

## EXPLANATION OF THE EFFECT OF TRANSFER OF ASSET(S) 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 resources 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:

- Services provided in skilled nursing facilities, including hospice and managed long-term care, health-related facilities, or intermediate care facilities;
- Nursing facility services provided in a hospital; or
- 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 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, income, and resources 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 coverage of nursing facility services, or at any time after you apply for Medical Assistance to pay for the nursing facility services listed in the "limited coverage" section below. In the case of trusts, we will look back for a period of 60 months.

For transfers made on or after February 8, 2006, if the transfer is made within the 60 months before your application for Medical Assistance coverage of nursing facility services, or at any time after you apply for Medical Assistance to pay for nursing facility services, and you meet all other eligibility requirements, your Medical Assistance coverage may 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:

- Services provided in skilled nursing facilities, including hospice and managed long-term care, health-related facilities, or intermediate care facilities;
- Nursing facility services provided in a hospital; or
- 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 these services are:
 

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

### 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. **For transfers made prior to February 8, 2006**, the penalty period would begin on the first day of the month following the month in which the transfer was made. **For transfers made on or after February 8, 2006**, the penalty period would begin on the first day of the month following the month in which assets have been transferred, or the month in which you are institutionalized and would otherwise be eligible for Medicaid payment of institutional level care, whichever is later, and which does not occur during any other period of ineligibility.

### How do we determine the uncompensated value of the transferred asset(s)?

We take the fair market value of the asset at the time it was transferred. We deduct any outstanding loans, mortgages or other legal 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 to another 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

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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 less than 65 years of age who is certified disabled; or
5. The asset(s) transferred was your homestead (for example: a house or an apartment that you own), and the homestead was transferred to:
  - a. Your spouse; or
  - b. Your minor child under age 21, or your child of any age who is certified blind or certified permanently and totally disabled; or
  - c. 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 became institutionalized; or
  - d. 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 became institutionalized and who provided care which permitted you to reside at home rather than in an institution or 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 Medical Assistance coverage of nursing facility services if you can prove that:

1. You or your spouse intended to dispose of 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 Medicaid coverage of nursing care and related services as described on the front page; 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 also 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 (c) the application of the transfer penalty would deprive you of food, clothing, shelter or other necessities of life. You may request a consideration of undue hardship at any time during a period of limited coverage due to a transfer penalty. The (re)determination may include up to three months prior to your request for a review of undue hardship. You, your spouse, representative or the nursing facility, with your consent or the consent of your representative, may request a (re)determination of undue hardship.

### **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 the applicable look-back period 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 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 a serious illness or disability after the transfer occurred; or
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 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 rights to a State Fair Hearing if you believe our action is wrong.

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