MISSISSIPPI DIVISION OF
MEDICAID

Administrative Code

Title 23: Medicaid
Part 103
Resources

TABLE OF CONTENTS

Title 23: Division of Medicaid

Part 103: Resources

Part 103 Chapter 1: Introduction to Resources

Rule 1.1 Families, Children and CHIP Programs.

A. The Medicare Catastrophic Coverage Act of 1988, (P.L.100-360), added provision 1902(r)(2) to the Medicaid statute which allows the state to apply income and resource rules to certain Medicaid coverage groups that are more liberal than the most closely related cash assistance group.

B. For the FCC programs, the most closely related cash assistance group is the former Aid to Families with Dependent Children (AFDC) program. For the ABD programs, the most closely associated cash assistance group is the Supplemental Security Income (SSI) program.

C. Under 1902(r)(2) and other authorization, the FCC programs operate under liberalized resource policy and have no resource test for eligibility in any coverage group.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 1.2 Aged, Blind and Disabled Programs.

A. Medicaid uses the value of a person's resources as a factor in determining eligibility. It is generally expected that individuals or couples whose resources exceed the limit will use the excess to meet their needs before becoming eligible for Medicaid.

B. As a 1634 state, Mississippi is required to use SSI resource rules for ABD eligibility determinations. However, as indicated previously, the state is allowed to apply income and resource rules to certain ABD coverage groups that are more liberal than the SSI program. The Division of Medicaid requested and received approval to liberalize resource policies for some ABD coverage groups.

C. Some coverage groups are exempt from liberalization under 1902(r)(2) because they are considered "deemed" cash assistance groups. These coverage groups continue to follow SSI resource rules. The remainder of this section describes the treatment of resources in determining eligibility in the Aged, Blind and Disabled programs and discusses the use of strict SSI rules or liberalized resource policy, as applicable.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 1.3 General Resource Principles.

A. The following general principles about resources should be noted:

1. Not everything a person owns is a resource.

2. Not all resources count against the limit.

3. The Social Security Act and other Federal laws require certain types and amounts of resources to be excluded.

    a) If a resource is not specifically excluded, it is countable.

4. In certain situations, federal law requires other people to share financial responsibility for an individual or couple.

    a) In those situations, Medicaid considers the resources of the person(s) along with those actually belonging to the individual couple. If countable resources exceed the limit, an individual or couple is not eligible.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 1.4 Resource Limits.

A. Federal law establishes a limit on the value of resources an individual or couple may own and still be eligible for Medicaid.

B. Countable resources must not exceed the limit in effect for the applicable time period.

C. Beginning 07-01-2000 ongoing:

    1. The indivdual limit is $4,000; and

    2. The couple limit is $6,000.

        a) The increased limits above are applicable to most coverage groups subject to liberalized resource policies.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b).

Rule 1.5 SSI Resource Limits.

A. The individual/couple limits for groups subject to SSI resource limits remain $2,000/$3,000.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 1.6 Coverage Groups Subject to SSI Resource Limits.

A. SSI resource limits apply to the following coverage groups:

1. SSI Retro Determinations,
   a) Unless the client must be placed in a liberalized coverage group for the retroactive period.

2. Former SSI Recipient Coverage Groups, which include:

   a) Disabled Adult Child (DAC),

   b) Cost of Living (COL) and

   c) OBRA widows/widowers.

3. Disabled Child Living at Home (DCLH), and

4. Qualified Working Disabled Individuals (QWDI),

   a) QWDI is a reduced coverage group which has resource limits that are twice SSI limits.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 1.7 Coverage Groups Subject to Liberalized Resource Limits.

A. Liberalized resource limits apply to the following coverage groups:

   1. Long Term Care coverage groups (LTC);

   2. Home and Community Based Waiver groups (HCBS);

   3. Poverty Level Aged and Disabled (PLAD);

      a) Program ended December 31, 2005.

   4. Healthier Mississippi Waiver (HM);

   5. Working Disabled (WD) and

   6. Medicare Savings Programs (MSP)

      a) See discussion on these reduced coverage groups below.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 1.8 Reduced Coverage Groups.

A. The reduced coverage groups for non-institutional individuals have or had a resource limit that is twice the SSI-related resource limit.

1. Under liberalized policy, the Medicare Savings Programs (QMB, SLMB, and QI) have no assets test.

2. The individual/couple limit for QWDI remains twice the SSI-related resource limit or $4,000/$6,000.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 1.9 Resource Limits Applicable to Institutional Groups.

