

Revision: HCFA-PM-91-4 (BPD)
AUGUST 1991

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: OKLAHOMA

TRANSFER OF RESOURCES

1902(f) and 1917
of the Act

The agency provides for the denial of eligibility by reason of disposal of resources for less than fair market value.

A. Except as noted below, the criteria for determining the period of ineligibility are the same as criteria specified in section 1613(c) of the Social Security Act (Act).

1. Transfer of resources other than the home of an individual who is an inpatient in a medical institution.

a. The agency uses a procedure which provides for a total period of ineligibility greater than 24 months for individuals who have transferred resources for less than fair market value when the uncompensated value of disposed of resources exceeds \$12,000. This period bears a reasonable relationship to the uncompensated value of the transfer. The computation of the period and the reasonable relationship of this period to the uncompensated value is described as follows:

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b. The period of ineligibility is less than 24 months, as specified below:

c. The agency has provisions for waiver of denial of eligibility in any instance where the State determines that a denial would work an undue hardship.

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2. Transfer of the home of an individual who is an inpatient in a medical institution.

A period of ineligibility applies to inpatients in an SNF, ICF or other medical institution as permitted under section 1917(c)(2)(B)(i).

- a. Subject to the exceptions on page 2 of this supplement, an individual is ineligible for 24 months after the date on which he disposed of the home. However, if the uncompensated value of the home is less than the average amount payable under this plan for 24 months of care in an SNF, the period of ineligibility is a shorter time, bearing a reasonable relationship (based on the average amount payable under this plan as medical assistance for care in an SNF) to the uncompensated value of the home as follows:

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- b. Subject to the exceptions on page 2 of this supplement, if the uncompensated value of the home is more than the average amount payable under this plan as medical assistance for 24 months of care in an SNF, the period of ineligibility is more than 24 months after the date on which he disposed of the home. The period of ineligibility bears a reasonable relationship (based upon the average amount payable under this plan as medical assistance for care in an SNF) to the uncompensated value of the home as follows:

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No individual is ineligible by reason of item A.2 if--

- (i) A satisfactory showing is made to the agency (in accordance with any regulations of the Secretary of Health and Human Services) that the individual can reasonably be expected to be discharged from the medical institution and to return to that home;
- (ii) Title to the home was transferred to the individual's spouse or child who is under age 21, or (for States eligible to participate in the State program under title XVI of the Social Security Act) is blind or permanently and totally disabled or (for States not eligible to participate in the State program under title XVI of the Social Security Act) is blind or disabled as defined in section 1614 of the Act;
- (iii) A satisfactory showing is made to the agency (in accordance with any regulations of the Secretary of Health and Human Services) that the individual intended to dispose of the home either at fair market value or for other valuable consideration; or
- (iv) The agency determines that denial of eligibility would work an undue hardship.

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3. 1902(f) States

Under the Provisions of section 1902(f) of the Social Security Act Act, the following transfer of resource criteria more restrictive than those established under section 1917(c) of the Act, apply:

a. Effective July 1, 1988, no period of ineligibility will be imposed on an individual for uncompensated transfers unless the individual is institutionalized (institutionalized means the individual resides in a nursing facility, intermediate care facility for the mentally retarded or is receiving waiver services) and transferred resources without compensation 30 months prior to institutionalization, if a Medicaid recipient at the beginning of institutionalization, or 30 months prior to application, if not Medicaid eligible at the beginning of institutionalization.

i. The agency uses a procedure which provides for a period of ineligibility (whole number of months) that will be the lesser of:

- (a) 30 months, or
- (b) a number of months equal to the uncompensated value of the transferred resources divided by the average monthly cost to a private patient in a NF in Oklahoma. Any remainder from the division will be disregarded.

ii. No individual is ineligible by the above reasons if:

- (a) the transfer was prior to July 1, 1988;
- (b) the resource transferred was a home and title to the home was transferred to:
 - (i) the spouse;
 - (ii) the individual's child under age 21 or who is blind or totally disabled (SSA/SSI definition);

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- (iii) a sibling who has equity interest in the home and resided in the home for at least one year prior to the individual's institutionalization; or
 - (iv) the individual's son or daughter who resided in the home, and provided care, for at least two years prior to the individual's institutionalization
 - (c) The individual can show satisfactorily that the intent was to dispose of resources at fair market value or that the transfer was for a purpose other than eligibility.
 - (d) The transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's resource allowance.
 - (e) The resource was transferred to the individual's minor child who is blind or totally disabled (SSA/SSI definition).
 - (f) The resource was transferred to the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the resources are not subsequently transferred to still another person for less than fair market value.
 - (g) The denial would result in undue hardship.
- b. Effective for services provided on and after October 1, 1993, and with respect to transfers of assets on and after August 11, 1993, the transfer of assets provisions are as follows:

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i. For an institutionalized individual, the look-back date is 36 months before the first day the individual is both institutionalized and has applied for medical assistance. However, in the case of payments from a trust or portions of a trust that are treated as transfers of assets, the look back date is 60 months.

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- ii. The penalty period begins the first day of the first month during or after which assets have been transferred and which does not occur in any other period of ineligibility due to an asset transfer. When there have been multiple transfers, all transferred assets are added together to determine the penalty.
- iii. The penalty period consists of a period of ineligibility (whole number of months) determined by dividing the total uncompensated value of the assets by the average monthly cost to a private patient in a nursing facility in Oklahoma. There is no limit to the length of the penalty period for these transfers. Uncompensated value is defined as the difference between the fair market value at the time of transfer less encumbrances and the amount received for the resource.
- iv. Assets are defined as all income and resources of the individual and the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action:
 - (a) by the individual or such individual's spouse;
 - (b) by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse; or
 - (c) by any person, including any court or administrative body acting at the direction or upon the request of the individual or such individual's spouse.
- v. A penalty would not apply if:
 - (a) The title to the individual's home was transferred to:
 - (i) the spouse;

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- (ii) the individual's child under age 21 who is blind or totally disabled (SSA/SSI definition);
 - (iii) a sibling who has equity interest in the home and resided in the home for at least one year prior to the institutionalization of the individual;
 - (iv) the individual's son or daughter who resided in the home and provided care for at least two years prior to the individual's institutionalization.
- (b) The individual can show satisfactorily that the intent was to dispose of assets at fair market value or that the transfer was exclusively for a purpose other than eligibility. It is presumed that any transfer of assets made for less than fair market value was made in order to qualify the individual for Medicaid. In order to rebut this presumption, the individual must present compelling evidence that a transfer was made for reasons other than to qualify for Medicaid. It is not sufficient for an individual to claim that assets were transferred solely for the purposes of allowing another to have them with ostensibly no thought of Medicaid if the individual qualifies for Medicaid as a result of the transfer.
- (c) The transfer was to the community spouse or to another person for the sole benefit of the community spouse in an amount equal to the community spouse's asset allowance.
- (d) The asset was transferred to the individual's minor child who is blind or totally disabled (SSA/SSI definition). The transfer may be to a trust established for the benefit of the individual's child.

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- (e) The asset was transferred to or from the spouse (either community or institutionalized) or to another person for the sole benefit of the spouse if the assets are not subsequently transferred to still another person for less than fair market value.
- (f) The asset is transferred to a trust established solely for the benefit of a disabled individual under the age of 65.
- (g) The denial would result in undue hardship.

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