MA-2240 - TRANSFER OF ASSETS
REVISED 02/01/08 – CHANGE NO. 07-08

I. INTRODUCTION

When an individual, legal representative, or financially responsible spouse transfers any real property, personal property or any other assets, including assets counted or excluded in determining Medicaid eligibility, for less than current market value, a transfer of assets sanction may be imposed. If a sanction is imposed the individual is ineligible for certain Medicaid covered services.

Transfer of asset regulations do not apply to all Medicaid covered services. Therefore, an individual under a transfer of assets sanction may be eligible for other services covered by the North Carolina Medicaid program.

The services that can be sanctioned are: Institutional services which are provided to individuals who are in a nursing facility (NF), intermediate care facility for the mentally retarded (ICF-MR), swing bed or inappropriate level of care bed, Community Alternatives Program (CAP), or the Program of All-Inclusive Care for the Elderly (PACE). Additionally certain non-institutional services may be sanctioned. These are in-home health services and supplies after the individual has been sanctioned for institutional services.

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

- Individuals subject to the transfer of assets regulations,
- Medicaid covered services subject to the transfer of assets regulations,
- Assets subject to the transfer of assets regulations,
- The lookback date,
- When a non-allowable transfer has occurred,
- When to impose a transfer of assets sanction,
- How to determine the sanction period,
- Applicant/recipient (a/r) notification procedures.

Refer to MA-2241, Transition Policy for In-home Health Services and Supplies, for policy concerning assets transferred prior to November 1, 2007. Refer to MA-2242, Home Equity Value and Eligibility for Institutional Services, for policy when determining eligibility for institutional services when an a/r has home equity in excess of $500,000. Refer to MA-2245, Undue Hardship Waiver for Transfer of Assets, for policy and procedures when an a/r alleges an application of a transfer of asset sanction would cause an undue hardship.

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(I.)

A transfer of asset evaluation involves many dates that are important to both the current evaluation and possible future evaluations. Always retain these dates in a sub-folder or file in the a/r's permanent record using MA-2240 Figure 6, Transfer of Assets Dates Documentation. Update at each review as needed. At the initial evaluation and at each subsequent update retain the original in the case file and send a copy of the MA-2240 Figure 6 to the Medicaid Program Representative.

II. POLICY PRINCIPLE

If an applicant/recipient, financially responsible spouse, or the a/r's representative gives away or sells an asset, either countable or excluded, for less than its current market value, the a/r may be ineligible for payment of institutional services or in-home health services and supplies after being sanctioned for institutional services. This includes any direct or indirect method of disposing of an interest in an asset whether or not the asset would have been considered excluded or exempt at the time of its disposal or transfer.

For a sanction to apply, the transfer must have occurred on or after a specific date (lookback date). The total, cumulative value of all uncompensated transfers made within the lookback period is treated as a single transfer and a single sanction period is calculated.

III. DEFINITION OF TERMS RELATED TO TRANSFER POLICY

Actuarially Sound – A promissory note, annuity, mortgage or loan established to pay off the entire asset value over the actual or expected lifetime of the annuitant/lender is actuarially sound. The annuitant/lender is expected to live long enough to receive an amount that is equal to or greater than the amount originally invested. The total amount of proceeds must be designed to be paid out in equal regular payments during the term of the agreement, with no deferral and no balloon payments.

Annuity - An annuity is a type of trust. An individual pays an entity a lump sum of money in return for the right to receive fixed, periodic payments, either for life or a term of years. This includes the investment portion of a single premium pure endowment life insurance policy.

Annuitant – An annuitant is the person who receives the income payments of an annuity policy at maturity date for life or for a specified period. The annuitant may or may not be the same as the owner.

Annuitize – Converting a principal of an annuity into a series of payments.

Asset – For purposes of transfer of assets is resources and income.

Beneficiary of an annuity – The beneficiary is the person who receives any benefit that is paid upon death of the annuitant prior to the maturity date of the annuity.

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.

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Cost of Care - The amount of money charged to an individual for NF or ICF-MR level of care, a swing bed, or inappropriate level of care bed in a hospital, waiver services for the Community Alternatives Program or Program of All-Inclusive Care for the Elderly (PACE).

Current Market Value - The value of an asset if sold on the open market. For real and personal property it is the tax assessed value of the property, unless that value is rebutted and a different value established. Refer to MA-2230, Financial Resources, for instructions on establishing and rebutting the tax value.

Demonstrated Hardship – The a/r, spouse or personal representative proves through the greater weight of evidence that a denial of institutional services due to excess home equity value will cause the a/r a demonstrated hardship.

Equity – The equity of real or personal property is the current market value (see definition above) less any encumbrances (mortgages, liens, or judgments) on the property.

Greater Weight of the Evidence – Refers to the quality and convincing force of the evidence rather than to the quantity of the evidence.

Homesite - When applying the transfer policy the homesite is defined as any property in which the a/r or financially responsible person has an ownership interest **and**

- Which is currently used (or during the lookback period was used) as his principal place of residence, or to which he intends (or intended) to return, or
- Which is currently used (or during the lookback period was used), as the principal place of residence of his spouse or his dependent relative.

It includes the land the home sits on and all buildings and land contiguous to the home.

See MA-2230, Financial Resources, for the definition of homesite when determining resource eligibility.

In-Home Health Services and Supplies – Medically necessary services provided to an applicant/recipient (a/r) by a Medicaid certified provider can be sanctioned due to a transfer of assets. These services include the following:

- Durable Medical Equipment (DME) and related medical supplies such as wheelchairs, walkers, canes, hospital beds, oxygen and oxygen equipment, needed to maintain or improve a recipient's medical, physical, or functional level.
- Home Health Services covers home health aide services, skilled nursing, physical therapy, speech pathology and audiology, and occupational therapy provided by a Medicaid certified home health agency to help restore, rehabilitate or maintain a recipient in the home.

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(III.)

Home Health Supplies include items such as adult diapers, disposable bed pads, catheter and ostomy supplies provided by a Home Health or Private Duty Nursing (PDN) agency. PDN services are not provided to individuals in an Adult Care Home (ACH).

Home Infusion Therapy (HIT) covers self-administered therapies such as nutrition therapy (tube feeding), drug therapy including chemotherapy for cancer treatments, antibiotic therapy and pain management therapy.

- Personal Care Services (PCS) are personal care activities such as bathing, toileting, monitoring vital signs, housekeeping and home management tasks essential for maintaining the recipient's health performed by an in-home aide in a private residence.

  PCS services provided to individuals in an ACH are not subject to this policy.

Institutional Services - These services include services provided in a nursing facility (NF), intermediate care facility for the mentally retarded (ICF-MR), swing bed or inappropriate level of care bed, services provided through the Community Alternatives Program (CAP), or Program of All-Inclusive Care for the Elderly (PACE). These services can be sanctioned due to a transfer of assets. This does not include acute hospital care regardless of length of stay.

Institutionalized for Transfer of Assets – As defined for a transfer of assets review, institutionalized is an individual receiving institutional services in a nursing facility (NF), intermediate care facility for the mentally retarded (ICF-MR), swing bed or inappropriate level of care bed in a hospital, services provided through the Community Alternatives Program (CAP) or Program of All-Inclusive Care for the Elderly (PACE). This is different from the definition of institutionalized for long term care budgeting or institutional living arrangement when determining state/county residency.

Legal Representative - A person acting for and legally authorized to execute a contract for the a/r, such as but not limited to a general guardian, guardian of the estate, parent of a minor child, power of attorney, fiduciary (agent), conservator or any trustee managing the a/r's resources. Legal authorization requires a separate legal document except for parents of minor children.

Lookback Date - The earliest date a transfer can occur and be evaluated for a transfer of assets for less than fair market value. The lookback date varies depending on when an individual applies for Medicaid, is admitted to a NF or ICF/MR or requests CAP or PACE services. Sanctions can be determined for transfers that take place on or after the lookback date.

Rebuttal – The process by which an a/r, the a/r's spouse or legal representative proves through a greater weight of evidence factors that eliminate or decrease a sanction period.

Remainder Beneficiary-The person(s) entitled to an annuity's principal, possibly including income that has been accumulated and added to principal, after the death of the annuitant.

(III.)

Sanction Period - The period of time in which an a/r is ineligible for Medicaid payment of institutional services and in-home health services. In order to sanction in-home health services, the sanction period must have begun during a period the individual received institutional services and continues when the individual goes to PLA living arrangement. The sanction period is also referred to as a penalty period.

Transfer - To change ownership or title from one person(s) to another. A transfer also occurs when an individual takes action to waive or renounce assets or an inheritance to which he is entitled or when an individual takes any action that eliminates his ownership or reduces his control of an asset. For example, changing fee simple property to tenancy-in-common property or adding an additional owner to a savings account is considered a transfer.

Transfer Date for Real Property or Interest in Real Property - The date of transfer for real property is the day the deed is signed by the grantor, delivered, and accepted by the grantee. Unless fraud is suspected, it is presumed this is the date recorded on the front of the deed. The deed does not have to be notarized or registered in order to be a valid title transfer. However, a deed of gift must be registered within 2 years to remain valid.

Uncompensated Value - The difference between the market value less encumbrances (the equity) of the asset at the time of the transfer and any payment or compensation received. The uncompensated value is the amount upon which the sanction is based.

Undue Hardship – The application of the sanction period would deprive the individual of medical care, such that the individual's health or life would be endangered; or of food, clothing, shelter, or other necessities of life.

Undue Hardship Waiver- An individual who incurs a sanction for transfer of assets and is denied or terminated from Medicaid payment of institutional services may request this sanction be waived and can demonstrate the sanction will cause the a/r an undue hardship.

IV. TRANSFER OF ASSET RULES

This section explains to whom transfer rules apply and what assets are considered in determining whether there is a transfer. It does not matter whether assets are owned jointly by the a/r and his spouse or whether the assets are owned individually by each spouse. It also does not matter whether assets were owned by one spouse prior to marriage.

A. Apply transfer rules to assets transferred in the look back period by:

1. The applicant/recipient, or

2. The applicant/recipient's financially responsible spouse, or

3. Any person with authority to act in place of or on behalf of the a/r or the a/r's spouse.

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B. Apply transfer rules to a/r's requesting or receiving assistance with any of the following:

1. Institutional Services:

   a. Nursing facility (NF) or intermediate care facility for the mentally retarded (ICF-MR), or

   b. Swing bed or inappropriate level of care bed in a hospital, or

   c. CAP waiver programs (See MA-2280, Community Alternatives Program (CAP), Medicaid Eligibility) or

   d. Program of All-Inclusive Care for the Elderly (PACE).

OR

2. In-home health services and supplies after being sanctioned for institutional services, and a portion of the sanction period remains after the individual stops receiving institutional services. (See MA-2241, Transition Policy for In-home Health Services and Supplies)

C. Do Not apply transfer rules to

1. Individuals who do not request or receive institutional services or in-home health services and supplies.

OR

2. Individuals who request or receive in-home health services and supplies and have not been sanctioned for prior institutional services. (See MA-2241, Transition Policy for In-home Health Services and Supplies)

OR

3. Individuals in acute care in a hospital, regardless of length of stay, who are discharged to pla or die without ever leaving acute care. Transfer rules do not apply even though long term care budgeting applies.

OR

4. Individuals in the psychiatric unit of a hospital.

OR

(IV.C.)

5. Children under age 21 admitted to a Psychiatric Residential Treatment Facility (PRTF),

OR

6. Individuals requesting MSB, MQB-B, MQB-E, MWD,

OR

7. A married individual authorized for institutional services when the community spouse (CUSP) transfers an asset.

   For example, an ISP is authorized for long term care March 2007 through August 2007. In June 2007, the CUSP makes a non-allowable transfer resulting in an 18-month sanction. The ISP returns home in July 2007 and receives in-home health services and supplies. Do not apply the transfer of assets sanction to the former ISP because the non-allowable transfer was made during a month in which the former ISP was authorized for long term care.

D. Apply transfer rules to the following:

1. Transfers of countable and excluded assets except for those listed under MA-2230, Financial Resources, I.A.6.

   Any real or personal property or liquid asset including vehicle, homesite, and tenancy-in-common or life estate interest in real property. Refer to VII., VIII., and IX. below for criteria for allowable transfers.

