STATE OF ALASKA
Department of Health and Social Services
Division of Public Assistance

**Date:** July 27, 2007

**Subject:** Aged, Disabled and Long Term Care Medicaid Manual Change #6

This manual change implements new transfer of asset policies. It also adds a new resource policy for an individual whose equity interest in a home exceeds $500,000. This is a result from the Deficit Reduction Act (*DRA* ) of 2005, which was signed into law February 8, 2006. These policies are effective for all Medicaid applications and reviews received on or after August 1, 2007, and for any new discovery of transfer of assets for less than fair market value. These policy changes affect individuals applying for or receiving Medicaid long term care or home and community based waiver services.

This manual change also implements new policy resulting from a change in state law that increases the resource limit for the Working Disabled Buy-In program to $10,000 for an individual and $15,000 for a couple.

A description of these changes is included in the overview below. If you have any questions, please contact any member of the Policy and Program Development Team at 465-3347 or email **dpapolicy@health.state.ak.us**

## OVERVIEW OF CHANGES

### MS 524-G – Institutionalized Individuals with Substantial Home Equity

- New subsection. Adds Medicaid exception to APA policy regarding the exemption of an individual's home for long-term care services.

### MS 524-H – Promissory Notes, Loans, and Property Agreements for Institutionalized Individuals

- New subsection. For transfer of asset purposes only, adds Medicaid exception to APA policy regarding the treatment of promissory notes, loans, and property agreements for long-term care services.

### MS 524-I – Purchase of Life Estates for Institutionalized Individuals

- New subsection. For transfer of asset purposes only, adds Medicaid exception to APA policy regarding the treatment of life estates for long-term care services.

**MS 524-J - Resource Limit for the Working Disabled Buy-In Category**

New subsection. For the Working Disabled Buy-In category only, adds resource exception to the APA policy regarding the resource limit.

**MS 534 - Working Disabled Buy-In**

- Adds new policy that increases the resource limit for the Working Disabled Buy-In program to $10,000 for an individual, or $15,000 for a couple.

**MS 553-C Substantial Home Equity**

- New subsection. Adds new policy that an individual is not eligible for long-term care services if the individual's equity interest in the individual's home exceeds $500,000. This policy does not apply if a spouse, child under 21, or disabled child of any age is living in the home.

**MS 554 – Transfer of Assets**

Updated section with new transfer of asset policies:

- Lengthens look-back period from 3 years (36 months) to 5 years (60 months) for individuals applying for long term care services, including home and community-based waivers. The look-back period is lengthened from the 36-months prior to the month of application to 60-months prior to the month of application. This will be phased-in over a 5-year period from the date of enactment, which is February 8, 2006.

- Changes the beginning date for a transfer of asset penalty for transfers for less than fair market value after February 8, 2006. The penalty period begins on the date of application or the time of transfer, whichever is later.

- Clarifies when the transfer of the home to an adult child will not result in a transfer of asset penalty.

- Adds a new subsection on non-allowable transfers.

- Adds new policy on when the purchase of promissory notes and loans are not considered a transfer.

- Adds new policy on when the purchase of life estates is considered a transfer.

- Adds new policy on when the purchase of an annuity is an allowable transfer.

- Requires an individual (including the individual's spouse) to disclose any interest in an annuity.
- Adds new policy on partial month penalties and examples showing the calculation for the remainder amount of penalty period.
- Adds e-mail contacts for the Division of Senior and Disabilities Services and the Division of Health Care Services and describes information that must be provided to those agencies when a transfer of asset penalty is imposed.
- Clarifies policy on undue hardship determinations.
- Allows a long term care facility to file an undue hardship request on behalf of the individual with consent of the individual or personal representative.

**Addendum 6 - Medicare Part D Low Income Subsidy Guide**
Removes SeniorCare Prescription Drug Coverage

**UPDATED FORMS**

The following forms have been revised to comply with the new transfer of asset requirements:

- Med 3 – Declaration Denial of Asset Transfer Form; and
- Med 4 – Application for Adults and Children with Long Term Care Needs.

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or waiver applicants. See Section 553-D for resource eligibility determination and allotment of resources policy.

### 524 g. INSTITUTIONALIZED INDIVIDUALS WITH SUBSTANTIAL HOME EQUITY

The APA policy regarding exemption of an individual's home, regardless of its value. **APA Manual Section 432-1** does not apply to institutional or waiver applicants for payment of long-term care services. See Section 553-C for resource eligibility determination and allotment of resources policy.

### 524 H. PROMISSORY NOTES, LOANS, AND PROPERTY AGREEMENTS

For transfer of asset purposes only, the APA policy regarding promissory notes, loans, and property agreements. **APA Manual Section 431-2(I)** does not apply to institutional or waiver applicants. See Section 554-H for purchase of promissory notes, land, or mortgages policy.

### 524 I. LIFE ESTATES

For transfer of asset purposes only, the APA policy regarding life estates. **APA Manual Section 431-1(6)** does not apply to institutional or waiver applicants. See Section 554-J for purchase of life estates policy.

### 524 J. RESOURCE LIMIT FOR THE WORKING DISABLED BUY-IN CATEGORY

The APA policy regarding the resource limit at **APA Manual Section 430-2** does not apply to the Working Disabled Buy-In category. See Section 534-B for the resource limit.

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# 534 WORKING DISABLED MEDICAID BUY-IN

An individual with a disability who is ineligible for APA and Medicaid because of earned income that is either the individual's own income or the individual's spouse's earned income, may be eligible for Medicaid under the Working Disabled Medicaid Buy-In eligibility category. An individual may be eligible for the Working Disabled Medicaid Buy-In category even if he or she has not received Medicaid or disability related benefits before.

