COMBINED MEDICAID 404-2
Penalty Periods for Asset Transfers

Supersedes: MA 404-2 (07/01/17)

Reference: OBRA '93; 20 CFR 416.1246; ARM 37.82.101, .417; 42 U.S.C. 1396p(c)(1)(E); P.L. 109-171; P.L. 109-432

Overview: ABD and ACA: A penalty period may be imposed when an HCBS waiver or institutionalized Medicaid client and/or their community spouse transfers assets for less than fair market value. The client is ineligible for Medicaid payment of waiver or institutionalized services during the penalty period; however, the client may be eligible for other services during this time.

Assets transferred prior to the month the client enters a nursing home are not considered in a resource assessment because neither the client nor their community spouse owns the asset once it has been transferred. The asset transfer penalty is a separate issue and may apply when the client requests nursing home or waiver Medicaid coverage.

NOTE: No penalty can be imposed for assets transferred before the look-back period.

CALCULATING PENALTY PERIOD:

Calculate the penalty period by dividing the uncompensated value of the transferred assets by the average daily cost of nursing home care at the time of Medicaid application or transfer, whichever is later.

AVERAGE COST OF NURSING HOME CARE:

	07/01/2021-ongoing	07/01/2020-06/30/2021	07/01/2019 – 06/30/2020
Daily rate	$261.53	$252.18	$242.14
Monthly rate	$7954.87	$7670.48	$7365.09

The penalty period is the number of days the client or couple is ineligible for Medicaid payment of institutionalized or waiver services. Waiver/institutional eligibility cannot begin until after the full penalty period has passed, which may result in eligibility beginning after the first of the benefit month. The penalty period runs continuously from the first day through the last day of the penalty period, whether or not the client remains in the nursing home or waiver program.

PENALTY START DATE:

The penalty period for uncompensated asset transfers begin on the date the client:

1. Transfers the asset or applies for Medicaid (the later of), AND
2. Is determined otherwise eligible (i.e., meets all other financial and non-financial criteria, including resource limit), AND
3. Is institutionalized or meets HCSB waiver criteria.

All the above criteria (1-3) must be met before the penalty period can begin.

When retroactive institutional/waiver coverage is requested, the penalty period may begin in the retro period if all the above criteria (1-3) are met. An asset transfer penalty period applied to an ongoing institutionalized/HCBS waiver client begins on the first of the month following timely notice.

MULTIPLE TRANSFERS:

The total combined uncompensated value of all transferred assets is used to calculate the penalty period length when multiple assets are transferred on or after the look-back date.

SPOUSAL TRANSFER RESULTS in PENALTY:

In certain instances, a penalty period must be applied to both spouses. This occurs when either spouse made an uncompensated asset transfer and:

1. Both spouses are institutionalized or eligible for the Medicaid HCBS waiver; and
2. A portion of the penalty remains at the time the spouse applies for and is determined otherwise eligible for Medicaid.

When 1 and 2 are met, the remainder of the existing penalty period is divided between the two spouses.

EXAMPLE:

Harold is in a nursing home and applies for Medicaid. Prior to his application, his wife Alice transferred an asset that resulted in a 1080-day asset transfer penalty. After Harold has served 300 days of the penalty period, Alice enters a nursing home. The remaining 780 penalty days are applied equally to each spouse, so each 'serves' a portion of the penalty.

When both spouses are serving the penalty and one spouse dies or leaves the nursing home/waiver program, the surviving spouse/spouse remaining in the nursing home/waiver program must serve the remainder of the penalty period.

TRANSFERRED ASSETS ARE RETURNED:

A transfer penalty may be modified if the client receives either the transferred asset or the financial equivalent back from the person(s) who received it. The effect on the individual's eligibility depends on his/her application status.

ASSETS/VALUE RETURNED BEFORE DENIAL/CLOSURE:

When the transferred asset/value is returned in full prior to denial/closure, the penalty is removed, and Medicaid eligibility is re-evaluated. When transferred assets are partially returned prior to denial/closure, the penalty is modified. The penalty period is recalculated based on the adjusted transfer value and the penalty start date is recalculated based on the new date that the individual may be Medicaid-eligible. Whether returned in full, or part, the returned asset/value is included in the resource determination when Medicaid eligibility is re-evaluated.

Because a penalty period cannot begin until a person is otherwise eligible for Medicaid, the person likely is not Medicaid eligible with the returned assets, therefore, any penalty will start later, after the returned assets are spent down and the person establishes Medicaid resource eligibility.

ASSETS/VALUE RETURNED AFTER DENIAL/CLOSURE:

If returned after denial/closure has already taken effect, a new application is required; retroactive eligibility can be evaluated.

Effective Date: July 01, 2021