2. Transfers of income

   Income (including a lump sum) transferred in the month of receipt. It is not necessary to detail the a/r's spending habits in the lookback period unless the a/r received a lump sum.

3. Purchases of life estates, including life estates in another individual's home. Refer to IX. below for specific criteria to determine if a transfer occurred.

4. Purchase of promissory note, loan, or mortgage. Refer to IX. below for specific criteria to determine if a transfer occurred.

5. Purchase of an annuity. Refer to IX. below for specific criteria to determine if a transfer occurred.

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V. LOOKBACK DATE

The lookback date is the earliest point in time on or after which all transfers of assets are reviewed for an a/r requesting or receiving institutional services. For applications on or after November 1, 2007, see V. A. to determine the starting point and V.B. to determine the lookback date. For applications prior to November 1, 2007, the lookback date is 36 months prior to the starting point, except for transfers to trusts and annuities, in which case the lookback date is 60 months prior to the starting point. Establish the lookback date following the procedures below. MA-2240 Figure 2, A Guide to Establishing Lookback Dates and Sanction Periods, and MA-2240 Figure 5, Establish Starting Point/Lookback, provides an overview and guide to determine the starting point and lookback dates.

For those individuals with a lookback date established prior to November 1, 2007, that lookback date remains unchanged.

A. Establishing the Starting Point for Determining the Lookback Date

In order to determine the lookback date for individuals requesting institutional services, you must establish the starting point.

1. For individuals who **first** applied for Medicaid in any category on or after February 1, 2003, but prior to November 1, 2007, the starting point is the date of the first application for Medicaid.

2. For individuals who **first** applied for Medicaid in any category prior to February 1, 2003 or on or after November 1, 2007, the starting point is the earliest date both of the conditions in a. and b. are met:

    a. The a/r is institutionalized (See III. above for a definition of institutionalized) or requests CAP or PACE, **and**

    b. Applies for Medicaid.

    c. Scenarios

        (1) If an individual is already a Medicaid applicant or recipient in PLA when he is institutionalized, use the day he enters the institution as the starting point to establish the lookback date.

        (2) If the a/r is already institutionalized as private pay when he applies for Medicaid, use the date of the current application as the starting point to establish the lookback date.

        (3) For individuals applying for the CAP or PACE programs, the starting point is the date the a/r applies for Medicaid and requests CAP or PACE.

(V.A.2.)

(4) If the a/r is an ongoing Medicaid recipient when he requests CAP, the lookback date is based on the date the a/r is placed on the CAP waiting list. If questionable, verify this date with the CAP case manager.

B. Establish the Lookback Date for Transfers

1. If the starting point is prior to November 1, 2010, look back 3 years (36 months). Look back 5 years (60 months) in the case of assets transferred to trusts or annuities. If an annuity is transferred from one owner to another owner, look back 3 years (36 months) from the starting point.

   EXAMPLE: You establish the starting point is December 15, 2007. Count back 36 months. The lookback date is December 15, 2004.

2. If the starting point is on or after November 1, 2010, but prior to November 1, 2012, look back to November 1, 2007. In the case of assets transferred to trusts look back 5 years (60 months) from the starting point, which will be prior to November 1, 2007. If an annuity is transferred from one owner to another owner, look back from the starting point to November 1, 2007.

3. If the starting point is on or after November 1, 2012, look back 5 years for all transfers.

4. In situations involving an ISP and CUSP, where the CUSP later becomes institutionalized, determine the lookback date for the CUSP as follows:

   a. If CUSP is institutionalized prior to November 1, 2007, the lookback date is the same as the spouse's.

   b. If the CUSP is institutionalized November 1, 2007, or later, determine the starting point and lookback date independently from the ISP.

C. The Lookback Date Never Changes

1. **Once the lookback date is correctly established, it never changes.**

   a. Evaluate all transfers beginning on or after the lookback date.

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

   c. During the lookback period, the transfer of certain assets is sanctionable only when transferred on or after a specific date. Do not apply a transfer of assets sanction when the following assets are transferred prior to the date specified. A transfer sanction must be determined for all other non-allowable transfers within the lookback period. Refer to XII. below.

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(V.C.1.c.)

Asset	Date
Income Producing Homesite Property	**October 1, 2001**
Tenancy-In-Common Property Interest	**December 1, 2002**
Non-Business Income Producing Property That Meets The 6% Test	**December 1, 2002**
Property That Produces Goods and Services For Home Consumption	**December 1, 2002**
Any Asset When A Non-CAP A/R Is Receiving In-Home Health Services and Supplies	**February 1, 2003**
Excluded Assets, including life estates	**November 1, 2007**

2. Document the lookback date in the case record.

3. When there has been a transfer of assets on or after the lookback date, verify the following information based on policy rules in MA-2230, Financial Resources.

   a. A description of the asset transferred (the homesite, other real property, life estate, remainder or tenancy-in-common interest in real property, cash, lump sum, vehicles, stocks, bank account, certificate of deposit, etc.).

   b. The person who transferred the asset (a/r, spouse, legal representative).

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

   d. The a/r's relationship to the individual to whom the asset was transferred.

   e. The value of the asset at the time of the transfer. See IX. below for determining the value of a transferred asset.

   f. The compensation (money or other benefit) received or expected from the transferred asset.

   g. The date the asset was transferred.

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

   i. Whether the applicant still retains any ownership right in the asset.

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VI. EXPLORING TRANSFER OF ASSETS

To determine if any transfers have occurred the county must explore **all** assets on all applications, redeterminations, and change in situations for individuals requesting or receiving institutional services. Evaluate the evidence presented by the applicant or the applicant's representative concerning any asset transferred. The evidence might establish another reason for the transfer other than to establish or retain Medicaid eligibility.

A. Verification

1. Request bank statements, investment accounts, and other financial documents that can verify the a/r's (and spouse's) assets for the entire lookback period.

   If requested information is unavailable, evaluate the information presented and determine if the information provides a reasonable picture of the applicant's financial situation.

   The county is responsible for obtaining this information if the a/r is unable to provide it. However, it is the responsibility of the a/r to provide the agency with enough information to pursue obtaining the required documentation. The county must use the DSS-3431, Request for Financial Information, to request information from the bank. In lieu of financial statements for the lookback period, the county may choose to request any of the following information from the financial institution.

   a. At a minimum, a financial document for the month of application, the month prior to the month of application, and a financial document for the first and last month of the lookback period and each twelve months in between. These financial documents can be used to verify consistency in balances. If these exact months are not available, but the information provided is reasonably close, accept the information. You may request more information but not to the point it discourages the a/r.

   b. Highest and lowest balances for all accounts for the entire lookback period. The highest and lowest balances can be used to verify average balance. An extremely high balance may require further documentation from the a/r.

   c. Deposit information for deposits that do not appear regular and recurring. Irregular deposits may indicate other sources of income and/or assets. Pensions and SSA are regular and recurring deposits.

   d. The date accounts may have been closed during the lookback period and the amount of the closing withdrawal(s). This can be used to identify accounts closed during the lookback period and possibly the source of other deposits.

(VI.A.1.d.)

Do not deny if the a/r cooperated but it is determined information is not available. Accept the a/r's statement or use whatever information is provided to determine eligibility.

2. Check county records or request copies of deeds to show current or past ownership on all real property owned by the a/r or the a/r's spouse.

3. Obtain evidence to indicate a pattern of giving regarding regular donations/gifts to charities, religious organizations or family members. For example, the a/r regularly gives each family member $1,000 at Christmas and birthdays. A pattern of giving can indicate intent other than to qualify for Medicaid.

4. Once the information is obtained, the IMC must examine the information for evidence a transfer may have occurred. Some potential indicators might be:

   a. The interest paid to date shows a substantial amount, but the current balance does not support payment of that interest.

   b. The balances in the past show substantially higher amounts than is currently in the account.

   c. DSS-3431 has been obtained from the bank, and it shows a substantial balance that is not currently in the account.

   d. The account shows a substantial withdrawal or withdrawals over a period of time.

5. During the evaluation some potential questions to ask and consider that may be useful to determine if transfer occurs are:

   a. What is the applicant's age, general health, living arrangement, and amount of assets retained to meet future needs at the time of the transfer?

   b. Does the case record document any inquiry by the applicant, his spouse, representative, or other interested party about asset limits for Medicaid, long term care budgeting, etc.?

   c. Has the applicant consulted or hired an attorney for estate planning purposes? This may provide a contact person. If the individual saw an attorney this does not necessarily mean the client was trying to hide assets.

   d. Does the individual(s) who provided the knowledgeable statements stand to gain in any way from the transfer?

(VI.A.5.)

e. Is there evidence of regular donations/gifts to charities, religious organizations or family members?

f. Is there evidence of onetime gifts by an applicant who did not anticipate needing institutional services?

g. Did the applicant attempt to dispose of the asset for its current market value?

6. If the county worker finds evidence to suspect a transfer may have occurred, the applicant or authorized representative must be questioned to secure an explanation and asked to provide additional information and documentary evidence as needed.

B. Documentation

1. Document the above information in a central location in the case file.

2. Document the explanation of transfers of assets rules to the a/r when:

   a. Assistance with nursing home cost of care, CAP, or PACE is requested, or

   b. A transfer is reported, or

   c. When explaining right to a rebuttal/undue hardship.

3. Document all of the following when explaining:

   a. How the sanction is calculated, and

   b. Exceptions to the sanction, and

   c. How to lift or reduce the sanction period, and

   d. That in-home health services and supplies will be sanctioned is the a/r is no longer eligible for institutional services/CAP and the sanction period has not expired (See MA-2241, Transition Policy for In-home Health Services and Supplies).

VII. ALLOWABLE TRANSFERS (NON-TRUSTS)

Certain transfers are allowed. DO NOT apply a sanction to the following transfers.

A. Compensated Transfer

Real or personal property or liquid assets or income that are transferred or exchanged in return for money or any other tangible object, service, or benefit that is equal to or greater than the equity of the transferred asset is a compensated transfer. Refer to IX. below, to evaluate transfers that may or may not be allowed.

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(VII.A.)

Some transfers that are adequately compensated may still be non-allowable transfers because of other requirements (e.g. annuities, purchases of life estates, etc.) and should be evaluated for a possible sanction.

B. Transfer of the Homesite

1. When evaluating for transfers, the homesite is defined as any property in which the a/r or financially responsible person has an ownership interest **and**

   a. Is used as his principal place of residence or the principal place of residence of his spouse or a dependent relative, **or**

   b. Was used as the principal place of residence by the a/r, his spouse or dependent relative during the lookback period **or**

   c. He intends to return to it or intended to return to it during the lookback period.

   Once ownership is established by the a/r or financially responsible person in a new principal place of residence, even if it occurs on or after the lookback date, the former principal place of residence becomes non-homesite property.

   Refer to MA-2230, Financial Resources, for the definition of the homesite and contiguous property and for policy used to determine asset eligibility.

2. Evaluate the transfer of a homesite that was made income producing as a non-allowable transfer. Transferring the homesite after it has been made income producing is allowable only if it is transferred to a specified person as indicated in VII.B.3. below.

3. Transfer of the homesite without receiving compensation of equivalent value is an allowable transfer only when it is transferred to one of the following:

   a. Legal spouse, or

   b. Natural, adopted, or step child under 21 at time of transfer, or

   c. Blind/disabled (determined by SSA) child of any age, or

   d. Sibling who:

      (1) Is a co-owner of the home and

      (2) Has been residing in the home for a period of at least one year immediately before the a/r entered a nursing facility or requests CAP or PACE.

   e. Natural, adopted, or step child(ren) age 21 or over who:

(1) Resided in the home for at least two years immediately before the a/r entered a nursing facility or requests CAP or PACE, and

(2) Provided care to the a/r to permit him to live at home rather than in a nursing facility throughout the 2 year period, and

(3) Provides documentation that the adult child(ren) resided in the home during the two years, and

(4) Provides documentation that the adult child(ren) provided necessary care.

For example, four children rotate months living with and caring for their mother in her home. They have taken turns doing this for three years when the mother must to go into a nursing home. The mother transfers her home to her four children who have taken turns living with and taking care of her. This is an acceptable transfer.

For transfers of the home prior to November 1, 2007, follow policy in MA-2241, Transition Policy for In-home Health Services and Supplies.

C. Transfer to the Legal Spouse or Blind/Disabled Child

1. Any resource or income transferred (in addition to the transfer of the homesite described above) to the legal spouse or blind/disabled child of any age is allowable.