## 534 A. DEFINITIONS

For the purposes of Family Income Test and determining the need standard, count all family members as defined below:

- **Family** means the applicant, the applicant's spouse, and any dependent children of either the applicant or spouse who are living in the same household a majority of the time in a month.
- **Dependent Child** means the natural or adopted child of either the eligible or ineligible spouse, who lives in the same household with the applicant and who is under age 18, or a student under age 22 is regularly attending a school, college, university, or vocational school in preparation for gainful employment. See **APA Manual Section 442-2(D)** for definition of regular school attendance.

## 534 B. RESOURCES

Countable resources may not exceed:

- $10,000 for an individual; or
- $15,000 for an individual living with a spouse, whether or not the spouse is eligible for assistance.

## 534 C. INCOME

The income eligibility determination is a two-step process:

### 1. The Family Income Test (Step 1)

Determine if the family's monthly net income is below 250% of the Federal Poverty Guidelines (*FPG* ) for Alaska. See the *FPG* chart in Addendum 1. To determine a family's monthly net income, combine all countable income of each family member and then, using APA methodology, subtract all disregards and exemptions, including impairment related work expenses (*IRWE* ) as described in **APA Manual Section 442-2 (G)**.

## 553 B. OPTIONAL PRELIMINARY RESOURCE ASSESSMENT

At the beginning of a continuous period of institutionalization, either spouse, or a representative acting on behalf of either spouse, may request and receive an assessment of the couple's combined resources. The assessment will calculate the total value of the couple's combined countable resources, owned either jointly or separately, as of the date on which the institutionalization in a medical institution or nursing home began. The assessment will provide the couple with the information necessary for their financial planning. An application for Medicaid is not required in conjunction with the assessment.

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***Note:***

*This assessment does not apply to HCB waiver individuals.*

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The assessment request is made by the requester by completing a NH8 - *Resource Assessment Request form*, which is available on the DPA e-forms web site at http://dpaweb.hss.state.ak.us/e-forms/pdf/nh8.pd. This form asks the requester to complete a list of the couple's resources and their current fair market value and present it to the nearest Public Assistance District Office for assessment.

Upon receipt, the caseworker must review the request and if it is incomplete or ownership and/or value of resources is questionable, request additional documentation or verification. If the requester has provided the information necessary to complete an assessment, the caseworker must compute the total countable value of the couple's resources, complete the *Resource Assessment* form, and send one copy to each spouse, or their representative. One copy of this form must be retained by the agency for one year.

The *Resource Assessment* informs the spouses that the assessment calculation is only as accurate as the amounts that they have provided. If these amounts prove to be inaccurate at a later date, the agency is not bound to use them to determine eligibility. The form also states that if they disagree with the assessment determination, they may submit an application and if they are not found eligible, may request a fair hearing.

The assessment should be completed in a timely manner, within 45 days after

receipt in the district office of the request or the necessary verification.

## 553 C. SUBSTANTIAL HOME EQUITY

An individual whose equity interest in a home exceeds $500,000 is NOT eligible for long-term care or home and community-based waiver services. Determine if the individual is eligible for regular Medicaid.

**Exception:** This limitation does not apply if the community spouse, the individual's child under age 21, or the individual's blind or disabled child of any age is residing in the home.

An individual may use a reverse mortgage or home equity loan to reduce the equity interest in the home. If the individual has a reverse mortgage or home equity loan, consider this in determining countable home equity.

If the individual has shared ownership in the home, only the fractional interest of the individual seeking long-term care or home and community-based services is considered. For example, if the home is owned by an applicant and a sibling, one-half of the home's equity value is used in calculating the equity value for the individual, unless the individual can prove that he or she does not have equal ownership in the property.

Re-evaluation of home equity is required at each review. The appreciation of home equity could result in disqualification of institutional or waiver services if the home equity value exceeds the limit.

## 553 D. RESOURCE ELIGIBILITY DETERMINATION AND ALLOTMENT OF RESOURCES

All countable resources owned by either spouse, jointly or separately, are pooled together as of the date of institutionalization or potential approval of *HCB* waiver services. Before the eligibility determination is made for the *LTC* spouse, resources may be allotted to the community spouse, up to the *Maximum Community Spouse Resource Allowance*. See Addendum 1 – Program Standards. Any amount exceeding this allowance must be considered available to the *LTC* spouse in the eligibility determination, regardless of which spouse owns the excess.

# 554 TRANSFER OF ASSETS

An individual who is institutionalized or receiving home and community based (*HCB* ) waiver services and who transfers income or resources for less than fair market value may be subject to a penalty that results in a period of ineligibility for institutional or HCB services. In order for a penalty to apply, the transfer must have occurred within the look-back period.

Medicaid transfer of assets rules apply to all individuals eligible under the Special Long Term Care eligibility category and to all individuals receiving HCB waiver services, regardless of their eligibility category.

This section explains how to treat a transfer of asset for less than fair market value and includes policies in effect before and after implementation of the Deficit Reduction Act of 2005 provisions.

This section contains the policy and procedures for determining the following:

- Who is subject to the transfer of asset penalty;
- Which assets are subject to the transfer of asset rules;
- The look-back period;
- Start date of the penalty period;
- When a non-allowable transfer has occurred;
- Treatment of purchasing promissory notes, loans, or mortgages;
- Treatment of purchasing life estates;
- Treatment of annuities;
- When to impose a transfer of asset penalty;
- How to calculate the penalty period; and
- Undue hardship.

## 554 A. DEFINITION OF TERMS RELATED TO TRANSFER POLICY

**Annuity** - An annuity is a contract. An individual pays an entity a lump sum of money in return for the right to receive fixed, periodic payments, either for life or for a term of years.

**Compensation** - Something received as payment for an asset. Payment is usually considered to be cash, but other forms of payment include in-kind income, real or personal property, support and maintenance, services, or assumption of a legal debt.

