for the convenience of the patient. These accounts are similar to a checking and/or savings account. The facility holds funds belonging to the patient for the patient's use. For Medicaid purposes, a patient account is treated in the same manner as a checking or savings account.

303.07 CHARITABLE FUNDS BANK ACCOUNTS

Count the value of funds in an account set up to receive and hold charitable contributions (fundraisers) if the name of the applicant/recipient is on the account and the funds are available to the applicant/recipient for support and maintenance.

303.08 CONTENTS OF SAFETY DEPOSIT BOX

Some or all of the contents of a safety deposit box may be countable as resources.

Procedure

Determine if the applicant/recipient has a safety deposit box.

To verify the contents of a safety deposit box, obtain a signed statement from the applicant/recipient, spouse or authorized representative listing the contents of the box.

If the client reports potentially countable resources, apply appropriate policy based on the type of resource reported (stock certificates, coins, jewelry, life insurance policies, etc.) to verify and value the resource.

If the client reports possessions stored in another person's safety deposit box, determine whether the client has access to the safe deposit box by obtaining a statement from the owner of whether or not the client is allowed access to the belongings stored in the safety deposit box. If so, handle as discussed above.

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303.09 NON-HOME REAL PROPERTY

This is land and any permanent buildings/immovable objects attached to it that are not considered a principal place of residence.

Treatment

- Generally, this type of property is a countable resource.
- An exclusion may be developed if there is a bona fide effort to sell.
- Refer to procedures in following sections to verify ownership and valuation of the property: Section 301.01.07, Evidence of Real Property Ownership, and Section 301.01.08, Verifying Current Market Value.
- Determine equity value (CMV – payoff on any legal debt = EV). If jointly owned, count the individual's share.

303.10 529 PLAN

This is a state-sponsored investment program. Parents may fund these accounts to pay for a child's college education.

Treatment

- Parents are owners and the account is considered a resource.
- Withdrawal for reasons other than to pay for qualified college education is subject to income tax and an additional 10% penalty.
- Account statements may be used to verify ownership and value.

303.11 STOCKS

The following guidelines refer to all stocks, including preferred stock, warrants and rights, and options to purchase stock.

- Shares of stock represent ownership in a business corporation.
- The value of a share of stock shifts with demand and may fluctuate widely.
- Absent evidence to the contrary, assume each owner of a stock owns an equal share of stock and can sell the stock at will, at current value.
- Broker fees do not reduce the value that stocks have as a resource.

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Verification of Stock Ownership

Verify ownership using the stock certificate or most recent account statement (including dividend account) from the brokerage firm that issued or is holding the stock.

If the individual does not have this information, have them obtain a statement from the brokerage firm. Provide assistance as needed.

Valuation of Publicly Traded Stocks

For **publicly traded stocks**, the CMV of a stock is its closing price on the last business day of the preceding month.

The values of over-the-counter stock are shown on a “bid” and “asked” basis. For example, “18 bid, 19 asked”. Use the bid price as the stock’s CMV.

On any given day the closing price of the stock can usually be found in the next day’s regular or financial newspaper, or it can be obtained from the internet. If the closing price is unavailable through these means, as a last resort, contact a local securities firm. Document the closing price and source of information in the case record.

NOTE: The “par” or “stated value” shown on some stock certificates is not the market value of the stock.

Valuation of 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 handled privately and subject to restrictions. Therefore, for **stock that is not publicly traded**, the burden of proof to establish the value is on the individual since sale of such stock is handled privately and subject to restrictions.

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 copy of it in the file.

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Description of Stocks

Common Stock - Common stock is usually 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.

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.

Reading Stock Quotations

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

- 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 ($22 \frac{3}{4} = \$22.75$); and
- The change in price from the previous day.

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

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Description of Options

Option - An option is the right to sell 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 called a “put”. An option to buy is a “call”. The value of an option depends on:

- The length of the contract (usually 3, 6, or 9 months);
- The difference between the CMV of the item and price at which the put permits it to be sold or the call permits it to be bought;
- The volatility of the item (how much the CMV is expected to fluctuate).

Buying and 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.

Reading Option Quotations

There are several exchanges across the country that list option prices for about 300 stocks: the Chicago Board of Options (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);
- The high, low and closing prices for a contract (\$56, \$25, \$37.50, respectively, on line 2);
- The net change in the value of the contract (\$6.25 on line 2).

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Stock Name Expiration Date and Price	Week's				Net Change
	Sales	High	Low	Last	
Tandy Apr 30	1317	4 ¾	2 ¾	3 1/8	-1/8
Tandy Apr 30p	996	9/16	¼	3/8	-1/16

303.12 MUTUAL FUND SHARES

A mutual fund is a company whose primary business is buying and selling securities and other investments. Types of mutual funds include growth funds, income funds, balance funds, municipal bonds, money market funds, load funds, no load funds.

Treatment

- Shares in a mutual fund represent ownership in the investments held by the fund.
- The investments may be pooled assets (such as stocks or bonds, managed by an investment company).
- A mutual fund share represents ownership interest in this pool as opposed to a specific stock.
- 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.

Description of Mutual Funds

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

Income Funds - The objective of these funds is current income through high dividends and interest as opposed to capital gains.

Balanced Funds - The objective of these funds is a balance of growth and income.

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

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Money Market Funds - The fund invests in conservative vehicles such as T-Bills and bank certificates. The minimum investment is usually \$1000 but may be less. Income may fluctuate daily based on interest rates. Money market funds often have a check-writing feature.

Buying and Selling Mutual Funds

“Load” funds are sold through a broker who collects a commission. “No-Load” funds usually are purchased directly from the fund with no commission and often are advertised in newspapers or magazines.

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;
- 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 Capital	52 Weeks			Week's		
	H	L		Close	Change	Income*
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						

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303.13 US SAVINGS BONDS

A US Savings Bond:

- Is an obligation of the federal government,
- Is not transferable,
- Can only be sold back to the federal government.

303.13A TREATMENT OF US SAVINGS BONDS

- Savings Bonds are issued as traditional paper bonds or as book-entry Securities. Book-entry securities (also called savings security instruments or electronic savings bonds) are sold online by the US Treasury Department.
- The individual in whose name a US Savings Bond is registered owns it. The owner may name a beneficiary of the bond but retains sole ownership rights throughout his lifetime. Upon death of the owner, the beneficiary then becomes the new owner.
- Paper bonds may have co-owners. Each individual owns equal shares of the redemption value of the bond.
- Some electronic bonds called “with” bonds may have the owner listed with one additional person. The additional person listed has authority to cash the bond but has no ownership rights.
- Ownership of a paper bond is noted on the front of the bond and can be verified by viewing the bond itself. View all paper bonds and retain a copy for the record. Ownership of electronic bonds is maintained by the Treasury Department and verification is obtained by the owner by downloading a record of the holdings from the Treasury Department.
- Physical possession of a paper bond is required to redeem it. If a person other than the client/spouse will not relinquish possession of a bond, it is not an available resource.
 - **NOTE:** A transfer of assets may exist unless a successful rebuttal of ownership is offered.
- Physical possession does not apply to electronic bonds
- US Savings Bonds are subject to a mandatory retention period before they can be redeemed. During the mandatory retention period, the bond is not a resource. Retention periods for paper and electronic bonds are:
 - Series E, EE and I bonds issued prior to 2/1/03 for the first 6 months
 - Series EE and I bonds issued on or after 2/1/03 for the first 12 months;

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-
- Series H and HH bonds for the first 6 months regardless of the issue date.
 - To determine the value of Series E, EE and I paper bonds:
 - Use the Savings Bond Calculator at the address shown below or

http://www.treasurydirect.gov/indiv/tools/tools_savingsbondcalc.htm
 - Use a current copy of the Table of Redemption Values for US Savings Bonds or
 - As a last alternative, obtain the value by telephone from a local bank and document the contact.
 - To determine the value of E, EE or I electronic bonds, ask the client to provide a copy of his “Current Holdings” list, which can be downloaded from the Treasury Direct website: <http://www.savingsbonds.gov/>. Electronic bonds have no set denominations and can be purchased in any amounts from \$25 to \$30,000 so the face value cannot be determined the same as paper bonds. If the client alleges the Current Holdings cannot be obtained because the password or account number has been lost, he must contact the Treasury Department to retrieve them.
 - Series E, EE, and I bonds accrue interest which is added to the redemption value of the bonds. Owners of these bonds do not receive interest payments. Series H and HH bonds are only issued as paper bonds. They are issued at their face value and do not increase in value. Interest is paid to the owner every six months. The cash value is the bond’s face value and is obtained from the bond itself. Retain a copy of the bond in the record.

303.14 MUNICIPAL, CORPORATE AND GOVERNMENT BONDS

A bond is a written obligation from a state or locality (municipal bond), a private corporation (corporate bond) or the federal government (government bond) to pay a sum of money at a specified future date.

Treatment

- These bonds are negotiable and transferable.
- Their value as a resource is their CMV. Their redemption value, available only at maturity, is immaterial.
- Obtain a copy of the bond and verify the value with the bond issuer.

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303.14.01 CORPORATE BONDS

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

- **Debentures** are backed by the issuer's full faith and credit
- **Mortgage-Backed** bonds are backed by a lien on the company's assets

Corporate bonds are issued in two forms:

- **Registered** bonds pay interest to their registered owner
- **Bearer or coupon** bond pay interest to whomever holds the bond

Convertible Bonds - These bonds are debentures that can be exchanged for a specified number of shares of a company's common stock.

Junk Bonds - These are high risk bonds.

UIT (Unit Investment Trust) - A UIT is a package of bonds in a portfolio. One can buy shares of the package for \$1 to \$1000 per share with a minimum investment of \$750 to \$5000 depending on the trust. The interest rate is usually fixed at purchase and does not change. Units usually are sold or redeemed through the trust sponsor.

Zero Coupon Bonds - These bonds are usually issued by corporations. They do not pay current interest; accrued interest is paid at maturity. The US government does not issue zero coupon bonds directly. However, see TIGER and CATS (US Securities) discussed below.

Interest

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

303.14.02 MUNICIPAL BONDS

Municipal bonds are to city, county and state governments 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 of two types:

- **General Obligation Bonds** are backed by the full faith and credit of the issuing municipality and supported by the taxing power; and

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- **Revenue Bonds** 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.

303.14.03 GOVERNMENT BONDS/US SECURITIES

A government bond, distinct from a US Savings Bond, is a transferable obligation issued or backed by the federal government. Examples are:

- **Treasury 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 they have longer maturities and lower minimum investment requirements. They have been registered in book form since July 1986, but were sometimes issued as bearer bonds before then.
- **TIGER (Treasury Investors Growth Receipt) and CATS (Certificate of Accrual on Treasury Securities)** 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.
- **Federal Agency Securities** - Some Federal Agencies have charters to issue securities. Minimum investments range from \$1,000 to \$25,000. Some of these federal agencies are:
 - The Federal Home Loan Bank Board,
 - Federal Home Loan Mortgage Corporation (FREDDIE MAC),
 - The Export-Import Bank and
 - The Government National Mortgage Association (GINNIE MAE).

Buying and Selling Bonds

Bonds are usually 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.

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Reading Bond Quotations

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

- The name of the issuer (AT&T)
- The bond's nominal or coupon rate (3.78%)
- The last two digits of the year in which the bond matures (1990);
- The current yield (5.6%);
- 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 69¼ equals \$692.50);
- The net change in the bond price.

ISSUE	CURRENT YIELD	SALES 1000'S	HIGH	LOW	CLOSE	CHANGE
ATT	5.6	54	69 ¾	69 ¼	69 ¼	-3/8
3 7/8, 90						

Treatment

The government securities discussed above are countable resources:

- To verify ownership, view and copy the receipt of purchase.
- Obtain the value from the issuer.

303.15 VIRTUAL CURRENCY AND OTHER DIGITAL TOKENS

Digital Tokens are a forms of digital assets that represent ownership of digital items. There are two types of digital token:

Fungible Tokens-Fungible tokens are interchangeable with and exchangeable for equivalent digital tokens and are divisible into smaller units. Fungible Tokens are also known as **Virtual Currencies or Cryptocurrencies**.

Non-Fungible Tokens (NFTs)-NFTs are digital assets that signify ownership of a unique or scarce property that is not interchangeable with another token and cannot be divided into smaller units.

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By IRS guidelines, virtual currency or digital assets are not considered currency, but instead are considered property. The following guidelines refer to all virtual currency and digital tokens.

Treatment

The current market value (CMV) of the virtual currency or digital token is counted as a resource.

The tax definition of a digital asset is any digital representation of value recorded on a cryptographically secured, distributed ledger (blockchain) or similar technology.

- The valuation of any virtual currencies or tokens which are listed on an exchange should be determined using that exchange.
- If the virtual currency or token is not held on an exchange, utilize “Coinbase” at the following web address: <https://www.coinbase.com> to determine the value. The exchange website and the exact exchange rate at the time of verification must be documented in case notes. In the absence of verification available to DOM staff, the applicant or beneficiary is responsible for providing documentation to verify the current market value (CMV) of any virtual currency held.
- The value of virtual currency or digital assets may fluctuate widely.
- The purchase of and subsequent transfer or gifting of any virtual currency or token should be developed as a transfer of assets for applicable categories of eligibility.
- The purchase and sale of virtual currency or tokens as a practice should be viewed and developed as capital gains or losses as applicable.
- Virtual currencies or tokens that can only be exchanged for virtual goods and services within a limited virtual economy **are not countable resources**. The most common type of digital asset in this category is in-game currency and non-transferable digital content in online games and applications. These items can be purchased with traditional money but generally cannot be exchanged for legal tender or convertible virtual currency or otherwise be used to meet a person’s food and shelter needs.

Verification of Ownership

Verify ownership using documentation of purchase or most recent account statement from the brokerage that issued the currency. Absent evidence to the contrary, assume each owner listed on virtual currency asset owns an equal share and can sell or exchange at will, at current value.