2. The blind/disabled child must have been determined blind/disabled according to SSA standards.

VIII. ALLOWABLE TRANSFERS TO A TRUST

A. Transfers to a Trust For The "Sole Benefit" of an Allowable Person

1. Transfers by the a/r or any person with legal authority to act in place of or on behalf of the a/r to another party for the "sole benefit" of certain “allowable persons” is allowable.

2. An allowable person is:

   a. The a/r’s legal spouse, or

   b. The a/r’s blind/disabled (determined by SSA) natural, adopted, or step child of any age, or

   c. Other unrelated disabled individual (determined by SSA) under age 65.

(VIII.A.)

3. To be allowable, a transfer to a third party for the "sole benefit" must meet the following criteria:

   a. The asset cannot benefit anyone in any way but the allowable person at the time of the transfer and in the future.

      Trustee Rule: The trust may provide for reasonable compensation for a trustee to manage funds. Reasonable compensation is based on the time involved to manage the trust and the prevailing rate of compensation. Evaluate each situation on a case-by-case basis to determine if the compensation is reasonable.

   b. The transfer must be in the form of a trust document (or similar legal document) which legally specifies the conditions under which the transfer was made, who can benefit, and the amount of the benefit.

   c. The trust (or legal document) must provide that the transferred funds are spent on behalf of the allowable person within his lifetime (except for Special Needs and Pooled Trusts described below).

   d. Determine if the beneficiary is expected to live long enough to receive the transferred funds based on his age at the time the trust is created and the disbursement schedule of the funds. Use the Life Expectancy Table to determine the beneficiary's life expectancy at the time of the transfer. Refer to Life Expectancy Table, MA-2240, Figure 1.

      (1) If the funds will be spent on the beneficiary in his lifetime, it is an allowable transfer.

      (2) Count as a transfer the portion of funds not expected to be disbursed to the beneficiary.

4. The transferred assets/income is countable to the person for whose benefit the asset is intended if that person applies for Medicaid (or is part of a budget unit applying for Medicaid). Refer to MA-2230, Financial Resources.

B. Transfers To Special Needs or Pooled Trusts

1. In addition to transfers to trusts for the "sole benefit" described in A. above, transfers of the a/r's assets to a Special Needs or Pooled trust are an allowable transfer when the terms of the trust meet all the criteria in MA-2230, Financial Resources, XI.

(VIII.B.1.)

An a/r cannot establish a Special Needs trust for himself. A Special Needs trust must be established by a parent, grandparent, legal guardian, or court.

2. Forward a copy of the trust document to DMA, Third Party Recovery Section, 2508 Mail Service Center, Raleigh, N.C. 27699-2508.

C. Purchase of An Irrevocable Burial Contract

Assets used to purchase an irrevocable burial contract are an allowable transfer and create a trust when:

1. The contract is purchased for the benefit of the a/r, his spouse, child under 21, or blind/disabled child of any age, and

2. The contract lists each burial item and/or service.

IX. TRANSFERS THAT MAY OR MAY NOT BE ALLOWED

A. Annuities

Evaluate all annuities held by the a/r or the spouse of the a/r to determine if they are a resource. (See MA-2230, Financial Resources.) If the annuity is a countable resource, do not evaluate for transfer of assets sanction. If the annuity is not a resource, evaluate for a possible transfer of asset following policy below. Use MA-2240 Figure 4, Annuities, as a guide.

EXCEPTION: Annuities purchased or changed on or after November 1, 2007, must have North Carolina's Medicaid program named as remainder beneficiary. If an annuity does not and the a/r is otherwise eligible for Medicaid, evaluate for transfer of assets regardless of their status as a resource. See IX.A.2. below.

The uncompensated value for sanctionable purchases of annuities that are purchased or changed on or after November 1, 2007, is always the full purchase price.

1. Annuities Purchased or Last Changed Prior to November 1, 2007

   a. Assets of the a/r (and those of the spouse of the a/r) used to purchase or change an annuity **prior to November 1, 2007,** are an allowable transfer when the annuity is not a resource and:

      (1) The beneficiary of the annuity is the a/r or an allowable person described in VIII.A., above.

      (2) The beneficiary is expected to live long enough to receive an amount that is equal to or greater than the amount originally invested to purchase the annuity.

(IX.A.1.a.(2))

(a) Use the Life Expectancy Table, MA-2240, Figure 1 to determine how long the beneficiary is expected to live based on his age at the time the annuity is purchased. There is a different life expectancy table for women and men. Round up or down to the nearest whole number.

(b) 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.

(c) Compare this amount to the purchase price of the annuity.

(d) When the amount that is expected to be paid out during the beneficiary's life is equal to or greater than the purchase price of the annuity, the a/r received fair market value for his investment. This is an allowable transfer. Do not apply a sanction. (Also, see IX.A.1.b. below.)

(e) When the purchase price of the annuity is greater than the amount that is expected to be paid out in the beneficiary's life, the difference between the two amounts is an uncompensated transfer.

EXAMPLES: A man, aged 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 14.96 years which is rounded to 15 years, the nearest whole number. Therefore, the annuity is an allowable transfer.

A man, age 85, purchases the same annuity. His life expectancy at age 85 is 5.19 years which is rounded to 5 years, the nearest whole number. The value of the uncompensated transfer is $5,000. ($1,000 per year multiplied by 5 years)

b. A transfer to an annuity may appear to be allowable in that the beneficiary is expected to live long enough to receive an amount that is equal to or greater than the amount originally invested. The disbursements must also be made as a stream of income that stays constant or increases or decreases in regular intervals to assure original investment is paid out over the beneficiary’s lifetime. If disbursements are not made in this manner, the transfer may be non-allowable.

For example, a person purchases an annuity that pays off in minimal amounts until the end of the person's life expectancy when it pays off in the last month. This is a "balloon payment" and does not represent a stream of income that is constant or increases or decreases at regular intervals. Evaluate the purchase of the annuity as a transfer of assets.

c. The transfer of an annuity from one owner to a non-allowable person is sanctionable. If the principal balance of the annuity was available to the a/r at the time of transfer, the uncompensated value is the amount of the principal balance. If the principal balance was not available to the a/r at the time of transfer, sanction the payments from the annuity as a stream of income.

2. Annuities Purchased or Changed On or After November 1, 2007

Annuities that are purchased or changed on or after November 1, 2007, and do not meet the criteria below are considered an uncompensated transfer for the amount of purchase plus any additions to the annuity. Determine a sanction period.

a. The following requirements apply to all annuities whether they are determined to be a resource or not:

(1) The State of North Carolina's Medicaid Program must be named remainder beneficiary in the first position for all annuities created or changed on or after November 1, 2007, when the a/r is applying for or receiving institutional services, CAP services, or PACE services. This requirement also applies to annuities held by the spouse of the a/r. Use the information obtained from the MA-2230 Figure 15/DMA-5111, Annuity Verification Form.

(a) If there is a community spouse and/or any child under age 21 or a disabled child of any age when the purchase or change takes place, the North Carolina Medicaid Program may be named in the next position after those individuals.

(b) If the North Carolina Medicaid Program is not named as a remainder beneficiary or not named in the correct position within the time frames for providing necessary information, the purchase or change to the annuity is a transfer of assets for the amount of the original full purchase price plus any additions. The amount the State of North Carolina Medicaid Program can receive, as a beneficiary of a Medicaid recipient's annuities, is limited to the amount that Medicaid paid on behalf of the Medicaid recipient.

(IX.A.2.a.)

(2) Changes include any action(s) taken by an individual that changes the course of payment of the annuity or that changes the treatment of the income or principal of the annuity. Changes include but are not limited to:

(a) Additions to principal

(b) Elective withdrawals

(c) Requests to change the distribution of the annuity

(d) Elections to annuitize the contract

Changes do not include address changes, death or divorce of a remainder beneficiary, child turning 21 or changes beyond the control of the individual such as change in the policy of the issuer.

If the annuity is a countable resource, the a/r will likely be ineligible for Medicaid due to excess resources. In this case no transfer of assets sanction can be applied.

b. The following requirements apply to annuities <u>not</u> determined to be a resource:

(1) Assets of an a/r used to purchase or change an existing annuity **on or after November 1, 2007,** will not be treated as a transfer of assets if, in addition to North Carolina's Medicaid program named as a beneficiary, the annuity meets the following conditions: (Note: This requirement does not apply to an annuity held by the a/r's spouse)

(a) The annuity was sold by a bank, insurance company, or other person engaged in the business of the sale of commercial annuities.

AND

(b) The annuity is considered either:

1) An individual retirement annuity, or

2) A deemed Individual Retirement Account (IRA) under a qualified employer plan.

OR

(c) The annuity is purchased with proceeds from one of the following:

(IX.A.2.b.(1)(c))

1) A traditional IRA; or

2) Certain accounts or trusts which are treated as traditional IRAs; or

3) A simplified retirement account; or

4) A simplified employee pension account; or

5) A Roth IRA.

NOTE: To determine if an annuity is established under any of the provisions in a. and b. above, rely on verification from the financial institution, employer, or employer association that issued the annuity. The burden of proof is on the a/r or the a/r's representative to produce this documentation.

OR

(d) The annuity meets all of the following requirements:

1) The annuity is irrevocable and does not allow the policy holder to assign or transfer the ownership or income of the policy to a third party; and

2) The purchase price of the annuity is expected to be paid back in full during the actual or expected lifetime of the annuitant, (Follow procedures in IX.A.1.a.(2) above to determine if the beneficiary is expected to live long enough to receive full payments), and

3) The annuity provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments.

(2) Annuities that are purchased or changed on or after November 1, 2007, and do not meet the criteria above are an uncompensated transfer for the amount of purchase. Determine a sanction period.

B. Promissory Notes, Loans, Mortgages, or Other Property Agreements

A promissory note, loan, mortgage, or other property agreement must have a fair market value at least equal to the value of the transferred asset. Consider a promissory note, loan, mortgage, or other property agreement that does not meet all the criteria below a transfer of assets.

(IX.B.)

Determine the sanction period using the remaining balance owed on the note, loan, mortgage, or other property agreement at the date of application for institutional services, or date CAP or PACE services are requested.

1. The purchase/establishment or receipt of a promissory note, loan, mortgage, or other property agreement on or after November 1, 2007, is considered an uncompensated transfer unless the repayment agreement meets the criteria below.

   a. The total value of the note, loan, mortgage, or other property agreement is expected to be paid back in full during the actual or expected lifetime of the lender/beneficiary,

      Use the Life Expectancy Table (MA-2240, Figure 1) to determine the lender/beneficiary's life expectancy at the time of purchase to determine if note, loan, mortgage, or other property agreement is expected to be paid back in full during the individual's lifetime. Follow procedures in IX.A.1.a.(2) above.

   and

   b. Repayment must be made in equal amounts during the term of the note, loan, mortgage, or other property agreement with no deferral payments and no balloon payments,

   and

   c. The agreement prohibits the cancellation of the balance upon the death of the lender.

2. A purchase of a non-negotiable promissory note prior to November 1, 2007, is a transfer. Since it cannot be sold, it has no value and is therefore uncompensated, resulting in a sanctionable transfer. Reduce the sanction as payments are made.

C. Life Estate

A life estate is a limited interest in real property. A life estate holder does not have full title to the property, but has the right to use the property for his lifetime or for a specified period of time.

1. Exclude a life estate interest as an asset in determining eligibility for Medicaid.

2. Evaluate for transfer of assets when the a/r or the a/r's spouse transfers real property and retains a life estate. (See IX.D. below for transfers of remainder interest in real property.)

(IX.C.2.)

a. The date of transfer is the day the deed is signed by the grantor, delivered, and accepted by the grantee. (See XII.C. below)

b. The uncompensated value is the equity of the remainder interest granted, less compensation received. Refer to MA-2230, Financial Resources, for instructions on determining the equity value of a remainder interest.

3. Evaluate for transfer of assets when an a/r or the a/r's spouse transfers a life estate interest.

a. The date of transfer is the day the deed is signed by the grantor, delivered, and accepted by the grantee. (See XII. below)

b. Determine if fair market value was received for the life estate. Refer to MA-2230 Figure 4, Life Estate/Remainder Interest Tables.

c. Multiply the tax value of the real property on the date the life estate is transferred by the corresponding life estate value for the age of the individual whose life determines the length of the life estate. The result is the value of the transferred life estate.

