STATE PLAN UNDER TITLE XIX
OF THE SOCIAL SECURITY ACT

State: District of Columbia

Transfer of Resources

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

General Statement of Purpose

The District of Columbia shall the impose the maximum penalties allowable under federal law for any and all transfers of resources for less than fair market value by Medicaid applicants, recipients, or spouses thereof. The foregoing explanation of the District's policies and procedures in this regard reflects the District's goal of preventing the use of estate planning and resource transfers to obtain Medicaid while sheltering resources. In so doing, the District seeks to preserve the entitlement to those for whom the program was intended to serve: genuinely low-income individuals who are aged, blind, disabled, children, or families who lack sufficient resources to provide for their own medical care.

1. Institutionalized individuals

The agency may deny certain Medicaid services to institutionalized individuals upon disposing of assets for less than fair market value on or after the look-back date. For any transfer of assets made on or after February 8, 2006, the look-back period is 60 months prior to the month of application.

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

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

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

x Home and community-based services under a 1915 waiver.

2. Non-institutionalized individuals

x 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:

- Aged, blind, or disabled individuals with income that does not exceed 100 percent of the Federal poverty level as described in

1902(a)(10)(A)(ii)(X);

- Medically Needy as described in 1902(a)(10)(C)(except those for whom less restrictive methodologies as discussed in Sections I and II of Supplement 8(b) to Attachment 2.6-A would apply);

- Persons who meet the income and resource requirements of the SSI program as described in 1902(a)(10)(A)(ii)(I);

- Persons who would be eligible for cash assistance (AFDC or SSI) if they were not in a medical institution as described in 1902(a)(10)(A)(ii)(IV);and
- Special income level group (i.e., in a medical institution for at least 30 consecutive days with gross income that does not exceed 300 percent of the SSI income standard) as described in 1902(a)(10)(A)(ii)(V)

(i.e., all Medicaid beneficiaries to whom a resource limit applies).

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

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

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

x 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);

x The following other long-term care services for which medical assistance is otherwise under the agency plan:
All Medicaid-reimbursable services for which payment may be withheld by law.

3. Penalty Date

For transfer of assets before February 8, 2006, the look back period will consist of thirty-six (36) months. For transfer of assets after February 8, 2006 involving payments from a trust or portions of a trust that are treated as assets disposed of by the individual; or any other disposal of assets, the look-back period will consist of sixty (60) months. Ineligibility will begin with the later of:

__X__ The first day of the month during which assets have been transferred for less than fair market value; or

____ The month after which assets have been transferred for less than fair market value.

The date on which the individual is eligible for medical assistance under the State Plan and is receiving institutional level of care services (based on an approved application for such services) that, were not for the imposition of the penalty period, would be covered by Medicaid.

4. Penalty Period: Institutionalized Individuals

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

__x_ The average monthly cost to a private patient of nursing facility services in the state;

____ The average monthly cost to a private patient of nursing facility services in the community in which the individual is institutionalized.

5. Penalty Period: Non-institutionalized Individuals

The agency:

__x_ 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.

6. Penalty period for amounts of transfers less than the 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 penalty for less than a full month, based on the proportion of the agency's private nursing.

nursing facility rate that was transferred;

7. Transfers made so that penalty periods would overlap

The agency:

___ Totals the value of all assets transferred to produce a single penalty period;

_x_ 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:

The agency totals the value of all assets transferred to produce a single penalty period.

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.

The existing penalty period is divided in half and equally apportioned between the spouses.

(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:

11. Imposition of a penalty would work an undue hardship

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:

The agency makes a decision regarding the effect of the transfer of assets on the individual's eligibility. If there is no effect on eligibility, no further action is required. If the transfer results in a penalty period that affects present eligibility, the agency sends a notice to the individual advising him or her regarding the penalty period, and informing the individual of the opportunity to rebut. If the individual claims undue hardship, the agency evaluates the claim based on the criteria described below.

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

An undue hardship exists if:

(a) The individual has been threatened with eviction from an LTCF or medical institution and has exhausted all legal methods to prevent the eviction; or

(b) An undue hardship or good cause exemption exists as defined by the Secretary for the Department of Health and Human Services or the Secretary for the Department of Agriculture; or

(c) The individual's medical provider has threatened to terminate home and community-based services provided under a waiver; and

(d) The transferee is no longer in possession of the transferred asset and the transferee has no other assets of comparable value with which to pay the cost of care; and

(e) There is no family member or other individual or organization able and willing to provide care to the individual.