

2342-TRANSFER OF ASSETS

POLICY STATEMENT

Assets, with respect to an A/R, includes all income and resources of the A/R and of the A/R's spouse, including income and resources which the A/R or A/R's spouse is entitled to but does not receive because of action by:

- the A/R or spouse
- a person, including a court or administrative body, with legal authority to act in place of or on behalf of the A/R or spouse
- any person, including any court or administrative body, acting at the direction or upon the request of the A/R or spouse

If an A/R, anyone acting legally on an A/R's behalf, anyone holding an asset in common with an A/R, or the A/R's spouse, gives away or sells assets for less than current market value (CMV) during the look-back period, the A/R may be subject to a transfer of assets penalty.

The transfer of assets policy does not apply to Family Medicaid.

BASIC CONSIDERATIONS**Definitions****OBRA'93**

Omnibus Budget Reconciliation Act of 1993 - the legislative basis for the transfer of resource penalty, effective 10/1/93, for all assets transferred on or after 8/11/93.

DRA'05

The Deficit Reduction Act of 2005 is the legislative basis for the transfer of assets penalty, enacted 2/8/2006. The DRA transfer of assets policy and partial month transfer of assets policy is to be implemented 2/1/07 with all applications (including three months prior) and reviews taken on or after October 1, 2006, for transfers which were done on or after 02/8/06.

Fair Market Value

Fair market value (FMV) is an estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred. Value is based on criteria you use in appraising the value of assets for the purpose of determining Medicaid eligibility. For an asset to be considered transferred for FMV, the compensation received for the asset must be in a tangible form with intrinsic value.

(Cont.)

Uncompensated Value

The difference between the FMV of the asset at the time of the transfer and compensation received for the resource.

Look Back Period

A specified number of months immediately preceding the application or request for assistance for which the worker must determine if an asset has been transferred. The look back period is different depending on when each law was enacted:

OBRA'93

- 60 months for assets transferred into a trust, beginning with the first month for which Medicaid eligibility is requested. Refer to Special Considerations, page 7, of this Section.
- 36 months for other transferred assets beginning with the first month for which Medicaid eligibility is requested. Refer to Special Considerations, page 7, of this Section.

DRA '05 – 60 months prior to the application date for **ALL** transfers of assets done on or after 2/8/06.

All Transfers

A transfer of assets **penalty does not apply** if any one of the following conditions is met:

- An asset is used to pay a valid debt.
- An asset is a valid loan.
- An A/R transfers an asset to his/her community spouse, or to another individual for the sole benefit of the spouse. See [Section 2502](#), Chart 2502.1, for a definition of *sole benefit of*
- An A/R can provide a satisfactory showing that he/she intended to dispose of the asset for fair market value, or for other valuable considerations. This would include situations where an individual is defrauded or executes a transfer as a result of misrepresentation.
- The transferred resources have been returned to the individual.
- Denial of eligibility would cause an undue hardship. Undue hardship must be considered in every case. Refer to [Section 2345, Undue Hardship](#).
- An asset was transferred **exclusively** for a purpose other than to qualify for Medicaid. **NOTE:** This policy does not apply to transfer of homeplace property.
- An asset owned by the community spouse of an institutionalized A/R is transferred by the community spouse after eligibility is established. **EXCEPTION:** annuities and homeplace property.
- An asset was transferred to a blind or disabled child (minor or adult) as established under title XVI or defined in section 1614 of the Social Security Act.