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303.16 CASH TO PURCHASE MEDICAL OR SOCIAL SERVICES

An individual cannot always disburse cash given to him/her to purchase medical or social services in the month of receipt. To permit use of the funds as intended, it is reasonable to assume, for a limited time, that the individual will use them to pay for approved services and, therefore, that they are not available for support and maintenance.

A cash payment for medical or social services that is not income also is not a resource for the month following month of receipt.

Exception: Even though it is not income, cash received as repayment for bills an individual has already paid is a resource and if retained, is counted the month after receipt.

303.17 RETROACTIVE IN-HOME SUPPORTIVE SERVICES

In limited circumstances, governmental programs will pay a spouse or parent to provide a disabled spouse or child with certain in-home supportive (attendant, homemaker) services (IHSS). IHSS payments are income when received by the ineligible spouse or parent but are not included as income for deeming purposes. In addition, a period of time is allowed during which retroactive IHSS payments are not considered resources.

A payment is considered retroactive if the payment is made after the month it was due. An IHSS retroactive payment is excluded as a resource the month of receipt and the calendar month after receipt. Beginning the second calendar month after receipt, it is a resource and subject to resources deeming. If the retroactive IHSS payment includes interest, the interest is treated in the same manner as described above.

If payment is made in the month due, but following the month services were rendered, the payment is not retroactive.

303.18 UNIFORM GIFTS TO MINORS ACT

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Most states have adopted the Uniform Gifts to Minors Act (UGMA) that permits making gifts that are tax free to minors. The UGMA is sometimes called the Uniform Transfers to Minors Act. Under the 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; and
- The donee automatically receives control of the assets when he/she reaches the age of majority established by state law (age 21 in Mississippi).

303.18.01 CUSTODIAN

A custodian of UGMA assets cannot legally use any of the funds for his/her own personal benefit. Therefore,

- The assets are not the custodian's resources.
- 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.

303.18.02 DONOR

Additions to principal may be income to the donor before becoming part of the UGMA principal.

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.

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

303.18.03 MINOR DONEE

What IS Income to the Minor?

- Custodian's disbursements to the minor

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- Disbursements on behalf of the minor used to make certain third-party vendor payments

What is NOT Income to the Minor?

- The UGMA property
- Any additions or earnings

303.18.04 DONEE AT AGE 21

- All UGMA property will become available to him/her
- All funds in the UGMA will count as income the month the minor reaches age 21 and a resource thereafter

303.18.05 CREATION AND TRANSFER OF “CUSTODIAL” PROPERTY IN MS

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), e.g., annuity, CD, 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, MS Code Ann., Section 91-20-19).

Verification

- A copy of the document of ownership assigned in writing and complying with the requirements of state law discussed above.
- If there is no document designating a UGMA transfer, treat as though there is no UGMA.

303.19 ENTRANCE FEES TO A CONTINUING CARE RETIREMENT COMMUNITY (CCRC)

Continuing Care Retirement Communities (CCRC) or life care communities provide a range of living arrangements, from independent living through skilled nursing care. Some CCRC's include Medicaid certified Nursing Facilities (NF) and others do not participate in Medicaid. However, there are instances where a CCRC may not include a Medicaid NF but a CCRC resident enters a Medicaid NF either because there are no

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available beds in the CCRC nursing facility or the CCRC nursing facility is unable to provide the level of care needed by the resident. In any instance where a CCRC resident enters a Medicaid certified NF, either on the grounds of the CCRC or separate from the CCRC, apply the following rules regarding entrance fees to the CCRC as a potential countable resource to the applicant applying for long-term care in a Medicaid NF.

Frequently, an individual or couple must pay a substantial entrance fee (or deposit) and sign detailed contracts before moving into a CCRC. The entrance fee or deposit paid to a CCRC is treated as a resource under certain circumstances for the purpose of determining Medicaid eligibility for long-term care in a Medicaid NF. Contact with CCRC and/or review of the entrance contract is needed to verify the amount of the entrance fee and the terms of the entrance contract.

303.19.01 SPOUSAL IMPOVERISHMENT RULES APPLY

If only one member of a couple living in a CCRC enters a Medicaid NF, apply Spousal Impoverishment rules and allow any potential resource allocation to the Community Spouse prior to determining the entrance fee or a portion thereof to belong to the Institutionalized Spouse.

303.19.02 NON-REFUNDABLE ENTRANCE FEE

If an entrance fee to a CCRC is nonrefundable, as evidenced by the contract or a statement from the CCRC, the entrance fee or deposit is not a countable resource.

303.19.03 REFUNDABLE ENTRANCE FEE

If an entrance fee is refundable, count the portion of the fee that can be refunded as a resource. Count the entire amount of the entrance fee for an applicant of long-term care in a nursing facility when all of the following conditions are met:

- The entrance fee or deposit can be used to pay for care under the terms of the entrance contract, either in portion or full lump-sum refunds, should other resources of the individual be insufficient. If the “potential” to get the refund or portions of the refund exists, then this condition is met.

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- The entrance fee or remaining portion is refundable when the individual dies or terminates the contract and leaves the CCRC. This condition is met as long as the CCRC resident applying for Medicaid in a NF “could” receive a refund if the contract was terminated or the resident died.
- The entrance fee does not confer an ownership interest in the CCRC. Ownership would result in all or part of the entrance fee being used to purchase rather than rent a living unit in the CCRC. If the entrance fee does not indicate that the CCRC resident is “purchasing” a living unit, then this condition is met.

304.01 TRUSTS

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. The three classifications of trusts are described below. When the type of trust has been determined, refer to the applicable section in this chapter for policy pertaining to that trust classification. The trusts are discussed in the following order:

- 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 are not met, refer to the appropriate trust policy. The Deficit Reduction Act of 2005 (DRA) amended OBRA-93 trust rules and provides current operating procedures for trust issues. The specific provisions of the DRA are discussed throughout this section.
- Medicaid Qualifying Trusts - applicable to trusts established on or after March 1, 1987, through August 10, 1993 that meet MQT criteria. If MQT criteria are 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.

Procedures for Clearing Any Type of Trusts, Guardianships, and Conservatorships

Trusts, guardianships/conservatorships are often complex documents involving state law and legal principles. They must be referred to the central office for clearance whenever a client or spouse either creates a trust or is the beneficiary of one. A copy of the trust agreement and all pertinent material must be submitted.

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304.02 GENERAL TRUST DEFINITIONS

The following definitions apply to any/all types of trusts. Refer to the discussion of each type of trust for definitions which are specific to that trust classification.

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).

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.

Trustee – A trustee is a person or entity who holds legal title to property for the use or benefit of another. In most instances, the trustee has no legal right to revoke the trust or use the property for his/her own benefit.

Trust Beneficiary – A trust beneficiary is a person for whose benefit a trust exists. A beneficiary does not hold legal title to trust property but does have an equitable ownership interest in it.

- **Primary Beneficiary** – the first person or class of persons to receive the benefits of a trust.
- **Secondary Beneficiaries** – the person or class of persons who will receive the benefits of the trust after the primary beneficiary has died.
- **Contingent Beneficiary** – a person or class of persons who will receive benefits only if a stated event occurs in the future.

Trust Principal (Corpus) – The trust principal is the property placed in trust by the grantor which the trustee holds, subject to the rights of the beneficiary plus any trust earnings paid into the trust and left to accumulate.

Trust Earnings (Income) – Trust earnings or income are amounts earned by trust principal. They may take such forms as interest, dividends, royalties, rents, etc. These

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amounts are unearned income to the person (if any) legally able to use them for personal support and maintenance.

Totten Trust – A Totten trust is a tentative trust in which a grantor makes himself trustee of his own funds for the benefit of another. The trustee can revoke a Totten trust at any time. Should the trustee die without revoking the trust, ownership of the money passes to the beneficiary.

Grantor Trust – A grantor trust is a trust in which the grantor of the trust is also the sole beneficiary of the trust.

Mandatory Trust – A mandatory trust is a trust which requires the trustee to pay trust earnings or principal to or for the benefit of the beneficiary at certain times. The trust may require disbursement of a specified percentage or dollar amount of the trust earnings or may obligate the trustee to spend income and principal, as necessary, to provide a specified standard of care. The trustee has no discretion as to the amount of the payment or to whom it will be distributed.

Discretionary Trust – A discretionary trust is a trust in which the trustee has full discretion as to the time, purpose and amount of all distributions. The trustee may pay to or for the benefit of the beneficiary, all or none of the trust as he or she considers appropriate. The beneficiary has no control over the trust.

Testamentary Trust – A testamentary trust is a trust that is an integral part of a will and takes effect upon the death of the individual making the will.

304.03 OBRA-93 TRUST POLICY/DRA 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 11, 1993. Trusts established before this date, but added to or otherwise augmented after this date, are treated under OBRA-93 Trust rules.

OBRA-93 Transfer of Assets policy is used in conjunction with OBRA-93 Trust policy and provisions of the Deficit Reduction Act of 2005 (DRA), which amended rules on transfer of assets for less than fair market value by broadening the spectrum of what is considered a transfer, the length of the penalty period, the look back period for

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transfers, the definition of assets and how penalty periods run consecutively rather than concurrently.

This section discusses OBRA-93 trust provisions, as amended by the DRA. Trusts that do not meet the criteria for OBRA-93 trusts or trusts established prior to 08/11/93 must be reviewed under the applicable trust policy.

Definitions

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.

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, pension funds, and other similar devices managed by an individual or entity with fiduciary obligations.

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.

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;

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-
- 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.

Revocable Trust - A revocable trust is a trust which can under State law be revoked or amended 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.

Irrevocable Trust - An irrevocable trust is a trust which cannot, in any way, be revoked or amended by the grantor. Being irrevocable does not make the trust an unavailable asset.

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. For DRA purposes, the beneficiary of a trust must be the applicant or recipient or another allowable person, as described in the trust and transfer of assets policy, and under specified conditions. A transfer of assets will result if a trust beneficiary is not an allowable person and the trust is funded with assets belonging to the applicant or recipient and/or their spouse.

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.

Annuity - An annuity is a right to receive fixed, periodic payments, either for life or a term of years.

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For the Sole Benefit of – A trust is considered to be 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.

304.04 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 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. However, this general rule is subject to the policy that governs payments made by the trust to or for the benefit of the individual, i.e., these payments are income provided the payment is counted as income under SSI rules.

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.

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Note: Exceptions to the count ability of trusts as a resource do exist and are outlined later in the section.

Trust assets include both resources and income the individual or individual's spouse own or would have owned but for actions taken to direct the assets elsewhere.

All assets held in a trust must be verified and the value of the assets established and documented.

304.04.01 TREATMENT OF REVOCABLE TRUSTS

In the case of a revocable trust:

- The entire corpus of the trust is counted as an available resource to the individual. Any income earned by the trust and paid into the trust is also an available resource.
- Any payments from the trust made to or for the benefit of the individual are counted as income to the individual, provided the payment is counted as income under SSI cash assistance rules.
- 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.
- Changes made to a revocable trust that restrict or limit its use for the individual or spouse may be a transfer 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 in OBRA-93 transfer policy is 60 months. The 60-month look back period for assets placed in a trust is not phased in as it is for other types of transfers handled under DRA rules.

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

304.04.02 TREATMENT OF IRREVOCABLE TRUSTS

Payment Can Be Made Under Terms of Trust

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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, provided the payment is counted as income under SSI cash assistance rules;
- Income received by 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. The 60 month look back period for transfer of assets applies.

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Payment Cannot Be Made Under Terms of Trust

If no payment can be made to or for the benefit of the individual from either all or a portion of the trust, treat the trust (or unavailable portion) 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.

As indicated, 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 look-back period is 60 months**. The value of the trust (or the value of the unavailable portion) is not a countable resource if it is being treated as a transfer of assets.

304.04.03 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.

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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.

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. 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.

304.04.04 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 that 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 home property of institutionalized individuals, as explained below.

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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. Transfer of title to the home of an institutionalized individual to a revocable trust will result in the home becoming a countable resource. Transfer of title to the home property of an institutionalized individual to an irrevocable trust will result in a transfer of assets. However, if there are circumstances where payment from the irrevocable trust could be made to or for the benefit of the individual, those payments are treated as a countable resource to the individual. The terms of the trust must be evaluated to make this determination.

304.04.05 UNDUE HARDSHIP PROVISION

When application of the 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.
- Application of the trust provisions would deprive the individual of food, clothing shelter, or other necessities of life causing severe deprivation.
- The applicant or spouse or representative has exhausted all legal action to have the transferred assets that caused the penalty returned.

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.
- The resource was transferred to a person (spouse, child, or other 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 it is established that the transferred funds cannot be recovered even through exhaustive legal measures.

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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 a trust.

304.04.06 REVIEWING TRUST DOCUMENTS

In reviewing a trust, specialists must:

- Obtain copies of trust documents, including amendments and the required number of accountings;
- Make the following determinations:
 - Type of Trust, i.e., OBRA-93 Trust, Medicaid Qualifying Trust, Standard Trust or one of the trust exceptions (SNT, Pooled or Income Trust);
 - Whether the trust is revocable or irrevocable; and
 - Income released from the trust.
- Trust documents must be referred to the central office for clearance whenever an individual applicant/recipient or their spouse or someone acting in the applicant/recipient or spouse's behalf either creates a trust or is the beneficiary of a trust. A copy of the trust and all pertinent materials related to the trust must be sent in for evaluation and clearance.

304.05 EXCEPTIONS TO TREATMENT OF TRUSTS

The rules concerning treatment of trusts do not apply to any of the following types of 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 noted in each exception below, one common feature of all of these 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.

NOTE: Special Needs Trusts and Pooled Trusts, as described below, whereby SSI-only recipients are the beneficiary of a trust are not reviewed or monitored by the Division

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of Medicaid, including SSI-only recipients in a nursing facility or participating in a HCBS waiver.

