



State of New Jersey

**DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

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MEDICAID COMMUNICATION NO. 90-16

DATE: August 8, 1990

TO: County Welfare Agency Directors

SUBJECT: Resource Transfer Penalty

The Medicare Catastrophic Coverage Act of 1988 contained provisions that modified the period of ineligibility resulting from a resource transfer. That provision became effective in New Jersey April 1, 1990. As a result, the Department of Human Services has adopted, on an emergency basis, a revision to the regulations governing eligibility for Medicaid coverage for long term care as they relate to the imposition of ineligibility penalties. Attached is the actual text of the adoption. These regulations are effective immediately in accordance with the implementation instructions below.

This revision modifies the period of ineligibility for Medicaid coverage for long term care from an absolute period of 24 months to a sliding-scale penalty with a maximum ineligibility penalty of 30 months. The period of ineligibility will be the lesser of 30 months or the whole number quotient resulting from dividing the uncompensated value of the transferred resource by the statewide average lowest semi-private room rate for skilled nursing facilities. That rate is currently \$3,235 and it will be adjusted annually.

The ineligibility penalty period shall be applied only in whole months and shall begin on the first of the month in which the resource transfer occurred. For example:

Mr. Jones transferred a resource on September 15, 1990. The uncompensated value of that resource was \$9,500. The calculation is as follows:

$$\$9,500 \div \$3,235 = 2.94$$

The numbers to the right of the decimal point are dropped and period of ineligibility is two months. Since the penalty will begin September 1, Mr. Jones will be entitled to Medicaid coverage for long term care services beginning November 1, 1990 presuming all other eligibility criteria are met.

Likewise, should the calculation result in a quotient less than one, because all numbers to the right of the decimal point are dropped, there would be no period of ineligibility resulting from the resource transfer. For example:

Ms. Smith transfers a resource on August 1, 1990. The uncompensated value of the resource is \$2,500. The calculation is as follows:

$$\$2,500 \div \$3,235 = .77$$

After dropping the numbers to the right of the decimal point, there is no period of ineligibility.

IMPLEMENTATION

Emergency rules are effective upon acceptance for filing by the Office of Administrative Law. Since this rule was filed July 30, 1990, that date serves as the effective date of the new resource transfer penalty periods. However, in order to assure that individuals are not unfairly affected by the implementation of the new penalty period, we have provided for special procedures relating to implementation.

In accordance with N.J.A.C. 10:71-4.7(k) of the attached, in computing the resource penalty for any resource transferred prior to August 20, 1990 (the date this new regulation will appear in the *New Jersey Register*), no penalty period shall be imposed that is greater than 24 months. It is important to note that it is the date of the resource transfer that controls this issue.

Likewise in accordance with the same section of the attached, for any resource transfer that occurred on or after April 1, 1990 but before August 20, 1990, the period of ineligibility will be the lesser of 24 months or the quotient resulting from dividing the uncompensated value of the resource by the average lowest semi-private skilled nursing facility rate.

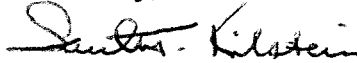
For any resource transfer occurring on or after August 20, 1990, the period of ineligibility shall be the lesser of 30 months or the quotient resulting from dividing the uncompensated value by the average lowest semi-private skilled nursing facility rate.

There will be no special consideration for any resource transfer occurring prior to April 1, 1990. The absolute 24 month period of ineligibility applies to any resource transferred prior to that date as per regulations in effect at that time.

County welfare agencies shall review their case denials and terminations to determine those cases denied or terminated because of resource transfers occurring April 1, 1990 or thereafter. The period of ineligibility shall be recomputed in accordance with these instructions.

This communication should be brought to the attention of all staff involved in Medicaid eligibility determinations for long term care. Questions may be referred to the field service staff assigned to your county.

Sincerely,

A handwritten signature in black ink, appearing to read "Saul M. Kilstein", written in a cursive style.

