



STATE OF NEW YORK DEPARTMENT OF HEALTH

Coming Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner of Health

Dennis P. Whalen
Executive Deputy Commissioner


Date: September 23, 1997
RE: Department Release - Transmittal No. 96 ADM-8
SUBJECT: OBRA '93 Provisions on Transfers and Trusts

Dear Sir or Madam:

Due to federal clarification regarding the counting of income in the month received when placed into an exception trust, please make the following revision to the above mentioned transmittal:

On page 8, under Trusts, paragraph b., after the first sentence, add the following: "While most exception trusts are created using the individual's resources, some may be created using the individual's income, either solely or in conjunction with resources. Income diverted directly to a trust or income received by an individual and then placed into a trust is not counted as income to the individual for Medicaid eligibility purposes. Verification that the income was placed into the trust is required. In order to eliminate the need to verify this on a monthly basis, it is recommended that you advise the recipient to divert the income directly to the exception trust."

Thank you.

Sincerely,

Ann Clemency Kohler, Director
Office of Medicaid Management

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STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Date: January 3, 1997
Re: Department Release - Transmittal No. 96 ADM-8
Subject: OERA '93 Provisions on Transfers and Trusts

Dear Sir or Madam:

Please make the following pen and ink changes to the above mentioned transmittal:

On page 15, Section G.,1., the reference in the first sentence should be IV.G.2, not IV.G.5.

On page 16, the second sentence of the example should read, "Calculated individually, based on a regional rate for nursing facility care of \$5,000 a month, the penalty period for the first transfer is from February through ~~May~~...",.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ann Clemency Kohler'.

Ann Clemency Kohler, Director
Office of Medicaid Management



STATE OF NEW YORK DEPARTMENT OF HEALTH

Coming Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

DATE: August 22, 2002
RE: Department Release – Transmittal No. 96 ADM-8
SUBJECT: OBRA '93 Provisions on Transfers and Trusts

Dear Sir or Madam:

Due to clarification regarding the responsibility of a life estate holder to pay taxes and maintenance on rented life estate property, provided the life estate agreement does not specify otherwise, please make the following revision to the above mentioned transmittal:

On page 21, under Availability, third paragraph, replace the second sentence with the following:

“The life estate holder is responsible for payment of taxes and maintenance unless the life estate agreement states otherwise. If the life estate holder pays taxes and maintenance, these costs can be deducted from the rental income.”

Thank you.

Sincerely,

A handwritten signature in black ink that reads 'Kathryn - Kuhmerker'.

Kathryn Kuhmerker
Deputy Commissioner
Office of Medicaid Management

NEW YORK STATE
DEPARTMENT OF SOCIAL SERVICES
 40 NORTH PEARL STREET, ALBANY, NEW YORK 12243-0001



BRIAN J. WING
 Acting Commissioner

ADMINISTRATIVE DIRECTIVE

TRANSMITTAL: 96 ADM-8

TO: Commissioners of
 Social Services

DIVISION: Health and
 Long Term Care

DATE: March 29, 1996

SUBJECT: OBRA '93 Provisions on Transfers and Trusts

**SUGGESTED
 DISTRIBUTION:**

Medical Assistance Staff
 Public Assistance Staff
 Legal Staff
 Fair Hearing Staff
 Staff Development Coordinators

**CONTACT
 PERSON:**

Transfers-Robin Johnson -1-800-343-8859, ext. 67454
 Trusts-Barbara Crumb - 1-800-343-8859, ext. 32237
 NYC: Call (212) 383-2512

ATTACHMENTS:

Attachment I Sole benefit statement (available on-line)
 Attachment II Procedures for Monitoring Exception Trusts (available on-line)
 Attachment III Explanation of the Effect of Transfer of Assets on MA Eligibility (available on-line)
 Attachment IV Life Expectancy/Actuarial Tables (available on-line)
 Attachment V Life Estate and Remainder Interest Table (available on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
95 ADM-17					Section 13611 of OBRA'93
92 ADM-53		360-4.4 (c)	SSL 366	<u>MARG</u> page	
92 ADM-45		360-4.5	SSA 1915 (c) & (d)	356	GIS '94- MA/018
91 ADM-37			Executive		GIS '94- MA/031
91 ADM-31			Law Sec 63		GIS '95- MA/038
90 ADM-29					
89 ADM-45					

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I. PURPOSE

This Administrative Directive (ADM) informs social services districts of changes in the treatment of transfers and trusts in the Medical Assistance (MA) program as a result of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93).

II. BACKGROUND

Section 1917 of the Social Security Act (42 U.S.C. 1396p) requires a period of ineligibility for MA coverage of nursing facility services (penalty period) when the MA applicant/recipient (A/R) or his/her spouse transfers assets for less than fair market value within or after a specified look-back period. Prior to the enactment of OBRA '93, Section 1917(c) provided for a 30-month look-back period; provided for a maximum penalty period of 30 months; referred to transfers of "resources" rather than "assets"; and did not contain any exceptions for transfers of assets into trusts. OBRA '93 made a number of amendments to Section 1917(c).

Prior to the enactment of OBRA '93, Section 1902(k) of the Social Security Act (42 U.S.C. 1396a(k)) provided that in the case of a trust created by an A/R or his/her spouse, other than by will, the maximum amount of payments which the trustee had discretion to distribute to the A/R would be deemed available for purposes of determining MA eligibility. OBRA '93 repealed Section 1902(k) and amended Section 1917 to more fully address the availability of assets held in trust and the applicability of the transfer rule to assets transferred into trusts.

Chapter 170 of the Laws of 1994 amended Section 366 of the Social Services Law to conform to the aforementioned OBRA '93 amendments. In addition, the Department amended 18 NYCRR 360-4.4(c) and 360-4.5 to implement the provisions of Chapter 170.

III. PROGRAM IMPLICATIONS

As a result of the enactment of OBRA '93 and Chapter 170 of the Laws of 1994, a number of changes and clarifications are being made to the MA rules concerning transfers and trusts. These changes apply to MA applications and recertifications on or after September 1, 1994, and apply to transfers made and trusts created or funded on or after August 11, 1993.

A. Transfers:

- the transfer rules apply to both income and resources;
- the look-back period is increased from 30 to 60 months in the case of trust-related transfers, as described in Section IV.B of this ADM, and from 30 to 36 months for all other transfers;
- there is no 30 month cap on the length of the penalty period;

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- there is no penalty for transferring assets to a trust established solely for the benefit of a person certified as disabled and under 65 years of age;
 - when either spouse makes a prohibited transfer that results in a penalty period for the institutionalized spouse, the penalty period must be apportioned equally between the spouses if the community spouse subsequently becomes in need of nursing facility services;
 - a penalty period is imposed for a partial month;
 - clarification is provided concerning when a transfer by an individual to another is considered to be for the "sole benefit" of the individual's spouse;
 - clarification is provided on the treatment of jointly held assets;
 - the "Explanation of the Effect of Transfer of Assets on Medical Assistance Eligibility" has been revised to reflect the changes resulting from OBRA '93; and
 - the penalty period will now begin on the first day of the month following the month of transfer.

B. Trusts:

- for a revocable trust, the total principal and income of the trust is considered available;
- for irrevocable trusts, payments actually made from the trust to or for the benefit of the A/R are available income in the month received; portions of the trust principal and income which can be paid to or for the benefit of the A/R are considered to be an available resource; and any portions of the trust principal and income which can never be paid to or for the benefit of the A/R under the terms of the trust are considered to be transferred assets for purposes of the transfer rule; and
- exceptions are made for certain trusts created for the benefit of disabled A/Rs using the A/R's assets.