**BASIC
CONSIDERATIONS
(cont.)**

**Transfers Made On
Or After 8/11/93
(OBRA '93)
And
(DRA '05)**

A transfer of assets **penalty does not apply** if any one of the following conditions is met:

- The homeplace was transferred (1) to the community spouse of the A/R or (2) child of the A/R if the child is under the age of 21 or is blind or is permanently and totally disabled.
- The homeplace was transferred to a sibling of a LA-D A/R if the sibling has an equity interest in the home and has been residing in the home for at least one year immediately prior to the A/R entering LA-D.
- The homeplace was transferred to a son or daughter of the A/R who has been residing in the home for at least two years immediately prior to the A/R entering LA-D, and the son or daughter was providing such care to the A/R as to permit the A/R to continue to reside at home rather than enter LA-D.
- The assets were transferred to a trust established for the sole benefit of (1) the A/R's disabled child or (2) a disabled individual who is under 65 years of age. Use the same definition of sole benefit of as for transfer to a spouse. See [Section 2502](#), Chart 2502.1.
- The transferred asset was any resource other than a homeplace that can be excluded under FBR policy.
- The resource was excluded under Non-FBR policy and was transferred into a trust.

**Transfers Made On
Or After 8/11/93
(OBRA '93)**

A transfer **penalty does apply** and is developed if:

- The community spouse of an A/R transfers an asset to anyone for purposes other than the sole benefit of him/herself during the 36 month look back period. Refer to [Section 2502](#), Chart 2502.1, for definition of *sole benefit of*.
- An A/R gives away or sells an asset for less than CMV, or refuses an inheritance, during the 36 month look back period or anytime thereafter.
- An A/R transfers non-excluded assets into a trust during the 60 month look back period or anytime thereafter.
- An A/R transfers homeplace property to anyone other than those individuals listed in the above exceptions.
- An asset held by an A/R in common with another individual or individuals in a joint tenancy, tenancy in common or similar arrangement, shall be considered to be transferred by the A/R when any action is taken, either by the A/R or the other owner(s), to reduce or eliminate the A/R's ownership or control.

BASIC**CONSIDERATIONS****Transfers Made On
Or After 8/11/93
(OBRA '93)
(cont.)****Transfers Made
On Or After 2/8/06
DRA '05**

NOTE: It does not matter if the A/R had knowledge or gave consent. This includes withdrawals from joint accounts by the other account holder.

- If an A/R's asset is given to someone (other than spouse) who has provided care to the A/R who at the time provided the care for free, presume that the services were intended to be provided without compensation. Thus, a transfer to a relative or others for care provided for free in the past is a transfer of assets for less than FMV. However, an individual can rebut this presumption with tangible evidence that is acceptable.

A transfer **penalty does apply** and is developed if:

- The community spouse of an A/R transfers an asset (including income) to anyone during the application process for purposes other than the sole benefit of him/herself during the 60 month look back period. Refer to [Section 2502](#), Chart 2502.1, for definition of *sole benefit of*.
 - The community spouse of an A/R transfers an annuity or homeplace to anyone for purposes other than the sole benefit of him/herself during the 60 month look back period or any time there after.
 - An A/R gives away or sells an asset for less than CMV, or refuses an inheritance, during the 60 month look back period or anytime thereafter.
 - The A/R or community spouse purchases a life estate interest in another individual's home without having lived in the home for at least 12 consecutive months from the date of purchase. Refer to [Section 2322](#).
 - An A/R transfers non-excluded assets into a trust during the 60 month look back period or anytime thereafter.
 - An A/R transfers homeplace property to anyone other than those individuals listed in the above exceptions. (See OBRA '93.)
 - An asset held by an A/R in common with another individual or individuals in a joint tenancy, tenancy in common or similar arrangement, shall be considered to be transferred by the A/R when any action is taken, either by the A/R or the other owner(s), to reduce or eliminate the A/R's ownership or control.
- NOTE:** It does not matter if the A/R had knowledge or gave consent. This includes withdrawals from joint accounts by the other account holder.
- If an A/R's asset is given to someone (other than spouse) who has provided care to the A/R who at the time provided the care for free, presume that the services were intended to be provided without compensation. Thus, a transfer to a relative or others for care provided for free in the past is a transfer of assets for less than FMV. However, an individual can rebut this presumption with tangible evidence that is acceptable.