Saul M. Kilstein
Director

SMK:RHh
Attachment

cc: Marion E. Reitz, Director
Division of Economic Assistance

Nicholas R. Scalera, Acting Director
Division of Youth and Family Services

Attachment to
Medicaid Communication No. 90-16

Full text of the proposal follows (additions indicated in underline thus; deletions in brackets [thus]):

SUBCHAPTER 4. RESOURCES
10:71-4.7 Transfer of resources

(a) The provisions of this section apply only to persons who are receiving an institutional level of services or who are seeking that level of services. An individual shall be ineligible for institutional level services through the Medicaid program if he or she (or his or her spouse) has disposed of resources at less than fair market value at any time during or after the 30 month period immediately before;

1. In the case of an individual who is already eligible for Medicaid benefits, the date the individual becomes an institutionalized individual, or
2. In the case of an individual not already eligible for Medicaid benefits, the date that the individual applies for Medicaid as an institutionalized individual.

~~[(a)]~~(b) The following definitions apply in situations involving the transfer of resources:

1. and 2. (No change.)

3. Institutionalized individual: An institutionalized individual for the purposes of this section is a person who is receiving care in a Medicaid certified skilled nursing facility, intermediate care facility (level A or B and ICFMR) and licensed special hospital (Class B or C) or Title XIX psychiatric hospital (if under the age of 21 or age 65 and over). Effective October 1, 1990, an institutionalized individual shall include an individual receiving care in a Medicaid certified nursing facility (NF). For the purposes of this section, an institutionalized individual shall include a person seeking benefits under a home or community care waiver program, not including the Home Care Expansion Program. An institutionalized individual shall not include a person who is receiving care in an acute care general hospital.

4. Penalty period: The penalty period is the period of ineligibility for Medicaid coverage for

institutional level care established for an individual as a result of the transfer of a resource for less than fair market value. The penalty period begins with the month of the resource transfer and is the lesser of:

i. 30 months; or

ii. The number of months resulting from dividing the uncompensated value of the transferred resource by statewide monthly average lowest semi-private room rate for Medicaid certified nursing facilities as calculated annually. The current average through December 31, 1990 is \$3,376.

[(b)](c) (General procedures: If an individual or his or her spouse [applying for Medicaid] described in (a) above (including any person acting with power of attorney or as a guardian for such individual) has sold, given away, or otherwise transferred any [nonexcluded] resources (including any interest in a resource or future rights to a resource) within the [24] 30 months preceding the date of application or entry into institutional care, the following steps shall be taken and fully documented in the case record:

1-5. (No change.)

6. Advise the applicant that he or she may rebut the presumption that a resource was transferred at less than FMV in order to qualify for Medicaid coverage for institutional care (see [(g)] (i) below).

[(c)](d) [Excluded resources: Resources which are excluded in accordance with N.J.A.C. 10:71-4.4 are not subject to the transfer provisions. A transferred resource shall be excluded if, at the time of transfer, the resource would have been excluded if the individual were an applicant. For example, if an individual transfers a home serving as his or her place of residence and subsequently applies for Medicaid, the CWA would not consider the UV of the home as a resource.] The provisions of this section apply whether or not the resource would have been considered an excluded resource at the time of its disposal or transfer. However, an individual shall not be ineligible for an institutional level of care because of the transfer of his or her equity interest in a home which serves (or served immediately prior to entry into institutional care) as the individual's principal place of residence and the title to the home was transferred to:

1. The institutionalized individual's spouse;
 2. A child of the institutionalized individual who is under the age of 21 or a child of any age who is blind or totally and permanently disabled;
 - i. In the event that the child does not have a determination from the Social Security Administration of blindness or disability, the blindness or disability shall be evaluated by the Disability Review Section of the Division of Medical Assistance and Health Services in accordance with the provisions of N.J.A.C. 10:71-3.13.
 3. A brother or sister of the institutionalized individual who already had an equity interest in the home prior to the transfer and who was residing in the home for a period of at least one year immediately before the individual becomes an institutionalized individual; or
 4. A son or daughter of the institutionalized individual (other than described in 2 above) who was residing in the individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual and who has provided care to such individual which permitted the individual to reside at home rather than in an institution or facility.
 - i. The care provided by the individual's son or daughter must have exceeded normal personal support activities (for example, routine transportation and shopping). The individual's physical or mental condition must have been such as to require special attention and care. The care provided by the son or daughter must have been essential to the health and safety of the individual and consisted of activities such as, but not limited to, supervision of medication, monitoring of nutritional status, and insuring the safety of the individual.
- (e) The provisions of this section do not apply to the following resource transfer situations:
1. The resources were transferred to the community spouse (or to another individual for the sole benefit of the community spouse) prior to the entry into institutional care so long as the resources

