

A transfer of property with the retention of a life estate interest is treated as an uncompensated transfer.

To determine if a penalty is assessed and the length of the penalty, the Worker must compute the value of the transferred property and of the life estate, then calculate the difference between the two.

- Step 1: To determine the value of the transferred property, subtract any loans, mortgages or other encumbrances from the fair market value (FMV) of the transferred property.
- Step 2: Determine the age of the life estate holder as of his last birthday and the life estate factor for that age found in Chapter 5, Appendix A. Multiply the FMV of the transferred property by the life estate factor. This is the value of the life estate.
- Step 3: Subtract the Step 2 amount from the Step 1 amount. The result is the uncompensated value of the transfer.
- Step 4: Divide the Step 3 amount by the State's average monthly nursing facility private pay rate of \$9,515 ~~6,789~~. The result is the length of the penalty.

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*NOTE: The value of a life estate may be excluded as a homestead property, if the individual intends to return to it.*

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#### **24.8.2.D.2 Transfer of a Life Estate**

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The value of a life estate interest is considered a transfer of resources when it is transferred or given as a gift.

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#### **24.8.2.D.3 Purchase of a Life Estate**

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The purchase of a life estate interest in another individual's home is treated as an uncompensated transfer, unless the individual who purchased the life estate interest resides in the home for at least one year after the purchase. The amount of the transfer is the entire amount used to purchase the life estate.

If the individual has resided in the home for at least one year after the life estate was purchased, determine the value of the life estate as follows.

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#### 24.8.2.G Purchase of a Promissory Note, Loan, or Mortgage

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Any purchase of a note, or any loan or mortgage is treated as an uncompensated transfer unless all of the following criteria are met:

- The repayment terms must be actuarially sound, based on the Period Life Table found in Appendix D;
- Payments must include the institutionalized spouse/individual in equal amounts during the term of the loan, with no payment deferrals or balloon payments; and,
- The note, loan or mortgage must prohibit cancellation of the debt upon the death of the lender.

If all of the criteria listed above are not met, the loan is treated as a transfer of resources. The amount of the transfer is the entire outstanding balance due on the loan as of the month of application for Medicaid LTC services.

See Section 5.5 to determine if the loan, mortgage/land sale contract, or promissory note is an asset.

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#### 24.8.2.H Treatment of Transfer of a Stream of Income or Right to a Stream of Income

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When the client fails to take action necessary to receive income or transfers the right to receive income to someone else for less than CMV, the transfer of resources penalty is applied. The Worker must follow the steps described below.

- Step 1: Verify the amount of potential annual income.
- Step 2: Using the client's age as of his last birthday, determine the Remainder Interest Value in Appendix A.
- Step 3: Multiply the Step 2 amount by the Step 1 amount to determine the uncompensated value.
- Step 4: Divide the Step 3 amount by the average monthly nursing facility private pay rate of ~~\$9,515~~ **6,789** to determine the penalty period.

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*NOTE: A partial month's penalty is imposed for the transfer of an individual or single income payment that is less than the monthly nursing facility private pay rate. See Transfer Penalty Section below for instructions about how to determine and apply partial month penalties.*

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#### 24.8.2.J.1 *Start of the Penalty*

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The beginning date of each penalty period imposed for any uncompensated transfer of resources is the later of:

- The date on which the individual is eligible for and is receiving institutional level of care services that would be covered by Medicaid if not for the imposition of the penalty period; OR
- The first day of the month after the month in which assets were transferred and advance notice expires, when the individual receives LTC Medicaid; AND
- Which does not occur during any other period of ineligibility due to a transfer of resources penalty.

➤ ***Penalty for Transfers during the Look-Back Period***

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When resources have been transferred at singular or multiple points during the look-back period, add together the value of all resources transferred, and divide by the average cost to a private-pay patient of nursing facility services. This produces a single penalty period which begins on the earliest date that would otherwise apply, if the transfer had been made in a single lump sum.