304.05.01 SPECIAL NEEDS TRUST (SNT)

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 disabled individual by the disabled individual, a parent, grandparent, legal guardian of the individual, or a court is often referred to as a Special Needs Trust. In addition to the assets of the individual, the trust may also contain the assets of individuals other than the disabled individual.

To qualify for an exception to the rules governing trusts in this section, the Special Needs Trust must contain a provision stating that, upon the death of the individual, or upon termination of the trust for any other reason, the MS Division of Medicaid 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.

When a Special Needs 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 65 and therefore, those assets are not subject to the exemption discussed in this section.

To qualify for this exception to the rules governing trusts, 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.

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Special Needs Trusts for applicants and SNT's created for recipients must be reviewed by Central Office staff prior to approval of initial or continuing eligibility to determine if the terms of the trust are allowable. If the SNT is permitted:

- The Trustee of an approved SNT must review and sign the "Special Needs Trust Guidelines & Restrictions" document, located in the Appendices, acknowledging the types of expenditures and SNT activity that is deemed appropriate by the Division of Medicaid. Refer to 304.05.03 below.
- Approved SNT's are monitored by DOM at each annual review or earlier, if appropriate. All trust activity since the last review must be verified and expenditures from the SNT must be approved by Central Office staff prior to approval of continuing eligibility.

304.05.02 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 entity that has been granted that status by the Internal Revenue Service (IRS);
- 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,
- 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 the 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. If disability is not established using SSI criteria, the pooled trust exception cannot apply.

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If a pooled trust does not meet the conditions specified above, a transfer of assets may apply.

NOTE: Pooled trust documents for a Medicaid applicant or recipient must be reviewed by Central Office staff prior to approval of initial or continuing eligibility to determine if the terms of the trust are acceptable. If the trust is allowable, any further trust activity is not monitored by DOM. The Trustee of a pooled trust does not review or sign any document for DOM regarding allowable trust activity.

304.05.03 SPECIAL NEEDS TRUST (SNT) GUIDELINES & RESTRICTIONS

The Division of Medicaid has established guidelines and restrictions regarding payments and distributions from a Special Needs Trust that must be followed in order for a SNT to meet or continue to meet the conditions for exception. A document entitled “Special Needs Trust Guidelines & Restrictions” is located in Appendix A-6. This document is available online in the Eligibility Policy and Procedures manual or may be issued to an interested party as a result of an inquiry.

However, when a SNT is submitted to DOM for review and approval, this process is handled by the DOM attorney assigned this function. The DOM attorney will provide the regional office with a copy of the document signed by the trustee of the SNT when the review and approval process is concluded. Do not approve initial or continuing eligibility for a SNT case until approval of the SNT and a signed guidelines and restrictions document is received by the DOM attorney and forwarded to the RO. After a SNT is approved, all trust activity and expenditures are monitored as addressed in 304.05.01.

304.05.04 INCOME TRUSTS

The purpose of an Income Trust is to allow an individual to qualify for Medicaid who has:

- Excess recurring monthly income that exceeds the Medicaid institutional limit in effect at the time eligibility is requested but has insufficient income to pay the private cost of institutional care for the facility in which the individual resides (Long-term Care Income Trust), or
- Excess recurring monthly income that exceeds the Medicaid institutional limit in effect at the time eligibility is requested and meets the requirements for

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participation in a Home and Community Based Services (HCBS) waiver (HCBS Income Trust).

- No remaining excess resources available for payment of institutional care or care in a HCBS setting, whichever is appropriate.

There are two types of Income Trust documents with accompanying Help Sheets for each type:

- Long-term Care (LTC) Income Trust for individuals who enter or reside in a nursing facility and need an Income Trust to qualify for Medicaid based on income. This type of Income Trust is limited to individuals receiving an institutional level of care in a nursing facility or ICF/IID; it is not available to individuals in an acute care hospital setting or a Psychiatric Residential Treatment Facility (PRTF).
- Home and Community Based Services (HCBS) Income Trust for individuals who are enrolled or participating in a HCBS waiver, meaning a waiver slot is available and HCBS services have been approved, and the individual requires an Income Trust to qualify for Medicaid based on income.

The difference in the LTC and HCBS Income Trust requirements is the funding of the trust, as outlined in the following sections. If an individual who is eligible under an Income Trust changes from HCBS to LTC or from LTC to HCBS, a new Income Trust appropriate to their coverage is required. Income Trust requirements applicable to the type of Income Trust needed are effective with the date of the change.

Each legal Income Trust document is available online in the Eligibility Policy and Procedures manual and may be provided as appropriate to individuals in need of an Income Trust. The appropriate Help Sheet must accompany each distribution of an Income Trust document.

Income Trusts Involving a Conservatorship

If an applicant with a court-appointed conservator requires an Income Trust to qualify for Medicaid in a nursing facility or for participation in a HCBS waiver, the conservator must furnish a copy of the Chancery Court Order authorizing the conservator to establish the Income Trust. The court must be aware of the Income Trust requirement to pay the Division of Medicaid any accumulated trust funds up to an amount expended by the Division of Medicaid under the terms of the trust. The conservator must be notified in writing about the requirement for court authorization. The

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timeframe for obtaining court authorization should not take longer than the time allowed by routine requests for information provided the conservator is notified early in the application process.

If timeliness becomes a factor for an application, it is permissible to approve the application using the signed/dated Income Trust document and allow the court authorization to be provided as a post-eligibility requirement. If the conservator fails to provide the court order authorizing the Income Trust after a first/second request for information, advance notice must be issued to terminate eligibility.

304.05.04A FUNDING AND PAYMENT REQUIREMENTS FOR INCOME TRUSTS

An Income Trust must meet all of the following requirements and conditions for funding the Income Trust and for repayment of funds required to be maintained in the Income Trust.

Income That Must Fund the Trust – applies to both LTC and HCBS Income Trusts

The trust is composed only of the pension(s), Social Security and other income due the individual from all sources, including accumulated interest and income that have not been paid out of the trust to either the facility or to the Division of Medicaid. Income that is not countable under Medicaid rules, such as payments from the Department of Veteran's Affairs (VA) for Aid & Attendance, Unreimbursed Medical Expenses and/or a Reduced Pension Payment are not required to fund the trust.

Effective Date of an Income Trust- LTC Income Trusts

The LTC Income Trust agreement must specify an effective date. The effective date will be the date the individual has been determined eligible for Medicaid on all factors of eligibility other than excess income that requires the use of an Income Trust. Retroactive Medicaid eligibility for up to 3 months prior to the month of the Medicaid application is possible if the applicant is otherwise eligible and the trust is funded for the retroactive period based on the terms of funding the Income Trust described below. Consultation with the Medicaid Regional Office is needed prior to execution of the trust to confirm the effective date applicable to the individual's Medicaid case. An Income Trust without an effective date specified will begin on the date the trust is signed and dated if the individual is otherwise eligible.

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Medicaid eligibility cannot begin prior to the effective date entered on the LTC Income Trust. Medicaid eligibility may begin in a later month in the following circumstances:

1. Medicaid eligibility based on all factors of eligibility cannot be established until a later month.
2. The individual elects, in writing, to delay eligibility until the month following the month of entry into the nursing facility, as addressed below.

Income Payable to the Division of Medicaid in the Month of Entry into a Nursing Facility – applies to LTC Income Trusts

A portion of the individual's income may be protected in the month of entry into a nursing facility. When income protection is applicable, income that is \$1 less than the institutional income limit is protected, i.e., not payable to the nursing facility. Income that is above this amount is payable to the Division of Medicaid under the terms of the Income Trust. Payment is due within 30-days of the notice issued by DOM approving eligibility. The approval notice informs the Trustee of the amount payable for the month of entry.

NOTE: The individual has the option to request that Medicaid eligibility be delayed until the month following the month of entry to avoid paying DOM the excess income due in the month of entry. This option may be beneficial to the individual if entry into the nursing facility is at the end of the month. Paying the private pay rate to the facility for a late month admission may be less than the amount payable to Medicaid to fund the trust.

The Specialist must discuss this option at the interview or at any point prior to approval of long-term care eligibility. All requests to delay the Medicaid eligibility effective date must be in writing if eligibility will begin after the effective date of the LTC Income Trust. The written statement serves as documentation of the gap in eligibility of an otherwise eligible month. Note that when the individual chooses to delay the Medicaid eligibility effective date, it is a forfeiture of Medicaid benefits. The individual assumes all responsibility for the month of entry, and this must also be explained.

Once eligibility is approved, no changes in the effective date of Medicaid eligibility or the Income Trust are possible for the month of entry since eligibility cannot be retracted. Income due in the month of entry is payable to DOM in order for eligibility to continue.

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Treatment of Income for All Subsequent Months Under a LTC Income Trust

For all subsequent months of eligibility under a LTC Income Trust, the income that is payable to the nursing facility, referred to as Medicaid Income, and any income that funds the trust must be handled as follows:

- If income of the individual is less than the cost of care at the nursing facility in which he/she resides, all income, less authorized deductions, must be paid directly to the nursing facility as Medicaid Income. No funds are retained by the trust if all income is payable to the facility. This determination is made based on the daily Medicaid rate payable to the facility, which varies depending on the facility and the days in the month.

Example: An individual's income is \$5,000 per month in total income. The daily Medicaid rate payable to the facility is \$180 per day, or \$5,580 for a 31-day month and \$5,400 for a 30-day month. Since the individual's income is less than the Medicaid rate for any month in a calendar year, the individual's entire \$5,000 income, less any allowable deductions, is payable to the facility as Medicaid Income each month and there is no income that must fund the trust.

- If income of the individual exceeds the cost of care at the nursing facility in which he/she resides, the trust must retain the income in excess of the cost of care in any month the individual is eligible under an Income Trust until such time that payment of the accumulated Income Trust funds is requested by DOM.

Example: An individual's income is \$6,000 per month, which is less than the private pay rate for the facility. The daily Medicaid rate payable to the facility is \$180 per day. The amount due the facility and the amount that must fund the trust will fluctuate, depending on days in the month:

- For a 31-day month, the amount due the facility = \$5,580 less any allowable deductions; the amount that will fund the trust is \$420.
- For a 30-day month, the amount due the facility = \$5,400 less any allowable deductions; the amount that will fund the trust is \$600.

MEDS will calculate the Medicaid Income and the amount that must fund the Income Trust based on the daily Medicaid rate payable to the facility. The Trustee will be notified by DOM of the amounts payable to the facility and of any amount of income

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that must fund the trust each month. Income Trusts that are not properly funded do not meet the criteria for a trust exception.

Effective Date of an Income Trust- HCBS Income Trusts

The HCBS Income Trust must specify the effective date of the trust. The effective date is the date the individual is determined eligible for Medicaid on all factors, including the date a waiver slot is available and HCBS services have been approved. Consultation with the Medicaid RO is needed prior to the execution of the Income Trust to confirm the effective date needed. The Specialist must discuss the HCBS effective date in the interview or at any point prior to approval of HCBS eligibility. Explain to the individual that the effective date of the HCBS Income Trust must be equal to the effective date of HCBS eligibility, which is either the effective date specified on the two-way form from the LTC Bureau or the date in which the individual is eligible for Medicaid on all factors, whichever is later. Income considered overage (income that equals and exceeds the institutional limit) must fund the trust beginning with the effective date of the HCBS Income Trust.

A HCBS Income Trust without an effective date specified will begin on the date the trust is signed and dated if the individual is otherwise eligible for HCBS. This should not happen since contact with the applicant or representative is required prior to approval; however, if Medicaid eligibility cannot begin until a month that is later than the stated effective date of the HCBS Income Trust, document the case. The trust document does not have to be modified if documentation is present. HCBS Medicaid eligibility cannot begin prior to the stated effective date of a HCBS Income Trust. If Medicaid eligibility can be established in an earlier month, a new Income Trust is needed to reflect an earlier effective date.

Treatment of Income for Home & Community Based Waiver Enrollees Eligible Under an Income Trust

All income of the individual technically funds the trust. The trust must distribute to the individual, or for his/her benefit, an amount equal to not more than \$1 less than the current Medicaid institutional income limit as approved by DOM. The Income Trust will not specify the amount of the individual's income as this amount may change each year. The Medicaid institutional income limit is also subject to change each year.

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Example: An individual's income is \$2,600 per month. The Medicaid institutional limit at the time eligibility is requested is \$2,199. The amount that is distributed to the individual is \$2,198. The amount that must fund the trust each month is \$402. Both the institutional limit and the individual's income that must fund the trust is subject to change at the beginning of each calendar year.

Funding a HCBS trust requires that a separate bank account be established other than an account used for living expenses, as explained below in the Separate Bank Account discussion.

The Trustee will be notified by DOM of the amount of income that must fund the trust each month. Income Trusts that are not properly funded do not meet the criteria for a trust exception.

Separate Bank Accounts for Income Trust Funds – Applies to HCBS and Certain LTC Recipients

All HCBS applicants with an Income Trust and all LTC applicants with income that exceeds the nursing facility per diem must establish a separate bank account for income that must fund the Income Trust. There is no requirement to style the account as a trust account or an Income Trust account. The requirement is only to keep trust funds due and payable to DOM in an account that is separate from accounts used to transact business or used for living expenses. The account must be clearly identifiable to DOM as an account with funds set aside for payment of accumulated Income Trust funds. The account balance will be verified through the AVS e-verification process to ensure proper funding of the account to the extent possible, at the time of application and at each review. If electronic verification is not possible, the individual must provide verification of the account and account balance(s).

LTC Income Trust recipients whose entire income, after allowable deductions, is payable to the nursing facility are not required to set up a separate bank accounts for Income Trust purposes.

NOTE: LTC recipients who convert from LTC to HCBS must establish a separate bank account as outlined above and execute a HCBS Income Trust as stated in 304.05.04.