EXAMPLE: An 84 year old individual transfers his life estate interest in a home valued at $130,000. The transfer amount is $48,097.40.

$ 130,000.00	Value of the home at the time the life estate was transferred
X .36998	Age 84 at time of transfer
$48,097.40	Value of the life estate at the time of transfer

d. Determine the sanction period. See XII. below.

4. Evaluate the purchase of a life estate in another individual's home for a transfer of asset sanction if the purchase date is on or after November 1, 2007, and

a. At the time of application for institutional services the purchaser has not resided in the home for a period of at least 12 consecutive months following purchase of the life estate. The 12 months begins the date the purchaser moves into the home and ends on the 365th day.

Vacations, overnight visits, and acute hospital stays should not be deducted from the 12 month period provided this continued to be the individual's residence.

(1) Determine the sanction period based on the purchase price.

(2) Continue the sanction period until it is complete even if the person continues to reside in the home beyond 12 months.

(IX.C.4.a.)

Example: A CAP recipient purchased a life estate in another's home and has lived in that home for less than 12 months when he applied for CAP services. He has a sanction period of 18 months. He continues to reside in the house beyond 12 months. He is not eligible for 18 months. Continue to apply the sanction for the remaining months.

OR

b. He has resided in the home for at least 12 consecutive months following purchase of the life estate at the time of application for institutional services and the purchaser paid equal or more than fair market value of the life estate. Determine the sanction period based on the difference between the amount paid and the fair market value of the life estate. See IX.C.5. below to determine the uncompensated value.

5. Evaluate the purchase of a life estate in any property that is not the home of another individual.

a. Count any amount paid over fair market value as a transfer.

b. The value of the life estate at the time of purchase must at least equal the amount paid. The uncompensated value is the purchase price minus the value of the life estate at the time of purchase.

For example: A life estate is purchased for $20,000. The value of the life estate is $10,000. $20,000 (purchase price) - $10,000 (value) = $10,000 (uncompensated value)

D. Remainder Interest in Real Property

1. When the a/r or the a/r's spouse obtains a remainder interest in real property, determine if the value of the remainder interest is at least equal to the value of the compensation given in return.

a. Determine if fair market value was received for the remainder interest.

b. Multiply the tax value at the time the remainder interest was obtained by the remainder decimal factor that corresponds to the age of the individual whose life determines the length of the life estate. Subtract any encumbrances applicable to the remainder interest. Refer to MA-2230 Figure 4, Life Estate/Remainder Interest Tables. The result is the equity value of the transferred remainder interest.

c. Compare the equity value of the remainder interest to the value of the compensation received. If the compensation received is less than the equity value of the remainder interest received, this is an uncompensated transfer. Refer to XII.C. below to determine the length of the sanction period.

(IX.D.1.)

d. The date of transfer is the date the remainder interest is purchased.

2. When the a/r or the a/r's spouse transfers a remainder interest in real property, whether or not a life estate interest was retained, evaluate to determine if the a/r or the a/r's spouse received compensation at least equal to fair market value of the transferred remainder interest in real property.

E. Tenancy-in-Common Interest

1. When the a/r or the a/r's spouse obtains a tenancy-in-common interest in real property, determine if the fair market value of the tenancy-in-common interest is at least equal to value of resources given by the a/r or the a/r's spouse.

   a. Determine the value of the tenancy-common interest on the date it is obtained. Multiply the tax value of the property at the time of transfer by the tenancy-in-common interest in the property.

   b. Multiply the amount of encumbrances on the property by the tenancy-in-common interest, and subtract this amount from the amount determined in a. above. The result is the fair market value of the tenancy-in-common interest.

   c. If the fair market value of the tenancy-in-common interest is less than the value of the compensation given by the a/r or a/r's spouse, this is an uncompensated transfer. Refer to XII.C. below to determine the length of the sanction period.

   d. The date of transfer is the date the tenancy-in-common interest is obtained.

2. When the a/r or the a/r's spouse transfers a tenancy-in-common interest in real property, determine if the value of compensation received is at least equal to fair market value of the tenancy-in-common interest in real property.

   a. Determine the value of the tenancy-in-common interest or other fractional interest on the date of transfer/purchase. Multiply the tax value of the property at the time of transfer by the fractional interest in the property.

   b. Multiply the amount of encumbrances on the property by the fractional interest in the property and subtract this amount from the value determined in a. above. The result is the fair market value.

   c. If the compensation received is less than the fair market value of the tenancy-in-common interest, this is an uncompensated transfer. Refer to XII.C. below to determine the length of the sanction period.

   d. The date of transfer is the date the tenancy-in-common was transferred.

(IX.E.)

3. Evaluate for transfer of assets when the a/r or a/r's spouse changes ownership interest in property from fee simple or tenancy-by-the-entirety to tenancy-in-common interest.

   a. The uncompensated value is the equity in the tenancy-in-common interest less any compensation received.

   b. For Medicaid eligibility purposes, encumbrances on real property that is held by tenancy-in-common apply to the entire property. The equity in the tenancy-in-common interest in real property is:

      (1) The CMV of the property multiplied by the tenancy-in-common share,

      (2) Less the encumbrances on the property multiplied by the tenancy-in-common share.

   c. In the event there is an encumbrance that applies to only the tenancy-in-common interest, subtract the full amount of the encumbrance from the result of the CMV of the property multiplied by the tenancy-in-common share. If an encumbrance applies only to the other tenancy-in-common share, do not deduct from the a/r's tenancy-in-common interest.

F. Single Premium Endowment Policies

The policy is an endowment investment instrument similar to an annuity that is not actuarially sound. The pure endowment policy pays a benefit only to those persons who survive a certain period of time. The policy has no cash value and payments are irregular or a balloon payment at maturity.

The purchase of a single premium pure endowment policy is considered an uncompensated transfer. Count the total amount of the purchase price of the endowment policy as the uncompensated value of the transfer.

G. Regular Donations/Gifts

A pattern of giving regular donations/gifts to charities, religious organizations or family members can indicate intent other than to qualify for Medicaid. For example, the a/r regularly gives each family member $1,000 at Christmas and birthdays. Do not impose a sanction when an asset was transferred solely for a reason other than to become eligible for Medicaid.

1. In making the determination, consider the following:

   a. The a/r's or the a/r's spouses' age, general health, living arrangement, and amount of assets retained to meet future needs at the time of the transfer;

   b. How the a/r expected to meet his medical and other living expenses without the transferred asset;

(IX.G.1.)

c. Whether the transfer by the a/r or the a/r's spouse to a charity, religious organization, or family member was made when the a/r or the a/r's spouse did not anticipate needing long term medical care.

2. Document the response provided to the considerations listed above. The a/r or the a/r's spouse or the a/r's or the a/r's spouse's representative must also provide a written description of the gifts/donations, including date, amount, and recipient.

3. In addition to the written evidence provided as listed above, evidence from other sources may be considered. Examples of other sources include but are not limited to bank records, medical records or oral or written statements from persons knowledgeable about the a/r's or the a/r's situation and the transfer of assets.

H. Personal Services and Continuing Care Contracts Signed on or After November 1, 2007

This does not pertain to Continuing Care Retirement Communities (CCRC) that provides a continuum of care under a contract. See MA-2230, Financial Resources, X.Q. for policy concerning a CCRC. For personal services and continuing care contracts signed on or after November 1, 2007, the following applies.

1. Personal services and continuing care contracts are not asset transfers when the value of the transferred assets is an amount that is at least equal to the value of the services to be received and all of the following conditions are met.

a. A written contract between the a/r or the a/r's spouse and the provider of the services is signed before services are delivered and payment made. The contract is dated and either party is able to terminate the contract; and

b. The contract is signed by the a/r or the a/r's spouse or a representative legally authorized through a power of attorney, general guardianship, or guardianship of the estate; and

c. At the time the a/r or the a/r's spouse receives services provided under the terms of a personal services contract, the a/r or the a/r's spouse who is receiving the services is not residing in a nursing facility or intermediate care facility for the mentally retarded.

However, the contract is a transfer of assets if:

(1) The a/r receives services under the terms of a personal services contract while he or she is residing in a nursing facility or intermediate care facility for the mentally retarded or

(2) The a/r's spouse receives services under the terms of a personal services contract while he or she is residing in a nursing facility or intermediate care facility for the mentally retarded; and

d. At the time the contract is signed, the services have been recommended in writing and signed by the a/r's or the a/r's spouse's physician as necessary to prevent the entry of the a/r or the a/r's spouse to a nursing facility or intermediate care facility for the mentally retarded. Such services may not include the providing of companionship, visits, or spiritual wellbeing; and

e. The county department of social services verifies the agreement by reviewing the written contract between the a/r or the a/r's spouse and the provider of the services. The contract must show the type, frequency and duration of the services being provided to the a/r or the a/r's spouse and the amount of assets being transferred by the a/r or the a/r's spouse to the provider of the services. If the amount of assets transferred in return for the services is greater than the fair market value of the services that can be expected to be received by the a/r or the a/r's spouse under the terms of the contract, the a/r or the a/r's spouse will be considered to have transferred the asset for less than fair market value.

(1) The uncompensated amount is the value of the transferred assets that exceeds the value of the services expected to be provided under the contract.

(2) Fair market value of the services expected to be provided to the individual or the individual's spouse under the contract is established by the written statement of an area business which provides such services. If the services cannot be purchased on the open market or a business that provides the service cannot be located, use the state minimum wage amount.

2. At application and at each redetermination of eligibility, the a/r or the a/r's spouse or his representative must present to the county department of social services a statement from the provider of the services that documents the amount and type of services provided.

3. Termination of the contract or failure to receive the services at the frequency and value specified in the contract constitutes a transfer of assets for less than fair market value. The uncompensated amount is the amount paid which exceeds the fair market value of the services received.

4. If the a/r or the a/r's spouse who has a personal services contract is admitted to a nursing facility or intermediate care facility for the mentally retarded, from that date forward any contract or the remainder of an existing contract is considered a transfer of assets for less than fair market value. The uncompensated amount is the amount paid which exceeds the fair market value of the services received.

I. Transfers for "Love and Consideration"

1. Evaluate for transfer of assets when an a/r gives cash or other assets to a family member, relative, or friend for care or services that were provided for free in the past.

2. Unless there was a written agreement for compensation **at the time the care or service was received**, the transfer is uncompensated.

(IX.I.)

3. If the agreement or the terms of the agreement are contradictory or inconsistent, refer to MA-2303, Verification Requirements for Applications, to evaluate for conflicting information.

X. ADDITIONAL EXCEPTIONS TO APPLYING TRANSFER SANCTION

Except for the allowable transfers outlined in VII., VIII., and IX. above, presume all other transfers are made to make the individual eligible for payment of institutional services or in-home health services and supplies after the individual has received institutional services.

Evaluate each situation on a case-by-case basis. It may be done as part of the application process, redetermination, change in situation, or appeal. The individual or his representative may rebut the presumption and provide evidence that the transfer was made exclusively for a reason other than to establish eligibility for Medicaid. Additionally, he may rebut the value of the transferred asset or the value of compensation received. See XIII. below.

Do not apply a transfer sanction when the a/r has been granted a waiver for undue hardship or when one of the situations in XI. below is verified. Refer to MA-2245, Undue Hardship Waiver for Transfer of Assets, for procedures to determine if an undue hardship exists.

XI. NON-ALLOWABLE TRANSFERS

Some transfers have special rules based on the type of asset transferred. Apply the following rules.

A. Date of Transfer for Real Property or Interest in Real Property

The date of transfer for real property is the day the deed is signed by the grantor, delivered, and accepted by the grantee. Unless fraud is suspected, it is presumed this is the date recorded on the front of the deed. The deed does not have to be notarized or registered in order to be a valid title transfer. However, a deed of gift must be registered within 2 years to remain valid.

B. Transfer of Contiguous Property When The A/R or A/R's Spouse Does not Have Ownership Interest in the Principal Place of Residence

1. Up to $12,000 value of contiguous property is excluded in determining resource eligibility (See MA-2230, Financial Resources) when the a/r or the a/r's spouse does not have ownership interest in the principal place of residence. This exclusion is not a homesite exclusion. For contiguous property to be excluded as the homesite, the a/r must have an ownership interest in the principal place of residence.