A. For Medicaid coverage groups considered to be "institutional" coverage groups, the following set of resource limits apply:

   1. Effective 10-01-1989, Spousal Impoverishment resource rules apply to married couples whereby one spouse is in a medical facility while the other spouse remains at home.

   2. The Community Spouse is allowed a higher resource limit set by federal law and subject to increase each year.

   3. Effective 04-01-1993 until the coverage group ended 04-30-2005, Spousal Impoverish rules applied to Hospice Coverage group.

   4. Effective 01-01-1994, Spousal Impoverishment resource rules began to be applied to the HCBS Waiver programs.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 1.10 Liberalized Resource Policy Overview.

A. The following briefly describes the liberalized resource policies currently in effect. The liberalizations are described in greater detail in the discussion of each resource type:

   1. Spend down of resources within a month to become eligible in that month, i.e., eligibility may be established effective the first day of the month if countable resources fall below the applicable limit within the month.

   2. Excess resources earmarked for payment of private pay in a nursing facility in month(s) prior to Medicaid eligibility are not considered countable resources.

   3. Income that accumulates pending Medicaid approval that results in excess resources can be excluded if this income is obligated for Medicaid income purposes.

   4. Certain property and types of ownership are totally excluded, regardless of value:

a) Home property located in Mississippi, life estate and remainder interests in any property, 16th Section land leaseholds, mineral rights or timber rights that are not under production and housing on government-owned land are excluded under liberalized policy,

b) Income producing property is excluded if it produces at least six percent (6%) of the equity value of the property,

c) Promissory notes, loans and property agreements are excluded if the note produces a net annual return of six percent (6%) of the principal balance,

d) Up to two (2) automobiles may be excluded,

e) Household goods are totally excluded and personal property up to five thousand dollars ($5,000.00) in equity value is excluded,

f) The cash value of whole life insurance is excluded if the combined face value of all life insurance policies on any one individual is ten thousand dollars ($10,000.00) or less,

g) Burial spaces for family members are excluded as resources, and

h) Burial funds set aside in a revocable arrangement are subject to a six thousand dollar ($6,000.00) limit effective April 1, 2001.

5. The current market value of real property is established using the county tax assessed true value as shown or calculated using the appropriate county property tax assessment notice.

Source: 42 U.S.C. § 1396a; 42 C.F.R. § 435.601.

History: Revised to correspond to SPA 16-0009 (eff. 01/01/2016) eff. 01/01/2017.

Rule 1.11 SSI Resource Policy Overview.

A. SSI policy specifies different exclusion limits or different ways to determine countable resources. If the resource policy has not been liberalized, SSI policy is applicable unless a subsequently issued federal statue or Medicaid regulation supersedes SSI policy.

B. SSI policies include:

1. Eligibility is based on the individual's countable resources as of the first moment of the first day of the month and is applicable to the entire month.

a) If resources exceed the limit as of the first moment of the first day of the month, the individual or couple is not eligible for that month.

b) It is not possible to "spenddown" resources within a month to establish eligibility for that month under SSI resource policy.

2. One automobile is automatically excluded regardless of value.

3. The value of life estates and remainder interest in real property is a countable resource.

4. The cash value of whole life insurance is excluded, if the combined face value of all policies on any individual is $1,500 or less.

   a) The combined face value of these excluded policies is used as an offset in determining burial fund exclusion.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 1.12 First of the Month Rule for Making Resource Determinations.

A. In the programs using SSI policy, resource determinations are made as of the first moment of a calendar month.

B. Any increase or decrease in the value of resources during a month is considered as of the first moment of the month following the month the change occurred.

   1. Example; Tom Lee applies for assistance on March 30th. His only resource is 20 shares of XYZ stock that are worth $800.00 on the date he applied. On April 30th, the value increased to $1,000.00. His countable resource amount for April is $800.00. The countable value for May is $1,000.00.

   2. Example; Rhonda Mooney applies for assistance on April 5th. On April 1st, her resources were $500 in checking and $700 in savings. On April 5th, her son gave her money and she purchases a CD worth $1,800. Her savings balance increased to $750 on April 30th, but her checking balance dropped to $350. For April, countable resources are $1,200 ($500 + $700). For May, they are $2,900 ($1,800 + $750 + $350). The CD is not considered until May since it was acquired in the middle of the month.