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Reviews of the Individual's Medicaid Eligibility – Applies to both LTC and HCBS

At the time of each review of the individual's Medicaid eligibility, at least annually, while the trust is in existence, the Trustee must pay to the Division of Medicaid the amount that should have accumulated in the trust up to the amount expended by DOM on behalf of the individual that has not previously been paid. The Trustee will be notified in writing of the amount due from the trust. Failure to make the requested payments by the due date specified in the letter issued to the Trustee will result in the loss of Medicaid eligibility for the individual.

Accounting of Funds – Applies to both LTC and HCBS

When requested, the Trustee must provide an accounting to DOM to show all receipts and disbursements of the trust during the prior calendar year. Any disbursements not approved by DOM or provided for by the trust will result in a loss of the trust exemption.

304.05.04B COMPLETION AND EXECUTION OF AN INCOME TRUST (LTC/HCBS)

The Division of Medicaid (DOM) will provide model Income Trust agreements for individuals in need of an Income Trust. Model agreements are provided for individuals in a nursing facility or ICF/IID and for individuals enrolled in a Home & Community Based Services (HCBS) waiver program that need an Income Trust in order to qualify for Medicaid based on income. The only change to these legally binding documents that DOM will accept is language to add a successor trustee or co-trustee. Changes must be approved by DOM prior to execution of the trust.

Once an Income Trust has been accepted by DOM, it cannot be modified without DOM's approval.

The individual eligible for Medicaid under an Income Trust is referred to as the Settlor; the Trustee is the individual(s) or entity (such as a bank) that manages the trust and has fiduciary responsibilities. The Medicaid applicant or recipient cannot be the Trustee.

The trust document must be signed and dated by both the Settlor and the Trustee. The Trustee's identifying information is required. The Income Trust must be notarized.

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Income Trust During a Transfer of Assets Penalty Period

It is possible to have an Income Trust during the time a transfer of assets penalty period is in effect in order to allow the penalty period to be implemented for an individual residing in a nursing facility. DOM will not pay the room and board costs to a nursing facility during a penalty period but the individual will qualify for Medicaid to cover all other Medicaid covered services during the penalty period. The individual's income must be used to pay the private pay charges to the facility rather than fund the trust or pay Medicaid Income.

Income Trusts are not needed for a HCBS waiver enrollee since transfer penalties result in total ineligibility for the HCBS enrollee. The transfer penalty can run simultaneous to at-home eligibility for an individual waiting out the transfer penalty for HCBS eligibility. When the transfer penalty expires, an Income Trust is appropriate for the first month of eligibility in the HCBS, including a partial month in which the penalty for HCBS waiver eligibility expires. For example, a transfer penalty ending June 15th will require an Income Trust for HCBS waiver eligibility effective June 1st. The Income Trust must be funded beginning June. Income funding the trust is not prorated for any partial month of eligibility.

The Specialist must explain this requirement to the HCBS recipient, either in writing while processing the transfer or by making telephone or personal contact with the individual or representative.

304.05.04C INCOME TRUST RESTRICTIONS

For both LTC and HCBS Income Trusts, the trust may be used only for income belonging to the individual. No resources may be used to establish or augment the trust. Inclusion of resources voids the trust exception. Other restrictions include the following.

Income Trust Fees for Both LTC and HCBS Income Trusts

No fees are allowed to be paid to the Trustee for their service. Administrative fees are limited to \$10 per month and are intended to cover any bank charges required to maintain the trust account.

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Restrictions on Temporary Income Trusts for Both LTC and HCBS Income Trusts

An Income Trust is not allowed on a temporary or intermittent basis except in instances when monthly excess income will be reduced at a future date. In such a situation, an Income Trust will be allowed until such time as the excess income is reduced and an Income Trust is no longer needed to allow eligibility. For example, a nursing home applicant has excess income that includes a VA pension that is subject to reduction to \$90. An Income Trust would be allowed for each month that the full VA pension is payable. The Income Trust would be terminated when the \$90 pension begins if total income would be below the institutional income limit.

Income received less than monthly does not qualify as recurring excess monthly income that allows the use of an Income Trust, even on a temporary basis. Irregular or infrequent income must be converted to a monthly income before allowing an Income Trust to be established.

MS State Retirees who receive a 13th check as part of their retirement benefit are required to have the 13th check averaged over a 12-month period before allowing an Income Trust.

The Public Employees Retirement System (PERS) allows the option to have the 13th check averaged. Since this type of payment is considered infrequent income, averaging of the 13th check is required for Income Trust cases.

NOTE: There is no durational requirement for an individual to remain in a nursing facility or remain in a HCBS waiver program before qualifying for Medicaid under an Income Trust. Upper income applicants must meet the 30-consecutive day requirement as a separate condition of eligibility. An Income Trust is permissible and is not considered a temporary Income Trust if the individual is discharged from the facility or HCBS waiver after meeting the 30-consecutive day provision. Temporary Income Trusts involve income that is received on a temporary basis and does not involve the length of admission to a facility or approval for HCBS waiver services.

Income Trusts and Private Pay Rates- LTC Income Trusts

Income Trusts are prohibited for individuals with income that is sufficient to pay the private pay rate for the facility in which the individual resides. In order to make this determination, the specialist will confirm the private pay daily rate for the facility and use a 31-day month to determine if monthly income of the individual exceeds the

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private pay rate. If income is at/below the 31-day private pay rate amount, an Income Trust will be allowed. The Income Trust must be funded with the overage amount that is the difference between the private pay rate and the Medicaid daily rate, as explained in the treatment of income for the month of entry and all subsequent months in a nursing facility.

Example: the private pay rate for a facility is \$6,820 for a 31-day month. If an individual residing in the facility has income that exceeds this amount, their income is too high to qualify for an Income Trust. If income is at/below \$6,820, an Income Trust is allowed. If the Medicaid daily rate is \$5820 for a 31-day month, the overage of \$1,000 must fund the Income Trust each 31-day month.

- If the individual transfers to another facility, a determination of the private pay rate for the new facility compared to the individual's income is required.
- Likewise, if income increases for an individual who is eligible under an existing Income Trust and the increase results in monthly income that exceeds the private pay rate for a 31-day month in the facility in which the individual resides, advance notice must be issued to terminate eligibility. If eligibility cannot be terminated due to advance notice requirements, but income can be counted for Medicaid Income purposes, the excess income will be payable to the Division of Medicaid upon receipt of notice from the agency.
- The private pay calculation is an eligibility decision based on total income of the individual before allowing any post-eligibility deductions for a spousal or other family member allowance or any other post-eligibility deductions.

304.05.04D INCOME TRUST TERMINATIONS

Income Trust Termination for Both LTC and HCBS Income Trusts

An Income Trust terminates:

- at the individual's death, or
- when Medicaid eligibility terminates, or
- when the trust is no longer necessary, or
- the trust is otherwise terminated.

Income Trusts may need to be terminated prior to an individual's death due to changes in the individual's income, changes in Medicaid policy regarding how certain income must be counted or in the event the individual is discharged from the nursing

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facility. All amounts remaining in the Income Trust must be paid to the Division of Medicaid up to an amount equal to the total medical assistance paid by Medicaid on behalf of the individual that has not previously been paid to DOM.

304.06 MEDICAID QUALIFYING TRUSTS (MQT)

The provisions in this section are applicable to any trust or similar legal device established on or after March 1, 1987, through August 10, 1993, that meet MQT criteria. If MQT criteria are not met, defer to Standard Trust policy.

A Medicaid Qualifying Trust is a trust or similar device, which:

- Is established (other than by will) with the applicant/recipient's own funds, by the applicant/recipient (or spouse),
- Names the applicant/recipient as the trust beneficiary for all or part of the payments from the trust, and
- Permits the trustee to exercise any discretion with respect to the distribution of such payments to the individual.

The MQT provision is applied without regard to whether or not:

- The MQT is revocable or irrevocable, or
- The MQT is established for purposes other than to qualify for Medicaid, or
- The discretion of the trustee is actually exercised.

NOTE: This provision also applies to SSI recipients. Refer to Special Handling of SSI cases for more discussion.

304.06.01 MQT POLICY PRINCIPLES

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

1. The grantor is the Medicaid client or his representative (e.g., spouse, parent, guardian, conservator or anyone holding power of attorney for the client);
2. The trust was established with property belonging to the client; and
3. The client is at least one of the beneficiaries of the trust.

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In addition, the following principles must be considered:

- The client is considered 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 trust policies to apply. MQT trust policies apply to "similar legal devices" or arrangements having all of the characteristics of an MQT, except there is no actual trust instrument. Examples are:
 - Escrow accounts;
 - Savings accounts;
 - Pension funds;
 - Annuities;
 - Investment accounts;
 - Other accounts managed by agent with fiduciary obligations, such as conservatorships or guardianships.
- The MQT provision does not apply to trust agreements established by will. These trusts are treated as standard trusts. However, if a client inherits resources and in turn establishes a trust, the MQT provision could apply.

304.06.02 RESOURCE TREATMENT OF MQT's

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

- **Revocable MQT** - The entire corpus of the trust is an available resource to the client. Resources comprising the corpus are subject to individual resource exclusions, if applicable, since the client can access these resources. An exception is exclusion of the home for institutionalized recipients. Home property loses its excluded status when transferred into an MQT.
- **Irrevocable MQT** - 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 power under the terms of the trust. Resources transferred to an irrevocable MQT 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.

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- 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 benefit), then the entire corpus is an available resource to the client.
 - If the trust does not specify an amount for distribution from the corpus of the trust or from 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.
 - 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, then client's countable resources increase cumulatively by the undistributed amount.

304.06.03 INCOME TREATMENT OF MQT's

In general, use the following criteria to determine treatment of income from an MQT:

- Amounts of trust income distributed to the client are counted as income when distributed.
- Amounts of trust income distributed to third parties for the client's benefit (including payments for medical services) are countable income when distributed.
- **Exculpatory Clauses** which limit the authority of the 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.

304.06.04 TRANSFER OF ASSETS POLICY - MQT's

If the MQT is irrevocable, a transfer of assets 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.

304.06.05 UNDUE HARDSHIP - MQT's

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

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released. This does not include situations where the trustee simply chooses not to make the trust funds available.

304.07 STANDARD TRUSTS

Standard trust policy is applicable to trusts or conservatorships 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. In addition, testamentary trusts where the Medicaid client is the beneficiary are also standard trusts.

Whether the trust is counted as a resource depends on the client's role as beneficiary or trustee and the specific terms of the trust. In all situations listed below a copy of the trust agreement or court documents must be obtained for review:

304.07.01 MEDICAID CLIENT IS TRUSTEE

Generally, a person 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 personal use. When the trustee has no access to the funds for personal use, the trust is not a resource to the client who is the trustee.

However, under certain circumstances the trust is a countable resource to the client who is the trustee. Count the trust as a resource, regardless of whose funds were originally deposited into the trust, if the client:

- Is the trustee, and
- Has the legal ability to revoke the trust and
- Can use the money for his own benefit.

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 trust principal is considered a resource to the trustee, count the total value of the trust and count any interest or distributions as a resource the month following the month of receipt. Do not count as income any withdrawals made from the trust by the trustee since the funds have already been counted as a resource.

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304.07.02 MEDICAID CLIENT IS BENEFICIARY

Restricted Access to Principal

If the client is the beneficiary of the trust and the client's access to the trust principal is restricted, meaning only the trustee or the court can invade the principal; the principal of the trust does not count as a resource to the client. Disbursements from the trust are income to the client as follows:

- Cash paid from the trust to the client is unearned income. This includes deposits into an account for the client's use.
- Disbursements that are used for food and shelter for the client count as income.
- Disbursements for any other reason may be excluded as income provided verification is shown as to how the funds were used:
 - Disbursements that result in the client receiving non-cash items, other than food/shelter, are not income. For example, the trust purchases a computer or television for the client or funds are used for educational expenses, medical services not covered by Medicaid, recreation, entertainment, phone bills, etc. for the client.
 - Disbursements that are reimbursements to a third party for funds expended on behalf of the client are not income. Existing income /resource rules apply to items a client receives from a third party.

In order to determine if a disbursement from an excluded trust is countable as income, a client must provide official trust accountings that show trust activity during the prior year at the time of application and at each annual review. If additional verification is needed to determine the purpose or use of any disbursement, the trustee must provide the needed documents such as bank statements or receipts that account for the expenditure.

If the trustee fails to verify how disbursements were used, the disbursement will count as income to the client. Income released from the trust for the prior year will be used to project anticipated income for the upcoming 12-month period unless verification is provided to show the disbursements will terminate. The trustee's statement will be sufficient to verify termination of a disbursement.

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Unrestricted Access to Principal

Count the trust as a resource if the client is trust beneficiary and has unrestricted access to the principal of the trust. In this situation, payments from the trust to the beneficiary are not counted as income since the funds have already been counted as a resource. The payments from the trust are conversion of a resource.

304.08 CONSERVATORSHIPS PRIOR TO 03/01/1987

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 the legal term used, an application or active case involving a conservator or legal guardian is handled as outlined below.

- 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 that client. The fact that the guardian/conservator manages and 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 or conservator is a court order which specifies the disbursement of funds and/or disposal of assets. 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. However, a "silent" court order, which 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.
- 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". 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

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

ELIGIBILITY DETERMINATION 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 subsequently have 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.

Example: A conservatorship court order specifies the release of \$100 per month from a savings account with a \$5000 balance and fails to mention the disposal of 50 acres of property owned by the client. The \$100 is counted as income while the balance of the account is excluded as a resource. The property is countable 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 resource to the client until the month the court is

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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.

305.01 ANNUITIES

Section 1917(d)(6) of the Social Security Act provides that the term “trust” includes an annuity to the extent and in such manner as prescribed by the Secretary. This section describes how annuities are treated under the OBRA-93 trust/transfer provisions, as amended by the DRA.