▪ ***Penalty for Transfers during the Look-Back Period Examples***

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**Example 1:** Mr. Ivy enters the nursing facility and applies for Medicaid in **October 2018** ~~July 2017~~. The individual transferred \$50,000 in April 2018 ~~2016~~. Based on the average private pay nursing facility rate of **\$9,515** ~~6,789~~ a month, the penalty is **five** ~~seven~~ whole months, beginning **October 2018** ~~July 2017~~ when Mr. Ivy was otherwise eligible for and receiving an institutional level of care that would have been covered by Medicaid, if not for the imposed penalty. A partial month's penalty of **\$2,425** ~~2,477~~ is imposed for **March 2019** ~~February 2018~~. Mr. Ivy is required to pay this amount to the nursing facility, in addition to the calculated monthly contribution. See Length of Penalty below.

**Example 1.1:** Same situation as above, but during the penalty period the Worker discovers an additional, undisclosed transfer that occurred during the look-back period. The penalty period is recalculated to include the undisclosed transfer of resources.

**Example 2:** Ms. Fern enters a nursing facility in January 2018 2017 and applies for Medicaid in October 2018 September 2017 with a request for backdated coverage to August 2018 2017. Ms. Fern transferred \$19,000 in January 2018 2016, \$19,000 in February 2018 2016 and \$19,000 in March 2018 2016. The Worker must calculate the penalty period by adding the transfers together. The total of \$57,000 is divided by the nursing facility cost of \$9,515 6,789. The penalty period is five eight whole months, beginning in August 2018 2017, because the individual requested backdated coverage to August 2018 2017, and was otherwise eligible for and receiving institutional level of care that would have been covered by Medicaid, if not for the imposed penalty. A partial month's penalty for January 2019 April 2018 of \$9,425 2,638 is also imposed. Ms. Fern is required to pay this to the nursing facility, in addition to his calculated monthly contribution. See Length of Penalty below for partial month penalties.

**Example 2.1:** Same situation as above, but after the penalty period ends and Ms. Fern is receiving Medicaid, the Worker discovers an undisclosed transfer occurred during the look-back period. A penalty is assessed and advance notice of an additional transfer penalty is sent to Ms. Fern.

#### ➤ *Transfers During a Penalty Period*

When an individual is in a penalty period and transfers additional resources during the penalty, a new penalty period begins as soon as the previous penalty ends.

All penalties for resources transferred on or after March 1, 2009 run consecutively.

#### ▪ *Transfers During a Penalty Period Examples*

**Example 1:** Mr. Oak transfers \$70,000 and is serving a seven 10-month penalty beginning October 2018 through April 2019 July 2017 through April 2018 with a partial month's penalty of \$3,395 2,110 for May 2019 2018. In November 2018 October 2017, Mr. Oak receives an inheritance of \$10,000 6,800 which he gives to a nephew. There is an assessed penalty of one whole month and a partial month's penalty of \$485 11. The new penalty begins May 2019 June 2018.

**Example 2:** Ms. Orchid, approved for and receiving institutional level of care services, receives an inheritance of \$100,000 in 2017 and gives the money to her grandson. Advance notice of the transfer penalty is sent in November and the penalty period begins December 1, 2017.



### 24.8.2.J.2 Length of Penalty

There is no maximum or minimum number of months a penalty may be applied. The penalty runs continuously from the first day of the penalty period, whether or not the client leaves the institution.

A partial penalty or extra payment is only applied in the last/partial month of the penalty period.

The penalty period lasts for the number of whole and/or partial months determined by the following calculation:

- Total amount transferred during the look-back period divided by the State's average, monthly nursing facility private pay rate of \$317.15 ~~226.29~~ per day or \$9,515 ~~6,789~~ per month.
- When the amount of the transfer is less than the average monthly private pay cost of nursing facility care, the agency imposes a penalty for less than a full month. The partial month's penalty is converted to a dollar amount and added to the individual's calculated contribution to his cost of nursing facility care for his first month of eligibility.

The partial month's penalty is determined as follows:

- Step 1: The total amount transferred is divided by the State's average monthly nursing facility private pay rate of \$9,515 ~~6,789~~.
- Step 2: Multiple the number of whole months from Step 1 by the average private pay rate of \$9,515 ~~6,789~~.
- Step 3: Subtract the amount in Step 2 from the total amount of all transfers. The remainder is the amount which is added to the individual's calculated contribution.