PROCEDURES**Developing the Possibility of a Transfer of Assets**

The possibility of a transfer of assets must be documented on every application and review on A/R and community spouse for ABD Medicaid, with detailed development at the time of application for a LA-D COA.

Indications that a transfer of ownership may have occurred include, but are not limited to the following:

- an individual alleges a resource transfer
- an individual's resources exceed the statutory limit for one or more months of the review period and decline in subsequent months
- other evidence, such as an IRS alert indicating the sale of land or stock.

Obtain the individual's signed statement on the following:

- the nature of the transfer-whether the asset was sold, given away, exchanged for goods or services, etc.
- the method of transfer-whether the property was listed with an agent and sold, transferred without financial considerations, disposed of through purchase(s), etc.
- the date of transfer
- a description of the transferred property
- the market value of the transfer - the amount of cash transferred or the estimated current market value(CMV) minus encumbrances of the property the month of transfer
- the amount of compensation received, if any, whether there were proceeds, their value and whether additional consideration is expected and when
- any remaining ownership interest, such as a partial interest.

Obtain a copy of available evidence of the alleged transaction. This would include items such as bills of sale, statements of purchase, receipts from landlords for prepayment of rent or corroborating statements from recipients of gifts.

NOTE: When an AR or an AR's spouse transfers a piece of property we look at the date the legal title is accepted and delivered not at the date the deed was recorded.

NOTE: Recognize that an individual may not be able to provide an exact to the penny accounting for purchases incurred more than a month or two in the past. Additionally, an individual may allege a purchase or that money was spent in a way, which cannot be corroborated, such as gambling. Exercise great care in resolving the issue of transfer by spending. Any reasonable accounting can be accepted.

PROCEDURES**Developing the Possibility of a Transfer of Assets (cont.)**

Limit development when an individual alleges having transferred excess countable assets through spending, such as making one or more purchases. Such allegations must always be documented by the individual's statement, but no other evidence need be developed except in either of the following situations:

- The individual cannot provide enough information about the alleged purchases to establish his/her resource eligibility status as of the first moment of each relevant month.
- Information in the files makes the allegations questionable.

If an A/R is found to have incurred a transfer of assets penalty, complete the following procedures:

- Compute and document the correct penalty.
- Notify the A/R that the penalty is being imposed, and that the undue hardship provision was considered and determined not to be applicable.
- Schedule an alert on the system, such as “transfer of resources penalty in effect through MM/YY”.
- For all cases involving a penalty of more than five years, flag the record as an exception to record retention procedures. Do not destroy the record until the penalty period expires or the individual dies, whichever occurs first.

OBRA '93 Transfer of Assets Penalty

Develop an OBRA '93 transfer of assets penalty on every A/R effective October 1, 1993. Develop a penalty on all assets transferred within the 36 month look back period or anytime thereafter. Impose an OBRA '93 penalty only on those assets transferred on or after 8/11/93. Refer to Appendix I, SUCCESS Functions, for instructions on completing the penalty in the system.

Determine the number of months of the penalty by dividing the total uncompensated value (UV) of the transferred resource by the average Georgia private pay rate (See Appendix A.1). Drop all fractions.

Begin the penalty the month that the asset was transferred. Do not apply a penalty for a fraction of a month. There is no limit to the number of months a penalty may last.

PROCEDURES

**OBRA '93
Transfer of
Assets Penalty**

Impose the penalty on A/R's in LA-D as follows:

- A/R's requesting nursing home service or Institutionalized Hospice in the nursing home will not be eligible for a vendor payment. Determine eligibility as usual. Do not authorize a vendor payment. The A/R is responsible for paying the Medicaid rate to the NH/Hospice provider.
- A/R's requesting services under a home and community based waiver (CCSP, ICWP, MRWP/CHSS, non-institutionalized Hospice, Katie Beckett) will be ineligible for home and community based services (not receiving waived services). Do not determine eligibility under the Medicaid CAP. Complete a CMD. Hospital is not included in the above.