IV. REQUIRED ACTION

A. Definitions

1. Assets

Assets include all income and resources of the individual and the individual's spouse. This includes income or resources which the individual or the individual's spouse is entitled to but does not receive because of any action or inaction by;

- the individual or the individual's spouse;
- 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; or
- any person, including a court or administrative body, acting at the direction of or upon the request of the individual or the individual's spouse.

Examples of actions which would cause income or resources not to be received are:

- irrevocably waiving pension income;
- renouncing an inheritance or refusing to assert one's right of election against an inheritance;
- not accepting or accessing injury settlements (however, A/Rs cannot be required to initiate litigation);
- settling a tort (personal injury) action so as to have the defendant place settlement funds directly into a trust or similar device to be held for the benefit of the A/R; or
- refusing without good cause to take action to obtain a court ordered payment that is not being paid, such as an alimony award or other judgment against an individual. In the case of alimony, good cause is defined in Department Regulation 369.2(b).

NOTE: The date of transfer is the date the asset was actually available and waived. In the case of a trust, the date of the transfer is the date the trust is actually funded, regardless of the date it was created.

2. Blind or disabled:

For purposes of this directive, the terms "blind" and "disabled" mean certified blind or certified disabled, according to the requirements of the Social Security Administration.

3. Fair Market Value

Fair market value (FMV) is the estimate of the value of an asset if sold at the prevailing price at the time it was actually transferred.

Fair market value of real property or other assets may be established by means of an appraisal by a real estate broker or other qualified dealer or appraiser.

4. Individual

When the ADM refers to the creation of a trust or to a transfer of assets, the term individual or A/R includes: the individual; the individual's spouse; any 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; or any person, including a court or administrative body acting at the direction of or upon the request of the individual or the individual's spouse.

5. Nursing Facility Services

Nursing facility services means:

- nursing care and health related services provided in a nursing facility (including residential health care facilities, residential treatment facilities, intermediate care facilities, and intermediate care facilities for the developmentally disabled);
- a level of care provided in a hospital which is equivalent to the level of care provided in a nursing facility; and
- care, services, or supplies furnished pursuant to a waiver under section 1915(c) or (d) of the Social Security Act, including: the Long Term Home Health Care Program, the OMRDD Home and Community-Based Services Waiver, the Traumatic Brain Injury Waiver or the Care At Home Program.

6. Sole Benefit

A transfer by an individual or the individual's spouse to another is for the sole benefit of the individual's spouse if the terms and conditions of the transfer are specified in a written instrument of transfer (such as a trust document, deed, or other signed and acknowledged statement), which is executed at or about the time of transfer, clearly limiting the use and enjoyment of the transferred property to the individual's spouse.

In the absence of a written instrument of transfer, a transfer must be considered a transfer for the sole benefit of the individual's spouse only if, at the time of application:

- the person who transferred the assets signs a statement attesting that the transfer was intended for the sole benefit of the individual's spouse; (districts may develop their own form for this purpose, or use the sample form included as Attachment I to this ADM); and
- other evidence is presented (such as evidence of a continuous course of conduct by the person to whom the assets were transferred) which establishes that the use and enjoyment of the transferred property has in the past been limited to the individual's spouse.

In addition, in order for a transfer to be considered to be for the sole benefit of the individual's spouse (regardless of whether there is a written instrument of transfer), the social services district must conclude, based on the age of the individual's spouse, the amount of assets transferred, and the rate and amount of expenditures from the transferred assets for the benefit of the individual's spouse, that the

transferred assets are likely to be totally expended within the spouse's lifetime.

The establishment of a trust for the benefit of a spouse will not be considered a transfer for the sole benefit of such spouse if: during the life of the trust, the trustee has the authority to make distributions for the benefit of anyone other than the spouse; or the trust provides that upon its termination, all or part of the remaining principal and income is to be distributed to someone other than the MA applicant/recipient, or the spouse's estate.

Note: Any subsequent action by the individual's spouse, or by the person to whom the assets were transferred for the spouse's benefit, which reduces or eliminates the spouse's beneficial use of the transferred property, or the ownership or control of the person to whom the assets were transferred, may be considered a transfer of assets by the individual's spouse on the date such action is taken. Such a transfer may affect the eligibility of either or both spouses, depending on the circumstances of the transfer.

Note: When assets are transferred by an individual or the individual's spouse to another for the sole benefit of the individual's spouse, the assets continue to be considered part of the couple's total resources for purposes of determining the amount of the community spouse resource allowance.

7. Trusts

In general, a trust is a legal instrument by which an individual gives control over his/her assets to another (the trustee) to disburse according to the instructions of the individual creating the trust. There are a number of different types of trusts, including escrow accounts and investment accounts.

- a. Annuity - An annuity is an investment vehicle whereby an individual establishes a right to receive fixed periodic payments, either for life or a term of years. To the extent to which the anticipated return is commensurate with the money invested, the purchase of an annuity shall be considered a compensated transfer of assets; to the extent that the anticipated return is less than the amount invested, it shall be considered to be a trust-related transfer for less than fair market value.
- b. Exception trusts - Exception trusts are trusts which are required to be disregarded as available income and resources for purposes of determining MA eligibility pursuant to the provisions of Section 366(2)(b)(2)(iii) of the Social Services Law and 18 NYCRR 360-4.5(b)(5).

Exception trusts generally will conform to the definition of supplemental needs trusts found in Section IV.A.7.e of this ADM. There are two types of exception trusts.

i. One type of exception trust is a trust created for the benefit of a disabled person under the age of 65. It must:

- be created with the individual's own assets,
- be created by the disabled person's parent or grandparent, legal guardian of the individual, or by a court of competent jurisdiction, and
- include language specifying that upon the death of the disabled person, the social services district will receive all amounts remaining in the trust, up to the amount of MA paid out on behalf of the individual.

Once established, additional funds can be added to the trust until the person reaches age 65. However, any additions to the trust made after the person reaches age 65 would be treated as a transfer of assets, and would require the imposition of a penalty period. It is the Department's position that if a district has imposed a Social Services Law Section 104-b or Section 369 lien against assets to be used to establish an exception trust, the district should attempt to have the lien satisfied (or, in the district's discretion, compromised) before the trust is established. Litigation is pending on the issue of whether enforcing such liens is allowed when the assets are to be put into an exception trust; when this litigation is concluded, the Department will notify districts promptly of the outcome and of any necessary policy changes.

ii. The other type of exception trust is a trust created for the benefit of a disabled person of any age, and is a pooled trust, as described below:

- the trust is established and managed by a non-profit association per Section 1917 (d) (4) (C) (i) of the Social Security Act;
- the assets are pooled with other assets and are managed by a non-profit organization which maintains separate accounts for each person whose assets are included in the pooled trust;
- the disabled individual's account in the trust is established by the disabled individual, by the disabled individual's parent, grandparent, or

legal guardian, or by a court of competent jurisdiction;

- the trust will be disregarded for MA purposes regardless of the age of the individual when the pooled trust account is established, or when assets are added to the pooled trust account; however, there is no exception to the transfer rules for transfers of assets to trusts created for the benefit of persons 65 years of age or older;
- upon the death of the individual, the district's right of recovery is limited to those funds not retained by the non-profit organization; and
- if the trust is subject to oversight by the Attorney General's office, no bonding (as specified in Section IV.F of this ADM) is required.