**Penalty Calculation Example:** Mr. Cactus makes an uncompensated transfer of \$24,534 in the month of application for Medicaid coverage of nursing facility services.

Step 1: \$24,534	Uncompensated transfer amount
÷ \$9,515	State's average monthly nursing facility private pay rate
2.6	Number of months for penalty period
Step 2: \$9,515	State's average monthly nursing facility private pay rate
_____ x 2	Whole months in penalty period
\$19,030	
Step 3: \$24,534	Total uncompensated transfer amount

<u>-\$19,030</u>	Amount for three whole months in period
\$5,504	Partial month's penalty amount

If Mr. Cactus applies in July and is otherwise eligible, the penalty period runs for ~~two~~ ~~three~~ full months from July through ~~August~~ ~~September~~, with a partial month's penalty calculated for ~~September~~ ~~October~~ of \$5,504 ~~4,167~~. The ~~September~~ ~~October~~ partial month's penalty amount of \$5,504 ~~4,167~~ is added to the calculated ~~September~~ ~~October~~ contribution for his cost of care. If Mr. Cactus had a \$500 monthly contribution, he would be required to pay \$6,004 ~~4,667~~ for the cost of care in ~~September~~ ~~October~~.

### 24.8.2.J.3 *Who Is Affected by the Penalty*

The institutionalized client is affected by any transfer described above when he or his spouse or any entity acting on their behalf or at their direction transfers an asset.

When the three following conditions are met, any remaining penalty period is divided equally between the institutionalized person and spouse:

- The spouse transferred resources which resulted in ineligibility for the institutionalized client;
- The spouse either is eligible for or applies for Medicaid and is, then, an institutionalized individual; and,
- Some portion of the penalty against the original institutionalized spouse remains when the above conditions are met.

If the penalty period is not equally divisible, the extra month in the penalty period is assigned to the spouse who actually transferred the resource.

When the penalty period is divided between spouses, the total penalty period applied to both spouses must not exceed the total penalty which remained at the time the penalty was divided.

When, for any reason, one spouse is no longer subject to a penalty, such as, when the spouse no longer receives nursing facility services, or dies, the penalty period which was remaining for both spouses must be served by the remaining spouse.

A recording in each affected case must specifically explain the division of the penalty period.

**Division of the Penalty Period Example 1:** Mr. Aster enters a nursing care facility and applies for Medicaid. Mrs. Aster transfers a resource that results in a 36-month penalty against Mr. Aster. After 12 months into the penalty period, Mrs.



**Applicant Asset Transfer Example 2:** Mr. Orchid, a 67-year-old man, applies for TBI waiver services in August 2016, but transferred cash from his bank account to his son in February 2017. Mr. Orchid is subject to a seven-month penalty. He never begins receiving waiver services because Medicaid never begins payment for these services due to the penalty. Mr. Orchid never entered a nursing home or equivalent institutional level of care, so the penalty period never began.

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### 24.31.2 TRANSFER OF RESOURCES PENALTY FOR A CLIENT

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When a waiver services client transfers resources without receiving fair compensation, a penalty is applied after advance notice. The penalty period is determined using the following procedure and lasts for the number of whole and/or partial months determined by the following calculation.

The total amount transferred during the look-back period is divided by the State's average monthly nursing facility private pay rate of \$~~317.15~~ ~~226.29~~ per day, or \$~~9,515~~ ~~6,789~~ per month.

When the remaining amount of the transfer is less than the average monthly private pay cost of nursing facility care, the agency imposes a penalty for less than a full month. The partial month's penalty is converted to a number of days for which the individual is ineligible for payment for waiver services.

The partial month's penalty is determined as follows:

- Step 1: The total amount transferred is divided by the State's average monthly nursing facility private pay rate of \$~~9,515~~ ~~6,789~~.
- Step 2: Multiply the number of whole months from Step 1 by the average private pay rate of \$~~9,515~~ ~~6,789~~.
- Step 3: Subtract the amount in Step 2 from the total amount of all transfers. The remainder is the amount used to determine the number of days the individual is ineligible for waiver services in the partial month of the penalty period.
- Step 4: The Step 3 amount is divided by the average daily rate of \$~~317.15~~ ~~226.29~~ to determine the number of days of ineligibility in the last month of the penalty period.