**DRA '05 Transfer
Of Assets Penalty**

Develop a DRA '05 transfer of assets penalty and a "partial month" transfer of assets penalty on every application (including three prior months) and reviews beginning February 1, 2007. This would include applications or reviews pending since 10/1/06. Develop a penalty on all assets transferred within the 60 month look back period or anytime thereafter. Impose a DRA '05 penalty only on those resources transferred on or after 2/8/06. If a penalty has already been computed under OBRA, do not recompute the penalty. Refer to [Appendix I](#), SUCCESS Functions, for instructions on completing the penalty in the system. For any asset transferred prior to 2/8/06, apply the OBRA penalty as appropriate.

If the community spouse transfers an asset during the 60 month look back period or during the application process for less than the FMV, the transfer penalty is imposed on the A/R. If the community spouse transfers an annuity or homeplace during the 60 month look back period or at any time thereafter for less than the FMV, the transfer penalty is imposed on the A/R. If the community spouse, subsequently goes into LA-D, the penalty may be shared between the spouses in the most advantageous way. Should one member die or otherwise lose Medicaid eligibility, the remaining eligible spouse will complete the remainder of the penalty period for the now ineligible spouse.

Determine the number of months of the penalty by dividing the total uncompensated value (UV) of the transferred resource by the average Georgia private pay rate (See Appendix A.1). **DO NOT** drop fractions. Determine a penalty even if the penalty does not result in a full month of penalty. A penalty is not imposed until the A/R is determined Medicaid eligible in every aspect **except for the transfer**. See [Appendix I](#), Success Functions, "Transfer of Assets".

PROCEDURES

DRA '05 Transfer
Of Assets Penalty
(cont.)

NOTE: If an A/R has a penalty imposed and subsequently leaves LA-D, the penalty continues to run even if the A/R is not continuing to receive any kind of Medicaid.

For applicants, begin the penalty when the A/R is in LA-D beginning with the later of:

- the month that the resource was transferred, or
- the month that the A/R is otherwise Medicaid eligible

For recipients, begin the penalty, when the A/R is in LA-D beginning with the later of:

- the month after the month of discovery if timely notice can be given,
- The second month after the month of discovery if timely notice cannot be given for the month after discovery.

See the DRA '05 Penalty Computation Form on page 12 to determine how to compute whole and partial months' penalty. There is no limit to the number of months a penalty may last.

NOTE: If an A/R has a penalty imposed the A/R may **NOT** subsequently use those incurred long term care bills as an IME in the PL/CS or for AMN.

Impose the penalty on A/R's in LA-D as follows:

- A/R's requesting nursing home service or Institutionalized Hospice in the nursing home will be Medicaid eligible but not eligible for a vendor payment. Determine eligibility as usual. Do not authorize a vendor payment for whole months of the penalty. The A/R is responsible for paying the **private pay rate** to the NH/Hospice provider for the full months of the penalty. For the month in which a fraction of a penalty is applied, the A/R will have the vendor payment paid, but the patient liability amount will be increased according to a dollar value of the partial penalty, even if income has otherwise been protected in that month. See the DRA '05 Penalty Computation Form on page 12 for how to compute whole and partial months' penalty and the partial month dollar amount.
- A/R's requesting services under a home and community based waiver (CCSP, ICWP, MRWP/CHSS, non-institutionalized Hospice) will be ineligible for home and community based services (not receiving waived services). Deny/terminate the HCBW case. Do not determine eligibility

PROCEDURES**DRA '05 Transfer
Of Assets Penalty
(cont.)**

under the Medicaid CAP. Complete a CMD. For the month in which a fraction of a penalty is applied, the A/R will be eligible and will have the vendor payment paid, but the cost share amount will be increased according to a dollar value of the partial penalty, even if income has otherwise been protected in that month.