NOTE: Although exception trusts created in accordance with the criteria set forth above are exempt as resources in the eligibility determination process regardless of the disabled individual's age, for purposes of the transfer provisions, any additions to the trust after the individual becomes 65 years of age are subject to applicable transfer penalties.

It is the responsibility of the trustee of an exception trust to ensure that the funds are expended for the benefit of the chronically impaired or disabled person. In some cases, this disbursement of funds may indirectly benefit someone other than the beneficiary. Such disbursements are valid, as long as the primary benefit accrues to the chronically impaired or disabled person. For example, payment of travel expenses for a companion to a chronically impaired or disabled person going on vacation may be appropriate. Also, the abilities and capabilities of the person should be taken into account. The purchase of sophisticated computer equipment to assist a physically disabled person to communicate would be considered appropriate, while purchase of the same type of equipment for an individual who could not be trained to use it would not.

- c. Irrevocable Trust - An irrevocable trust is a trust created by an individual, over which the individual may or may not be able to exercise some control, but which may not be cancelled under any circumstances.
- d. Revocable Trust - A revocable trust is a trust created by an individual which the individual has the right to cancel.

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- e. Supplemental Needs Trust (SNT) - A supplemental needs trust, as defined in Section 7-1.12 of the Estates, Powers and Trusts Law, is a trust established for the benefit of an individual of any age with a severe and chronic or persistent impairment, designed to supplement government benefits for which the individual is otherwise eligible. Under the terms of such a trust:
- i. the beneficiary does not have the power to assign, encumber, direct, distribute, or authorize distributions from the trust; and
 - ii. the trust document generally prohibits the trustee from expending funds in any way that would diminish the beneficiary's eligibility for or receipt of any type of government benefit.
- f. Testamentary Trust - A testamentary trust is any trust established by will. Testamentary trusts are third party trusts, as defined below.
- g. Third Party Trusts - A third party trust is a trust established with the funds of someone other than the A/R. A third party trust may or may not be a supplemental needs trust, as defined in Section 7-1.12 of the Estates, Powers and Trusts Law. For purposes of determining the eligibility of an A/R who is a beneficiary of a third party trust, the principal and accumulated income of the trust are not considered available to the A/R. However, any distributions of trust assets actually made to the A/R are counted as income in the month received.

Social services districts are authorized, but not required, to commence court proceedings on behalf of A/Rs who are beneficiaries of third party trusts, seeking to compel the trustee to use trust assets to pay for necessary medical care. However, if the terms of the trust specifically prohibit the trustee from using trust assets for medical care, as will be the case with trusts conforming to Section 7-1.12 of the Estates, Powers and Trusts Law, it is extremely unlikely a court will order the trustee to do so.

8. Uncompensated Value

The uncompensated value is the difference between the FMV at the time of transfer (less any outstanding loans, mortgages, or other encumbrances on the asset) and the amount received for the asset.

If the client's resources are below the appropriate MA resource level, the amount by which the MA resource level exceeds the client's resources must be deducted from the uncompensated value of the transfer. Likewise, amounts

specified in Department regulations for burial funds, but not for burial space items, also must be deducted.

Note: A transfer for "love and consideration" is not considered a compensated transfer. Also, while relatives and family members legitimately can be paid for care they provide to the individual, there is a presumption that services provided for free at the time were intended to be provided without compensation. Thus, a transfer to a relative for care provided for free in the past, normally is not a transfer of assets for FMV. However, an individual can rebut this presumption with tangible evidence. An example of acceptable evidence would be a promissory note executed at the time services were provided.

B. Look-Back Date

In the case of the transfer of assets by an individual in receipt of or applying for nursing facility services, the look-back date is 36 months prior to the first day of the month in which the individual was:

- institutionalized; and
- submitted an application for full Medical Assistance coverage, including coverage of nursing facility services.

For trust-related transfers on or after August 11, 1993, the look-back period is 60 months. Funding a new trust is a trust-related transfer. Trust-related transfers also include transfers to already existing trusts, distributions from existing trusts to someone other than the A/R, and the foreclosure of a trustee's ability to distribute trust assets to the A/R due to a "trigger provision" in the trust agreement. Thus, even though a trust is established prior to August 11, 1993, subsequent trust-related transfers which occur on or after August 11, 1993 may be subject to the new transfer provisions.

EXAMPLE: Mrs. Jones created a revocable trust in 1988. She applies for MA in December 1994. The district determines that \$10,000 was removed from the trust and given to Mrs. Jones' son in October 1993. In such a situation, even though the trust was created more than 60 months ago, the social services district would consider the \$10,000 to be a transfer since the activity occurred after August 10, 1993, but within the 60 months preceding the month of application. In addition, because the trust is revocable, any balance remaining in the trust is considered an available resource.

When an individual has multiple periods of institutionalization, or multiple applications (whether or not they resulted in the provision of assistance), the look-back period begins 36 months (or 60 months in the case of trust-related transfers) prior to the first day of the month in which the individual both: is in receipt of nursing facility services **AND** has submitted an application for full MA coverage.

NOTE: As explained in 18 NYCRR 360-4.5, certain "trigger provisions" are null and void under State law. With respect to these provisions, the triggering event has no effect on the trustee's powers and thus no transfer of assets occurs; instead, the trust assets subject to the trigger provision continue to be considered an available resource.

C. Treatment of Revocable Trusts

In the case of revocable trusts established by the A/R, the entire value of the trust is considered as an available resource.

- (1) All payments made from the trust to or for the benefit of the A/R are considered available income in the month received.
- (2) All payments made from the trust to a person other than the A/R are considered to be assets transferred for less than FMV for purposes of the transfer of assets rule.

D. Treatment of Irrevocable Trusts

In the case of an irrevocable trust established by the A/R, any portion of the trust principal, and income generated by the trust principal, from which no payments may be made to or for the benefit of the A/R is considered to be an asset transferred for less than FMV for purposes of the transfer of assets rule.

- (1) Payments made from the trust to or for the benefit of the A/R shall be considered available income in the month received.
- (2) Any portion of the principal of the trust, or the income generated from the trust, which can be paid to or for the benefit of the A/R, is considered an available resource. If the language of the trust specifies that money can be made available for a specific event, that amount shall be considered an available resource, whether or not that event has occurred.
- (3) Payments which are made from trust assets considered available to the A/R, as described in paragraph (2) above, and which are not made to or for the benefit of the A/R, are considered to be assets transferred for less than FMV for purposes of the transfer of assets rule.

Note: In the case of trusts, the date on which the penalty begins is the first day of the month following the month in which the trust was funded (or a revocable trust made irrevocable), or assets were transferred for less than FMV.

E. Treatment of Exception Trusts and Third Party Trusts

In the case of exception trusts and third party trusts, the principal and accumulated income are disregarded in determining MA

eligibility. However, any trust assets actually distributed to the A/R are counted as income in the month received and as a resource if retained into subsequent months. In addition, as indicated in Section IV.A.7.g of this ADM, the social services district can go to court to compel the trustee of a third party trust to make trust assets available to a trust beneficiary, where the trustee is required or granted the discretion to make such distributions under the terms of the trust agreement.

