STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

TRANSFER OF ASSETS

1917(c) The agency provides for the denial of certain Medicaid services by reason of disposal of assets for less than fair market value.

1. Institutionalized individuals may be denied certain Medicaid services upon disposing of assets for less than fair market value on or after the look-back date.

The agency withholds payment to institutionalized individuals for the following services:

Payments based on a level of care in a nursing facility;

Payments based on a nursing facility level or care in a medical institution;

Home and community-based services under a 1915 waiver.

2. Non-institutionalized individuals:

[ ] The agency applies these provisions to the following non-institutionalized eligibility groups. These groups can be no more restrictive than those set forth in section 1905(a) of the Social Security Act:

The agency withholds payment to non-institutionalized individuals for the following services:

Home health services (section 1905(a)(7));

Home and community care for functionally disabled and elderly adults (section 1905(a)(22));

Personal care services furnished to individuals who are not inpatients in certain medical institutions, as recognized under agency law and specified in section 1905(a)(24).

[ ] The following other long-term care services for which medical assistance is otherwise under the agency plan:

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3. <u>Penalty Date</u> --

The beginning date of each penalty period imposed for an uncompensated transfer of assets is:

[ ] the first day of the month in which the asset was transferred;

[X] the first day of the month following the month of transfer.

4. <u>Penalty Period – Institutionalized Individuals</u> --

In determining the penalty for an institutionalized individual, the agency uses:

[ ] the average monthly cost to a private patient of nursing facility services in the agency;

[X] the average monthly cost to a private patient of nursing facility services in the community in which the individual is institutionalized.

5. <u>Penalty Period – Non-institutionalized Individuals</u> --

The agency imposes a penalty period determined by using the same method as is used for an institutionalized individual, including the use of the average monthly cost of nursing facility services;

[ ] imposes a shorter penalty period than would be imposed for institutionalized individuals, as outlined below:

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6. Penalty period for amounts of transfer less than cost of nursing facility care --

a. Where the amount of the transfer is less than the monthly cost of nursing facility care, the agency;

[ ] does not impose a penalty;

[X] imposes a penalty for less than a full month, based on the proportion of the agency's private nursing facility rate that was transferred.

b. Where an individual makes a series of transfers, each less than the private nursing facility rate for a month, the agency:

[ ] does not impose a penalty;

[X] imposes a series of penalties, each for less than a full month.

7. Transfers made so that penalty periods would overlap --

The agency:

[X] totals the value of all assets transferred to produce a single penalty period;

[ ] calculates the individual penalty periods and imposes them sequentially.

8. Transfers made so that penalty periods would not overlap --

The agency:

[X] assigns each transfer its own penalty period;

[ ] uses the method outlined below:

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9. **Penalty periods – transfer by a spouse that results in a penalty period for the individual** --

(a) The agency apportions any existing penalty period between the spouses using the method outlined below, provided the spouse is eligible for Medicaid. A penalty can be assessed against the spouse, and some portion of the penalty against the individual remains.

In the case of a transfer by a spouse of an individual which results in a period of ineligibility for the individual, if the spouse becomes eligible for MA before such period of ineligibility ends, the remaining portion of the period of ineligibility will be divided equally between the individual and the spouse so long as both remain eligible for MA.

(b) If one spouse is no longer subject to a penalty, the remaining penalty period must be served by the remaining spouse.

10. **Treatment of income as an asset** --

When income has been transferred as a lump sum, the agency will calculate the penalty period on the lump sum value.

[X] The agency will impose partial month penalty periods.

When a stream of income or the right to a stream of income has been transferred, the agency will impose a penalty period for each income payment.

[X] For transfers of individual income payments, the agency will impose partial month penalty periods.

[X] For transfers of the right to an income stream, the agency will use the actuarial value of all payments transferred.

[ ] The agency uses an alternate method to calculate penalty periods, as described below:

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11. <u>Imposition of a penalty would work an undue hardship</u> --

The agency does not apply the transfer of assets provisions in any case in which the agency determines that such an application would work an under hardship. The agency will use the following procedures in making undue hardship determinations:

– The form, "Explanation of the Effect of Transfer of Assets on Medical Assistance Eligibility", is made available to all individuals who request such information and must be given to all MA-only applicants at the time of the initial application. The form must also be sent when an A/R is denied/discontinued due to a prohibited transfer. This form notifies A/R's that an undue hardship provision exists.

– At any time during or after the application process, an A/R or his/her representative may request that a determination based on undue hardships be made. The local district must base its decision on the criteria set forth below. Local districts must determine whether an undue hardship waiver will be granted within 30 days of such a request by an A/R or his/her representative. A longer time period may be allowed in situations where additional time is needed due to difficulties or delays in obtaining evidence.

– The mandated client notice that informs the A/R of his/her denial/discontinuation for MA due to transfer of assets, provides detailed information on the process under which an adverse action determination can be appealed via fair hearing process.

The following criteria will be used to determine whether the agency will not count assets transferred because the penalty would work an undue hardship:

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 (where possible). Cooperation may include but is not limited to, assisting in providing all legal records pertaining to the transfer 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

Additionally, undue hardship cannot be claimed when after payment of medical expenses, the individual's or couple's income and/or resources is above the allowable MA exemption standard for a household or the same size; or

When the only result is the individual's or the individual's spouse claim that the assets are needed to maintain a pre-existing life style; or

when application of the transfer of assets provision merely causes

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11. <u>Imposition of a penalty would work an undue hardship</u> --

The agency does not apply the transfer of assets provisions in any case in which the agency determines that such an application would work an undue hardship. The agency will use the following procedures in making undue hardship determinations:

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Fair hearings are provided pursuant to federal regulations (Goldberg v. Kelly)

The following criteria will be used to determine whether the agency will not count assets transferred because the penalty would work an undue hardship:

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the individual inconvenience; or

when such application might restrict his or her lifestyle but would not put him/her at risk of serious deprivation.