All Transfers

When it is determined that an asset transfer will result in a penalty period, notify the A/R, PR, nursing home and/or the HCB Waiver agency. The notice should include a statement that the hardship provision was determined not to be applicable. For penalties under DRA '05, send a letter, "[Undue Hardship Waiver Letter](#)" and form for "[Undue Hardship Waiver Application](#)". See Appendix F, Forms.

**SPECIAL
CONSIDERATIONS**

If an individual makes more than one application for Medicaid (whether approved or denied), the look back period is based on the *first* date that the individual enters LA-D and requests Medicaid to pay for those services.

If an A/R is not in a nursing home under the Nursing Home or Institutionalized Hospice class of assistance or receiving community waived services at the time the transfer penalty is computed, the penalty has no immediate effect. However, if the A/R enters a NH, Institutionalized Hospice or begins receiving community waived services before the penalty expires (OBRA '93), impose the remainder of the penalty. If the transfer was made on or after 2/8/06, impose the penalty beginning with the first day of the month in which the asset(s) was transferred, or the date on which the individual is otherwise eligible for LA-D Medicaid, **whichever is later**.

If an asset is transferred back to the A/R, void the penalty. Determine eligibility for all requested months as if no transfer had ever occurred.

If an asset is partially transferred back to the A/R, recompute the penalty. An A/R may not exchange non-excluded assets for services received prior to the transfer unless there was a written contract at the time the services were provided.

**SPECIAL
CONSIDERATIONS
(cont.)**

**Multiple Transfers
On or After
8/11/93
(OBRA '93)**

For an A/R who transfers more than one asset between 8/11/93 and 2/7/06, develop a transfer of assets penalty on each separate transfer. However, treat multiple transfers in the same month as one transfer. Impose all penalties consecutively.

- Begin the penalty with the first transfer.
- Impose the penalty for the second transfer to begin the month following the expiration of the first penalty.
- Impose the penalty for the third transfer to begin the month following the expiration of the second penalty.
- Continue the process as necessary for additional transfers.

EXCEPTION: If an A/R or spouse makes multiple transfers in which some or all of each transfer is under the average NH private pay billing rate, compute a penalty beginning with the transfer that causes ineligibility. In other words, if the first transfer penalty does not result in the imposition of a penalty and a subsequent transfer(s) would result in a penalty if added to the amount of the first transfer, then compute the penalty of the combined amount(s) with the penalty to begin the month of the subsequent transfer.

**Multiple Transfers
On or After
2/8/06
(DRA '05)**

Effective with new or pending applications/reviews taken on or after February 1, 2007, assets transferred on or after the 60 month look back period (but not earlier than 2/8/06) by an A/R or the A/R's spouse in more than one month for less than the fair market value, will have the penalty determined by:

- Treating the total cumulative uncompensated value of all assets transferred by the A/R or spouse(if applicable) during all months on or after the 60 month look back period as **one** transfer; and
- The start date of the penalty for applicants is the first day of a month in which the asset(s) was transferred or the first month in which the A/R is otherwise eligible for LA-D Medicaid, whichever is later. For recipients, the penalty begins the month after month of discovery (allowing for timely notice) and the A/R is in LA-D,

**SPECIAL
CONSIDERATIONS
(cont.)**

**Treatment of Income
As a Asset**

When it is determined that an A/R disposes of income that would be an asset the next month (e.g., a lump sum payment) for reasons other than ordinary and legitimate expenses, develop a transfer of assets penalty beginning in the month in which the money was given away. If the A/R gives away or assigns the right to receive recurring income, develop a transfer of assets penalty. All the policies and procedures for DRA '05, transfer of assets, apply to a transfer of income.