With respect to a disabled person under age 65, a lump sum payment, such as a personal injury award or settlement, or an inheritance, will be disregarded as income or resources from the date the person has the right to take possession of the assets until the first day of the second month following that date, if the person intends to place such assets in an exception trust. In addition, assets of a disabled person under age 65 will be disregarded from the date of commencement of a court proceeding necessary to allow the assets to be placed in an exception trust until the resolution of such proceeding, assuming the disabled person or his or her representative promptly pursues the resolution of the proceeding.

In the case of a trust created from the proceeds of retroactive payments received as a result of a court settlement due the beneficiary under the SSI program, the Department shall first be entitled to reimbursement of any interim assistance paid out pending the court decision, and the representative payee shall be entitled to reimbursement of any expenses incurred in the pursuit of the settlement.

F. Oversight Responsibilities

Districts are responsible for notifying trustees of exception trusts of the information they need to maintain in order to monitor the trust activity, including but not limited to:

- providing notification to the district of the death of the beneficiary of a trust;
- providing notification to the district of any transactions made that would substantially deplete the value of the corpus (principal) of the trust;
- providing documentation to the district that there have been no transfers of assets from the trust nor any transactions from the corpus of the trust that involve transfers for less than fair market value;
- providing proof of bonding in all situations involving trusts of more than one million dollars, or when required by the court (pooled trusts subject to oversight by the Attorney General's Office do not require bonding);
- information ensuring, with respect to pooled trusts, that all trust activity is posted to the appropriate account.

Suggested procedures for meeting these responsibilities are included in Attachment II of this ADM.

In the event that a district considers any acts, omissions, or failures of the trustee to be contrary to the terms of the trust, applicable laws and regulations, or the trustee's fiduciary obligations, it can refer the matter to the Attorney General to commence a proceeding against the trustee under Section 63 of the Executive Law. It may do so by contacting:

NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL AFFAIRS
BUREAU OF HEALTH AND LONG TERM CARE LAW
40 NORTH PEARL STREET
ALBANY, NEW YORK 12243-0001
Attn: Trust Review

G. Penalty Period

The penalty period is the period of time that an individual is ineligible for MA coverage of nursing facility services as a result of an uncompensated transfer of a non-exempt asset or homestead. As a result of the enactment of OBRA '93 and Chapter 170 of the Laws of 1994, there is no longer a maximum penalty period.

1. Calculation

The length of the penalty period is calculated by dividing the uncompensated value of all assets transferred during or after the look-back period (except as provided in Section IV.G.5. concerning multiple transfers) by the MA regional rate established for the region in which the person is institutionalized. The regional rates are revised by this Department annually in an Administrative Directive. In addition, social services districts must reduce the uncompensated value as necessary to take into account the appropriate MA resource level, any allowable burial funds, and any allowable income deductions or disregards as defined in Section IV.H.1. or 2. of this ADM.

NOTE: Except as provided in Section IV.G.2. concerning multiple transfers, the penalty period begins on the first day of the month following the month of transfer, provided that the date does not occur during an existing penalty period.

2. Multiple Transfers

For **multiple transfers** during the look-back period, where assets have been transferred in amounts and/or frequency that would make the calculated penalty periods overlap, add together the uncompensated value of all assets transferred, and divide by the MA regional rate. The period of ineligibility begins with the first day of the month following the month in which the first transfer occurred.

Example: An individual transfers \$20,000 in January 1994, \$20,000 in February, and \$20,000 in March, all of which are uncompensated. Calculated individually, based on a regional rate for nursing facility care of \$5,000 a month, the penalty period for the first transfer is from February through April (February is the first month following the month of transfer), the second transfer is from March through June, and the third is from April through July. Because these periods overlap, calculate the penalty period by adding the transfers together (a total of \$60,000) and dividing by the nursing home cost (\$5,000). The penalty period would run from February 1994 through January 1995.

When a penalty period ends at any time during a month and a subsequent transfer occurs at any time during that same month, the subsequent transfer is considered to have occurred in an overlapping penalty period and would be treated as a multiple transfer.

When multiple transfers are made in such a way that the penalty periods for each do not overlap, treat each transfer as a separate event with its own penalty period.

Example: An individual transfers \$10,000 in January, \$10,000 in May, and \$10,000 in October. Assuming that the regional rate for nursing facility care is \$5,000 a month, the penalty periods for transfers are, respectively, February through March, June through July, and November through December.

3. Partial Month

If the uncompensated value of the transferred assets is less than the regional rate, or the penalty period results in a partial month penalty, districts must count the uncompensated value attributable to the partial month as part of the Net Available Monthly Income (NAMI) or, in the case of a person receiving waived services in the community, spenddown liability for the month.

4. Apportioning Penalty Periods Between Spouses

If either spouse transfers an asset (before eligibility is established) that results in a penalty for the institutionalized individual, the penalty must be apportioned equally between the spouses if the community spouse subsequently becomes in receipt of nursing facility services and applies for MA. If one spouse is no longer subject to a penalty (e.g., the spouse dies), the remaining penalty period for both spouses must be applied to the remaining spouse.

Example: Mr. Smith enters a nursing home and applies for MA, while Mrs. Smith remains in the community and is not in receipt of MA. Mrs. Smith transfers assets before Mr. Smith is determined eligible for MA and a 10-month penalty period is imposed on Mr. Smith's care. Four months into the penalty

period Mrs. Smith enters a nursing home and applies for MA. The remaining 6 months of the penalty period must be divided equally between the two spouses.

In the above example, if Mr. Smith leaves the nursing home, but his wife remains, the remaining penalty period that had been apportioned to Mr. Smith must be imposed on Mrs. Smith. If Mr. Smith returns to the nursing home, any remaining penalty is again apportioned between the two spouses.

5. Continuity of Penalty

A penalty period imposed for a transfer of assets runs continuously from the first date of the penalty period regardless of whether the A/R continues to receive nursing facility services (except as noted above when a penalty is apportioned between spouses). Thus, if an A/R leaves a nursing facility, the penalty period nevertheless continues until the end of the calculated period.

If during the interview or clearance process it becomes known that the individual had previously applied for MA in another district, contact the former district to determine if it had any knowledge of a possible transfer or to determine whether the A/R is currently in a penalty period.

After the submission of a written application, but before the applicant is notified by the social services district of his/her eligibility determination, the applicant may withdraw his/her request for Medical Assistance. Once the applicant is notified in writing of the MA eligibility determination, the application may not be withdrawn, and any penalty period imposed will remain in effect, even if the applicant subsequently re-applies for MA.

H. Treatment of Income as an Asset

The transfer rules apply to transfers of income. Absent some reason to believe otherwise, districts should assume that ordinary household income of an A/R and his or her spouse during the look-back period was legitimately spent on the normal costs of daily living. However, districts should determine whether the A/R or the A/R's spouse transferred a lump sum income payment or a stream of income during the look-back period.

1. Lump Sum Income Payments

If a countable lump sum income payment is transferred in the month received, a penalty period must be imposed (if no exceptions apply). To calculate the uncompensated value of the transfer, the income deductions and disregards of the Supplemental Security Income (SSI) program must be applied. If the lump sum payment is transferred in the month after receipt, it is treated as a resource and the appropriate resource disregards (not income disregards) would be allowed.

2. Stream of Income

If a stream of income (i.e., income received on a regular basis, such as a pension) or the right to a stream of income is transferred, districts must treat it as a transfer of a resource. The amount transferred is the total amount of income expected to be received during the transferor's lifetime, based on an actuarial projection of the transferor's life expectancy. Districts must reduce the uncompensated value of the transfer as necessary to take into account the appropriate MA resource level and any allowable burial funds.