An annuity is defined as a contract or agreement by which one receives fixed, non-variable payments on an investment for a lifetime or a specified number of years. An individual may buy an annuity by making payments over a period of time or purchase an immediate annuity by paying a lump sum to a bank or insurance company in return for regular payments of income in certain amounts.

- When an annuity is “annuitized,” the investment is converted into periodic income payments.
- These payments may continue for a fixed period of time or for as long as the individual or another beneficiary lives. An annuity may or may not include a remainder clause whereby whatever remains in an annuity is converted into a lump sum and is paid to a designed beneficiary when the annuitant dies.
- The annuitant is the person who will receive the payments during the term of the annuity.
- An annuity contract should identify the purchaser (owner) and the annuitant (the owner and annuitant may not be the same).

Policy described in this chapter applies to annuities purchased with a Medicaid applicant’s or recipient’s own funds by the applicant/recipient, his/her spouse, guardian or legal representative and which names the applicant or recipient or spouse as the annuitant.

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 be eligible for Medicaid. In order to avoid penalizing annuities validly purchased as part of a retirement plan but to capture those intended to shelter assets, a

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determination must be made with regard to the ultimate purpose of the annuity, i.e., whether or not it is part of a bona fide retirement plan.

TREATMENT OF ANNUITIES – GENERAL

The DRA added new requirements to the treatment of annuities purchased on/after 02/08/2006. These requirements are outlined in this chapter. However, the following guidelines describe the overall treatment of annuities that applies regardless of the purchase date. These policy principles apply as a companion to the annuity policy based on the purchase date:

1. Revocable Annuities

An annuity that is revocable is a countable resource. Some annuities which appear irrevocable may be revocable with a penalty, reducing the total value. Generally, an annuity is revocable until the time it is annuitized. Verification is needed to make a determination.

- An annuity is a countable resource if it can be sold, cashed in, surrendered or revoked. An annuity that can be revoked is valued at the amount the purchaser would receive if canceled.
- An annuity is a countable resource if it can be assigned to a new owner or the payments transferred to someone else. If an annuity is assignable, it is valued at the amount the annuity can be sold on the secondary market.
- Annuities specified in 305.03.05, Treatment of Annuities in Determining Eligibility for Long-term Care, under item 1, are treated as retirement funds as described in 302.02, even if revocable.

2. Irrevocable Annuities

- If an annuity cannot be revoked or cashed in and the annuity contract does not allow the annuitant to transfer ownership or payments to someone else, the annuity is not a countable resource, although it may be a transfer of assets if purchased within the 5-year look-back period as outlined in this chapter.
- If periodic payments are not being made, the individual must take all steps necessary to receive periodic payments as outlined in this chapter. If periodic payments are denied but a lump sum payment is possible, the lump sum amount is a countable resource.

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3. Payments Produced by Annuities

Annuity payments paid to the annuitant are countable income regardless of whether the annuity itself is countable as an asset or treated as a disqualifying transfer. Certain conditions apply to the frequency and amount of the payments required in order for an annuity to avoid being treated as a transfer of assets, as outlined in this chapter.

4. Non-Annuitized Annuity (or any portion thereof)

The equity value of an annuity that is not annuitized or any part of an annuity that is not annuitized is a countable resource. Verification is needed to make a determination.

5. Funds Used to Purchase an Annuity for Someone Other Than an Allowable Person

When an applicant's or recipient's own funds are used to purchase an annuity for someone other than the applicant/recipient or his/her spouse, the purchase is evaluated under transfer of assets rules.

6. Right to Receive Payment Transferred to Non-Allowable Person

If the right to receive payments on an annuity is assigned to someone other than the applicant/recipient, his/her spouse or to a minor or disabled child of the applicant/recipient, the assignment is evaluated under transfer of assets rules.

305.02 TREATMENT OF ANNUITIES PURCHASED PRIOR TO 2/8/2006

An annuity purchased before February 8, 2006, by or for an individual using that individual's assets will be considered a transfer of assets unless both of the following conditions are met:

1. The annuity produces a net annual return of at least 6% of its equity value, and
2. The annuity pays out principal and interest in equal monthly installments (no balloon payments) to the individual in sufficient amounts that the principal is paid out within the actuarial life expectancy of the individual seeking long-term care services, including HCBS services.

An annuity that meets the criteria above will be excluded as a resource and the income paid by the annuity counted as income to the annuitant.

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An annuity that does not meet the required conditions is a transfer of assets if purchased during the look-back period. The income produced by the annuity counts as income to the annuitant during the transfer penalty and the full payment period of the annuity.

Calculating the Uncompensated Value (UV) of Annuities (Pre-DRA)

Use the following procedures to calculate the uncompensated value of annuities purchased prior to February 8, 2006:

- Divide the purchase price of the annuity by the number of payout years. This equals the annual rate.
- Using the Life Expectancy Tables published by the Office of the Actuary of the Social Security Administration (located in the Appendix), determine the number of years the individual is expected to live. Subtract the number of years from the number of payout years.
- Multiply the difference by the annual rate. This is the uncompensated value.
 - Purchase Price divided by Payout years = Annual Rate
 - Payout years minus Life Expectancy = Difference
 - Difference times Annual Rate = Uncompensated Value (UV)

Example, an 80 year old male purchases an annuity for \$10,000 prior to 02/08/2006, to be paid over 10 years. His life expectancy, using the chart in effect at the time of the case action is 7.62 years. The UV is calculated as follows:

- The purchase price (\$10,000.00) is divided by the number of payout years (10) to get the annual rate of \$1,000.00.
- The number of payout years (10) minus the Life expectancy years (7.62) equals 2.38.
- $2.38 \times \text{annual rate of } \$1,000.00 = \$2,380.00$, the uncompensated value.

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305.03 TREATMENT OF ANNUITIES PURCHASED ON OR AFTER 2/8/2006

The DRA added new requirements to the Medicaid statute with respect to the treatment of annuities purchased on or after 02/08/2006, the date of enactment of the DRA, by or on behalf of an annuitant who has applied for Medicaid for nursing facility services or other long-term care services, including HCBS. The DRA requirements also apply to certain other transactions involving annuities that take place on or after 02/08/2006 that are described below.

305.03.01 DISCLOSURE REQUIREMENT

Effective 2/8/2006, at each application and review for Medicaid, all long-term care applicants are required to disclose any interest the applicant or community spouse may have in an annuity or similar financial instrument. Parents of a minor child must report any annuities in which the child may have an interest. This disclosure is a condition for Medicaid eligibility for long-term care services, including nursing facility services and Home and Community Based Waiver Services (HCBS) and applies regardless of whether or not an annuity is irrevocable or is treated as a resource.

Refusal to disclose sufficient information related to any annuity will result in denial or termination of Medicaid entirely, based on the applicant's failure to cooperate in accordance with existing Medicaid policies.

When an unreported annuity is discovered after eligibility has been established and after payment for long-term care services has been made, appropriate steps to terminate payment for long-term care services will be taken, including allowing for rebuttal and advance notice. In addition, an Improper Payment Report may be required to initiate recovery of incorrectly paid benefits.

305.03.02 ANNUITY-RELATED TRANSACTIONS OTHER THAN PURCHASES MADE ON OR AFTER 2/8/2006

In addition to purchases of annuities, certain related transactions which occur to annuities on or after February 8, 2006, make an annuity, including one purchased before that date, subject to all provisions of the DRA that went into effect on 2/8/2006.

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Any action taken on or after February 8, 2006, by the individual that changes the course of payment to be made by the annuity or the treatment of the income or principal of the annuity, including:

- Additions of principal,
- Elective withdrawals,
- Requests to change the distribution of the annuity,
- Elections to annualize the contract and similar actions.

For annuities purchased prior to February 8, 2006, routine changes and automatic events that do not require any action or decision after the effective date are not considered transactions that would subject the annuity to treatment under the DRA provisions. Routine changes could be notification of an address change, or death or divorce of a remainder beneficiary and other similar circumstances. Changes which occur based on the terms of the annuity which existed prior to February 8, 2006, and which do not require a decision, election or action to take effect are also not subject to the DRA.

305.03.03 REQUIREMENT TO NAME THE STATE AS REMAINDER BENEFICIARY ON ANNUITIES

The purchase of an annuity within the 5-year look-back period and in all subsequent months will be treated as a transfer of assets unless the Mississippi Division of Medicaid is named as a remainder beneficiary in the correct position as outlined below:

- This requirement applies to annuities purchased by the applicant or recipient, his/her spouse and to certain annuity-related transactions other than purchases made by the applicant/recipient or his/her spouse.
- An annuity must name the Mississippi Division of Medicaid as the remainder beneficiary in the first position for the total amount of Medicaid assistance paid on behalf of the institutionalized individual who is the annuitant unless there is a community spouse and/or a minor or disabled child.
- If there is a community spouse and/or minor or disabled child, the Mississippi Division of Medicaid may be named in the next position after those individuals.
- If the Mississippi Division of Medicaid is named beneficiary after a community spouse and/or minor or disabled child, and any of those individuals or their representatives dispose of any of the remainder of the annuity for less than fair

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market value, the Mississippi Division of Medicaid must then be named in the first position.

Exception: Annuities with the payment option of “life only” do not permit the naming of any beneficiary. Payments end upon the death of the annuitant. These “life only” annuities must be determined actuarially sound meaning paid out in equal monthly amounts with no balloon payments over the annuitant’s expected lifetime, provided the annuitant is the individual applying for long-term care services.

Verification must be provided to show that the Mississippi Division of Medicaid has been named as remainder beneficiary in the correct position on annuities purchased by an applicant/recipient or his/her spouse. If verification is not provided, the purchase of an annuity will be considered a transfer of assets for less than fair market value. The full purchase value of the annuity will be considered the amount transferred.

An annuity purchased prior to the 5-year look-back period is treated as a resource and/or income source, depending on the terms of the annuity as outlined in “Treatment of Annuities – General.”

305.03.04 INFORMATION PROVIDED BY THE DIVISION OF MEDICAID TO ISSUER

For any annuity disclosed for the applicant or Community Spouse, DOM must inform the issuer of the annuity of the Division of Medicaid’s right to be named as a preferred remainder beneficiary and may require the issuer to notify the Division of Medicaid regarding any changes in amount of income or principal being withdrawn from the annuity. The issuer of the annuity may disclose information about DOM’s position as remainder beneficiary to others who have a remainder interest in the annuity.

305.03.05 TREATMENT OF ANNUITIES IN DETERMINING ELIGIBILITY FOR LONG-TERM CARE

In addition to the requirement for the Mississippi Division of Medicaid to be named as a remainder beneficiary for an annuity purchased by the institutional spouse or community spouse within the 5-year lookback period and in all subsequent months, an annuity purchased by or on behalf of an annuitant who has applied for medical assistance with respect to nursing facility or other long-term care services will not be

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treated as a transfer of assets if purchased within the 5-year look-back period or any subsequent month if certain conditions are met which are described below.

1. The annuity meets one of the following conditions for employment-related annuities that are treated as retirement benefits:
 - It is an individual retirement annuity according to (b) or (q) of section 408 of the Internal Revenue Code of 1986 (IRC), or,
 - The annuity is purchased with proceeds from an account or trust described in subsection (a), (c) or (p) of section 408 of the IRC, or,
 - The annuity is purchased with proceeds from a simplified employee pension within the meaning of section 408 of the IRC, or,
 - The annuity is purchased with the proceeds from a Roth IRA described in section 408A of the IRC.
2. The purchase of an annuity not described in one of the 4 bullets above will be considered a transfer of assets unless it meets all of the following requirements for every month in which eligibility is being considered:
 - The annuity is irrevocable and non-assignable; and,
 - The annuity is actuarially sound, meaning it will return the full investment within the annuitant's life expectancy using the Life Expectancy Tables published by the Office of the Actuary of the Social Security Administration (located in the Appendix) and described in "Determining Whether an Annuity is Actuarially Sound" (below), and,
 - The annuity is providing payments in equal amounts during the term of the annuity with no deferred or balloon payments; and,
 - The annuity is issued by a business licensed and approved to issue commercial annuities in the state in which the annuity was purchased; and
 - The Division of Medicaid has been named as beneficiary of the annuity in the correct position as outlined in 305.03.03.

NOTE: The purchase of a single-premium life insurance policy, endowment policy or similar instrument which has no cash value, and for which the individual receives no valuable consideration, will be considered a transfer of assets if purchased within the 5-year look-back period or any subsequent month.

An annuity that does not meet the requirements above, or an annuity that is not changed to meet the necessary requirements and/or documentation that is not provided relating to an annuity will result in the annuity being treated as a transfer of

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assets if purchased within the 5-year look-back period or any subsequent month using the full purchase price as the amount transferred.

NOTE: Even if an annuity is determined to meet the requirements above and the *purchase* is not treated as a transfer, if the annuity or income stream from the annuity is transferred, that transfer may be subject to a penalty with the exception of transfers to a spouse or to another individual for the sole benefit of the spouse, to a minor or disabled child or to a Special Needs Trust.

305.03.06 CONSIDERATION OF INCOME FROM AN ANNUITY

If an annuity is treated as a transfer of assets, the income produced by the annuity counts as income to the individual or spouse, as appropriate, in determining eligibility and post-eligibility cost of care and spousal allocation, as applicable.

The income produced by an annuity that complies with the requirements in this chapter counts as income to the individual or spouse, as appropriate, in determining eligibility and post-eligibility cost of care and spousal allocation, as applicable.

305.03.07 DETERMINING WHETHER AN ANNUITY IS ACTUARIALLY SOUND

A determination must be made on whether the purchase of annuities, other than qualifying IRS annuities, is treated as 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 the determination regarding whether the annuity is actuarially sound, use the life expectancy tables located in the Appendix, 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 of the annuity based on the projected return. In this case, the annuity is not actuarially sound and a transfer

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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, using the full purchase price as the amount transferred.