C. Do not consider as a resource any advance dated checks or advance posted direct deposit checks received prior to the month of normal receipt. If retained, funds from such checks will be considered a resource as of the first moment of the first day of the month following the month in which the check is normally paid.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 1.13 Resource Definitions.

A. Resources (General Definition): All assets, including real and personal property which an individual or couple:

   1. Owns;

2. Can apply toward basic needs of food, clothing and shelter, either directly or by conversion to cash, (if not already cash); and

3. Are not legally restricted from use for support or maintenance.

   a) Examples of resources include, but are not limited to:

      1) Home,

      2) Land,

      3) Bank Accounts,

      4) Burial Assets,

      5) Life Insurance,

      6) Automobiles, and

      7) Investments.

B. Liquid Resources:

1. Cash or items that are readily converted to cash (within 20 workdays).

2. Liquidity or nonliquidity of a resource has no effect on a resource's countability.

3. Absent evidence to the contrary, assume the following types of resources to be liquid:

   a) Stocks, bonds and mutual fund shares;

   b) Checking and savings accounts, time deposits, CDs;

   c) US Savings Bonds, treasury bills;

   d) Mortgages and promissory notes;

   e) This is not an all-inclusive list of liquid resources.

C. Non-liquid Resources:

1. Are not cash and are not readily convertible to cash;

2. Liquidity or non-liquidity of a resource has no effect on a resource's countability; and

3. Absent evidence to the contrary, assume the following resources to be non-liquid:

    a) Buildings, land and other real property rights,

    b) Vehicles,

    c) Farm machinery and livestock,

    d) Household goods and personal effects, and

    e) Non-cash business property.

    f) This is not an all-inclusive list of non-liquid resources.

D. Real Property:

1. Land, including buildings or immovable object attached permanently to the land.

E. Personal Property:

1. Any property that is not real property.

2. Personal property includes such items as:

    a) Cash,

    b) Jewelry,

    c) Household goods,

    d) Tools,

    e) Life insurance policies, and

    f) Automobiles

F. Exclusion:

1. A resource, or part of a resource's value, that is not considered in the eligibility determination.

G. Countable Resources:

1. Resources remaining after all exclusions are applied.

2. The value of a resource is the amount of an individual's or couple's equity in it. The current market value and debt on a resource must be verified to determine the equity value.

H. Current Market Value (CMV):

1. The amount a resource can reasonably be expected to sell for on the open market in the particular geographical area involved or the sale price, if sold for a higher amount.

I. Equity Value:

1. The current market value (CMV) minus any encumbrance (payoff amount), i.e., a piece of property has a CMV of $35,000. The mortgage payoff is $20,000. The equity value is $15,000.

J. Encumbrance:

1. An encumbrance is a legally binding debt against a specific property.

2. The debt reduces the value of the encumbered property, but does not prevent the owner from transferring ownership (selling) to a third party.

   a) However, if the owner does sell it, the creditor will nearly always require payment from the proceeds of a sale.

K. Conserved Funds:

1. Funds or property being held for an individual by another person, such as a daughter has $30,000 in a bank in her name but it is verified to be her parent's money and is used for their needs.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 1.14 Income vs Resources.

A. It is important to distinguish between resources and income to know which counting rules to use for any given month. The same item is not evaluated under two sets of counting rules for the same month; that is, one item cannot be counted as both income and a resource in the same month:

B. Income Counting Rules. Items received in cash or in-kind during a month are evaluated under the income rules.

C. Resource Counting Rules. Items retained for use in the month following the month of receipt are subject to evaluation under resource rules, as are all other items not defined as income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 1.15 Distinguishing Resources from Income.

A. If an individual sells, exchanges, or replaces a resource, what he receives in return is not income; rather, it is a different form of resource.

B. In order to distinguish resources from income, a determination must be on what has occurred and the monetary gain.

C. The monetary gain would be considered a resource when it:

   1. Was an increase in value of an existing resource;

   2. Was for the receipt or replacement of a resource;

   3. Was from the conversion or sale of a resource; or

   4. Was a cash or in-kind item for the replacement or repair of an excluded resource which is lost, damaged or stolen. (This is discussed further later in this chapter.)

D. Dividends and interest are defined as returns on investments, stocks, bonds, and savings accounts, etc. Refer to the income section for handling.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 1.16 Converted Resources.

A. If an individual sells, exchanges or replaces a resource, what he receives in return is a resource that has been converted from one type of resource to another.