- I. Jointly Held Assets. The general rule is that joint property held by an A/R is considered available to the A/R to the extent of his or her interest in the property. In the absence of documentation to the contrary, it is presumed that all joint owners possess equal shares. However, there are special rules for SSI-related A/Rs concerning the availability of financial institution accounts, which are described in paragraph 1 below. In addition, with respect to an A/R who converts his or her assets into joint assets, OBRA '93 and Chapter 170 of the Laws of 1994 indicate when such a conversion constitutes a transfer of assets, as explained in paragraph 2 below.

1. Financial Institution Account Owned by an SSI-Related A/R

In accordance with SSI regulations issued on May 31, 1994, ownership of financial institution accounts (including savings, checking, and time deposits or certificates of deposit) involving an SSI-related A/R must be determined as outlined below. There is no change in MA policy to determine ownership of other types of resources.

a. SSI-Related A/R is the Sole Owner

As long as an SSI-related A/R is designated as the sole owner by the account title, and can withdraw funds and use them for his or her support and maintenance, the A/R is presumed to own all of the funds in the account, regardless of their source. This presumption cannot be rebutted.

b. SSI-Related A/R is a Joint Owner

In the absence of evidence to the contrary, if an SSI-related A/R is a joint account holder, it is presumed that all of the funds in the account belong to the A/R. If there is more than one SSI-related A/R who is a holder of the joint account, it is presumed that the funds in the account belong to the A/Rs in equal shares. To rebut this presumption, the SSI-related A/R must:

- i. submit a written statement, along with corroborating written statements from the other account holders,

regarding who owns the funds, why there is a joint account, who has made deposits and withdrawals, and how withdrawals have been spent;

- ii. submit account records for the months for which ownership of funds is at issue; and
- iii. separate the funds owned by the SSI-related A/R from the funds of the other account holders.

2. Conversion of Individual's Assets to Jointly Held Assets

When an asset belonging to an individual is jointly held in common with another person or person in a joint tenancy, tenancy in common, or similar arrangement, the asset is considered to be transferred by the individual when any action is taken, either by the individual or any other person, that reduces or eliminates the individual's ownership or control of the asset. Merely placing another person's name on an account or asset as a joint owner does not necessarily constitute a transfer of assets. The individual may still possess ownership rights to the account or asset and have the right to withdraw all of the funds in the account at any time. However, actual withdrawal of funds from the account, or removal of the asset, by the other person would remove the funds or property from the control of the individual and so would constitute 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 would constitute a transfer of assets.

J. Life Estates

1. Definitions

a. Life Estate

A life estate is a limited interest in real property. A life estate holder does not have full title to the property, but has the use of the property for his or her lifetime, or for a specified period. Generally, life estates are in the form of a life lease on property that the person is using, or has used, for a homestead.

b. Value of a Life Estate

Social services districts must use a reasonable method of calculating the value of a life estate, based on the current fair market value of the property and the age of the person. A life estate and remainder interest table

published by the federal Health Care Financing Administration in its State Medicaid Manual is attached for districts' information (Attachment V). This table sets forth percentages of fair market value corresponding to the values of the life estate and the remainder interest, based on the age of the person possessing the life estate. Districts may, but are not required, to use this table in calculating the value of life estates and remainder interests.

c. Value of the Remainder Interest

The value of the remainder interest is the current market value of the property less the value of the life estate.

d. Remainderperson

A remainderperson is an individual who has the right to possession or ownership of the property after the life estate holder dies or surrenders the life estate.

2. Transfers

Transferring property while retaining a life estate within the look-back period is a partially uncompensated transfer. The uncompensated value of the transfer is the value of the remainder interest at the time the life estate is created. If the remainderperson of a life estate is an individual to whom the property could be transferred without penalty, the establishment of the life estate is not a prohibited transfer.

If the holder of a life estate transfers the life estate during the look-back period, it must be determined if FMV was received for the life use. If FMV was not received, a transfer penalty must be imposed.

When an individual both transfers property (retaining a life estate) and transfers the life estate interest within the look-back period, the uncompensated value of the transfers are the value of the remainder interest at the time the life estate is created plus the value of the life estate at the time it is transferred.

Examples (using table in Attachment V)

a. Transfer of a home:

\$92,000 value of the home at the time the life estate was created

x.62086 age 69

\$57,119.12 value of the life estate

\$92,000.00

-\$57,119.12

\$34,880.88 (remainder interest) uncompensated value of transfer of the home

b. **Transfer of a life estate (same situation as above, but two years later):**

\$94,000 value of the home at the time the life estate was transferred

x.58914 age 71

\$55,379.16 value of the life estate at the time the life estate was transferred

3. Availability

For the purpose of determining an A/R's net available resources, a life estate will not be considered a countable resource, and no lien may be placed on the life estate. Social services districts cannot require an A/R possessing a life estate to try to liquidate the life estate interest or to rent the life estate property.

If an A/R possessing a life estate sells the life estate interest, the proceeds of this liquidation is a countable resource for purposes of the A/R's MA eligibility. If the A/R sells the life estate interest for less than fair market value, the uncompensated value of the life estate interest is the amount transferred for purposes of the MA transfer-of-assets rule.

If an A/R possessing a life estate rents the life estate property, any net rental income received is counted in determining eligibility. If under the terms of the life estate, the life estate holder must pay taxes and maintenance, these costs can be deducted from the rental income. On the other hand, if the life estate holder does not have to pay any taxes or maintenance, a gross rental figure must be used.

The provisions of this ADM supersede any previous instructions or policies issued by this Department with respect to the MA treatment of life estates.

K. New York State Partnership for Long Term Care

Under the New York State Partnership for Long Term Care, resources are exempt. Therefore, a transfer of resources by those individuals who have purchased policies under this program (and have received three years of nursing home coverage, or six years of home care services, or a combination of nursing home care and home care services where one nursing home day equals 2 home care days) will have no effect on their eligibility for nursing facility services. Since income is not exempt, a transfer of income must be treated as specified in this directive. However, when an exempt resource that generates income is transferred, no transfer penalty is imposed.

L. Exceptions

Exceptions to the application of transfer of asset penalties are:

1. The asset transferred is the individual's home, and title to the home is transferred to;

- the spouse of the individual;
- a child of the individual who is under age 21;
- a child of the individual who is certified blind or certified disabled, regardless of age;
- the sibling of the individual who has an equity interest in the home, and who has been residing in the home and using it as their primary lawful residence for a period of at least one year immediately before the date the individual becomes institutionalized (see 89 ADM-45 page 16, for a definition of equity interest); or
- a son or daughter of the individual (other than a child as described above) who was residing in the homestead, using it as their primary lawful residence for a period of at least two years immediately before the date the individual becomes institutionalized, and who provided care to the individual which permitted the individual to reside at home, rather than in an institution or facility.

2 An asset other than the individual's home was transferred:

- to the individual's spouse, or to another for the sole benefit of the individual's spouse;
- from the individual's spouse to another for the sole benefit of the individual's spouse;
- to the individual's child who is certified blind or certified disabled; or
- to a trust established solely for the benefit of an individual under 65 years of age who is disabled.

3. The individual or spouse intended to dispose of the assets either at FMV or for other valuable consideration.

In determining whether an individual or the individual's spouse intended to dispose of an asset for FMV, or for other valuable consideration, the individual must establish the circumstances which caused the asset to be transferred for less than FMV. An example would be the sale of a home when the realtor appraised the property and the home was subsequently sold based on that appraisal, which was less than FMV. Generally, the individual would be required to provide written evidence of attempts to dispose of the asset for FMV, as well as evidence to support the value at which the asset was disposed.