**Equity** - The equity of real or personal property is the fair market value (see definition below) less any encumbrances (mortgages, liens, or judgments) on the property.

**Fair Market Value** - The value of an asset at the time it was transferred if sold in the locale where it was transferred at the time it was transferred. For real and personal property, it is the tax assessed value of the property for the year of the transfer, unless proof of a lesser value is received.

**Legal Representative** - A person legally authorized to execute a binding contract for the individual, such as (but not limited to) a legal guardian, parent of a minor child, power of attorney, or trustee managing the individual's assets. Legal authorization requires a legal document or court action except for parents of minor children.

**Life Estate** - Under a life estate, an individual who owns property transfers ownership of that property to another individual while retaining, for the rest of his or her life (or the life of another person), certain rights to that property. Generally, a life estate entitles the owner of the life estate (the grantor) to possess, use, or profit from the property as long as he or she lives. However, the grantor no longer owns the property.

**Look-back Period** - The period immediately prior to the date of application or review in which the caseworker will look to see if the applicant transferred an asset.

**Medical Institution** - An institution certified under state law to provide medical care, including nursing and convalescent care, such as hospitals,

skilled nursing facilities (*SNF* ), intermediate care facilities (*ICF* ), intermediate care facility for the mentally retarded (ICF-MR); residential psychiatric treatment centers (RPTC); and certain assisted living homes providing residential supported living and habilitation services, including Alaska Pioneer Homes.

**Partial Month Penalty** - The penalty period for transferring an asset that produces a fractional monthly amount, resulting in a partial month of ineligibility.

**Penalty Period** - The period of time in which a client is ineligible for institutional and HCB waiver services due to a transfer of asset for less than fair market value. See Subsection 554 L.

**Transfer** - To change ownership or title from one person(s) to another. A transfer also occurs when an individual takes any action that eliminates his ownership or reduces his control of an asset.

**Uncompensated Value** - The difference between the equity value of the asset at the time of the transfer and any payment or compensation received. The uncompensated value is the amount upon which the length of a transfer of asset penalty is based.

## 554 B. VERIFICATION AND DOCUMENTATION

A **MED 3 Declaration / Denial of Asset Transfer** form, or **M723 Transfer of Asset Declaration** notice must be provided, and completed for all new nursing home or home and community based waiver applicants, including child waivers. The applicant is required to provide proof of any funds held in financial accounts. If such accounts exist, the applicant must provide the last three bank statements for each account that is owned by the applicant and his or her spouse. The caseworker must also obtain this declaration when an APA/SSI/Medicaid, Family Medicaid, or Denali KidCare recipient has started the waiver process.

In addition to the initial application, look for a transfer of asset at the time of review, when a transfer is reported, or when there is a request for a change in institutional or HCB services.

When there has been a transfer of assets during the look-back period, obtain

the following information:

1. A description of the asset transferred (the home, other real property, life estate, cash, lump sum, car, stocks, bank account, certificate of deposit, etc.).

2. The person who transferred the asset (client, spouse, legal representative).

3. The name of the person(s) to whom the asset was transferred.

4. The client's relationship to the individual to whom the asset was transferred.

5. The countable value of the asset at the time of the transfer and the compensation (money or other benefit) received or expected to be received from the transferred asset.

6. The date the asset was transferred.

7. Whether the applicant was the sole owner of the asset at the time of the transfer; if not, the name of any co-owners.

8. If applicable, documentary evidence that the individual intended to dispose of an asset at a fair market value or information from knowledgeable sources to support the value (if any) at which the asset was disposed. See Section 554-F(3).

Document information in the *CANO* and explain the following transfer of assets rules to the client:

- How the penalty is calculated, and
- Exceptions to the penalty, and
- How to lift or reduce the penalty period.

## 554 C. TRANSFER OF ASSET RULES APPLY

Transfer of asset rules apply to:

1. Resources - Any real or personal property, annuity, liquid resource, or funds owned by the individual and his or her spouse that is given away, sold for less than fair market value, or used to purchase a promissory note, loan, mortgage, or life estate.

2. Income - Any earned or unearned income (including a lump sum) of the individual and his or her spouse that is transferred to another individual in the month of receipt. See **APA Manual Section 440-1** for the definition of income.

## 554 D. LOOK-BACK PERIOD

The date on which the look-back period is established is based on the date an individual applies for long term care services, or the date the individual is institutionalized, whichever is later. For example, an individual entered a nursing facility in June and submitted an application during the month of July, the July application date sets the look-back period.

The look back period will vary depending on the date that assets were transferred for less than fair market value.

### Assets transferred before February 8, 2006

The look-back period is three years (36 months) for most asset transfers. However, if transfers to a trust or annuity occurred, the look back period is five years (60 months). See Section 525 D for additional information about applying the 60-month look-back period to situations involving a trust.

### Assets transferred on or after February 8, 2006

The look-back period is 60-months for non-trust transfers of assets for less than fair market value made on or after February 8, 2006. The 60-month look-back period will be phased in and a 36-month look-back period for a transfer of asset will be used until February 2009.

After February 2009, the look-back period will increase each month until the full 60-month look-back period takes effect.

By February 2011, any transfer of assets for less than fair market value will require a 60-month look-back period.