B. Examples of converted resources are:

   1. A lot with equity value of $5,000.00 is sold and the money is deposited into a money market account.

   2. A life insurance policy is cashed in and the proceeds are used to purchase a pre-need burial contract.

C. Handling Changes in a Converted Resource. When a resource changes form, it may also change:

   1. From an excluded resource to a countable one,

   2. From a countable resource to an excluded one or

3. To something that is not considered a resource for Medicaid purposes.

    a) Example: An excluded vehicle is sold and proceeds are deposited into a checking account. The money received is a countable resource, rather than income.

    b) Example: A life insurance policy with a face value of $15,000.00 and a countable cash surrender value of $1,000.00 is cashed in and the proceeds are used to purchase a cemetery plot which is excluded in the resource determination.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 1.17 Evaluation of Receipt of Property as Income.

A. When an individual first receives property (as a gift or inheritance, for instance, and not as a purchase or trade of one resource for another), the new property is subject to evaluation under the income rules for the month of receipt and under resource rules thereafter.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 1.18 Factors That Make Property a Resource.

A. Property of any kind, including cash, is a resource only if it meets all three criteria listed below by resource criteria and description:

    1. Ownership Interest.

        a) An individual must have some form of ownership in property in order for the property to be considered a resource. The fact that an individual has access to property, or has a legal right to use it, does not make it a resource if there is no ownership interest.

    2. Legal Right to Access (spend or convert) Property.

        a) An individual must have a legal right to access property. Even with ownership interest, property cannot be a resource if the owner lacks the legal ability to access funds to spend or convert non-cash property into cash. The fact that an owner does not have physical possession of property does not mean it is not his resource. It is a resource if the owner still has the legal ability to spend it or convert it into cash. An individual has free access to, and unrestricted use of, property even when he can take actions only through an agent (such as a representative payee or conservator).

    3. Legal Ability to Use for Personal Support and Maintenance.

        a) Even with ownership interest and legal ability to access property, a legal restriction against the property's use for the owner's own support and maintenance means the property is not a resource.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 1.19 Access to Resources.

A. Unless an individual has been declared legally incompetent, he is assumed capable of managing his own affairs and his resources are considered. Competency does not affect consideration of resources.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 1.20 Individuals Declared Legally Incompetent.

A. The following is applicable to individuals who have been declared legally incompetent:

    1. Court Appointed Guardian or Conservator or Conservator. If the court has appointed a guardian or conservator, resources owned by the individual are considered available.

        a) Seeking court approval is not a legal restriction to the sale or disposal of the property and does not change the property's status as a countable resource to the individual.

B. No Court Appointed Guardian. If the court has not yet appointed a guardian or conservator, resources owned by the individual are not considered available.

    1. The individual does not have access to the resource until a guardian or conservator has been appointed.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 1.21 Types of Access.

A. Resources are accessible through an agent, litigation or a petition-conservatorship account under SSI and liberalized resource policy:

    1. Access Via an Agent. An individual is considered to have free access to, and unrestricted use of, property even when he can take those actions only through an agent, such as a representative payee or guardian.

        a) Example: Joan Shoto receives Social Security. Her mother, Laura Shoto, is her representative payee and has Power of Attorney. The bank account is a countable resource to Joan because she has unlimited access through her mother.

    2. Access Only Via Litigation. If there is a legal restriction, or a bar, to the sale or use of property, such as a co-owner legally blocks the sale of jointly-owned property, an individual is not required to undertake litigation to accomplish the sale or access. The

property is not a resource under such circumstances in a month if a legal bar exists any time in the month.

a) Example: Shelley Lumpkin and her sister, Susan Smith, co-own a piece of property they inherited from their parents. Last year Susan took legal action to prevent Shelley from selling. Shelley is not required to enter into litigation to gain the ability to sell, so the property is not a resource to her.

3. Access Via Petition. Petitioning a court is different from undertaking litigation, and:

   a) Seeking court approval is not a legal restriction against use.

   b) Although the individual does not have access to the asset, the conservator does. Therefore, it is available for the individual's support and maintenance and is, therefore, that individual's resource. This is true despite the fact that the individual or his agent is required to petition the court to withdraw funds for the individual's support and maintenance.

   c) The conservator will be allowed a period of time to petition the court. Once the conservator has verified a petition has been filed with the court, the regional office will follow-up to determine the outcome.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 1.22 Assets vs Resources.