2. If a non-allowable transfer of contiguous property is made and the a/r or the a/r's spouse does not have an ownership interest in the principal place of residence, determine the sanction period using the total uncompensated value of the property. Do not subtract the $12,000 in determining the value of the property.

   For example, property contiguous to the principal place of residence in which the a/r has no ownership interest has an equity of $20,000. Exclude $12,000 of the equity in determining countable assets. If the property is transferred, evaluate for a sanction. Use the full $20,000 equity in determining the sanction period.

C. Joint Ownership of Liquid Assets

1. Evaluate for transfer of assets when the a/r takes any action that eliminates his ownership or reduces his control of a liquid asset. Examples include when the a/r adds another individual(s) to a bank account or certificate of deposit.

   Determine if a resulting trust exists. The transfer is a resulting trust if the asset is in another person's name but it is held for the benefit of the a/r and the person holding the asset retains no legal interest in the asset and will not benefit from the disposal of the asset. If a resulting trust is verified, there is no sanctionable transfer.

2. The date of transfer depends on the action:

   a. The date of transfer for an "or" account is the date the asset is actually reduced.

      EXAMPLE: The a/r added his niece's name to his $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 the a/r.) In April, the niece withdraws the $30,000 from the joint account and puts it into her own account. The date of transfer is the date the niece actually withdrew the funds. However, if the niece withdraws the money and uses it on behalf of the a/r, there is no transfer.

   b. The date of transfer for an "and" account is the date the a/r reduces his control of the asset.

      EXAMPLE: The same situation as above, but the account is changed to an "AND" account. An "and" account requires the signature of both parties to access. The date of transfer is the date the niece's name was added to the account because that is the day the a/r reduced his control of the asset.

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D. Transfers Involving Countable Trusts

Note: Any time you learn the a/r or financially responsible spouse or parent created a trust or is the beneficiary of a trust, report it to DMA, Third Party Recovery Section. The telephone number is 919-647-8100.

1. Except for the specific trusts described in VIII. above, evaluate trusts created by the a/r with his funds as either:

   a. An available asset to the a/r, or

   b. A transfer of asset.

2. Refer to MA-2230, Financial Resources, to determine what portion of the trust is an available asset to the a/r. The amount that is unavailable to the a/r is subject to a transfer sanction.

3. Revocable Trust

   a. The date of transfer for a revocable trust is the date a disbursement from the trust is made to someone other than the a/r.

   b. The uncompensated value of the transfer is the actual amount paid to an individual other than a/r.

4. Irrevocable Trusts

   a. The date of transfer is the date the trust is established.

   b. The uncompensated value is the portion of the trust that was made unavailable to the a/r on the date the trust is established. Do not subtract any payments made from the trust after the trust was established.

   c. Treat additions to existing trusts as a new transfer based on the date of the addition. Additions include undistributed interest earned on the trust principal.

E. Stream of Income

1. A stream of income is income received on regular basis such as a pension or rental income from property.

2. When a stream of income is transferred or diverted, treat each payment as a separate transfer.

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(XI.)

F. Transfer of Income Producing Property

1. If a homesite becomes income producing, it remains a homesite for transfer of asset purposes if it meets the criteria in VII.B.1. Evaluate transfer of homesites, including those that have become income producing.

2. If income producing property that meets the 6% net annual income test (See MA-2230, Financial Resources, for policy on the 6% net annual income test.), is transferred, evaluate for transfer of assets.

   The uncompensated value is the value of the property less any compensation received less any amount used to pay off an encumbrance. Do not deduct $6,000.

3. When evaluating a transfer of income producing property, do not consider a stream of income.

G. Inheritance

A transfer also occurs when an individual takes action to waive or renounce an inheritance to which he is entitled.

XII. TRANSFER SANCTION

A. Determine the Uncompensated Value of Transfer(s)

1. List each non-allowable transfer occurring on or after the lookback date through the current date.

2. Determine the date of transfer. Calculation for sanction periods vary depending on the date of the transfer(s). Refer to XII.B. below and XII.C. below to determine the sanction period based on the transfer(s) date. Refer to XI. above for dates of transfer in special situations.

3. Determine the value of each transferred asset based on policy in MA-2230, Financial Resources. For transfers of tenancy-in-common interest in real property, see IX.E. above.

   a. For the transferred asset, establish the market value (tax value) **at the time of the transfer**.

      NOTE: The value of certain transferred assets can be rebutted. If an asset's value has already been successfully rebutted as part of the application process, use the established rebutted value.

   b. Subtract any encumbrances at the time of transfer to establish the equity of the asset. The remainder is the equity.

(XII.A.3.)

c. Subtract the amount or value received, if any, from the equity. **This is the uncompensated value**.

d. See IX.A., IX.B., and IX.C. above for exceptions to the rule when evaluating annuities, promissory notes, loans, mortgages, or other property agreements, and life estates.

B. Determine the Sanction Period for Transfers Occurring prior to November 1, 2007

The length of the sanction period is based on the uncompensated value of the transfer, and for transfers prior to November 1, 2007, it begins with the month of transfer. Only determine countable assets for transfers during this period with the exceptions noted in VII.B. above.

1. Total the uncompensated value of transfers in the lookback period that took place prior to November 1, 2007. If the total uncompensated value of transfers is less than the current average private NF rate of $5,000, there is no sanction. This private NF rate is subject to change. DMA will issue changes in the rate.

2. Divide the total uncompensated value for all transfers by $5,000.

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

4. The result is the number of months of sanction.

   EXAMPLE: Mr. Smithy has never applied for Medicaid. He entered a nursing facility in May 2007 and applied for Medicaid on June 15. The lookback period begins June 15, 2004. He made one transfer in the lookback period. He transferred real property with an equity value of $156,000 on February 20, 2005, receiving no compensation.

   $156,000 / $5,000 = 31.2. This is a 31 month sanction beginning February 2005.

5. Begin the sanction period with the month the total transfer(s) equals $5,000.

   EXAMPLE: Mr. Johnson has never applied for Medicaid. He entered a nursing facility on May 31, 2007, and applied for Medicaid on July 5. The lookback period begins July 5, 2004. He made the following transfers during the lookback period: $1,250 on January 20, 2005, $2,000 on September 6, 2006, and $2,000 on November 5, 2006.

   On November 5, 2006, the total value of assets transferred in the lookback period is $5,250. That results in a one-month sanction ($5,250 / $5,000= 1.05) that begins and ends in November 2006.

(XII.B.)

6. For other transfers that occur during the sanction period, add the uncompensated value of those transfers to the total and divide the total by the average private NF rate.

   a. Round down each total. This is the number of months in the sanction period so far.

   b. Stop adding and end the sanction period with the first month in which:

      (1) No transfer occurred, and

      (2) No sanction applies to that month from an earlier transfer.

7. Begin a new sanction period with the month the total transfer(s) equals $5,000.

8. Never begin a new sanction period until the previous period has expired, and no transfer was made in the month following the last month of the expired sanction period.

   EXAMPLE: Mr. Wentzl entered a nursing facility on May 10, 2007. He applied for Medicaid on May 14. His lookback period begins May 14, 2004. He made a transfer of $8,500 in February 2007, another transfer of $8,500 in March 2007, and another transfer of $8,000 in April 2007. Alone each of these is a one-month sanction. However, because a subsequent transfer occurs in the month following the month the sanction period ends, it is added to the previous transfer. In this case the total transfer is $25,000 for a 5-month sanction beginning with the first transfer in February. ($25,000 / $5,000 = 5)

9. When both spouses are institutionalized, requesting CAP, or receiving in-home health services and supplies, divide the sanction period between the spouses. The total sanction imposed on both spouses cannot exceed the number of months of the sanction period.

   EXAMPLE: If the sanction period is 10 months, each spouse has a 5-month sanction period. If the sanction period is 11 months, assign one spouse a 5-month sanction period and one spouse a 6-month sanction period.

10. For a transfer made prior to November 1, 2007, if a community spouse is institutionalized after the ISP, requests CAP or receives in-home health services and supplies, and a sanction period is still in effect for the institutionalized spouse:

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

EXAMPLE: A 10-month sanction period has been assigned to the institutionalized spouse. After 6 months have passed, the community spouse enters a facility, applies for CAP, or requests in-home health services and supplies. Divide the remaining 4 months of the sanction period equally between the two. If only 3 months remain, assign one spouse a 2 month sanction period and the other spouse a one month sanction period.

b. Do not establish a new lookback period for the former CUSP. The lookback date is the same for financially responsible spouses. Refer to V.B. above.

c. Evaluate for additional transfer of assets by the former CUSP on or after the lookback date. A non-allowable transfer by the CUSP after Medicaid eligibility is established for the ISP is not a sanctionable transfer for the ISP. Add any additional sanction months to the CUSP's portion of the shared sanction. Refer to V.B. above.

11. If a community spouse is institutionalized on or after November 1, 2007, the ISP was institutionalized prior to November 1, 2007, and the CUSP now requests CAP or PACE services, or receives in-home health services and supplies, and a sanction period is still in effect for the institutionalized spouse:

a. Determine the CUSP's lookback period. Refer to V. above.

b. Evaluate all transfers that are in the CUSP's lookback period.

c. Determine if the transfer that resulted in the ISP's sanction period occurred within the CUSP's lookback period.

(1) Divide the remaining sanction period between the spouses. If the amount is not equal, the larger amount can be given to either spouse. Determine what is best for both spouses. The total sanction imposed on both spouses cannot exceed the number of months of the sanction period.

(2) Determine any additional sanction periods to be imposed on the CUSP.

(3) Add additional sanction periods to the end of existing sanction period.

d. Evaluate for additional transfer of assets by the former CUSP on or after the lookback date. A non-allowable transfer by the CUSP after Medicaid eligibility is established for the ISP is not a sanctionable transfer for the ISP.

EXAMPLE 1: A 10-month sanction period has been assigned to the institutionalized spouse. After 5 months have passed, the community spouse enters a nursing facility. Divide the remaining 5 months of the sanction period equally between the two. In this case, assign one spouse (e.g. the ISP) a 2 month sanction period and the other spouse (e.g. the CUSP) a 3 month sanction period.

It is further determined that the CUSP has a 4-month sanction period for additional transfers. The CUSP now has a 7 month sanction period and the ISP a 2 month sanction period.

EXAMPLE 2: An 80 month sanction period has been assigned to the institutionalized spouse. After 65 months have passed, the community spouse enters a nursing facility. The transfer occurred more than 60 months prior to the former CUSP's institutionalization and application for Medicaid. The remaining sanction period can not be divided between spouses. The ISP must serve the remaining sanction period.

12. Once a sanction period is imposed, key the sanction end date in the special review field on the DSS-8125.

13. Key the entire sanction period on the transfer of assets tracking screen. Refer to **EIS-3900**, Assets Transfer Tracking Screen, for data entry instructions.

C. Determine the Sanction Period for Transfers Occurring on or after November 1, 2007

The length of the sanction period is based on the uncompensated value of the transfer. For transfers on or after November 1, 2007, it begins on the date specified in XII.C.1. Use MA-2240 Figure 7, Calculating Penalty Period, as a tool to assist in calculating the penalty period.

1. The date the sanction period begins depends upon when the transfer occurred. The sanction period for transfers that occur prior to November 1, 2007, should be determined based on policy in effect at that time. Note: This date may occur on any day of the month.

   a. When the transfer occurs prior to the individual becoming eligible for Medicaid for institutional services, the sanction period begins on the date when he meets all other eligibility criteria and

      (1) For nursing facility cases the first day he is in a nursing facility with an approved FL-2, or

      (2) For CAP cases the day he has an approved plan of care and an FL2 and is authorized for Medicaid. If he had to meet a deductible it is the date the deductible is met.

(XII.C.1.a.)

(3) For PACE cases the day he would have been authorized by Medicaid to receive PACE services and he is still enrolled in PACE.

EXAMPLE: (Institutionalized applicant not otherwise eligible) An applicant is determined to have made a non-allowable transfer after November 1, 2007, and is also determined to have excess assets for the month nursing home coverage is requested. The sanction period for the transfer of assets would not be applied since the individual is not otherwise eligible due to excess assets.

b. An a/r who has a deductible does not meet all other eligibility criteria and is not otherwise eligible until the day the deductible is met. The sanction period begins on the day the deductible is met.