**60-Month Phase-In**

| | | | | | | |
|---|---|---|---|---|---|---|
| 02/08/06 | 02/2009 | 03/2009 | 04/2009 | 05/2009 | 06/2009 | 07/2009 |
| 36-mo | 36-mo | 37-mo | 38-mo | 39-mo | 40-mo | 41-mo |

| | | | | | | |
|---|---|---|---|---|---|---|
| 08/2009 | 09/2009 | 10/2009 | 11/2009 | 12/2009 | 01/2010 | 02/2010 |
| 42-mo | 43-mo | 44-mo | 45-mo | 46-mo | 47-mo | 48-mo |

| | | | | | | |
|---|---|---|---|---|---|---|
| 03/2010 | 04/2010 | 05/2010 | 06/2010 | 07/2010 | 08/2010 | 09/2010 |
| 49-mo | 50-mo | 51-mo | 52-mo | 53-mo | 54-mo | 55-mo |

| | | | | |
|---|---|---|---|---|
| 10/2010 | 11/2010 | 12/2010 | 01/2011 | 02/08/11 |
| 56-mo | 57-mo | 58-mo | 59-mo | 60-mo |

Take the following steps when determining the look back period:

1. Evaluate all transfers beginning on or after the look-back date.

2. Do not consider transfers made prior to this date.

3. A transfer penalty must be determined for all non-allowable transfers within the look-back period.

4. Document the findings in the CANO.

Although eligibility is determined month-by-month, the look-back period is day specific.

***Example #1***

*Ms. Allam applies for Medicaid on February 13, 2007. She enters a nursing home on March 7, 2007. She enters a nursing home eon March 7, 2007. She has a 36-month look-back period from March 7, 2004 through March 7, 2007.*

***Example #2***

*Mr. Sherwood is institutionalized on May 20, 2011. He applies for Medicaid on May 26, 2011. He has a 60-month look-back period from May 26, 2006 through May 26, 2011.*

## 554 E. PENALTY START DATE

For asset transfers made before February 8, 2006, the penalty period begins the month after the first transfer was made.

For asset transfers made on or after February 8, 2006, the penalty begins the month the individual is eligible for Medicaid and would be receiving institutional level of care services, except for the imposition of a transfer of asset penalty.

If assets were transferred for less than fair market value both before and after February 8, 2006, one penalty period is established for the assets transferred before February 8, 2006, and a separate penalty period is established for assets transferred on or after February 8, 2006. See Section 554-L(6).

## 554 F. ASSET TRANSFERS NOT RESULTING IN PENALTY

DO NOT apply a transfer of asset penalty for:

### 1. Compensated Transfer

Real or personal property or liquid assets that are transferred or exchanged in return for money or other tangible object, service, or benefit that is equal to or greater than the equity of the transferred asset is a compensated transfer. Transfers for services to be provided in the future are not allowable because they have not been compensated.

### 2. Excluded Asset at the Time of Transfer

An asset that is exempt at **APA Manual Section 433-1(B)** is an allowable

transfer not subject to a transfer of asset penalty.

### 3. Intent to Dispose of Assets for Fair Market Value or for Other Valuable Consideration

The individual intended to dispose of the assets either at fair market value or for other valuable consideration. The individual must provide written evidence of attempts to dispose of the asset for fair market value, as well as proof to support the value at which the asset was disposed.

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***Example #3:***

*Ms. White owns rental property with a tax value of $50,000. There are no encumbrances on the property. She lists the property with a realtor for the current market value of $50,000. After several months, Ms. White received a firm offer for $40,000. She accepted the offer. This example documents that Ms. White intended to sell her property at the current market value, but she only received a portion of that amount. Do not apply penalty to the difference between the current market value and the compensation received.*

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### 4. Transfer for Other Purposes

Assets transferred exclusively for a purpose other than to qualify for Medicaid or remain eligible for Medicaid at a future date. The individual must provide convincing evidence to the specific purpose for which the asset was transferred.

### 5. Transfer Returned

The transferred asset for less than fair market value is returned to the client.

### 6. Transfer of the Home

Transfer of the home is an allowable transfer only when it is transferred to one of the following:

a. Legal spouse;

b. Child under age 21;

c. Blind/disabled (determined by *SSA* ) child of any age;

d. Sibling who is a co-owner of the home and has been residing in the home for a period of at least one year immediately before the applicant or recipient was institutionalized; or

e. Adult child who resided in the home for at least two years immediately before the applicant or recipient entered an institution or began receiving home and community based waiver services, and who for the entire two-year period provided care to the disabled parent such that it prevented the need for the parent to enter the institution or to begin receiving HCB waiver services.

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***Note:***

*Verification must be provided that the adult child resided in the home during the two years, and that the adult child provided necessary care.*

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**7. Transfer to a Trust**

Income transferred to a Medicaid Qualifying Income Trust, or income and resources transferred to a Special Needs or Pooled Trust established for the sole benefit of an individual under age 65 who is disabled as defined under SSI rules.

**8. Transfers to Prevent Spousal Impoverishment**

Transfers made under Section 553-F are not subject to penalty.

## 554 G. TRANSFERS TO A SPOUSE, CHILD, OR A DISABLED PERSON

Transferring an asset to the individuals spouse, child, or to a disabled person is not subject to transfer of asset penalty if the asset was transferred:

1. To the individuals spouse or to another for the sole benefit of the individuals spouse;

2. From the individuals spouse to another for the sole benefit of the individuals spouse;

3. To the individuals child, or to a trust established solely for the benefit of the individuals child, provided the child meets the SSI criteria for blindness or disability; or

4. To a trust established for the sole benefit of a person under age 65 who meets the SSI criteria for disability.

To verify that a transfer of assets is for the sole benefit of an individuals spouse, child, or a disabled person, there must be a written document that legally binds the parties to a specified course of action and identifies who can benefit from the assets.

If there are restrictions placed on the transfer that limit the availability of assets to the individuals spouse, child, or a disabled person, email **dpapolicy@health.state.ak.us.** Also, please contact the Medicaid Specialist if there are any other indications that the transfer is intended to benefit someone besides the individual's spouse, child, or a disabled person.