Examples:

1. A male at age 65 purchases a \$10,000.00 annuity to be paid over the course of 10 years. His life expectancy according to the table in effect at the time is 16.73 years; thus, the annuity is actuarially sound.
2. A male at age 80 purchases a \$10,000.00 to be paid over the course of 10 years. His life expectancy (using the table in effect at the time) is only 7.62 years; thus, the annuity is not actuarially sound.

305.03.08 DOCUMENTATION OF QUALIFYING IRS ANNUITIES

To determine that an annuity is established under any of the various provisions of the Internal Revenue Code that are referenced above, rely on verification from the financial institution, employer or employer association that issued the annuity.

The burden of proof is on the institutionalized individual or his representative to produce documentation. If documentation is not provided, which includes producing a copy of the actual annuity contract (not an application for an annuity or a request form for a change to an existing annuity) in order to evaluate the annuity, the purchase of the annuity will be considered a transfer for less than fair market value which is subject to a penalty. Without documentation, the full purchase value of the annuity will be considered the amount transferred.

305.03.09 REQUIREMENTS FOR THE COMMUNITY SPOUSE

Annuities purchased by the Community Spouse on or after February 8, 2006, must name the Division of Medicaid as the preferred remainder beneficiary. The Institutionalized Spouse may not be named as a beneficiary ahead of DOM. However, if

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there is a minor or disabled child, the child may be named as first beneficiary and the Division of Medicaid must be named in the next position after those individuals.

It does not matter if the Community Spouse's annuity is actuarially sound or provides payments in approximately equal amounts with no deferred or balloon payments. These provisions apply only to annuities purchased by or on behalf of the individual who has applied for medical assistance.

305.03.10 ESTATE RECOVERY

Annuities purchased on or after February 8, 2006, will be subject to Estate Recovery. Refer cases with an annuity naming the Division of Medicaid as the primary beneficiary to Estate Recovery upon the death of the recipient. If DOM is named as the secondary beneficiary for an annuity, refer the case to Estate Recovery only if the primary beneficiary is also deceased. For example, if the Community Spouse was the primary beneficiary at the last review but the CS died prior to the IS, this would then make DOM the primary. If there is a surviving beneficiary of an annuity, such as a CS or disabled child named as the primary beneficiary, there is no need to refer the annuity to Estate Recovery at the time of the recipient's death.

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 August 10, 1993 were evaluated under Medicare Catastrophic Coverage Act (MCCA) of 1988 described in 307.01.
- Assets disposed of on or after August 11, 1993 were evaluated under OBRA 1993 rules.
- Assets disposed of on/after February 8, 2006 are evaluated using revisions to the OBRA-93 law by the Deficit Reduction Act (DRA) of 2005, i.e., DRA rules in combination with OBRA-93 rules are current policy.

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Changes to OBRA-93 by the DRA regarding transfers of assets include the following provisions:

Provision	OBRA 1993	DRA 2005
Lookback period	36 month lookback	Extended to 60 month lookback
Beginning Date of Transfer Penalty	Month of transfer	The date the individual is otherwise eligible for Medicaid based on all eligibility factors <u>and</u> an approved level of care/ approval for long-term care services for HCBS <u>or</u> the month of the transfer, which is later.
Partial Month Penalty	Not applicable	Partial month implemented by DRA
Purchase of Life Estate in Another Individual's Home	Not applicable	Provision implemented by DRA
Purchase of Annuities	Not applicable	Provision implemented by DRA

306.02 TRANSFER PENALTY DEFINITIONS

The following definitions apply to transfers of assets:

TERM	DEFINITION
Assets	<p>All income and resources of the individual and his/her spouse. This includes income and resources which the individual or individual's spouse is entitled to but does not receive because of any action by the individual or his/her spouse or anyone authorized to act in their behalf. Examples of actions which would cause income or resources not to be received include:</p> <ul style="list-style-type: none">• Irrevocably waiving pension income;• Waiving an inheritance, including an elective share;• Not accepting or accessing injury settlements;• Diverting tort settlements into a trust or similar device to be held for the benefit for the benefit of an individual who is a plaintiff;• Refusing to take legal action to take a court ordered payment that is not being paid, such as child support or alimony.

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TERM	DEFINITION
Fair Market Value (FMV)	<p>The amount the resource can be expected to sell for on the open market in the area in which the property is located. If a resource sells for more than the value assigned to it, the FMV is equal to the sale price. For an asset to be considered transferred for fair market value or for valuable consideration, the compensation received for the asset must be in a tangible form with intrinsic value to the individual equivalent to or greater than the value of the transferred asset.</p> <ul style="list-style-type: none"> • A transfer for love and consideration is not considered a transfer for fair market value. Medicaid presumes that services provided for free at the time were intended to be provided without compensation. Care provided under an acceptable personal services contract is discussed in 306.06.08. • A transfer for care provided in the past is a transfer for less than FMV unless tangible evidence is provided to show a valid personal services contract agreement existed at the time services were provided.
HCBS Individual	<p>A person approved for participation in one of the HCBS waiver programs. Although not institutionalized, this individual is considered to be receiving long-term care services. The eligibility criteria for the HCBS individual are the same as those for the institutionalized person, including application of transfer policy.</p>
For the Sole Benefit of	<p>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 or blind/disabled child or individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future.</p> <ul style="list-style-type: none"> • A transfer, transfer instrument or trust that provides for funds or property to pass to a beneficiary who is not the spouse, blind/disabled child or disabled individual is not 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 an allowable individual on a basis that is actuarially sound based on the life expectancy of the individual. • Exemptions to this rule are trusts addressed in 304.05, Exceptions to Treatment of Trusts, that require the Division of

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TERM	DEFINITION
	Medicaid to be named as beneficiary of funds remaining in the trust at the allowable individual's death.
Income	The definition of income is the same used by SSI. Refer to Chapter 200, Income.
Individual	An individual includes all of the following: <ul style="list-style-type: none">• The individual applying for (applicant) or receiving (recipient) Medicaid,• The spouse of the applicant or recipient,• A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or individual's spouse,• Any person, including a court or administrative body, acting at the direction or upon request of the individual/spouse.
Institutionalized Individual	An individual who is an inpatient in a nursing facility, ICF/IID or hospital swing bed or an inpatient in a medical facility for whom payment is based on a nursing facility level of care.
Resources	The definition of resources is the same used by SSI, except that home property loses its exclusion if home property is transferred or home ownership interest is reduced.
Spouse	The person considered legally married to the individual.
Uncompensated Value	The difference between the equity value of the asset at the time of the transfer and the amount received for the asset.

Transfer provisions apply when an institutionalized individual or HCBS individual or his/her spouse transfer assets for less than fair market value on or after the lookback date that is explained below. Assets transferred by a parent, guardian, court or administrative body or anyone acting in place of, on behalf of, or at the direction or request of the individual or spouse are considered to be transferred by the institutionalized or HCBS individual.

The transfer of a resource may apply to:

- Any real or personal property of the individual or spouse, whether owned jointly or individually;
- The purchase of an annuity under certain conditions;
- The purchase of a promissory note, loan or property agreement;
- The purchase of a life estate in another individual's home;

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- Waiving the right to receive any potential future resource that the individual or spouse might be entitled to receive.

The transfer of income may apply to:

- Any earned or unearned income of the individual or spouse, whether owned jointly or individually;
- A lump sum payment belonging to the individual or spouse, whether owned jointly or individually;
- Waiving the right to receive potential future income that the individual or spouse might be entitled to receive.

NOTE: The transfer of resources to a non-allowable individual (refer to 306.07) that are subsequently used to pay for the care of a long-term care applicant or recipient in a nursing facility or HCBS waiver is not considered a transfer of assets. Instead, the funds are treated as “Funds Held in Another Individual’s Account,” as outlined in 303.03.04. Funds of the applicant/recipient are presumed to be accessible and therefore countable as a resource when held in another individual’s account or held in any capacity by another individual and used to pay for the applicant’s or recipient’s institutional or at-home care. The transfer of resources may be any type of liquid resource or a non-liquid resource converted to liquid or otherwise used as collateral to obtain cash.

306.03 VERIFICATION AND DOCUMENTATION OF A TRANSFER

Transfer of assets provisions are applied at the time the individual enters a nursing facility, ICF/IID or hospital swing bed and applies for long-term care services (may be an initial application, reapplication or an action requiring a regular or special review of eligibility). The same is true for an individual applying for HCBS long-term care services.

When a transfer of assets is discovered on or after the beginning date of the lookback period, the following documentation is required:

- A description of the asset transferred, such as home property, other real property, cash, income, etc.
- The name of the person who transferred the asset (the institutionalized or HCBS individual, the individual’s spouse, the legal representative, etc.
- The name of the person to whom the asset was transferred.
- The individual’s relationship to the person to whom the asset was transferred.

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- The countable value of the asset at the time of the transfer and the compensation received or expected to be received for the transferred asset.
 - The date the asset was transferred.
 - The ownership interest held by the individual or individual's spouse. Include names of any co-owners.
 - The documentary evidence that the individual intended to dispose of the asset(s) at fair market value or information from knowledgeable sources to support the value of the asset or the value of the transfer.

A Transfer of Assets Documentation Form, developed for internal use, is used to document each transfer of assets, whether the transfer is exempt or non-exempt.

306.04 LOOK BACK PERIOD

The Deficit Reduction Act of 2005 changed the look back period to 5 years (60 months) effective for institutional applications filed on or after February 8, 2006.

The 60-month rule applies to any type of asset transferred including assets placed in a trust. OBRA-93 rules required a 36 month lookback except for assets placed in a trust, which required a 60-month lookback.

Application of the DRA transfer rules was phased in over a 60 month period starting February 8, 2006. Because the DRA implementation date did not change, the length of the look back period to evaluate transfers under DRA rules increased each month by one month until it reached 60 months in February 2011.

OBRA-93 Lookback Provision

Under OBRA-93, the look-back period for transfers other than transfers to a trust is a date that is 36 months from the date the individual is both an institutionalized individual and has applied for Medicaid.

The following example illustrates this:

- 12/94 – enters nursing facility
- 02/95 – applies & 36 month look-back begins
- 11/94 – transfer occurs & penalty begins

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The 36 month look-back period described above did not become fully effective until August 11, 1996 and was phased in over a 36 month period beginning August 11, 1993. Therefore, OBRA transfer rules are 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.

DRA 5-Year Lookback Provision

The 5 year lookback period is the first date an individual is both in an institution (or approved for HCBS services) and has applied for Medicaid and the application was not withdrawn. Refer to 306.05.01 for an explanation on how to apply the 5 year lookback period when there are multiple periods of institutionalizations and multiple applications.

The transfer provision prohibits transfers of assets on and after the beginning date of the 5-year lookback period that is applicable to the individual. A transfer of assets by the institutionalized or HCBS individual, his/her community spouse or someone with legal authority to act in behalf of the individual and/or spouse is prohibited on/after the beginning date of the 5-year lookback period and for the duration of time the individual is eligible using institutional rules, unless a specific exemption applies.

Institutional example: an individual enters a nursing home on January 15, 2018 and applies for Medicaid on March 1, 2018. The 60 month look back is a full 60 month period that begins with March 1, 2013 and goes through February 2018. Any transfers of assets that occurred on or after March 1, 2013 must be developed.

HCBS example: An individual is assessed and approved for HCBS services on December 5, 2017. Application for Medicaid is filed on January 15, 2018. The first month in which the individual has both applied for Medicaid and been approved for HCBS services is January 2018, resulting in the 5-year lookback beginning January 1, 2013.

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. Transfer penalties are applied to institutionalized individuals in a nursing home, ICF/IID or Swing Bed and those applying for or receiving Home and Community Based Services.

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Transfer Penalty for Individuals in a Nursing Facility, ICF/IID or Swing Bed

The transfer of assets penalty period for an institutionalized individual who is eligible for Medicaid and would otherwise be receiving an institutional level of care but for the imposition of the transfer penalty results in:

- The denial or termination of the per diem payment for room and board in the facility for the duration of the calculated penalty period; and
- Medicaid approval for all other services.

Transfer Penalty for Individual Applying or Participating in a HCBS Program

The transfer of assets penalty period for a HCBS individual who is eligible for Medicaid and would otherwise be receiving long-term care support services but for the imposition of the transfer penalty results in:

- The denial or termination of Medicaid for the duration of the calculated penalty period in a HCBS waiver program effective on/after April 17, 2018.
- Prior to April 17, 2018, the transfer penalty resulted in a denial or termination of Medicaid for the duration of a penalty period that lasted a full 60 months beginning with the month of the transfer.
- The individual can be approved in a Medicare Cost-Sharing program (QMB, SLMB or QI) or any other available at-home coverage group if all other eligibility factors are met using at-home budgeting rules.
 - Effective April 17, 2018, the transfer penalty runs simultaneous with the at-home coverage based on the calculated begin and end date of the transfer penalty.
 - Prior to April 17, 2018, the transfer penalty for applicants in a HCBS waiver program was a flat 60 month period (or a calculated period for transfers discovered after HCBS approval) that could also run simultaneously with at-home coverage.

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 or considered institutionalized for HCBS

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purposes, meaning approval for HCBS has been received. 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 2011 but the application is denied for failure to provide requested information. Subsequent applications are filed July 2011, January 2012 and January 2013. The 5-year look-back date is based on the 03/2011 application date. Transfers that occur on or after March 1, 2006 will be considered under transfer policy because the look-back period is tied to the initial March 2011 application date.

HCBS waiver applicants with multiple applications or multiple periods of approved HCBS assessments are evaluated in the same manner. The 5-year lookback begins with the first application that is not withdrawn using the month in which the individual both applied and was approved for HCBS services as the month to determine the 5-year lookback begin date. In the above example, if the individual's first HCBS application was in March 2011 and long-term care services were approved effective March 2011, the begin date of the 5-year lookback period would be March 1, 2006.

The effective date of the penalty is calculated differently than the beginning date of the 5-year lookback period.