(1) If a deductible is met during the month of entry into a nursing facility, the sanction period begins the day the deductible is met.

(2) If the deductible is not met during the month of entry into the nursing facility, the sanction period begins the first day of the next month, the first day of long term care budgeting.

Example: An individual applies in January, enters a nursing facility in February, and transferred an asset in December, resulting in a sanction period of five months. In determining whether he is "otherwise eligible" for institutional services, and therefore when to begin the sanction period, you must consider his PLA deductible for the months in the CP through his month of entry. That is, you are budgeting as though he was going to be eligible for cost of care, only for the purpose of determining when the sanction begins. Calculate a PLA deductible for two months, January and February (through the month of entry.) Determine whether this deductible can be met. If the deductible can be met in January, the sanction begins on February 1st. If the deductible is met in February, the month of entry, then the sanction begins on the date the deductible is met. If the deductible is not met by the end of February, apply the sanction beginning on March 1st.

c. When the transfer occurs after an individual becomes eligible for Medicaid for payment of institutional services, the sanction period begins the first day of the month following the notice of the sanction period. Implement the sanction period as quickly as possible after the notice period expires.

d. For a sanction that cannot begin prior to the first day of the month that follows three full calendar months from the date of the report or discovery of a transfer:

(1) The beginning date of the sanction period is the first day of the month following three full calendar months from the date of the report or discovery of a transfer (month 4).

(2) If the sanction cannot be keyed until after month 4 due to notification requirements, the period beginning with month 4 until the month the action is effective must be referred to the local dss Program Integrity Section for recoupment.

(3) Key the remaining sanction period in the AT screen.

If the entire sanction period ends prior to the month the sanction can be imposed due to notice requirements, refer the entire sanction to the local dss Program Integrity Section and do not key a sanction period.

EXAMPLE:

An on-going LTC recipient has a January – June certification period.
An unallowed transfer was made in January.
The county learned of the transfer in February.
The sanction period is determined to be 17 ½ months.
The sanction begin date is no later than June 1st (month 4). However, the sanction cannot be made effective until July 1st due to notification requirements.
Refer the overpayment for June to Program Integrity.
Key the remaining 16 ½ months as the sanction period.

e. The sanction period cannot begin until after any existing sanction period has expired.

NOTE: A sanction period cannot be triggered by receipt of in-home health services and supplies. In-home health services can only be sanctioned if they are received in a sanction period that began due to receipt of institutional services. Please refer to MA-2241, Transition Policy for In-Home Health Services and Supplies.

2. Calculate the sanction period.

a. Total the uncompensated value of all transfers in the look back period. Transfers prior to November 1, 2007, should not be totaled with transfers that occur on or after November 1, 2007. Determine a sanction period on any and all transfers regardless of whether the amount transferred is over or under the private NF rate.

(XII.C.2.)

b. Divide the total uncompensated value for all transfers by the private NF rate, $5,000.

The result is the length of the sanction period. Do not round down to the nearest whole month. Round the amount to 2 decimals.

EXAMPLE: The a/r had a total of $52,083 uncompensated transfers in the lookback period. 52,083 ÷ 5,000 = 10.416666 months, rounded to 10.42 months for the sanction period.

c. Multiply the remaining fractional amount by 31.

(1) The result is the additional number of days to be added to the sanction period.

(2) Drop any fractional portion of a day.

EXAMPLE CONTINUED: 0.42 × 31 = 13.02 days. Drop the portion of the day and 13 days will be added to the 10-month sanction period.

d. Calculate the sanction period, beginning on the date specified in XII.C.1. above.

(1) Determine the sanction period for the whole months calculated in XII.C.2.b. above.

EXAMPLE CONTINUED: The sanction begin date is August 5 and the a/r is sanctioned for 10.42 months (10 months and 13 days). The 10 month sanction August 5 through September 4 is the first month. The 10-month sanction runs from August 5 – June 4.

(2) Add the fractional days to the sanction determined in 2.d.(1) above.

EXAMPLE CONTINUED: Add the 13 days fractional sanction. The sanction period now runs from August 5 through June 17.

(3) Authorize CAP cases the day after the last day of the sanction.

(a) Enter the CAP effective date in EIS.

(b) When the individual becomes eligible for CAP, re-calculate the deductible for the certification period according to instructions in MA-2280, Community Alternatives Program (CAP), Medicaid Eligibility, II.A.9.d. and III.F.

(XII.C.2.d.)

(4) For cases with PML, convert the number of days in the sanction-ending month to a dollar amount.

(a) Multiply the number of days in the month (if less than the full calendar month) by $161 (average private daily rate).

(b) Add this to the first month's PML amount regardless of whether the person has a zero PML. Do not deduct any amount for UMN or income protected for spouse or dependents at home.

EXAMPLE CONTINUED: The sanction period ends June 17. Multiply 17 × 161 = 2737. $2,737 is added to the first month's PML.

(c) If the full sanction period (including the fractional days) ends on the last day of the sanction-ending month, do not convert to a dollar amount. The a/r is ineligible for that entire month.

EXAMPLE CONTINUED: The whole months of the sanction period end on May 4. The fractional days are calculated as 27. The full sanction now ends on May 31. Do not multiply by the private rate ($161). The a/r is ineligible for the entire month of May. Eligibility begins on June 1. Calculate the PML for June following LTC budgeting procedures in MA-2270, Long Term Care Need and Budgeting.

3. Once a sanction period is imposed, key the sanction end date in the special review field on the DSS-8125.

4. Key the entire sanction period on the transfer of assets tracking screen. Refer to **EIS-3900**, Assets Transfer Tracking Screen, for data entry instructions.

D. Sanction Period When an Individual Leaves the Institution, CAP, or PACE

A sanction period runs continuously from the first date of the sanction period through the end of the sanction, regardless of whether the individual remains in or leaves the institution or continues to need CAP, PACE, or in-home health services and supplies.

E. Lifting or Reducing the Sanction Period

1. When all transferred assets are returned to the a/r, evaluate if the sanction should be lifted or modified.

2. Assets are considered returned when:

a. The actual asset is transferred back to the a/r, or

(XII.E.2.)

b. The a/r receives fair market value as compensation for the asset **after the transfer**. Value may be received in cash or money spent on the client's behalf. Examples of money spent on the client's behalf are: children pay for private LTC, buy a burial plot for their parents, or pay old bills for their parents. The cash or money spent on the client's behalf does not have to come from the person to whom the asset was originally transferred.

c. Verify any money spent on the client's behalf is, in fact, paid. For example, the nursing facility verifies the outstanding bill has been paid.

3. If a sanction period has already been assigned and nursing home cost of care denied, when all the transferred assets are returned, the entire sanction period is "erased". However, the returned assets are countable to the a/r in determining eligibility for the entire period they were previously not in the a/r's name.

a. Determine eligibility for nursing home cost of care based on the date of application.

b. Reverify assets considering the returned assets as if a/r owned them throughout the sanction period.

c. Erase the sanction period beginning with the first month of the sanction period.

4. When only a portion of the transferred asset is returned to the a/r, you must count this portion as a countable asset to the a/r at the point the sanction period began. If this makes the a/r ineligible, then the sanction period begin date must change to the point at which the a/r is institutionalized and otherwise eligible for Medicaid.

a. Determine eligibility for nursing home cost of care based on the date of application.

b. Reverify assets considering the returned assets as if a/r owned them throughout the sanction period.

c. Modify the sanction period.

The sanction period begins when the assets are reduced to the resource limit since the sanction cannot begin until the individual becomes otherwise eligible for Medicaid.

EXAMPLE: A transfer of $50,000 results in a 10 month sanction period, January 2008 through October 2008. The family returns $25,000 in May 2008. The sanction period should be reduced by 5 months. The sanction should be lifted for January 2008 through May 2008. The a/r would continue to be sanctioned from June through October. When the sanction period was modified by 5 months, the a/r was not otherwise eligible for Medicaid during the January 2008 through May 2008 period because of excess assets. Therefore, the sanction period does not begin until the a/r becomes otherwise eligible for Medicaid, June 2008 through October 2008.

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(XII.)

F. Budgeting During Sanction Period

1. If an individual is sanctioned for payment of nursing home cost of care, CAP or in-home health services and supplies due to transfer of assets, continue to determine eligibility for other Medicaid services.

2. If an individual is sanctioned for payment of PACE services due to transfer of assets and does not disenroll from the PACE Program, he is ineligible for Medicaid in any aid program/category during the sanction period. (Refer to MA-2275, Program of All-Inclusive Care for the Elderly.)

3. Budget as PLA. Refer to MA-2260, Financial Eligibility Regulations-PLA and MA-2270, Long Term Care Need and Budgeting. If it is determined that an individual must meet a deductible, see XII.C.1.b. above.

4. Continue to allow the community spouse resource protection when the spouse in LTC is budgeted PLA because of a transfer of assets sanction. (However, the community spouse income allowance does not apply in pla budgeting.)

G. Applicant/Recipient Fails to Provide Information to Establish Transfer or Sanction Period

If the a/r fails to provide the necessary information to determine if a non-allowable transfer has occurred or the length of the sanction period, deny the application for failure to provide necessary information. Approve as PLA if eligible and enter a sanction on the AT screen with an end date of 11/30/10. Follow policy for requesting information in MA-2303, Verification Requirements for Applications, for applicants and in MA-2320, Redetermination of Eligibility, for recipients.

If unable to determine if a non-allowable transfer has occurred or the length of the sanction period, use the DMA-5097/5097S, Request For Information, to request the necessary information from the a/r.

XIII. REBUTTAL

A. General

Advise the a/r using the MA-2240, Figure 3, Important Notice, of the transfer(s) considered, the sanction period, the right to rebut the value of the asset transferred, the right to rebut the presumption or provide evidence to prove the transfer was made exclusively for a purpose other than establishing Medicaid eligibility, the right to prove the compensation received is greater than established, the right to prove the a/r has been defrauded, the right to prove the asset has been returned, or right to prove intent to dispose asset at current market value.

(XIII.A.)

1. Also advise that he may:

   a. Rebut the presumption that the asset was transferred to establish or retain Medicaid eligibility, or

   b. All or a portion of the asset has been returned, or

   c. After the date of transfer the money was spent for the benefit of the a/r or the a/r's spouse.

   Follow notification procedures in XIV.B. below.

2. The a/r or the a/r's spouse must show by the greater weight of the evidence that:

   a. The transferred asset is less than the value established by the county dss, or

   b. The value of compensation received is greater than the value established, or

   c. At least two attempts to dispose of the asset for current market value, or

   d. All or a portion of the asset has been returned, or

   e. The money has been spent for the benefit of the a/r or the a/r's spouse, or

   f. The asset was transferred solely for a purpose other than qualifying for Medicaid.

The evidence presented (written or oral) must be more persuasive than all evidence presented to the contrary.

The rebuttal evidence may include the a/r's (spouse/legal representative) statement regarding the circumstances of the transfer, including the specific reason the asset(s) was transferred, the date of transfer, the name and relationship of the person(s) to whom the asset was transferred, and any compensation received. Examples of evidence are oral or written statements from persons knowledgeable about the situation, medical records, and bank records.

B. Rebutting the Value of the Transferred Asset and Amount of Compensation Received

1. To prove that the value of transferred asset is less than the value established by the county, the a/r or the a/r's spouse must provide a signed written statement from a knowledgeable person located in the same geographic area in which the property is located. The knowledgeable person cannot be a family member, friend or someone who stands to gain from the transaction. The statement must include:

(XIII.B.1.)

a. A description of the asset that clearly identifies the asset,

b. A specific statement as to the value of the asset and when the value was determined,

c. The reason for establishing the lesser value, and

d. The basis for the source's knowledge of the value of the property.

A "knowledgeable person" is an individual involved in the sale or appraisal of the type of asset in question, involved in the financing of sales of the type of asset in question, an official of the local property tax jurisdiction, or other person who can establish in the written statement that he is knowledgeable of the value of the type of asset in question. The "same geographic area in which the asset was located" is the same area as covered by local radio, television, newspaper or other media.

2. If the evidence provided proves that the value of the transferred asset is less than the value established under policy, recalculate the uncompensated value using the lesser value.

   a. If the a/r or the a/r's spouse received no compensation for the transferred asset, shorten the sanction period according to the reduced value of the transferred asset.

   b. If the a/r or the a/r's spouse received compensation for the transferred asset with a fair market value that is at least equal to the reduced value of the transferred asset, do not impose a sanction period.

   c. If the a/r or the a/r's spouse received compensation for the transferred asset with a fair market value that is less than the reduced value of the transferred asset, shorten the sanction period according to the reduced uncompensated value of the transfer.