## 554 H. NON-ALLOWABLE TRANSFERS

A non-allowable transfer occurs when any action is taken that causes income or resources of the individual or the individual's spouse to be transferred to another, including:

- Irrevocably waiving pension income;

- Waiving the right to receive an inheritance;

- Not accepting or accessing injury settlements;

- Agreeing to a tort settlement that allows the defendant to divert the tort settlement proceeds into a trust, annuity, or similar device to which the plaintiff (who is an applicant or recipient), or the plaintiff's parent or guardian, does not have any access or control. This prohibition does

not apply if the proceeds are placed into a recognized Medicaid trust established by the applicant or recipient.

- Refusing to take legal action to obtain a court-ordered payment that is not being paid, including child support or alimony; or
- Reducing the individual's ownership or control of an asset.

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***Example #4:***

*Ms. Hamm added her niece's name to her $30,000 savings account in January so either party could access the account independently. This is an "OR" account. (For Medicaid purposes, the entire $30,000 would still be considered available to her and is not subject to a transfer of asset penalty.) However, in April, her niece withdraws the $30,000 from the joint account and puts it into her own account, which eliminates Ms. Hamm's ownership, thus Ms. Hamm is subject to a transfer of asset penalty beginning in May.*

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***Example #5:***

*The same situation as above, but in January the account is changed to an "AND" account. An "and" account requires the signature of both parties to access, thus reducing the clients control of the asset. In this situation, Ms. Hamm is subject to a transfer of asset penalty beginning in February.*

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***Note:***

*It is not a transfer of asset for less than fair market value if the reason for failure to receive an asset is because the individual cannot afford to take the necessary action to obtain the asset or the cost of obtaining the asset is equal to or greater than the assets worth.*

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## 554 I. PURCHASE OF PROMISSORY NOTES, LOANS, OR MORTGAGES

Funds used to purchase a promissory note, loan, or mortgage are treated as a transfer of asset unless all of the following criteria are met:

1. The repayment term is actuarially sound (i.e., the beneficiary is expected to live long enough to receive all of the payments); and

2. Payments are made in equal amounts during the term of the loan with no deferral of payments and no balloon payments; and

3. The promissory note, loan or mortgage prohibits the cancellation of the balance upon the death of the lender.

***Note:***

*Use the period life table published by the Social Security Administration online at* ***http://www.ssa.gov/OACT/STATS/table4c6.html.***

## 554 J. LIFE ESTATES

If an individual has a life estate, the caseworker must investigate whether a transfer of asset for less than fair market value occurred. If the value of the asset transferred by the individual is greater than the value of the life estate, a transfer of asset for less than fair market value has occurred.

The value of the life estate is the amount that it would sell for as of the first moment of the month. This value is determined by multiplying the fair market value of the property by a decimal value based on the life estate holders life expectancy.

***Note:***

*Use the life estate tables published by the Social Security Administration online at* ***https://s044a90.ssa.gov/apps10/poms.***

***nsf/lnx/0501140120!opendocument*.**

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If the value of the property exceeds the fair market value of the life estate, the difference between the property value and the life estate value is treated as an asset transfer.

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***Example #6:***

*Ms. Pedersen, age 65, owns a house worth $100,000. She deeds the house to her son but retains a life estate in the property. Under the terms of the life estate, Ms. Pedersen is entitled to live in the house for the rest of her life. To determine the value of Ms. Pedersen's life estate, the current market value of the property ($100,000) is multiplied by a life estate factor corresponding to Ms. Pedersen's age in the table (.67970), resulting in a life estate worth $67,970. The penalty is assessed for the difference between the value of the asset transferred ($100,000) and the value of the life estate ($67,790), resulting in $32,210 uncompensated transfer.*

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## 554 K. ANNUITIES

The purchase of an annuity by an applicant or a spouse is an allowable transfer when all of the following conditions are met:

- It is purchased with proceeds from an employee retirement account or trust, employee pension, or Roth Individual Retirement Account; and
- It is irrevocable and nonassignable; and
- It is actuarially sound (i.e., the beneficiary is expected to live long enough based on the beneficiary's age at the time the annuity is purchased to receive all of the payments); and
- It is paid out in equal monthly payments with no deferral and no balloon payments; and
- It names the State as remainder beneficiary

- in the first position for the total amount of medical assistance paid on behalf of the individual, including both long-term care services and waiver services, or
- in the second position if there is a community spouse, or a minor or disabled child.

To determine if a transfer for less than fair market value has occurred, take the following steps:

1. Determine the number of years the beneficiary is expected to live based on the beneficiary's gender and age at the time the annuity is purchased.

> ***Note:***
>
> *Use the actuarial tables published by the Social Security Administration online at* ***www.ssa.gov/OACT/STATS/table4c6.html.***

2. Multiply the annual amount scheduled to be paid out by the annuity by the number of years the beneficiary is expected to live. Round to the nearest dollar. This is the amount that the annuity is expected to pay out.
3. Compare this amount to the purchase price of the annuity.
4. When the amount that is expected to be paid out during the beneficiary's lifetime is equal to or greater than the purchase price of the annuity, the individual will receive fair market value for his investment. This is an allowable transfer. Do not apply a penalty.
5. When the purchase price of the annuity is greater than the amount that is expected to be paid out in the beneficiary's lifetime, the difference between the two amounts is an uncompensated transfer and subject to penalty.