- The 5-year lookback period is based on the initial application date in combination with the date long-term care services are approved;
- The effective date the penalty is applied is based on the date the individual is otherwise eligible in combination with the date long-term care services are approved, as described below.

306.05.02 EFFECTIVE DATE OF PENALTY

Effective February 8, 2006, the date of the transfer 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.
- The date on which the individual is eligible for medical assistance based on all factors of eligibility being met and would otherwise be receiving institutional level of care services (based on an approved application for such services) that,

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were it not for the imposition of the penalty period would be covered by Medicaid.

DRA Effective Date of Penalty Period for NF, ICF/IID or Swing Bed Applicants

Under DRA rules, a transfer penalty (for applicants) begins effective with the month that is the later of:

- The month that long-term services are requested, or
- The month the individual is eligible based on all factors of eligibility.

For example, an individual enters a nursing facility in January 2018 and requests eligibility beginning 01/01/2018. Level of care approval is received for the admission. However, excess resources in a savings account result in eligibility that could begin no earlier than April 1, 2018. A transfer of home property that occurred 3 years prior to entering the nursing facility results in a transfer penalty that is applied April 1, 2018, which is the later date required for imposing a transfer penalty.

DRA Effective Date of Penalty Period for HCBS Applicants

Under DRA rules and effective April 17, 2018, the penalty begin date is the month that is the later of:

- The date the individual would be eligible for Medicaid on all factors of eligibility, or
- The date the individual would otherwise be receiving HCBS waiver coverage based on approval for level of care services, including the availability of a waiver slot, as verified by the effective date as shown on the 2-way form completed by the Long-term Care Bureau at the Central Office of DOM. This form is referred to as the LTSS (Long-term Support Services) form.

For example, an individual applies for Medicaid on May 1, 2018 and requests eligibility retroactive to February 1, 2018. The 2-way form effective date for approval in a HCBS waiver program is March 1, 2018. A transfer of assets is discovered resulting in a penalty. Eligibility on all factors other than the transfer is determined to be June 1, 2018. The transfer penalty effective date is 06/01/2018, which is the later date required for imposing a transfer penalty.

Prior to April 17, 2018, the transfer penalty was applied beginning with the first month of the transfer and ended after a full 60-month penalty expired for transfers discovered during the application process. Refer to 306.05.06.

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DRA Penalty Period for Transfers After Approval (Applicable to Institutional and HCBS)

Recipients are prohibited from transferring resources after approval of Medicaid. For transfers discovered after approval, the effective date of the penalty is the month of the transfer. The penalty is imposed in MEDS 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. Refer to 306.05.05, Determining the Correct Transfer of Assets Divisor to Use, for examples.

OBRA Penalty Period

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 CALCULATION

The numbers of months of ineligibility for an institutionalized or HCBS individual are 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.

To determine the correct transfer of assets divisor to use and how to determine the correct effective date of the penalty refer to 306.05.05.

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.

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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. Partial month penalties are applied to transfer penalties imposed on institutionalized individuals and effective 04/17/2018, to HCBS individuals. See below for an example of a partial month penalty calculation.

Prior to 04/17/2018, there was no partial month penalty period imposed for HCBS.

Example of Partial Month Penalty Calculation (Institutional and HCBS)

An individual makes an uncompensated transfer of \$30,000 in June 2015. He applies for Medicaid coverage for long-term care services (nursing home or HCBS) in April 2018 and is determined eligible for the requested month. The transfer falls within the 5 year look back period.

The uncompensated transfer amount of \$30,000 is divided by the average monthly rate of \$6,619 (in effect for 04/2018)) and equals 4.53 months. The full 4 month penalty runs from April 2018 (the month of eligibility and approved long-term care services) through July 2018 with a partial month penalty calculated for August 2018. The penalty calculation is as follows:

- Step 1:** \$30,000 uncompensated transfer amount divided by \$6,619 average monthly private pay rate = 4.53 months penalty period
- Step 2:** \$6,619 average monthly private pay rate (x) 4 full months penalty period = \$26,476 penalty amount for 4 months
- Step 3:** \$30,000 uncompensated transfer amount (less) \$26,476 penalty amount for 4 full months = \$3,524 partial month penalty amount
- Step 4:** \$3,524 partial month penalty amount (divided by) \$217 daily rate (in effect for 04/2018) = 16.24 days or 16 days for partial month penalty

The month of August 2018 will have 16 days that a per diem payment will not be made to the nursing facility or that HCBS eligibility will be denied. Eligibility for a per diem payment or for HCBS eligibility can begin on day 17. Thus the total penalty period for the transfer of \$30,000 will be April 1, 2018 through August 16, 2018. Eligibility for the per diem payment or HCBS services can resume August 17, 2018.

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306.05.05 DETERMINING THE CORRECT TRANSFER OF ASSETS DIVISOR TO USE

Use the following chart to determine the correct transfer of assets divisor to use for transfer of assets penalties for institutionalized individuals and, effective 04/17/2018, HCBS individuals for case actions in MEDS.

Case Action	Transfer Divisor	Example
New Applications	Use the monthly and daily transfer divisor in effect at the time of application.	An application for long-term care services is filed on 06/30/2018. Use the transfer divisor & daily rate in effect June 2018 regardless of when the application is registered or approved.
Redeterminations	Use the monthly and daily divisor in effect at the time the redetermination contact is created.	<p><u>Example #1.</u> A redetermination contact is created on 07/02/2018 for an individual eligible for long-term care services since May 2016. A transfer is discovered during the redetermination that occurred in May 2017. Using the divisor & daily rate in effect for July 2018 results in a 24 month, 12 day penalty period. Use the divisor/daily rate in effect for July 2018 for both the ongoing penalty period that begins after the rebuttal/advance notice period ends and for the improper payment period that begins in May 2017 and continues through the month prior to the month the penalty is imposed in MEDS.</p> <p><u>Example #2.</u> Assume the redetermination contact of 07/02/2018 is for an active QMB recipient requesting & approved for HCBS services effective June, 2018. Use the divisor/daily rate in effect for July 2018 for the transfer penalty that will begin 06/01/2018. No improper payment is involved since there is no prior eligibility involving long-term care services.</p>

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Case Action	Transfer Divisor	Example
Special Reviews	Use the monthly and daily divisor in effect at the time the special review contact is created.	A recipient eligible for long-term care services since December 2015 transfers an asset in July 2016 but the transfer is not discovered until July 2018. The most recent redetermination contact was created in December 2017 but a special review contact must be created to impose a transfer penalty. The special review contact is created 07/11/2018. Use the divisor in effect for July 2018 for both the improper payment period and the ongoing penalty period created in MEDS after the rebuttal and advance notice period ends.
No Case Action Required in MEDS	Use the monthly and daily transfer divisor in effect at the time of the most recent case action.	A transfer is discovered on an active case but the penalty will not be ongoing so there is no case action created in MEDS. An improper payment will address the entire transfer period. Use the monthly/daily 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 PRIOR TO APRIL 17, 2018.

The chart below describes the methods of applying the transfer of assets penalty to HCBS cases prior to April 17, 2018. Calculated penalties use only the monthly divisor with no partial month penalty. How the penalty was applied varied, depending on when the transfer was discovered.

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 (penalty not calculated). The individual could enter a nursing facility to trigger the start date of the penalty which would then be a calculated period. If the

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Occurrence of Transfer	Discovery of Transfer	Penalty begins with	Duration of Penalty
			individual discharged from the nursing facility during the penalty period, the penalty would continue to the expiration date, at which time HCBS eligibility could be re-evaluated.
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. Prior policy required a penalty to start when the HCBS individual was receiving an institutional level of care, not when the individual would otherwise be receiving a level of care.

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 effective date of the penalty is determined using the rules outlined in 306.05.02, Effective Date of Penalty.

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.

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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 transfer cash to a relative of \$5,199 in April and \$5,199 in May. The two gifts must be added together and divided by the appropriate divisor using the rules outlined in 306.05.02, Effective Date of Penalty.

306.06 TYPES OF TRANSFER OF ASSETS

The situations listed below are considered transfers of assets and may be subject to a penalty period for institutionalized and Home and Community Based individuals. The types of transfers may not be an exhaustive list.

306.06.01 TREATMENT OF INCOME AS AN 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 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.

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Also attempt to determine whether amounts of regularly scheduled income or lump sum payments, which the individual received or 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 (i.e., 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 on a regular basis, such as a pension) is transferred over multiple months, calculate the penalty period by adding the income payments together and begin the penalty period on the earliest date that would otherwise apply if the transfer had been made in a single lump sum.

When the transfer involves a right to income (as opposed to periodic transfer 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.

306.06.02 CONVEYANCE FOR LESS THAN FAIR MARKET VALUE

Giving away or conveying an asset for less than fair market value within the look back period for an institutionalized or HCBS individual may be considered a transfer of assets.

306.06.03 WAIVING AN INHERITANCE OR OTHER ENTITLED BENEFIT

Refusal to accept an inheritance or refusal to take legal action to obtain benefits an individual is entitled to receive may be considered a transfer of assets.

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306.06.04 ANNUITIES WHEN EXPECTED RETURNS ARE LESS THAN COST OF ANNUITY

Establishing or purchasing annuities in which anticipated payments based on life expectancy of the individual are less than the cost of the annuity. The policy on annuities is explained in detail in the Annuities section.

306.06.05 IRREVOCABLE BURIAL CONTRACTS UNDER CERTAIN CIRCUMSTANCES

An irrevocable burial contract or similar device established by the funeral home/director is considered a transfer of assets if the cost to the individual or spouse exceeds the value of the merchandise and/or services. The specialist will obtain an itemized statement to assist in determining whether the costs are commensurate with the value of the merchandise and/or services.

306.06.06 TRANSFERS BY A SPOUSE

Transfers made by the Community Spouse (CS) will create a penalty for the Institutionalized Spouse (IS). Transfers by the CS after the IS has been determined eligible will also create a penalty for the IS.

If the CS becomes institutionalized and applies for Medicaid during the penalty period, the penalty must be apportioned between both spouses. However, if the IS has already served the penalty in full, it will not be applied a second time. If one member of the couple should leave the facility or die, the remaining portion of the penalty must be served by the remaining institutionalized spouse.

306.06.07 TRANSFERS OF 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.

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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. 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.

306.06.08 PERSONAL SERVICE CONTRACTS/AGREEMENTS

A personal service contract/agreement should be a written contract between the recipient/applicant and the personal services provider. The contract should be executed prior to the date any payments have been made to the provider. If payments have been made prior to the date of the contract these payments should be considered as transfers.

Once an individual begins receipt of Medicaid Long-term Care (LTC) services, the individual's personal and medical needs are considered to be met by the LTC provider. Payments to other individuals for services received after the individual enters LTC are considered an uncompensated transfer for Medicaid purposes.

The contract should be very specific as to the services to be provided and the payment to be paid for the services. Each service/duty should be listed with the number of hours for each service with the amount charged for each service. If the

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contract calls for a payment of a specific amount per hour, this amount should be reasonable. For example, nursing charges will not be allowed for non-nurses and CPA charges will not be allowed for persons who are not CPA's. Documentation of the services performed and the number of hours for each service should be submitted. All charges will be evaluated based on usual and customary charges for services in the community.

The contract must not provide for payment of compensation for future services. All payments should be made only as the services are actually rendered. Any payments made for future services should be considered as transfers. Contracts indicating a prior date but no payments have ever been made should be questioned as to why the payments for services were not made when the services were performed. This type of arrangement indicates services were provided for free. Services provided for free are not under obligation to be paid at a future unknown date.

306.06.09 PURCHASE OF A LIFE ESTATE IN ANOTHER INDIVIDUAL'S HOME

The purchase of a life estate interest in another individual's home is considered a transfer of assets unless the purchaser resides in the home for a period of at least one (1) year after the date of purchase. Refer to 301.01.04, Life Estate Provisions Under the DRA, for additional policy on this topic.

306.06.10 PROMISSORY NOTES, LOANS OR MORTGAGES

The term "assets" includes funds used to purchase a promissory note, loan or mortgage unless such note, loan or mortgage is determined to be actuarially sound, provides for payments to be made in equal amounts during the term of the loan, with no deferral or balloon payments, and prohibits the cancellation of the balance upon the death of the lender. A note, loan or mortgage not meeting these requirements is a transfer of assets in the amount of the outstanding balance due as of the date of the individual's application.

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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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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.

Undue hardship does not exist when:

- Application of the application of the transfer of assets provision 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.

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- The assets were transferred to the community spouse and the community spouse refuses to cooperate in making the resource available to the institutional spouse.
- The resource was transferred to a person (spouse, child, or other 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 it is established that the transferred funds cannot be recovered even through exhaustive legal measures.

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 transferred assets.

306.07.04 UNDUE HARDSHIP WAIVER REQUESTED BY FACILITY

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 person representative's consent. The hardship waiver is for the recipient, not the hardship of the facility. The agency provides that, while an application for an undue hardship waiver is pending in the case of an individual, who is a resident of a nursing facility, payments to the nursing facility to hold the bed for the individual will be made for a period not to exceed 30 days.

306.07.05 EXCEPTION FOR TRANSFERS TO COMMUNITY SPOUSE OR THIRD PARTY

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 inter-spousal transfers and transfers to a third party for the sole benefit of a spouse apply even under the spousal impoverishment provisions. Thus, the institutional spouse can transfer

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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 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 cannot 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 transferred funds 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, this exemption is void, and a transfer to a third party may then be subject to a transfer penalty.

306.08 TRANSFER OF ASSETS NOTIFICATION

The applicant/client will be notified via the appropriate DOM-322, Notice of Transfer of Assets, i.e., OBRA 93 or DRA, regarding countable transfers and the penalty period. The transfer and the penalty must be clearly indicated. The notice allows the client or representative time 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. Individuals in nursing homes remain eligible for all other Medicaid services if the transfer penalty is the only factor of ineligibility; therefore, payment of nursing home services only will be denied or terminated. If the individual is ineligible on other factors as well as the transfer, the application or case must be denied or terminated. If Medicaid eligibility is dependent on participating in the HCBS waiver program, the application is denied, or the case is closed until the transfer penalty period expires. Individuals with Medicare can be approved in a Medicare Savings Program (QMB, SLMB, QI) if eligible on all factors using at-home budgeting criteria.