- If the income is a lump sum, determine a penalty based on the value of the lump sum minus ordinary and legitimate expenses.
- If the A/R assigns or gives away a stream of income or the right to a stream of income, base the penalty period on the combined actuarial value of all payments transferred. Obtain this figure from the payment source, if possible. See Multiple Transfers above.
- For transfers of individual income payments that are less than the private pay rate, impose partial month penalty periods.

**Purchase of
Life Estates
In Another's Home
DRA '05**

If an A/R or A/R's spouse purchases a life estate interest in another's home, impose a transfer of assets penalty:

- If the A/R or spouse does not reside in the home for a minimum of 12 consecutive months following the date of purchase. Brief rehab stays or vacations do not necessarily negate residency, but should involve investigation. To regard a house as a residence, take into consideration:
 - Whether the person's mail is delivered there,
 - Whether they pay property taxes, etc.
- If the individual who purchases a life estate moves out of the home prior to the end of the 12 month period. The date of transfer is the date of purchase of the life estate, and the uncompensated value is the full amount paid for the life estate as if the individual never moves into the home.
- If the life estate was not purchased for the FMV.
- If the person's life expectancy is less than the value of the life estate purchased.
- If the person makes a gift of the life estate.

**DRA '05 TRANSFER POLICY FOR APPLICANTS/RECIPIENTS
(Effective 2/8/06)**

Step 1 Subtract the compensation received from the FMV of the transferred resource.

- a. _____ FMV of transferred asset
- b. - _____ Compensation received
- c. = _____ Uncompensated value

Step 2 Divide the uncompensated value by the NH Private Pay Billing Rate (NH PP BR)*.

- a. _____ (1.c)

Divided by

- b. _____ (NH PP BR)
- c. = _____ months of penalty including partial months**

Step 3. Multiply the NH PP BR by the number of **FULL** months' penalty found in 2. c.

- a. _____ (NH PP BR)
- b. X _____ (2.c) # of **FULL** months' penalty **without** the fraction
- c. = _____ dollar value of the full months' penalty

Step 4. Subtract the value of the full months' penalty from the uncompensated value of the Transferred asset.

- a. _____ (1.c) uncompensated value of the transferred asset
- b. - _____ (3.c) value of full months' penalty
- c. = _____ partial month penalty amount

Step 5. Include the partial month penalty amount (4.c) as unearned income in the AU for the benefit month in which the partial month penalty falls.

*NH PP BR (Nursing Home private pay billing rate): the average Georgia private pay rate. Refer to Appendix A.1.

The number of months the A/R is ineligible for a nursing home/institutionalized hospice vendor payment. Medicaid eligibility is not affected for NH or Institutionalized Hospice A/Rs. However, do **not approve eligibility for CCSP, ICWP, MRWP/CHSS, non-institutionalized Hospice or Katie Beckett COAs until the **full** months' penalty period expires.

The penalty normally begins the first day of a month in which the asset(s) was transferred, or the date on which the individual is otherwise eligible for LA-D Medicaid, whichever is later. There is **NO** limit to the number of months a penalty may last.

**OBRA '93 TRANSFER POLICY FOR APPLICANTS/RECIPIENTS
(Effective 8/11/93)**

Step 1 Subtract the compensation received from the CMV of the transferred resource.

a. _____ value of transferred resource

b.- _____ compensation received

c. _____ uncompensated value (enter on line 2.a)

Step 2 Compute penalty.

a. _____ (1.c) divided by _____ (NH PP BR*) = _____ months

penalty**

*NH PP BR (Nursing Home private pay billing rate): the average Georgia private pay rate. Refer to Appendix A.1.

The number of months the A/R is ineligible for a nursing home/institutionalized hospice vendor payment. Medicaid eligibility is not affected for NH or Institutionalized Hospice A/Rs. However, do **not approve eligibility for CCSP, ICWP, MRWP/CHSS, non-institutionalized Hospice or Deeming Waiver COAs until the penalty period expires.

The penalty normally begins the month in which the transfer occurred. There is **NO** limit to the number of months a penalty may last.