***Example #7:***

*Mr. Ashe, age 65, purchases a $10,000 annuity for himself to be paid out at an annual rate of $1,000 per year over the next ten years. His life expectancy at age 65 is 15.52 years. Since he is expected to live long enough to receive the full value of the annuity, the annuity is an allowable transfer.*

***Example #8:***

*Mr. Rogers, age 85, purchases a $10,000 annuity to be paid out at an annual rate of $1,000 per year over the next ten years. His life expectancy at age 85 is 5.20 years. Since he is not expected to live long enough to receive the full value of the annuity, an uncompensated transfer has occurred and a penalty must be applied. The value of the uncompensated transfer is $4,800 (10 years minus 5.20 years = 4.80 years x $1,000 = $4,800). Mr. Rogers is subject to a four-year, eight-month penalty.*

## 554 L. TRANSFER PENALTY AND PARTIAL MONTHS

Partial months of ineligibility will be imposed when the calculation of the penalty period for transferring an asset produces a remainder amount. This calculation is based on the monthly nursing home rate in the community in which the individual is institutionalized. If unable to determine which community the individual would receive nursing facility services, use the current swing-bed rate as determined by the Division of Health Care Services, Office of Rate Review, and provided by DPA Policy to eligibility workers upon request.

To determine the uncompensated value of a transfer:

1. Determine and list the **date(s) of each non-allowable transfer** occurring during the look-back period.

2. Determine the **value of each transferred asset.**

   - Establish the fair market value of the transferred asset at the time of transfer.

- Subtract any encumbrances from the fair market value to establish the equity of the asset.
- Establish the amount or value received for the transferred asset.
- Subtract from the equity the amount received. This is the uncompensated value.

3. Determine the **Penalty Period.**

**For transfers made on or after February 8, 2006**

a. Add the uncompensated value of each transfer in the look-back period.

b. Divide the total uncompensated value for all transfers by the average monthly cost to a private patient of nursing home care in the individuals community. If unable to determine in which community the individual would receive nursing facility services, use the current swing-bed rate.

c. When the calculation of the penalty period produces a remainder, the penalty will include a partial month disqualification.

d. The result is the number of full and/or partial months for the penalty period.

e. The period of ineligibility begins once an individual is institutionalized, and eligible for Medicaid. The period runs continuously through the end of the penalty period, even if the individual subsequently stops receiving institutional level of care.

***Example #9:***

*Mr. Reed entered a nursing facility in November 2007 and applied for Medicaid on December 5, 2007.*

*He made one transfer during the look-back period. He transferred real property with an equity value of $150,000 on*

*February 20, 2006, receiving no compensation.*

*The average monthly cost to a private patient in a nursing home in his community is $9,630. The uncompensated transfer amount of $150,000 is divided by the average monthly rate of $9,630 and equals 15.58 months. Because Medicaid eligibility begins on the first day of the month, the full 15-month penalty period runs from December 2007 through February 2009, with a partial month penalty calculated for March 2009:*

| | |
|---|---|
| *$150,000* | *uncompensated transfer amount* |
| *÷ 9,630* | *monthly rate* |
| *= 15.58* | *number of months for penalty period* |

| | |
|---|---|
| *31* | *number of days in March 2009* |
| *x .58* | *partial month penalty period* |
| *= 17.98* | *number of days for partial month penalty* |

*The partial month penalty of 17 days (rounded down) is added to the 15-month penalty period. This means that Medicaid will begin payment for long-term care coverage on March 18, 2009.*

**For transfers made before February 8, 2006**

a. Add the uncompensated value of each transfer in the look-back period.

b. Divide the total uncompensated value for all transfers by the average monthly cost to a private patient of nursing home care in the individuals community. If unable to determine in which community the individual would receive nursing facility services, use the current swing-bed rate.

c. Round this number down to the lowest whole number.

d. The result is the number of months of penalty.

e. Begin the penalty period the month after the transfer.

f. The penalty runs continuously through the end of the period, regardless of whether the individual remains in or leaves the institution or continues to receive HCB waiver services.

***Example #10:***

*Mrs. Lebert entered a nursing facility August 2, 2007 and applied for Medicaid August 18, 2007.*

*She made one transfer during the look-back period, giving $200,000 to her grandson on December 24, 2006.*

*The total uncompensated transfer amount of $200,000 is divided by the average monthly rate of $9,630 and equals 20.76 months.*

| | | |
|---|---|---|
| *$200,000* | *uncompensated transfer amount* | |
| *÷ 9,630* | *monthly rate* | |
| *= 20.76* | *number of months for penalty period* | |

*This number is rounded down to the lowest whole number. A 20-month penalty period is given, beginning January 1, 2007 and ending August 31, 2008. Mrs. Lebert is eligible for long-term care services beginning September 1, 2009.*

**4. Multiple Penalty Periods Overlap.**

When assets have been transferred so that multiple penalty periods overlap, combine the uncompensated value of all assets transferred and compute a single penalty period.

***Example #11:*** *(For transfers made on or after February 8, 2006)*

*Mr. Crowe entered a nursing facility on July 2, 2007. The average monthly cost to a private patient in a nursing home in his community is $9,630. He applied for Medicaid on July 12, 2007. The 60-month look-back period begins July 12, 2007.*

*He made the following transfers during the look-back period: $20,000 on January 20, 2007, another transfer of $15,000 on September 6, 2006, and another transfer of $10,000 on February 10, 2006.*

*The total uncompensated transfer amount of $45,000 is divided by the average monthly rate of $9,630 and equals 4.67 months. This results in giving a partial month penalty. Because Medicaid eligibility begins on the first day of the month, the full four-month penalty period runs from July 2007 through October 2007 with a partial month penalty calculated for November 2007:*

| | |
|---|---|
| *$45,000* | *total multiple uncompensated transfer amount* |
| *÷ 9,630* | *monthly rate* |
| *= 4.67* | *number of months for penalty period* |

| | |
|---|---|
| *30* | *number of days in November 2007* |
| *x .67* | *partial month penalty period* |
| *= 20.10* | *number of days for partial months penalty* |

*The partial month penalty of 20 days (rounded down) is added to the four-month penalty period. This means that Medicaid will begin payment for long-term care coverage for Mr. Crowe on November 21, 2007.*