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Individuals without Medicare can be placed in an alternate at-home coverage group, if eligible on all factors using at-home budgeting criteria. The penalty period will run concurrently with at-home eligibility.

NOTE: Notice to the client via DOM-322 is required whenever a transfer is being charged. This is true even if the penalty period has 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. All DOM-322s must be submitted for approval to the Bureau Director prior to issuance.

306.09 REBUTTAL PROCESS

Written rebuttals along with the Regional Office decision regarding acceptability require Central Office review and approval prior to issuing final notice to the client. The material submitted to Central Office should include the rebuttal, a copy of DOM-322 issued to the client, and a summary of the circumstances surrounding the transfer. The Bureau Director will issue a memorandum to the Regional Office explaining the final decision on the transfer.

306.10 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 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.

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306.11 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.

Example: A transfer of \$13,800.00 occurred in October 2008, resulting in a 3-month penalty period beginning with the month that LTC is requested, or eligibility is determined. In January 2009, \$9,200.00 is returned to the institutionalized individual. The penalty period is then recalculated using the UV of \$4,600.00 (rate in effect at the time) transferred in October 2008. This results in a revised period of ineligibility for one (1) month beginning with the month that LTC is requested, or eligibility is determined.

NOTE: If the resource is returned, normal resource rules apply in determining Medicaid eligibility.

306.12 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 eligible must not be sent verifying eligibility for nursing facility services until the possibility of any transfers have been developed.

Example: A Medicaid application is filed in July 2008 for an applicant who entered the nursing home in May 2008 as an SSI-eligible. SSI eligibility continued until July 31, 2008. A transfer, which occurred in May 2008, is discovered during the Medicaid application process and it results in a 6-month period of ineligibility. The penalty can be imposed for May 2008 through October 2008 even though the months of May 2008 through July 2008 are SSI months. This means no vendor payment will be authorized for the 6-month penalty period; however the individual is eligible for all other Medicaid services.

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307.01 MEDICARE CATASTROPHIC COVERAGE ACT TRANSFER POLICY

The Medicare Catastrophic Coverage Act of 1988 (MCCA) repealed the transfer of resources penalty for non-institutionalized individuals. New transfer of resources policy created under the MCAA 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.

307.01.01 DEFINITION OF INSTITUTIONALIZED INDIVIDUAL

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/IID residents are not included in this definition.

The transfer penalty resulting in ineligibility, as defined below, applies to nursing facility services and 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.

307.01.02 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 October 1, 1989, 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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307.01.03 THE PENALTY PERIOD

The period of ineligibility shall be equal to the lesser of:

- 30 months, or
- 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.

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.

Private Pay Calculation

The private pay calculation is based on a statewide average private pay cost of \$1,456.00 per month. In calculating the period of ineligibility, divide the UV by \$1,456.00 to determine the number of month that an individual will be ineligible for nursing home services. All calculations are rounded down to the nearest whole dollar.

Example: If the total UV is \$20,000, then $\$20,000 \div \$1,456 = 13.73$.

Rounding down, the period of ineligibility would be 13 months, which is less than the 30-month penalty.

307.01.04 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 the application.

Example: A transfer with UV of \$5,000 occurs 7/5/88. Using the private pay calculation, the period of ineligibility for nursing facility services is 3 months, July through September. If the application is filed on or after October 1, 1988, the penalty period will have expired, although eligibility for all other Medicaid services is possible in the retroactive period.

If the UV does not result in ineligibility for at least one month, the transfer will not count.

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Example: If the transfer is for \$1,000, 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.

307.01.05 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:

- The individual's spouse or child under age 21 **or** a disabled or blind adult child; or
- A sibling who is part owner of the home who lived in the home for one (1) year before the individual entered the nursing facility; or
- 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.

307.01.06 EXCEPTIONS 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:

- Resources are transferred to or from the individual's spouse. Effective October 1, 1989, a transfer of assets from a community spouse to another individual will result in a penalty charged to the institutionalized spouse.
- Resources are transferred to the institutionalized individual's child who is disabled or blind.
- 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.
- Denial of eligibility would result in undue hardship.

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- The resource was excluded under ongoing policy at the time for the transfer.
- 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's or recipient's behalf at the time of the transfer.

307.01.07 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.

307.01.08 REBUTTAL PROCESS

Written rebuttals along with the regional office decision regarding acceptability are to be submitted to the central office. The material submitted should include the rebuttal, a copy of the transfer notice issued to the client and a summary of circumstances surrounding the transfer. The regional office will be notified of the final decision.

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:

- The occurrence **after** a transfer of resources of one or more of the following:
 - Traumatic onset (e.g., traffic accident of disability or blindness;
 - Diagnosis of previously undetected disabling condition;
 - Unexpected loss of other resources which would have precluded Medicaid eligibility;
 - Unexpected loss of income (including deemed income) which would have precluded Medicaid eligibility.

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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.

- 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;
- Court-ordered transfer;
- Resource(s) sold at less than current market value in order to obtain cash quickly to meet expenses or repay a legal debt.

307.01.09 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).

307.01.10 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 return. The resource of 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.

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.

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 client. The penalty period is then recalculated using UV of \$5,000 transferred in 10/88 which results in a revised period of ineligibility of 3 months or October 1988 – December 1988.

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If the full resource is returned, normal resource rules apply the month of the transfer.

307.01.11 TRANSFER PENALTY INVOLVING SSI MONTHS

The transfer penalty can be imposed during months that an individual receives SSO or is SSI-eligible in a nursing home.

Example: An ABD application is filed in December 1988 and a transfer is discovered during the application process. The applicant had entered the nursing home in October 1988 as an SSI eligible and SSI eligibility continued until 12/31/88. The transfer results in a 4-month penalty period. The penalty can be imposed for October 1988 – January 1989 even though SSI eligibility existed October 1988 – December 1988. This would mean no vendor payment would be authorized for the 4-month penalty period.

As a result, specialists need to postpone sending notices on an SSI to ABD applicant advising of eligibility based on SSI until eligibility for ABD is determined which excludes any transfers for the SSI months.

308.01 ENCUMBRANCE OF A LIQUID RESOURCE

An encumbrance is defined as a legal obligation to pay a debt. If an applicant/recipient's combined resources exceed the resource limit, the specialist must deduct the amount of any encumbrances from the Current Market Value (CMV) to determine the equity value of a resource. The equity value is countable toward the resource limit.

308.01.01 ENCUMBRANCE OF A LIQUID RESOURCE (SSI POLICY)

An encumbrance may occur when the applicant/recipient in an SSI-related coverage group has alleged a check has been written from a bank account, and it has not yet cleared the bank.

If the individual has alleged a check has been written from a bank account and it has not cleared, the specialist must

- Examine evidence that the check was written, therefore legally obligating the funds from the bank account.

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Verification must be obtained before allowing a reduced equity value of the bank account. Once verification is received, the equity value of the bank account can be established by deducting the amount of the check written.

Verifications needed:

- Paid receipt, cancelled check, etc.

Example: Mr. Timmons' bank statement shows a checking account balance of \$1,250 as of May 1, which combined with other countable resources, exceeds \$2000 as of the first day of the month. Mr. Timmons alleges that the balance includes his rent check of \$500 which he wrote and gave to the landlord on April 25, but his landlord has not yet cashed the check.

The specialist examines Mr. Timmons' check register and finds an annotation for check number 1345 written on 4/25 for \$500. He also notes that check 1346 has already cleared the bank and has been deducted from his account according to the bank statement. Next the specialist notes Mr. Timmons has written a \$500 check to his landlord for rent on or around the 25th of each month for the last six months.

Since there is evidence that Mr. Timmons has written the check and legally obligated those funds in his account, **and** his records provide a complete and consistent picture of the account, the specialist can deduct the amount of the uncashed check from the 5/1 first of the month balance.

The uncashed check can be deducted because SSI equity value rules state that in determining equity value, we deduct encumbrances from the CMV. The new balance of \$850 permits eligibility on resources.

308.01.02 ENCUMBRANCE OF A LIQUID RESOURCE (LIBERALIZED POLICY)

Under liberalized resource policy, an encumbrance may occur when the applicant/recipient has alleged a check has been written from a bank account, and it has not yet cleared the bank.

Alleged Check has not Cleared the Bank

If the individual has alleged a check has been written from a bank account and it has not cleared, the specialist must

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- Examine evidence that the check was written, therefore legally obligating the funds from the bank account.

Verification must be obtained before allowing a reduced equity value of the bank account. Once verification is received, the equity value of the bank account can be established by deducting the amount of the check written.

Verifications needed:

- Paid receipt, cancelled check, etc.

Example: Mr. Jon Doe applied for Medicaid on January 4. As of January 31, Mr. Doe's bank statement shows a checking account balance of \$2,350, which combined with other countable resources, exceeds \$4000. Mr. Doe alleges that the balance includes his rent check of \$500 which he wrote and gave to the landlord on January 22, but his landlord has not yet cashed the check.

The specialist examines Mr. Doe's check register and finds an annotation for check number 1345 written on January 22 for \$500. Since there is evidence Mr. Doe has written the check from the account, the specialist can deduct the amount of the uncashed check since it is an encumbrance.

In determining equity value of the bank account, the encumbrance of \$500 is deducted from the \$2,350 in the bank account. Eligibility can be established for Mr. Doe for January if he is otherwise eligible.

308.01.03 RESOURCE SPENDDOWN (LIBERALIZED POLICY)

For cases subject to liberalized resource policy, effective October 1, 1989, 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 provisions, resources can be reduced within the applicable limit and as long as resources remain within the limit for that month, eligibility can be established.

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The following are considered in making the determination:

- 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.
- 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.
- The spenddown provision implies that an individual spends down to the resource limit 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 acceptable level and remained eligible for that month for a true spenddown to have occurred.

Example: An individual had \$5,000 in a bank account on the first of the month and spent \$3,000 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 \$2,500. The \$2,500 then becomes a resource (conversion of a resource) in the same month and unless the individual spends the excess \$2,500 by the end of the month, eligibility cannot be established for that month.

308.01.03A RESOURCES EARMARKED FOR PRIVATE PAY OF LTC

Under liberalized resource policy, 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 the 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.

Example: A LTC applicant enters a nursing home in June and applies for Medicaid in August. The applicant's bank account is \$6,000, but \$4,500 is earmarked for private pay for June/July. Medicaid is needed for August 1. Since the \$4,500 is obligated for months prior to Medicaid eligibility, it can be excluded as a resource in determining

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eligibility for August forward, provided the earmarked funds are used to pay for the intended private pay expenses.

308.01.03B ACCUMULATED INCOME EARMARKED AS MEDICAID INCOME

Under liberalized resource policy, 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.

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 \$1,200 per month. In November when the case is being worked up, the bank balance is \$5,000. Medicaid Income for September and October would be \$2,312 ($\$1,200 - \$44 = \$1,156 \times 2$). November's income of \$1,200 can be backed out of the balance plus the \$2,312 obligated for September and October Medicaid Income, thus leaving \$1,488 as a countable resource for November.

309.01 DEEMING OF RESOURCES

For SSI and Medicaid purposes, an individual's resources are 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 children.

Example: If there are two eligible children and \$500 in parental resources must be deemed, deem \$250 to each child.

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

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309.01.01 EXCEPTION TO DEEMING OF RESOURCES

Effective September 1, 1987, 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(s) 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 Internal Revenue Code.

309.01.02 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 to the resource limit 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 for a couple, the applicant/recipient is ineligible. Verify and document the ineligible spouse's resources as required for an eligible individual.

Eligible Spouses Not Living Together

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.

Deeming and Changes in Marital Status

When a change occurs in marital status, 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 or couple) is effective as a result of the change in marital status.

Example: If two eligible individuals marry in February, a new resource determination would be required for March since the individuals became a couple effective on the first day of March as a result of the marriage.

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For SSI or 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 criteria 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.

309.01.03 PARENT TO CHILD DEEMING

In determining eligibility for a child under age 18 (or under 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.

Considerations When Deeming from Parent(s) to Child

When deeming from parent(s) to child, the following should be considered:

- 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 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.

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- A child's total countable resources are the combination of the value of the deemed resources and the non-excluded resources of the child.

Resource Determination for a 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 the excess resources.

309.01.04 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) do not meet the resource eligibility requirements, follow the usual parent-to-child resource deeming rules to determine the value of the deemed parental resources.

310.01 GENERAL VERIFICATION REQUIREMENTS

Generally, resources must be verified for any month for which you must determine eligibility. For the following types of action, verify as follows:

Applications

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

Redeterminations

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

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most recent month for which verification is available for regular reviews, rather than requiring resource balances for the review month.

Appeals

If a client appeals a denial related to a particular resource, the evidence in the file must clearly establish the value of that resource. If 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.

310.01.01 EXCEPTIONS TO GENERAL VERIFICATION REQUIREMENTS

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

- The resource is totally excluded, regardless of its value;
- The alleged value of total countable resources exceed the applicable limit for that month; or
- The individual is ineligible that month for reasons other than excess resources

310.01.02 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. Verify, at a minimum, the outstanding principal balance (payoff), 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.

310.01.03 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 re-verification of resource(s) at shorter intervals.

The following describes situations which mandate re-verification of resources at shorter intervals than annually, but it is not an all-inclusive list. Any reported changes in

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resources or discovery of changes in resources may warrant verification or re-verification.

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 six 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 special review of cases with countable resources close to the resource limit.

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 counted will determine the frequency review/re-verification is deemed necessary.

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 it is necessary to re-verify resources during the period of Medicare coverage to check for possible excess resources.