3. To prove that the value of compensation received in return for a transferred asset is greater than the value established under policy, the a/r or the a/r's spouse must provide evidence of the greater value. Examples of evidence include cancelled checks, receipts, bills of sale, records of a bank or other financial institution that establishes the value of compensation received. For compensation received in the form of real or personal property, use the evidence listed in XIII.B. above.

   If the evidence provided proves that the value of the compensation received for a transferred asset is greater than the value established by the county, recalculate the uncompensated value of the transfer based on the greater value of the compensation.

(XIII.B.)

a. If the a/r or the a/r's spouse received compensation for the transferred asset with a fair market value that is at least equal to the value of the transferred asset, do not impose a sanction.

b. If the a/r or the a/r's spouse received compensation for the transferred asset with a fair market value that is less than the value of the transferred asset, shorten the sanction period to the reduced uncompensated value of the transfer.

4. To prove that all or a portion of a transferred asset has been returned, the a/r or the a/r's spouse must provide evidence establishing the return of the asset. Examples of evidence includes property deeds, closing statements, property tax records, financial statements, records of banks or other financial institutions, deeds of trust, title transfer records, contracts and other legally binding agreements. The asset may be returned beyond the time required to provide evidence. Therefore, allow the a/r an additional 12 days in which to provide the evidence.

a. Do not apply a sanction when the entire transferred asset is returned.

b. When a portion of the transferred asset is returned, reduce the value of the transferred asset by the value of the asset returned. Recalculate the sanction period based on the reduced value of the transferred asset. See XII.E. above.

5. To prove that money has been spent for the benefit of the a/r or the a/r's spouse after the date of the transfer, the a/r or the a/r's spouse must present the following documents: cancelled checks, receipts, bills of sale, bank or other financial institution records, or other records that prove the amount of money spent, the date on which it was spent, any goods or services purchased for the a/r or the a/r's spouse and that the a/r or the a/r's spouse was the recipient of the benefit from these expenditures. The asset may be returned beyond the time required to provide evidence. Therefore, allow the a/r an additional 12 days in which to provide the evidence.

a. Do not impose a sanction when the amount of money spent for the benefit of the a/r or the a/r's spouse after the date of the transfer is at least equal to the uncompensated value of the transfer.

b. When the amount of money spent for the benefit of the a/r or the a/r's spouse after the date of the transfer is less than the value of the transferred asset, reduce the uncompensated value of the transfer by the amount of money spent after the date of the transfer. Shorten the sanction period according to the reduced uncompensated value of the transfer.

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(XIII.)

C. Establishing That a Transfer of Assets Was for a Reason Solely Other Than to Become Eligible for Medicaid

Do not impose a sanction when an asset was transferred solely for a reason other than to become eligible for Medicaid. The following situations establish that an asset was transferred solely for a reason other than to become eligible for Medicaid:

1. The asset was stolen. The a/r or the a/r's spouse must provide greater weight of evidence which may include but is not limited to a report to law enforcement officials.

2. The a/r has been defrauded.

   a. Refer the case to protective services and/or if there is a legal representative, the clerk of court, to pursue possible reversal of the action and return of the asset to the a/r.

   b. Do not apply a transfer sanction when Adult Protective Services investigates and determines that the a/r is a victim of fraud and did not take the action with the intent of becoming eligible for Medicaid.

   c. The a/r or the a/r's spouse must provide greater weight of evidence which may include but is not limited to a report to law enforcement officials.

3. The a/r or the a/r's spouse is a victim of exploitation. The a/r or the a/r's spouse must provide through the greater weight of evidence which may include:

   a. Proof that includes substantial evidence that the a/r or the a/r's spouse is a victim of exploitation due to the illegal or improper use of a disabled adult or his assets for another's profit or advantage.

   b. Proof of a request to the county department of social services for adult protective services for the a/r or the a/r's spouse.

   c. The a/r or the a/r's spouse must provide greater weight of evidence which may include but is not limited to a report to law enforcement officials.

4. The a/r or the a/r's spouse is a victim of actual or threatened abuse. The a/r or the a/r's spouse must provide through the greater weight of evidence:

   a. Proof that includes greater evidence that the a/r or the a/r's spouse is a victim of actual or threatened abuse due to the willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation by a caretaker of services which are necessary to maintain mental and physical health, and

(XIII.C.4.)

b. Proof of a request to the county department of social services for adult protective services for the a/r or the a/r's spouse.

c. The a/r or the a/r's spouse must provide greater weight of evidence which may include but is not limited to a report to law enforcement officials.

5. The transfer of assets occurred as part of a regular, in frequency and amount, pattern of giving. The greater weight of evidence must include written records that clearly document the pattern of giving. Such records include, but are not limited to bank account records and property transfer records.

6. In situations other than those noted in XIII.C. 1. through 5. above, when an a/r or an a/r's spouse alleges that the transfer of assets was made solely for a reason other than to become eligible for Medicaid, evaluate the evidence presented. The evidence might establish another reason for the transfer. However, if establishing Medicaid eligibility for institutional services or in-home health services and supplies after receiving institutional services was also considered, the transfer was not exclusively for a purpose other than to establish or retain Medicaid eligibility.

a. In making the determination, consider the following:

(1) The a/r's or the a/r's spouses' age, general health, living arrangement, and amount of assets retained to meet future needs at the time of the transfer;

(2) How the a/r expected to meet his medical and other living expenses without the transferred asset;

(3) Whether the case record documents any inquiry by the a/r, the a/r's spouse, representative, or other interested party about asset limits for Medicaid, or other eligibility requirements for Medicaid;

(4) Whether the a/r or the a/r's spouse, representative, or other interested party consulted or hired an attorney for estate planning purposes;

(5) Whether the individuals who provided the knowledgeable statements concerning the circumstances of the transfer stand to gain in any way from the transfer;

(6) Whether the transfer is a one-time gift by the a/r or the a/r's spouse to a charity, religious organization, or family member made when the a/r or the a/r's spouse did not anticipate needing long term medical care.

(XIII.C.6.)

b. Document the response provided to the considerations listed in XIII.C.6.a. above. The a/r or the a/r's spouse or the a/r's or the a/r's spouse's legal representative must also provide a complete written accounting of the transfer, including all relevant documentation that shows the following:

(1) The a/r or the a/r's spouse's purpose for transferring the asset;

(2) The a/r or the a/r's spouse's attempts to dispose of the asset at fair market value;

(3) The a/r or the a/r's spouse's reasons for accepting less than fair market value such as:

(a) A forced sale was done under reasonable circumstances;

(b) Little or no market demand exists for the type of asset transferred; or

(c) The asset was transferred to settle a legal debt approximately equal to the fair market value of the transferred assets; and

(4) The a/r or the a/r's spouse's relationship, if any, to the persons to whom the asset was transferred.

c. In addition to the written evidence provided in XIII.C.6.b. above, evidence from other sources may be considered. Examples of other sources include but are not limited to bank records, medical records or oral or written statements from persons knowledgeable about the a/r's or the a/r's situation and the transfer of assets.

XIV. DECISION AND NOTIFICATION PROCEDURES (DENIAL/REBUTTAL/UNDUE HARDSHIP)

When it is determined that a non-allowable transfer has occurred and a sanction period is to be applied, notify the a/r in writing of the sanction period and rebuttal procedures.

A. Determination of Medicaid Eligibility

Do not delay the determination of Medicaid eligibility while evaluating a transfer of assets. An a/r may be eligible or ineligible for Medicaid regardless of a transfer of assets.

1. If the a/r is found ineligible for Medicaid, a sanction for transfer of assets cannot be applied. Stop the evaluation of the transfer of assets.

(XIV.A.)

2. If the a/r is found eligible for Medicaid, is requesting assistance with institutional services, and evaluation of a transfer of assets is pending,

   a. Notify the a/r

      (1) Of eligibility for non-institutional services, and

      (2) That eligibility for institutional services is still pending.

      This is a manual notice.

   b. Once the evaluation of the transfer is complete:

      (1) If the evaluation later reveals no sanctions, send a revised approval notice authorizing eligibility for nursing home cost of care, CAP or PACE.

      (2) If the evaluation reveals a non-allowable transfer and a sanction period, follow procedures in XIV.B. below.

B. Notifying Individual of Sanction and Right to Rebut

1. If the transfer of assets evaluation reveals that a non-allowable transfer has occurred and the sanction period can be determined, use the DMA-5097/5097S, Request for Information, and MA-2240 Figure 3, Important Notice, to notify the a/r:

   a. Applicant is ineligible for payment for institutional services and/or in-home health services and supplies, but only after receiving institutional services, due to transfer of assets. Applicants enrolled in a PACE program with a PACE organization are ineligible for Medicaid in any aid program/category except MQB. (See MA-2275, Program of All-Inclusive Care for the Elderly).

   b. The transfer(s) considered, the sanction period, the right to rebut the value of the asset transferred, the right to rebut the presumption or provide evidence to prove the transfer was made exclusively for a purpose other than establishing Medicaid eligibility, the right to prove compensation has been received, the right to prove the a/r has been defrauded, the right to prove the asset has been returned, prove the money has been spent on behalf of the individual, or right to prove intent to dispose asset at current market value. See XI. above.

      Refer to MA-2230, Financial Resources, for requirements to rebut the value of the asset.

c. Whether or not he is eligible for non-institutional services.

2. Follow application processing procedures when requesting information from an applicant. Send at least two requests for information to the applicant. Refer to MA-2303, Verification Requirements For Applications.

3. Allow the recipient 12 calendar days to provide evidence to rebut the reason for the transfer, rebut the established value of the transferred asset, etc. Allow an additional 12 calendar days if evidence is not received within the first 12 days.

4. The county has 12 calendar days to make a decision after the information is received. If the county determines additional information is needed, allow an additional 12 calendar days for the a/r to provide the information.

5. If the a/r proves that the transfer was not made to become eligible for Medicaid, document the case record and notify the a/r using a DSS 8108/DSS-8108S, Notice of Benefits, that the sanction will not be imposed.

6. If the a/r provides evidence that rebuts the established value of the transferred asset or that compensation has been received or that all or a portion of the asset has been returned or money has been spent on his behalf, recalculate the sanction period, document the case record and notify the a/r of the change.

   a. If the change results in no sanction, notify the a/r in writing that the sanction will not be imposed.

   b. If the change results in a shorter sanction period, notify the a/r in writing of the new sanction period using the DMA-5113/MA-2245 Figure 1, Notification of Right to Request an Undue Hardship Waiver (Transfer of Assets).

7. If an applicant for institutional services fails to rebut the sanction, either by failing to provide information within the time frame described in XIV.B.3. above or the information he provides does not rebut the sanction, send a DMA-5113/MA-2245 Figure 1, Notification of Right to Request an Undue Hardship Waiver (Transfer of Assets), to notify the applicant of ineligibility and right to request an undue hardship waiver.

8. If a recipient of institutional services fails to rebut the sanction, either by failing to provide information within the time frame described in XIV.B.2. above or the information he provides does not rebut the sanction, send a DMA-5113/MA-2245 Figure 1, Notification of Right to Request an Undue Hardship Waiver (Transfer of Assets), to notify the applicant of ineligibility and right to request an undue hardship waiver.

(XIV.)

C. Undue Hardship

If, after evaluation and rebuttal, it is determined that a non-allowable transfer has occurred, notify the a/r in writing of the sanction period and the undue hardship waiver process using DMA-5113/MA-2245 Figure 1, Notification of Right to Request an Undue Hardship Waiver (Transfer of Assets). The request for an undue hardship waiver must be made to the county dss within 12 calendar days from the date of notification of a transfer of assets sanction and the a/r's right to request a waiver of the sanction because it will cause an undue hardship. Refer to MA-2245, Undue Hardship Waiver for Transfer of Assets, for policy and procedures for determining if a transfer of assets sanction should be waived.

1. If an applicant is not granted an undue hardship waiver because he fails to request the waiver, fails to provide necessary information, or the information provided does not establish that undue hardship exists, send a manual DSS-8109/DSS-8109S, Notice of Benefits, Denied or Withdrawn, using the appropriate notice text from XIV.D. below.