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***Example #12:*** *(For transfers made before February 8, 2006)*

*Mr. Henderson entered a nursing facility on July 2, 2007. The average monthly cost to a private patient in a nursing home in his community is $9,630. He applied for Medicaid on July 12, 2007.*

*He made a transfer of $20,000 on July 4, 2004, another transfer of $15,000 on September 15, 2005, and another transfer of $10,000 on February 4, 2006.*

*The total uncompensated transfer amount of $45,000 is divided by the average monthly rate of $9,630 and equals 4.67 months. This number is rounded down to the lowest whole number. A 4-month penalty period applies.*

*Because the assets were transferred before February 8, 2006, the full four-month penalty begins March 1, 2006 through June 30, 2006, and a partial month penalty is not applied.*

*This means that Mr. Henderson has already served his penalty.*

### 5. Multiple Transfers Made Before and After February 8, 2006.

A new penalty period cannot be imposed while a previous penalty period is still in effect. Therefore, when transfer of asset policies overlap, run the penalty periods separately but consecutively.

***Example #13:***

*Mr. Bjorgan entered a nursing home on December 15, 2008. The average monthly cost to a private patient in a nursing home in his community is $9,630. He applied for Medicaid on January 2, 2009.*

*He made one transfer of $45,000 on January 11, 2006, and another transfer of $53,000 on March 10, 2008.*

*For the first transfer of $45,000. The penalty start date is February 1, 2006 through May 1, 2006. A four-month penalty applies.*

| | |
|---|---|
| *$45,000* | *uncompensated transfer amount* |
| *÷ 9,630* | *monthly rate* |
| *= 4.67* | *number of months for penalty period* |

*For the second transfer of $53,000. The penalty start date is January 1, 2009 (date of Medicaid application). The second penalty begins January 1, 2009 and runs through May 2009. A partial month penalty is added to June 2009.*

| | |
|---|---|
| *$53,000* | *uncompensated transfer amount* |
| *÷ 9,630* | *monthly rate* |
| *= 5.50* | *number of months for penalty period* |

| | |
|---|---|
| *30* | *number of days in June 2009* |
| *x .50* | *partial month penalty period* |
| *= 15.00* | *number of days for partial months penalty* |

*The partial month penalty of 15 days is added to the five-month penalty period. This means that Medicaid will begin payment for*

*long-term care coverage on June 16, 2007. The first penalty has already been served.*

## 6. Both Spouses are Institutionalized or Receiving HCB Waiver Services

When both spouses are institutionalized or receiving HCB waiver services, divide the penalty period between the spouses. The total penalty imposed on both spouses cannot exceed the number of months of the penalty period.

When one spouse is no longer subject to a penalty (i.e., the spouse no longer receives institutional services or the spouse dies), the remaining penalty period applicable to both spouses must be served by the remaining spouse.

If a community spouse is later institutionalized or receives waiver services and a penalty period is still in effect for the first institutionalized spouse:

a. Divide the remaining penalty period equally between the spouses.

b. Do not establish a new look-back period. The clients initial look-back period for the first institutionalized spouse is the same for the former community spouse.

c. Determine if any additional transfers were made by the former community spouse during the look-back period. Apply the same rules when considering an asset subject to transfer of asset penalty.

d. A transfer that occurred during the portion of the community spouses look-back period that does not overlap with the look-back period of the first institutionalized care spouse is subject to a transfer penalty. Only the former community spouse is subject to that penalty.

***Example #14**: (For transfer made before February 8, 2006)*

*Mrs. Moon enters a nursing a facility and applies for Medicaid. Mr. Moon transfers an asset that results in a 15.64 month penalty against Mrs. Moon. This is rounded down to 15 months. Six months into the penalty period, Mr. Moon enters a nursing facility and applies for Medicaid. The penalty period against Mrs. Moon still has 9 months to run.*

*Because Mr. Moon is now in a nursing facility and a portion of the original penalty period remains, the remaining 9 months of penalty is divided between Mr. and Mrs. Moon. Because there are an uneven number of months, assign one spouse (Mrs. Moon) a five month penalty period and the other spouse (Mr. Moon) a four month penalty period. The extra month is given to the spouse who entered the institution or receives waiver approval first.*

When both spouses are approved at the same time, the extra month is applied to the one with the earlier birth date.

***Example #15:** (For transfer made on or after February 8, 2006)*

*Mr. Gibson enters a nursing a facility and applies for Medicaid. Mrs. Gibson transfers an asset that results in a 12.64 month penalty against Mr. Gibson. Four months into the penalty period, Mrs. Gibson enters a nursing facility and applies for Medicaid. The penalty period against Mr. Gibson still has 8.64 months to run.*

*Because Mrs. Gibson is now in a nursing facility and a portion of the original penalty period remains, the remaining 8.64 months of penalty is divided between Mr. and Mrs. Gibson. Therefore, Mr. and Mrs. Gibson each have a four month penalty. Because there is a partial month, the extra days are assigned Mr. Gibson. The partial month is given to the spouse who entered the institution or receives waiver approval first.*

When both spouses are approved at the same time, the partial month is

applied to the one with the earlier birth date.

7. **When a transfer of assets penalty is imposed, immediately notify:**

    - Jan Dickey in the Division of Health Care Services (*DHCS* ) at **Jan_Dickey@health.state.ak.us**, and "cc" Natalia Manfredi at **Natalia_Manfredi@health.state.ak.us**; and

    - The Division of Senior and Disability Services (*DSDS* ) at **waiver@alaska.gov** with the date of Medicaid closure. This is necessary so that DSDS can discontinue issuing Prior Authorizations for HCB Waiver and Nursing Home services.