4. The assets were transferred exclusively for a purpose other than to qualify for MA.

The individual must establish that the asset was transferred for a purpose other than to qualify for MA coverage for nursing facility services. Factual circumstances supporting a contention that assets were transferred for a purpose other than to qualify for MA include, but are not limited to: the unexpected onset of a serious medical condition subsequent to the transfer; the unexpected loss, subsequent to the transfer, of income or resources which would have been sufficient to pay for nursing facility services; or the existence of a court order specifically requiring the transfer of a certain amount of assets.

At the time of the personal interview, the A/R must be given the opportunity to establish that the transfer was made for a purpose other than to qualify for MA coverage for nursing facility services. Social services districts must not take any adverse action on an MA-only A/R who has transferred assets without first advising the client in writing of his/her right to make such a showing. Attachment III must be used to meet this requirement.

5. All or part of the assets transferred for less than FMV have been returned to the individual.

If all transferred assets are returned to the individual prior to the MA eligibility determination, no transfer penalty is imposed. If a portion of the transferred assets is returned prior to the MA eligibility determination, the uncompensated value of the transfer is reduced by the amount of assets returned.

If all transferred assets are returned after the MA eligibility determination, the existing penalty period is rescinded and the individual's eligibility for MA during such period must be redetermined as though the assets were never transferred. If a portion of the transferred assets is returned after the MA eligibility determination, the existing penalty period is recalculated, reducing the uncompensated value of the transfer(s) by the amount of assets returned; if the recalculated penalty period has already elapsed, the individual's eligibility for MA subsequent to the penalty period must be redetermined as though the returned assets were never transferred.

For purposes of these rules, transferred assets shall be considered to be returned if the person to whom they were transferred: uses them to pay for nursing facility services for the MA applicant/recipient; or provides the MA applicant/recipient with an equivalent amount of cash or

other liquid assets.

6. Imposition of a penalty would work an undue hardship.

Undue hardship exists when:

- the individual applying for nursing facility services is otherwise eligible for MA; **and**
- despite his/her best efforts, as determined by the social services district, the individual or the individual's spouse is unable to have the transferred asset(s) returned or to receive FMV for the asset or to void the trust; **and**
- the institutionalized individual is unable to obtain appropriate medical care such that the individual's health or life would be endangered without the provision of MA for nursing facility services or for home or community-based services furnished under a waiver granted under section 1915(c) or (d) of the Social Security Act.

Undue hardship cannot be claimed:

- if the client failed to fully cooperate, to the best of his/her ability, as determined by the social services district, in having all of the transferred assets returned or the trust declared void. Cooperation may include, but is not limited to, assisting in providing all legal records pertaining to the transfer or creation of the trust, assisting the district, wherever possible, in providing information regarding the transfer amount, to whom it was transferred, any documents to support the transfer or any other information related to the circumstances of the transfer; or
- if after payment of medical expenses, the individual's or couple's income and/or resources is at or above the allowable MA exemption standard for a household of the same size; or
- if the only undue hardship that would result is the individual's or the individual's spouse's inability to maintain a pre-existing life style.

M. Community Coverage

Social Services districts may elect to offer community coverage only, in cases where an individual does not anticipate the need for nursing facility services. If the district elects to provide community coverage, they must provide it as an **option** to the client. If the client requests full coverage, the district must complete the resource investigation. If the client requests community coverage only, the district may make their determination

based on the applicant's current resources only (see 95 ADM-17).

V. NOTICE REQUIREMENTS

Local districts must make Attachment III, "EXPLANATION OF THE EFFECT OF TRANSFER OF ASSETS ON MEDICAL ASSISTANCE ELIGIBILITY", available to all individuals who wish to establish that the transfer was made for a purpose other than to qualify for nursing facility services. In addition, this form must be given to all MA-only applicants at the time of (re)application. A copy of Attachment III must also be sent when an A/R's (re)application is denied/discontinued due to a prohibited transfer. The form must be enclosed with the appropriate mandated client notice. This notice must be reproduced by the social services district until such time as it becomes available from this Department. If a local district elects to provide community coverage, they must use the appropriate notice contained in 95 ADM-17, Community Coverage Option, along with Attachment III.

VI. SYSTEM IMPLICATIONS

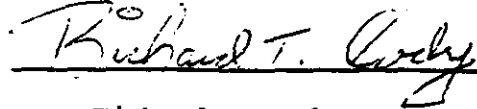
Upstate: Currently, coverage code 10 (All Services Except Long-Term Care) is used in conjunction with an Anticipated Future Action (AFA) code of 505 (End of Property Transfer Prohibition) with a specific end date to indicate an individual for whom a penalty period has been established. Until a separate coverage code is established for persons electing community coverage, for all cases determined eligible for the community benefit package, enter coverage code 10, and do not make a corresponding entry into the AFA field. For those recipients who are currently in a penalty period, or receive one in the future, continue to use an AFA code 505. The presence of coverage code 10 in combination with the AFA code 505 will allow social services districts to track those recipients who are in a penalty period.

New York City: Currently, coverage code 10 (All Services Except Long-Term Care) is used to indicate an individual for whom a penalty period has been established. Until a separate coverage code is established for persons electing community coverage, for all cases determined eligible for the community coverage package, enter coverage code 10 for those persons, as well.

VII. EFFECTIVE DATE

For applications and recertifications for MA submitted on or after September 1, 1994, determine if any trust was created or a transfer occurred at any time after August 10, 1993. If so, then the provisions of this ADM must be utilized. However, the 36 month look-back period does not become fully effective until August 11, 1996 for non-trust-related transfers and August 11, 1998 for trust-related transfers, since prior to that date a full 36 month or 60 month look-back period could include a period of time prior to August 11, 1993. Any trusts created or transfers occurring prior

to August 11, 1993, are to be treated in accordance with Department Regulation 360-4.4(c). However, in the case of trusts created before August 11, 1993, districts will look at any trust activity that occurred after that date.

A handwritten signature in cursive script that reads "Richard T. Cody". The signature is written in dark ink and is positioned above a horizontal line.

Richard T. Cody
Division of Health & Long Term Care

SAMPLE STATEMENT

SOLE BENEFIT

I, _____, transferred the following assets:

to _____, on _____.
(transferee) (date)

At the time of this transfer, it was my intent, and it was the agreement of myself and the transferee, that the transferred assets henceforth would be used for the sole benefit of _____.
(beneficiary)

Specifically, it was and is my intent that the assets be expended for the following purposes: _____

I acknowledge that I have a responsibility to provide to the social services agency evidence of a continuous course of conduct by the transferee, consistent with this intent, since the time of the transfer.

I further acknowledge that, pursuant to regulations of the New York State Department of Social Services, any action by myself or the transferee which has the effect of reducing or eliminating the above-named beneficiary's beneficial use of the transferred property, or has the effect of reducing or eliminating the transferee's ownership or control of the transferred property, will be considered a transfer of assets (on the date such action is taken) which may affect my or my spouse's eligibility for Medical Assistance.