24.31.2.A Client Asset Transfer Examples

**Client Asset Transfer Example 1:** Mr. Alder makes an uncompensated transfer of \$24,534 after approval for ADW services and Medicaid.

Step 1: \$24,534	Uncompensated transfer amount
<u>÷ \$9,515</u>	State's average monthly nursing facility pay rate
2.6	Number of months for penalty period
Step 2: \$9,515	State's average monthly nursing facility private pay rate
<u>× 2</u>	Whole months in penalty period
\$19,030	
Step 3: \$24,534	Total uncompensated transfer amount
<u>-\$19,030</u>	Amount for three whole months in penalty period
\$5,504	Partial month penalty amount <sup>62</sup>
Step 4: \$5,504	
<u>÷ \$317.15</u>	Average daily rate
17.35	Number of ineligible days for partial month

The partial penalty is imposed for the number of whole days only. If an ADW client transfers resources in July and advance notice is provided for August closure, the penalty period runs for **two three** full months from August through **September October**, with a partial month penalty of **17 18** days calculated for **October November**. The individual becomes eligible for ADW on **October 18 November 19** if he meets all other requirements.

**Client Transfer Example 2:** Ms. Ivy is receiving TBI services and transfers her home to her daughter without compensation in **October 2018 June 2016**. The value of the home is \$100,000. After advance notice, the penalty period is **October 2018 through July 2019 July 2016 through August 2017** for **10 14** whole months. A partial month penalty is calculated for **August 2019 September 2017**, the **11th 15th** month, based on **\$4,850 4,954** remaining of the total penalty amount. **\$4,850 ÷ \$317.15 = 15.29 4,954 ÷ \$226.29 = 21.89** days of ineligibility in **August 2019 September 2017**. Any fractional days are dropped and the length of the penalty is based on the number of whole days. If otherwise eligible, payment for TBI services is approved effective **August 16, 2019 September 22, 2017**.



## APPENDIX E: CONTRACT AGENCY LISTING

The following contains contact information for the current contract agencies for LTC coverage groups and Medical necessity questions, Estate Recovery, Annuity and Trusts reporting, and Payment and Billing issues.

<b>Estate Recovery and Annuities and Trusts</b>	Health Management Services (HMS)	
	Phone: (304) 342-1604 Fax: (304) 342-1605	
<b>Payment and Billing Issues</b>	Molina Medicaid Solutions	
	Molina Provider Services	Molina Member Services
	(888) 483-0793	(888) 483-0797

Contract Agency Listings		
Utilization Management Contract Agency		Medical Necessity Determination
<b>TBI Waiver</b>	KEPRO – ASO 100 Capitol Street, Suite 600 Charleston, WV 25301 800.346.8272 Phone: (866) 385-8920 Fax: (866) 607-9903 General Email: <a href="mailto:WVTBIWaiver@kepro.com">WVTBIWaiver@kepro.com</a>	KEPRO Phone: (866) 385-8920 Fax: (866) 607-9903 General Email: <a href="mailto:WVTBIWaiver@kepro.com">WVTBIWaiver@kepro.com</a>
<b>I/DD Waiver</b>	KEPRO Toll-Free: (866) 385-8920 Phone: (304) 380-0617 Fax: (866) 521-6882 General Email: <a href="mailto:WVIDDWaiver@kepro.com">WVIDDWaiver@kepro.com</a>	Psychological Consultation and Assessment, Inc. (PC&A) Phone: (304) 776-7230 Fax: (304) 776-7247 There is no general email box for PC&A for I/DD services.
<b>AD Waiver</b>	KEPRO Phone: (844) 723-7811 Fax: (866) 212-5053 Email: <a href="mailto:WVADWaiver@kepro.com">WVADWaiver@kepro.com</a>	KEPRO Phone: (844) 723-7811 Fax: (866) 212-5053 Additional Information for PAS: <a href="mailto:ADWDocumentation@kepro.com">ADWDocumentation@kepro.com</a>
<b>Nursing Facility</b>		KEPRO