    The following information must be given:

    1. Name and identification number of the client;

    2. Date of penalty start;

    3. Date of penalty end; and

    4. Long term care or waiver services are not to be authorized or paid for until after the penalty end date.

    The Division of Health Care Services will enter the penalty end date into the Medicaid Management Information System (*MMIS* ) to prevent long term care or waiver service claims from being paid until the penalty ends.

## 554 M. UNDUE HARDSHIP

An undue hardship exists when a transfer of asset penalty would deprive the applicant, recipient, or community spouse of:

- medical care such that the individual's life or health would be endangered; or

- food, clothing, shelter, or other basic necessities of life.

If a transfer of assets penalty is imposed on an individual, a timely notice of

the penalty must be sent. The notice must state that

- The penalty will be imposed 10-days after the date of the notice;
- An undue hardship exception exists;
- The request for an undue hardship exception must be submitted within 30 days of the date the notice was mailed;
- The individual, or the facility in which the institutionalized individual is residing can request an undue hardship on behalf of the individual with the consent of the individual or the authorized representative of the individual. The facility must have the consent of the individual or the individual's personal representative. In addition, the facility may present information on behalf of the individual to the Department. The facility may represent the individual throughout the appeals process with the specific written consent of the individual or the individual's authorized representative;
- An undue hardship determination will be made within 30 days of receipt of the request; and
- A denial of a hardship determination can be appealed.

The individual or facility acting on behalf of the individual must submit a written statement to the caseworker indicating how the individual or his or her community spouse would be subject to undue hardship and describes:

- Why the assets transferred for less than fair market value cannot be returned; and
- What efforts the applicant or recipient has made to have the assets returned.

The request should be sent to the Medicaid Specialist at dpapolicy@health.state.ak.us. The Medicaid Specialist will:

- evaluate requests for undue hardship exceptions.
- notify the Division of Health Care Service's (DHCS) Third Party

Liability (*TPL* ) Claims Unit of the request. This unit will pend all institutional and HCB waiver service claims made within the ten-day notice period, and deny claims after the ten-day notice period. Claims will be pended until ten days after the agency notifies the client of the determination.

- email the finding of undue hardship to the eligibility caseworker.

If a finding of undue hardship is made, no penalty applies.

# ADDENDUM 6
## MEDICARE PART D LOW INCOME SUBSIDY GUIDE
Effective January 1, 2007

| Category | Full Subsidy Eligible | Reduced Subsidy Eligible | Full Benefit Dual Eligible | | | | Standard Medicare Beneficiaries (Not LIS Eligible) |
|---|---|---|---|---|---|---|---|
| **Description** | **Premium, deductible and cost sharing subsidy for low-income Medicare Part D recipients.** | | | | | | |
| **Application Form** | SSA 1020 – Application | SSA 1020 – Application | None – State transmits eligibility file to SSA | | | | N/A |
| **Income** | <135% FPL | <150% FPL | Dual Eligible (100% FPL) | Dual Eligible (>100% FPL) | Dual Eligible (Institutionalized) | Deemed Eligible Medicare Premium<br><br>*SLMB* = <120% FPL><br><br>*SLMB* PLUS =<br><br><135% FPL> | >150% FPL |
| **Resource Limit** | $6,120 Single<br><br>$9,190 Couple | $10,210 Single<br><br>$20,410 Couple | | | | | None |
| **Prescription Drug Plan** | Facilitated Auto-Enroll | Recipient Enrolls | Auto-Enrolled | Auto-Enrolled | Auto-Enrolled | Auto-Enrolled | Voluntary Enrolls |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| **Recipient Premiums Deductibles And Co-Pays** | $0 premium<br><br>No Deductible<br><br>$2.15 or $5.35 co-pay<br><br>$0 co-pay after $3,850 out-of-pocket expenses | Sliding scale premium<br><br>$50 Deductible *May be covered by SeniorCare<br><br>15% co-insurance<br><br>$2.15 - $5.35 co-pay after $3,850 out-of-pocket expenses | $0 premium<br><br>No Deductible<br><br>$1 or $3.10 co-pay<br><br>$0 co-pay after $3,850 out-of-pocket expenses | $0 premium<br><br>No Deductible<br><br>$2.15 or $5.35 co-pay;<br><br>$0 co-pay after $3,850 out-of-pocket expenses | $0 premium<br><br>No Deductible<br><br>$0 co-pay | $0 premium<br><br>No Deductible<br><br>$2.15 or $5.35 co-pay<br><br>$0 co-pay after $3,850 out-of-pocket expenses | 100% premium<br><br>$265 Deductible<br><br>25% coinsurance up to $2,400<br><br>100% co-pay between $2,400 and $5,451.25<br><br>$2.15 or $5.25 co-pay after $5,451.25 |
| **Coverage Gap** | None | None | None | None | None | None | Recipient pays 100% after $2,400 in total drug costs and up to $4,451.25 in total drug costs |
| **Corresponding *EIS* Medicaid Subtype** | | | SI = SSI<br><br>ST = APA eligible<br><br>QM = *QMB*<br><br>NS = Ineligible for SSI /APA due to requirements that do not | AS = Waiver in Asst. Living<br><br>BB = Lost SSI / APA due to1977 SSA *Cola*<br><br>BC = | *NH* = Nursing Home | SL = SLMB | |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | | | apply to Medicaid | Breast & Cervical Cancer<br><br>DW = Working Disabled Buy-In<br><br>GF = Eligible for MED in 1973<br><br>IN = *HCB* Waiver<br><br>PM = 1619b, Disabled Adult Children,<br><br>Disabled<br><br>Widowers<br><br>QD = Qualified<br><br>Disabled & Working<br><br>Individuals<br><br>RC = Refuse Cash | | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | | | SS = Eligible for AF/SSI / APA in 1972<br><br>ST = APA Eligible | | | |

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