Signed: _____

Sworn to before me this

_____ day of _____, 19____

SUGGESTED PROCEDURES FOR MONITORING EXCEPTION TRUSTS

- 1) The district should establish a file of all exception trusts identified within the district. This file can be created and maintained manually, or within a PC based system.
- 2) The file should contain, at a minimum, the name of the client, CIN and case number, name of the trustee, amount of the trust, and the expected annual payments to be made according to the terms of the trust. It should also include an area to record additions to and disbursements from the fund on an annual basis.
- 3) At the time that the agency is made aware of the existence of an exception trust, (generally at application or recertification) they should add the trust to the file and should request the trustee to provide copies of any accountings that he is required to produce.
- 4) Upon receipt of this information, the district should update their file, and should evaluate the activity to ensure that no monies have been inappropriately transferred.
- 5) Upon notification of the death of the client, the district should forward any information on exception trusts to their recovery unit for estate recovery evaluation.

**EXPLANATION OF THE EFFECT OF TRANSFER OF ASSETS
ON MEDICAL ASSISTANCE ELIGIBILITY**

This explains how a transfer of assets may affect your eligibility for Medical Assistance. Assets include all of your and your spouse's income and resources, including any income or resource which you or your spouse are entitled to receive but do not receive because of any action or inaction by you or your spouse. A transfer is when property or assets are given or sold from one person to another. For Medical Assistance purposes, a prohibited transfer is the voluntary giving or sale of your property or assets to another person without receiving something of equal value in return, in order to qualify for:

- nursing facility services provided in hospitals, residential health care facilities or intermediate care facilities for the developmentally disabled;
- care, services, or supplies furnished pursuant to a waiver under section 1915(c) or (d) of the Social Security Act, including: the Long Term Care Program, the OMRDD Home and Community Based Waiver, the Traumatic Brain Injury Waiver or the Care At Home Program.

The information contained in this document is applicable to all transfers made after August 10, 1993. For information on transfers made prior to that date, ask your Medical Assistance Eligibility Examiner.

The Medical Assistance Program will not pay for any of the services listed below if a prohibited transfer of countable assets (the total value of property, resources and income that are in excess of the allowable Medical Assistance resource standard) for less than fair market value is made within the 36 months before your application for Medical Assistance, or at any time after you apply for Medical Assistance to pay for the services listed in the "limited coverage" section below. In the case of trusts, we will look back for a period of 60 months. (In most cases, once you are found to be eligible for these services, a transfer by your spouse does not affect your Medical Assistance coverage.) If we decide that a prohibited transfer has been made within this time period, and you meet all other eligibility requirements, your Medical Assistance coverage will be limited for a period of time.

What does limited coverage mean?

Limited coverage means that for a period of time you will not be able to receive Medical Assistance coverage for the following types of care and services:

- nursing facility services provided in hospitals, residential health care facilities or intermediate care facilities for the developmentally disabled;

- care, services, or supplies furnished pursuant to a waiver under section 1915(c) or (d) of the Social Security Act, including: the Long Term Care Program, the OMRDD Home and Community Based Waiver, the Traumatic Brain Injury Waiver or the Care At Home Program. Examples of some of these services are:

Congregate/home delivered meals
Home maintenance tasks
Housing improvement
Social transportation
Respite care
Social day care
Personal emergency response system services
Moving assistance
Medical social services
Respiratory therapy
Nutritional counseling/education services

How is the limited coverage period determined?

When you or your spouse make a transfer of assets for less than they are worth, you cannot get Medical Assistance for the services listed above for a period of time, depending upon the amount of transferred assets. We determine the number of months you are ineligible for these services by dividing the uncompensated value of the assets transferred by the average monthly rate for nursing facility services in the region where you live. The penalty period would begin the month following the month in which you made the transfer. Information on average monthly rates is available upon request from your social services district.

How do we determine the uncompensated value of the transferred assets?

We estimate the fair market value of the asset at the time it was transferred. We deduct any outstanding loans, mortgages or other encumbrances on the asset and the amount of compensation received in exchange for the asset. In addition, certain resource or income disregards may be deducted, if applicable.

What transfers do not affect your eligibility for Medical Assistance?

There are exceptions to the transfer rules. Your Medical Assistance coverage is not limited when a transfer has been made if:

1. the asset(s) was transferred to (or for the sole benefit of) your spouse, or from your spouse to you; or
2. the asset(s) was transferred from your spouse to another person for the sole benefit of your spouse; or
3. the asset(s) was transferred to your child of any age who is certified blind, or certified disabled, or to a trust established solely for the benefit of that child; or

4. the asset(s) was transferred to a trust established solely for the benefit of an individual under 65 years of age who is certified disabled.
5. the asset(s) transferred was your homestead (for example: a house or an apartment that you own), and the homestead was transferred to:
 - your spouse;
 - your minor child under age 21, or your child of any age who is certified blind or certified permanently and totally disabled;
 - your brother or sister who also has an equity interest in the home and who lived in the home for at least one year immediately before you entered a nursing facility;
 - your child (other than a child who is under 21 or who is certified blind/disabled) who was living in your home for at least two years immediately before you entered a nursing facility and who provided care which permitted you to reside at home rather than in a nursing facility.

NOTE: Although the Department does not treat a life estate possessed by you as a countable resource for purposes of determining your Medical Assistance eligibility, a life estate has value and you may be subject to a transfer penalty if you transfer your life estate interest to another person.

What other transfers do not affect your eligibility for Medical Assistance?

If you or your spouse transferred assets for less than fair market value you can still get full Medical Assistance coverage if you can prove that:

1. you or your spouse intended to sell the asset(s) at fair market value or to receive other valuable consideration in exchange for the asset(s); or
2. the asset(s) was transferred **exclusively** for a purpose other than to qualify for nursing care and related services as described above; or
3. all of the transferred assets have been returned.

In the absence of the evidence described in 1. or 2. above, we will not limit your Medical Assistance coverage if we determine that despite your best efforts, as determined by the social services district, you are unable to have the transferred asset(s) returned or to receive fair market value for the asset.

We will not limit your Medical Assistance coverage if we determine that such limitation will result in **undue hardship** for you. We will consider undue hardship to exist if you: (a) meet all other eligibility requirements, and (b) are unable to obtain appropriate medical care without which your health or life would be in danger or if application of the transfer penalty would deprive you or your spouse of food, clothing, shelter or other necessities of life.

How can you prove the transfer was not made to qualify for these medical services?

We will presume that any prohibited transfer of assets made within 36 months (60 months for trusts), that occurred immediately before or when you became in need of nursing care and related services was made for the purpose of qualifying for Medical Assistance. If you disagree with this presumption, you should present evidence to your Medical Assistance eligibility examiner which proves that the transfer was made for some other purpose. Some factors which may establish that a transfer was made for a purpose other than to obtain Medical Assistance eligibility are:

1. sudden, unexpected onset of serious illness or disability **after** the transfer occurred;
2. unexpected loss of other resources or income which would have made you ineligible for Medical Assistance, **after** the transfer occurred;

These are examples only. All of the circumstances of the transfer will be considered as well as factors such as your age, health and financial situation at the time the transfer was made. It is important to note that you have the burden of providing this agency with complete information regarding all assets and any other relevant factors which may affect your eligibility.

What appeal rights do you have?

You will receive a written notice if we determine that your Medical Assistance coverage is to be limited based on a transfer of assets for less than fair market value. If you are in a nursing facility or require the services listed under the "limited coverage" section at the time we make our decision, the notice will tell you how long you will have limited coverage. This period will be based on the amount of assets you or your spouse has transferred for less than fair market value and the average rate for nursing facility services in the region in which you reside.