A. Not everything a person owns (assets) are resources for Medicaid purposes. As previously indicated, a resource is cash or other real or personal property that an individual (or spouse, if any):

   1. Owns,

   2. Has the right, authority or power to convert to cash, (if not already cash),

   3. Is not legally restricted from using for his support or maintenance.

B. In certain situations, an asset that is not a resource may become one at a later date or vice versa. The distinction is important since:

   1. An asset that is not a resource does not count against the resource limit (while a resource may count); and

   2. Proceeds from the sale or trade of a resource, i.e., the amount representing conversion of principal from one form to another, are also resources; however,

3. What a person receives from a non-resource is subject to evaluation as income at the time of receipt. For example, an individual is the beneficiary of a trust which is not his resource; therefore, when the trust pays him his monthly allowance, he receives income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 1.23 Resources With Zero Value.

A. Property does not cease to be a resource simply because it has no current market value. Even though there is no value to count, the property remains a resource for as long as it meets the definition of a resource. If the property develops market value at a later time, this will be an increase in the value of a resource rather than receipt of income.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 1.24 Property That Is Not a Resource.

A. Any property (asset) that does not meet the above definition of a resource is not a resource, e.g., an individual who has an ownership interest in property, but is not legally able to transfer that interest to anyone else does not have a resource.

B. Example: An individual owns a block of stock with his brother. Although the form of ownership is one which would permit either to sell the property without the other's consent, the brothers have a legally binding agreement that one will not sell without consent of the other. The individual's brother refuses his consent, making the stock a non-resource for the individual. If the brother subsequently agrees to sell, the stock would be evaluated under resource-counting rules beginning with the month following the month of consent. The value of the stock would not be counted as income to the individual in the month consent is given.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 1.25 Unknown Assets.

A. An individual may be unaware of his ownership of an asset. If this is the case, the asset is not a resource for the period during which the individual is unaware of his ownership.

B. Once the asset is discovered by the individual, the value, including any monies accumulated on it through the month of discovery, must be treated as follows:

1. Month of discovery. The value of the unknown asset, including any monies (such as interest) that have accumulated on it through the month of discovery, is evaluated under regular income-counting rules.

2. Months after month of discovery. For months after the month of discovery, the previously unknown asset is a resource and subject to usual resource counting rules.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 1.26 Valuation of Resources.

A. The value of a resource is the amount of an individual's or couple's equity in it. As indicated in the definitions section, the equity value (EV) of a resource is its current market value (CMV) less any encumbrance(s). The pay-off amount for each encumbrance on the property is used in the calculation of its equity value.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 1.27 Whose Resources to Count.

A. When eligibility is determined or re-determined, the resources of the following must be considered**:**

    1. Applicant/recipient; and

    2. Spouse of the applicant/recipient;

        a) If the spouse is included in the household;

        b) Even if the spouse is not applying or is ineligible;

        c) An exception exists for institutionalized individuals.

    3. Parent(s) of an applicant/recipient who is a child under age 18 living in the same household.

        a) There is no deeming of parental resources to the eligible child in the Disabled Child Living at Home group or in any institutional group for the month of entry.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Part 103 Chapter 2: Ownership Interest

Rule 2.1 Significance of Ownership.

A. Since the type and form of ownership may affect the value of real or personal property and even its status as a resource, ownership interests are significant in determining resource eligibility.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 2.2 Sole Ownership.

A. Only one person owns the property (real or personal) and may sell, transfer or dispose of the property. However, sole ownership may be subject to conditions imposed by others, such as sole ownership of a remainder interest in property.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 2.3 Shared Ownership.

A. Two or more people own the property (real or personal) together. The different types of shared ownership are discussed below.

   1. Tenancy in Common.

      a) Two or more people have an undivided fractional interest in the whole property for the duration of the tenancy. These interests are not necessarily equal, i.e., two joint tenants do not necessarily each owns half of the property.

      b) One owner may dispose of his share without permission of the other owner(s), but cannot take these actions with respect to the entire property.

      c) When one owner dies, his interest passes to his heirs or estate.

      d) There is no automatic right to survivorship for the surviving tenants-in-common.

      e) Example, Don, Charles and Fred Evans own property as tenants-in-common. Charles and Fred each own an undivided ¼ interest while Don owns the remaining ½ interest. If Don Evans were to sell his ½ interest to Stan Long, Mr. Long would be a tenant-in-common with Charles and Fred. If Mr. Long were then were then to die so that property passed to his 4 children, each of them would own 1/8 interest as tenants-in–common with Charles and Fred, who would each continue to own ¼ interest.