2. If an ongoing recipient who is requesting institutional services is not granted an undue hardship waiver because he fails to request the waiver, fails to provide necessary information, or the information provided does not establish that undue hardship exists, send a manual DSS-8109/DSS-8109S, Notice of Benefits, Denied or Withdrawn, using the appropriate notice text from XIV.D. below.

3. If an ongoing recipient of institutional services is not granted an undue hardship waiver because he fails to request the waiver, fails to provide necessary information, or the information provided does not establish that undue hardship exists, send a manual DSS-8110/ DSS-8110S, Notice of Change in Benefits, using the appropriate notice text from XIV.D. below.

   After the timely notice period has expired, notify the facility the recipient is no longer eligible for payment of nursing home cost of care. For CAP recipients, notify the CAP lead agency/case manager that the individual is no longer eligible for CAP. For PACE recipients, notify the PACE organization by sending the DMA-5106, Medicaid/PACE Referral.

   a. Change the living arrangement code in EIS from LTC to PLA or delete the CAP code, or delete the PACE information. If the recipient is still enrolled with the PACE organization, evaluate and transfer to MQB if applicable. If ineligible for MQB, terminate the Medicaid case.

   b. Update the transfer of assets evaluation indicator in EIS. Refer to XV. below.

(XIV.C.)

4. Although an individual under a transfer of assets sanction may not be eligible for assistance with nursing home cost of care or in-home health services and supplies, he may be eligible for other Medicaid covered services. If, after an undue hardship notification and review, the a/r is determined ineligible for the requested CAP or nursing home cost of care or in-home health services and supplies services but remains eligible for pla Medicaid, notify the a/r of the decision using the appropriate notification text. Note: Individuals under a transfer of assets sanction and enrolled in the PACE Program are ineligible for Medicaid in any aid program/category except MQB. Refer to MA-2275, Program of All-Inclusive Care for the Elderly.

D. Decision Notification Text

Use the following decision notification text when doing manual notices concerning transfer of assets. See EIS-4000 for the appropriate automated text code.

1. Due to asset transfers and an imposed sanction period you are ineligible for Medicaid to pay for institutional services. Medicaid will pay for other covered services. (Text code M1)

2. You have not provided the information needed to establish eligibility for institutional services. Medicaid will pay for other covered services. (Text code M5)

3. Due to asset transfers and an imposed sanction period you are ineligible for all Medicaid services. (Text code A4)

4. Due to asset transfers and an imposed sanction period you are ineligible for institutional services. As a result you are also ineligible for other Medicaid services because of excess resources. (Text code A5)

5. Due to asset transfers and an imposed sanction period you are ineligible for institutional services. As a result you are also ineligible for other Medicaid services because of excess income. (Text code A6)

6. Program of All-Inclusive Care for the Elderly (PACE) Manual Text

   a. Due to asset transfers you are ineligible for Medicaid to pay for Program of All-Inclusive Care for the Elderly (PACE) services. You are also ineligible for other Medicaid services because you are enrolled in the PACE Program.

(XIV.D.6.)

b. Text Codes

(1) Denial – P1
(2) Termination (Adequate) – 7P
(3) Termination (Timely) – 2P

E. Hearing Process

Refer to MA-2420, Notice and Hearing Process, regarding the hearing process.

XV. TRACKING TRANSFER OF ASSETS SANCTION PERIOD

An individual who is ineligible for institutional services or CAP due to a transfer of assets sanction may be authorized for other Medicaid covered services. Authorize Medicaid under PLA provided the applicant/recipient meets all other Medicaid eligibility factors. Key an Assets Transfer Screen in EIS for the entire sanction period, including while institutionalized or receiving CAP. The sanction period continues for in-home health services and supplies if the a/r returns to private living.

The Transfer of Assets Tracking Screen must be updated for PACE applicants/recipients with current or past eligibility in EIS. However, if a PACE applicant's application is denied due to a transfer of assets sanction, and no past EIS eligibility exists on the applicant, asset transfer information cannot be entered on the Assets Transfer Tracking Screen. In these situations the transfer of asset sanction period history and documentation must be manually documented and maintained in the case record for future reference.

The Assets Transfer Tracking Screen should be updated once a transfer of assets evaluation has been completed. This may occur when processing an application, a redetermination for a non-SSI recipient is due, an ex parte review for an SSI recipient is due, requested by the a/r or provider, or notified by any source that a transfer has occurred.

For transfers occurring prior to November 1, 2007, whenever a PLA applicant/recipient (including SSI recipients) requests or receives assistance with in-home health services and supplies, complete a transfer of assets evaluation. (See **MA-2241**, Transition Policy for In-Home Health Services and Supplies) Enter the findings in EIS via the Assets Transfer Tracking Screen. Refer to **EIS-3900**, Assets Transfer Tracking Screen, for data entry instructions.

A. The Assets Transfer Tracking Screen must be updated for all cases except MQB, even if there have been no non-allowable transfers. Update the Assets Transfer Tracking Screen by entering the evaluation indicator and if applicable the sanction period begin and end dates. Include any partial months**.**

(XV.A.)

1. Evaluation Indicator

   a. Enter a "Y" to indicate that a transfer of assets evaluation has been completed and a transfer of assets sanction has been imposed, or

   b. Enter an "N" to indicate that a transfer of assets evaluation has been completed and no transfer of assets sanction has been imposed because:

      (1) There have been no non-allowable transfers, or

      (2) A non-allowable transfer has occurred but no sanction applies, or

      If the "N" indicator has already been entered due to a previous evaluation and there are no new transfers, do not make another entry.

2. Sanction Period Begin Date

   For transfers prior to November 1, 2007, see XII.B. above. For transfers on or after November 1, 2007, see XII.C. above.

   a. Applications

      For transfers prior to November 1, 2007 the sanction period in EIS begins with the month the total transfers equal $5,000 or the month of application/ retroactive request whichever is later.

   b. Ongoing Cases

      The sanction period in EIS begins with the month following the month in which the timely notice expires.

3. Sanction Period End Date

   The sanction period end date is the specific date on which the sanction actually expires as determined per instructions in XII., above.

B. Once updated, do not make changes to the evaluation indicator or sanction period unless the information entered must be adjusted due to an appeal reversal, transfer of assets rebuttal, incorrect calculation or other information becomes available.

If a change is required, correct the sanction period begin and end dates.

Process override requests if necessary to allow past claims to be paid. Follow procedures in MA-2395, Corrective Action and Responsibility for Errors.

C. The Assets Transfer Tracking Screen allows for the entry of up to 6 sanction periods. Therefore, subsequent non-allowable transfers which result in a new sanction period may be entered.

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(XV.)

D. Reports

When a claim for in-home health services and supplies is submitted to the Medicaid claims contractor for payment, the contractor will search for the transfer of assets indicator.

1. If the Assets Transfer Tracking Screen has been updated with an evaluation indicator and/or a sanction period, the contractor will either pay or deny the claim based on the date of service, evaluation indicator, and/or sanction period in EIS.

   For example, a non-allowable transfer results in a 6-month sanction period for June through December. The EIS Assets Transfer Tracking Screen is updated with a "Y" indicator and the sanction period. On September 23rd, the Medicaid claims contractor receives a claim for in-home health services and supplies with an August 12th date of service. The claim is denied as the assets transfer tracking screen indicates the recipient is not eligible on the date of service due to a transfer of assets sanction.

   If a claim is denied, the provider may bill the recipient if the recipient was advised of his responsibility for payment before the service was provided.

2. If the Assets Transfer Tracking Screen has not been updated with an evaluation indicator and/or sanction period, the claims contractor will pay the claim and produce a report in XPTR to notify the county that a claim for in-home health services and supplies has been paid for an individual with a blank evaluation indicator.

   a. Transfer of Assets Evaluation Needed Report

      (1) The report, DHREJA TRANS ASSET EVAL NEEDED, is generated weekly and sorted by county number, district number, date first appeared on the report, and recipient name. The report will be available in XPTR on Wednesday of each week for county viewing and will include the following information:

         (a) Recipient County Number and County Name.

         (b) District Number.

         (c) Recipient Name and Individual ID Number.

         (d) First Report Date (The first date the individual was included on the report).

         (e) Number of Days Pending (The number of days the evaluation has been pending).

(XV.D.2.a.(1))

(f) Aid Program/Category (APC)/Termination Indicator, if other than MAABD or MQB.

1) The report will only list individuals who were receiving MAABD or MQB-Q on the date of service. If the aid program/category has changed since the date of service or the case has terminated, the transfer of assets evaluation must still be completed.

For example, an individual is authorized MAD/PLA for February through July. Effective August 1st, the individual is authorized under MAF. The MAF case is closed effective September 30th. The individual appears on a November report as receiving in-home health services and supplies on June 10th. The county must attempt to contact the individual regarding transfer of assets.

2) If unable to locate the individual by telephone or mail, check other possible sources of information such as the telephone directory, city-county directory, or postal service.

a) Document the case file of all attempts to locate the individual and the results of the transfer of assets evaluation.

b) Update the Assets Transfer Tracking screen. Refer to XV.A., if unable to determine if a non-allowable sanction has occurred or the length of the sanction period.

c) If unable to locate the individual, propose termination following timely notice. If the case is terminated, flag the case in the event the individual later requests assistance.

(g) Current Case ID Number and Case ID Number on the Date of Service, if different.

(h) Date of Service and Service type.

(i) Provider Name.

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(XV.D.2.a.)

(2) Review the report weekly to determine which individuals require a transfer of assets evaluation. Contact the recipient either verbally or in writing regarding any possible transfers in the lookback period. The evaluation must still be completed even if the individual is terminated, active in another aid program/category, or deceased.

(a) For recipients who first applied for Medicaid prior to February 1, 2003, use the date of service on the report as the starting point for determining the lookback period, unless you learn from any other source that the recipient received assistance with in-home health services and supplies prior to the date of service on the report

(b) For recipients whose first application for Medicaid is on or after February 1, 2003, the date of application is the starting point for determining the lookback period.

(c) If the Non-SSI recipient lived in a different county on the date of service, the county of residence in which the report appears must complete the transfer of assets evaluation.

(d) If the Non-SSI recipient has established residence in another county, and the county reassignment has not been completed, the county in which the report appears must complete the transfer of assets evaluation.

(e) For the SSI recipient, refer to MA-1100, SSI Medicaid-County DSS Responsibility, when determining county responsibility for completing the transfer of assets evaluation.

(3) The transfer of assets evaluation must be completed and the evaluation indicator entered in EIS within 30 days of the date the individual first appeared on the report.

(4) When it is determined that a recipient was not eligible for in-home health services and supplies on the date of service due to a transfer of assets sanction, refer the case to the local Program Integrity Section to assess the overpayment resulting from recipient delay.

(XV.D.2.a.(4))

For example, a Transfer of Assets Evaluation Needed Report was produced for Minnie May on April 30, 2003. The transfer of assets evaluation reveals that a non-allowable transfer occurred on February 21, 2003, resulting in a 7-month sanction period beginning February 2003. A timely notice is sent proposing ineligibility for in-home health services and supplies effective June 1, 2003. The transfer of assets evaluation indicator and sanction period of June 2003 through July 2003 is entered in EIS on May 26, 2003. Refer the case to Program Integrity to determine any overpayment for February 2003 through May 2003.

Do not refer the case to the Program Integrity Section if the overpayment is due to agency delay. Agency delay may result from failure to properly evaluate for transfer of assets at application, review, or applicable change in situation or failure to complete the transfer of assets evaluation and update the assets transfer tracking screen within 30 days of the date the individual first appeared on the report.

b. Transfer of Assets Evaluation Summary Report

The report, DHREJ TRANS ASSET EVAL SUMM, is for county and DMA use. It is sorted by county and district number and provides a summary of the number of individuals pending a transfer of assets evaluation. The report will be generated weekly in XPTR and will be available on Wednesday of each week for county viewing.

c. Transfer of Assets Sanction Period Report

The report, DHREJA TRANS ASSET SANCTIONS, is for county and DMA use. It is sorted by county and sanction thru date. This report provides a listing of individuals who have a sanction period in EIS. The sanction may or may not have expired. This report is based on the transfer of assets sanction indicator being “Y” in EIS. This report is generated once a month on the last workday of the month and is available on XPTR on the first workday of the next month.