You have the right to appeal our decision to limit your coverage. Our written notice will provide you with information on how to request a conference with us to review our actions. Our notice will also provide you with information on your right to a State Fair Hearing if you believe our action is wrong.

**IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT YOUR
MEDICAL ASSISTANCE ELIGIBILITY EXAMINER.**

LIFE EXPECTANCY TABLE
FOR FEMALES

<u>AGE</u>	<u>LIFE EXPECTANCY</u>	<u>AGE</u>	<u>LIFE EXPECTANCY</u>	<u>AGE</u>	<u>LIFE EXPECTANCY</u>
0	78.79	40	40.61	80	9.11
1	78.42	41	39.66	81	8.58
2	77.48	42	38.72	82	8.06
3	76.51	43	37.78	83	7.56
4	75.54	44	36.85	84	7.08
5	74.56	45	35.92	85	6.63
6	73.57	46	35.00	86	6.20
7	72.59	47	34.08	87	5.79
8	71.60	48	33.17	88	5.41
9	70.61	49	32.27	89	5.05
10	69.62	50	31.37	90	4.71
11	68.63	51	30.48	91	4.40
12	67.64	52	29.60	92	4.11
13	66.65	53	28.72	93	3.84
14	65.67	54	27.86	94	3.59
15	64.68	55	27.00	95	3.36
16	63.71	56	26.15	96	3.16
17	62.74	57	25.31	97	2.97
18	61.77	58	24.48	98	2.80
19	60.80	59	23.67	99	2.64
20	59.83	60	22.86	100	2.48
21	58.86	61	22.06	101	2.34
22	57.89	62	21.27	102	2.20
23	56.92	63	20.49	103	2.06
24	55.95	64	19.72	104	1.93
25	54.98	65	18.96	105	1.81
26	54.02	66	18.21	106	1.69
27	53.05	67	17.48	107	1.58
28	52.08	68	16.76	108	1.48
29	51.12	69	16.04	109	1.38
30	50.15	70	15.35	110	1.28
31	49.19	71	14.66	111	1.19
32	48.23	72	13.99	112	1.10
33	47.27	73	13.33	113	1.02
34	46.31	74	12.68	114	0.96
35	45.35	75	12.05	115	0.89
36	44.40	76	11.43	116	0.83
37	43.45	77	10.83	117	0.77
38	42.50	78	10.24	118	0.71
39	41.55	79	9.67	119	0.66

**LIFE EXPECTANCY TABLE
FOR MALES**

<u>AGE</u>	<u>LIFE EXPECTANCY</u>	<u>AGE</u>	<u>LIFE EXPECTANCY</u>	<u>AGE</u>	<u>LIFE EXPECTANCY</u>
0	71.80	40	35.05	80	6.98
1	71.53	41	34.15	81	6.59
2	70.58	42	33.26	82	6.21
3	69.62	43	32.37	83	5.85
4	68.65	44	31.49	84	5.51
5	67.67	45	30.61	85	5.19
6	66.69	46	29.74	86	4.89
7	65.71	47	28.88	87	4.61
8	64.73	48	28.02	88	4.34
9	63.74	49	27.17	89	4.09
10	62.75	50	26.32	90	3.86
11	61.76	51	25.48	91	3.64
12	60.78	52	24.65	92	3.43
13	59.79	53	23.82	93	3.24
14	58.82	54	23.01	94	3.06
15	57.85	55	22.21	95	2.90
16	56.91	56	21.43	96	2.74
17	55.97	57	20.66	97	2.60
18	55.05	58	19.90	98	2.47
19	54.13	59	19.15	99	2.34
20	53.21	60	18.42	100	2.22
21	52.21	61	17.70	101	2.11
22	51.38	62	16.99	102	1.99
23	50.46	63	16.30	103	1.89
24	49.55	64	15.62	104	1.78
25	48.63	65	14.96	105	1.68
26	47.72	66	14.32	106	1.59
27	46.80	67	13.70	107	1.50
28	45.88	68	13.09	108	1.41
29	44.97	69	12.50	109	1.33
30	44.06	70	11.92	110	1.25
31	43.15	71	11.35	111	1.17
32	42.24	72	10.80	112	1.10
33	41.33	73	10.27	113	1.02
34	40.23	74	9.27	114	0.96
35	39.52	75	9.24	115	0.89
36	38.62	76	8.76	116	0.83
37	37.73	77	8.29	117	0.77
38	36.83	78	7.83	118	0.71
39	35.94	79	7.40	119	0.66

LIFE ESTATE AND REMAINDER INTEREST TABLE

<u>AGE</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>	<u>AGE</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>
0	.97188	.02812	35	.93868	.06132
1	.98988	.01012	36	.93460	.06540
2	.99017	.00983	37	.93026	.06974
3	.99088	.00992	38	.92567	.07433
4	.98981	.01019	39	.92083	.07917
5	.98938	.01062	40	.91571	.08429
6	.98884	.01116	41	.91030	.08970
7	.98822	.01178	42	.90457	.09543
8	.98748	.01252	43	.89855	.10145
9	.98663	.01337	44	.89221	.10779
10	.98565	.01435	45	.88558	.11442
11	.98453	.01547	46	.87863	.12137
12	.98329	.01671	47	.87137	.12863
13	.98198	.01802	48	.86374	.13626
14	.98066	.01934	49	.85578	.14422
15	.97937	.02063	50	.84743	.15257
16	.97815	.02185	51	.83674	.16126
17	.97700	.02300	52	.82969	.17031
18	.97590	.02410	53	.82028	.17972
19	.97480	.02520	54	.81054	.18946
20	.97365	.02635	55	.80046	.19954
21	.97245	.02755	56	.79006	.20994
22	.97120	.02880	57	.77931	.22069
23	.96986	.03014	58	.76822	.23178
24	.96841	.03159	59	.75675	.24325
25	.96678	.03322	60	.74491	.25509
26	.96495	.03505	61	.73267	.26733
27	.96290	.03710	62	.72002	.27998
28	.96062	.03938	63	.70696	.29304
29	.95813	.04187	64	.69352	.30648
30	.95543	.04457	65	.67970	.32030
31	.95254	.04746	66	.66551	.33449
32	.94942	.05058	67	.65098	.34902
33	.94608	.05392	68	.63610	.36390
34	.94250	.05750	69	.62086	.37914

LIFE ESTATE AND REMAINDER INTEREST TABLE (cont.)

<u>AGE</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>	<u>AGE</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>
70	.60522	.39478	90	.28221	.71779
71	.58914	.41086	91	.26955	.73045
72	.57261	.42739	92	.25771	.74229
73	.55571	.44429	93	.24692	.75308
74	.53862	.46138	94	.23728	.76272
75	.52149	.47851	95	.22887	.77113
76	.50441	.49559	96	.22181	.77819
77	.48742	.51258	97	.21550	.78450
78	.47049	.52951	98	.21000	.79000
79	.45357	.54643	99	.20486	.79514
80	.43659	.56341	100	.19975	.80025
81	.41967	.58033	101	.19532	.80468
82	.40295	.59705	102	.19054	.80946
83	.38642	.61358	103	.18437	.81563
84	.36998	.63002	104	.17856	.82144
85	.35359	.64641	105	.16962	.83038
86	.33764	.66236	106	.15488	.84512
87	.32262	.67738	107	.13409	.86591
88	.30859	.69141	108	.10068	.89932
89	.29526	.70474	109	.04545	.95455