were not subsequently transferred by the community spouse;

i. If funds were transferred to another individual for the sole benefit of the community spouse prior to entry into institutional care, in order that the transfer not be considered to have been for the purposes of qualifying for Medicaid, the funds must have been transferred in the form of a legally binding trust document specifying that the trustee(s) may use the funds solely for the benefit of the community spouse. Should the transferred funds not be so designated, the transfer shall be presumed to be for the purpose of qualifying for Medicaid in accordance with the provisions of this section.

2. The resources were transferred to the community spouse subsequent to the application for Medicaid in accordance with N.J.A.C. 10:71-4.8(a)3; or,

3. The resources were transferred from the institutionalized individual or the community spouse to the institutionalized individual's child who is blind or permanently and totally disabled.

i In the event that the child does not have a determination from the Social Security Administration of blindness or disability, the blindness or disability will be evaluated by the Disability Review Section of the Division of Medical Assistance and Health Services in accordance with the provisions of N.J.A.C. 10:71-3.13.

[(d)](f) (No change in text.)

[(e)](g) Resource transferred, resource limit not exceeded: When the UV of a transferred resource, combined with all other countable resources does not exceed the applicable resource limit, the application shall be processed as usual. [In addition, the following procedures shall be adhered to.

1. It shall be explained to the applicant that he or she has transferred a resource at less than FMV, the amount of the UV, and that this amount will be counted toward the resource maximum for 24 months from the date of disposal. This shall be

accomplished via completion and mailing of Form PA-13.

2. The client shall be informed that although eligible at time of application, if his or her resources, including the amount of the UV, should exceed the resource maximum within the 24 month period, he or she will lose Medicaid eligibility.
 - i. Example: At the time of application the UV equals \$1,000, other resources equal \$200.00 for a total of \$1,200, the client is resource eligible. At the time of redetermination, the UV equals \$1,000, other resources equal \$1,100 for total of \$2,100, the client is ineligible because of excess resources and the case must be terminated.
3. A list shall be maintained of all such cases for control purposes. This should include the case number, client's name, Social Security number, date of the resource disposal, FMV of the resource, amount of UV, and the date of termination if applicable.]

[(f)](h) Resource transferred, resource limit exceeded: When the UV of a transferred resource combined with other countable resources, exceeds the resource limit, [the application for Medicaid] eligibility for institutional level services shall be denied and the procedures below followed[.]:

1. Notify the applicant via Form PA-13 that he or she has transferred a resource at less than FMV, the amount of the UV[, and that this amount will be counted toward the resource maximum for 24 months from the date of disposal] and the length of the penalty period. Explain that the law states that transfer of a resource at less than FMV is presumed to be for the purpose of establishing Medicaid eligibility for institutional services.
2. Advise the applicant that he or she may rebut the presumption (see [(g)] (i) below).
3. Prepare a list of such cases for control purposes [in accordance with (e) 3 above]. The control list shall include the case number, client's name, Social Security number, date of resource disposal, FMV of the resource, amount of UV, and the start

and end dates of the period of ineligibility for institutional level services.

[(g)](i) (No change in text.)

[(h)](j) Factors which may indicate that the transfer was for some other purpose: The presence of one or more of the following factors, while not conclusive, may indicate that the resources were transferred exclusively for some purpose other than establishing Medicaid eligibility.

1. (No change.)

2. Resources that would have been below the resource limit during each of the preceding [24] 30 months if the resource had been retained.

3 and 4. (No change.)

[(i)](k) (No change in text.)

(l) In the case of any resource transfer which occurred between April 1, 1990 and the date of publication of this rule in the New Jersey Register and which would otherwise be subject to the provisions of this section, the period of ineligibility for institutional services shall be the lesser of:

1. 24 months or

2. the number of months resulting from the application of the calculation at N.J.A.C. 10:71-4.7(b)4ii.