   2. Joint Tenancy

      a) Each person has an undivided ownership interest and possession of the whole property for the duration of the tenancy. In effect, each owns all of the property.

      b) Right to survivorship applies to the other owner(s).Upon the death of one of only two joint tenants, the survivor becomes the sole owner. On the death of one of three or more joint tenants, the survivors become joint tenants of the entire interest.

   3. Tenancy by the Entirety.

      a) Exists only with married couples.
      b) While married, the wife and husband own the property as a unit and the property can only be disposed of if both give consent;

c) If divorced, the former spouses become tenants-in-common and each can sell his/her share without the other's consent.

d) Right to survivorship applies upon the death of one tenant by the entirety, the survivor takes the whole.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 2.4 Fee Simple Ownership.

A. Relates only to real property;

B. Means absolute and unqualified legal title to real property;

C. Fee simple ownership is completely free of conditions imposed by others.

D. The owner has the unconditional power of disposition during his lifetime.

E. Upon the owner's death, property held in fee simple can always pass to the owner's heirs.

F. May exist with respect to property owned jointly or solely.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 2.5 Less Than Fee Simple Ownership.

A. Equitable Ownership.

1. Exists without legal title to property;

2. Legal title may belong to another or to no one;

3. Examples of equitable ownership include ownership in unprobated estates or trust property.

    a) Unprobated Estate. An individual may have an equitable ownership in an unprobated estate if he is an heir or relative of the deceased, receives income from the property or acquires rights through intestacy laws. Under liberalized policy, estates in process of probation are excluded. Under SSI resource policy an unprobated estate becomes a resource the month following the month it meets the definition of income.

    b) Trust Property. A trust is a right of property, established by a trustor or grantor. A Trustee holds legal title and manages the property for the benefit of a beneficiary. The beneficiary does not have legal title, but does have an equitable ownership interest. Clearance procedures must be followed in determining how the trust affects eligibility

B. Life Estate Interest.

1. Individual has certain property rights during his life or someone else's life.

2. May be conditional. See instructions below for handling a conditional life estate.

3. Legal document is required (such as will or deed).

4. Unless the legal document restricts rights, the life estate owner has the right to possess, use, and obtain profits from the property (such as rents).

5. Life estate interest can be sold.

6. Life estates do not descend to heirs.

7. Example: Mr. Heath, now deceased, willed his daughter a life estate in property which he owned fee simple. The will also designated Mr. Heath's two sons as remaindermen. The daughter has the right to live on the property until her death at which time, under the terms of her father's will, the property will pass to her brothers as joint tenants.

8. If there are joint owners of a life estate, the CMV is divided by the number of owners to determine an individual's share.

9. When one joint owner of the life estate dies, the surviving owner(s) increases their interest. If a couple has a life estate and one spouse dies, the remaining spouse is the sole owner of the life estate. When the remaining spouse dies, the person holding the remainder interest then has the right to possess and use the property.

10. It is possible to have a life estate interest in a structure (house) and not surrounding land. The CMV of the structure or whatever the tenant has the right to use as established by the deed or a will would be determined.

11. Under liberalized policy, a life estate is an excluded resource. The exclusion is not limited to property located in Mississippi. In addition, if the individual has a life estate interest in more than one piece of property, all are excluded**.** However, there are some exceptions to excluding a life estate:

    a) If a life estate is transferred or sold, eligibility for vendor payment or HCBS waiver services may be affected. A transfer of a life estate is sanctionable.

        1) When the value of a life estate interest needs to be determined for a potential transfer, follow the procedures below, using the age of the individual as of their last birthday at the time of the transfer. Verify the Current Market Value (CMV) of the property. Use the Unisex Life Estate and Remainder Interest Table for the following steps:

(a) Find the age of life estate owner as of their last birthday at the time of the transfer.

(b) Locate the factor in the Life Estate column that corresponds to the age.

(c) Multiply the CMV of the property by the life estate factor to obtain the value of the life estate. (CMV of the property X Life Estate Factor = CMV of the life estate).

(i) Example: Jane Ayers took a life estate in her home in 1988. Now at age 97, she is applying for nursing home care. It is discovered she transferred her life estate interest to her son two years ago. Her age as of her last birthday at the time of the transfer was 95 and at that time the property had a CMV of $250,000. The uncompensated value is determined as follows:

$250,000 (CMV) x .22887 (Life Estate Factor for Age 95) = $52,217.50 (Uncompensated Value).

12. Conditional Life Estate.

a) A conditional clause establishes limitations on the life estate. For example, the grantor may reserve a life estate for as long as the grantor lives and maintains a home on the property.

b) For deeds dated on or after February 8, 2006, consider the entire property transferred if the deed contains a conditional life estate clause. The transfer date will be the date of the deed.

c) The life estate can be corrected if a revised deed is prepared removing the conditional clause with the grantor reserving a life estate without limitations. However, the transfer of the remainder interest, if it occurred within the 5-year look back period, must be considered if the grantor enters long term care. Therefore, removing the conditional life estate clause may only shorten the transfer period.

13. Under the DRA the purchase of a life estate in another individual's home on or after February 8, 2006, is a transfer of assets unless the purchaser resides in the home for at least 12 consecutive months after the date of purchase.

a) Do not deduct vacations, overnight visits, and hospital stays from the one-year period as long as the home continued to be the individual's legal residence. Count the entire purchase price as an uncompensated transfer if the purchaser resides in the home for any period less than one year.

b) Also the DRA provides that even if the life estate purchaser lives in the home for 12 consecutive months, the purchaser must not pay more than CMV for the life estate.

Any amount paid above CMV is considered a transfer and should be penalized according to the transfer policy. Verify the purchase price and calculate the CMV of the life estate. Any amount paid over the CMV of the life estate is considered a transfer.

14. Under strict SSI policy, the value of a life estate is a countable resource unless an exclusion exists.

    a) Verify the Current Market Value (CMV) of the property.

    b) Use the Unisex Life Estate and Remainder Interest Table for the following steps:

        1) Find the age of life estate owner as of their last birthday.

        2) Locate the factor in the Life Estate column that corresponds to the age.

        3) Multiply the CMV of the property by the life estate factor to obtain the value of the life estate. (CMV of the property X Life Estate Factor = CMV of the life estate).

    c) If there is joint ownership of a life estate, first determine the CMV of the entire property. Divide the CMV by the sharer of joint owners to determine the individual's share and then calculate the individual's life estate value as described above.

        1) Example. 75 year-old Harry Thomas has a life estate in non-homestead property with a current market value of $80,000. An exclusion for the property cannot be developed. Using the table, his life estate interest is valued as follows:
        $80,000 (CMV) x .52149 (factor for age 75) = $41,719.20 (value of the life estate)

        2) Example. 75 year-old Max Berry is living with his daughter due to illness, but states he intends to return home when health permits. Ten years ago, he transferred his home to his children retaining a life estate interest. An exclusion can be developed for the home property since his desire is to be able to return home.

C. Ownership by Will or Descent.

1. An individual may have ownership interest in an unprobated estate acquired through a will or through the death of a relative who died intestate (without a will). The heir(s) may be the sole owner or joint or common owners, etc.

2. Heirs by Will.

    a) Have ownership or control of the property or their joint or common share.

b) If the will has not been filed with the proper court and has not been probated, there is question of whether the will is legally binding. Legally, wills are supposed to be filed for probate; however, there is no time limit.

c) Absent evidence to the contrary, assume the client owns the property in proportion, whereby he has the right to the will's directives.

3. Heirs by Descent.

a) Acquire ownership interest to property by virtue of the heir's relationship to the deceased. Intestate property of a deceased person with a spouse and children is shared equally by the surviving spouse and children. Grandchildren become involved in ownership interest only when their parent, who was a child of the original owner, is deceased. The grandchildren's interest is only in the share that their deceased parent held in interest.

b) Intestate property of an individual with no spouse or children at the time of death descends equally to his parents and brothers and sisters. If the deceased's parents are also deceased, the property descends to his brothers and sisters. Nieces and nephews become involved only if their parent who was a brother or sister to the deceased is also deceased. Their ownership interest is only in the share that their deceased parent held an interest in.

c) Absent evidence to the contrary assume an heir inherited property based on their laws of descent where the property is located.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 2.6 Property Rights With No Ownership.

A. Leasehold.

1. Does not designate rights of ownership, but conveys an individual control of the property so that he has use and possession for a specific period of time and usually for a specified rent, such as 16th section land leases.

a) 16th Section Land. 16th section land or land acquired in lieu of 16th section land is land controlled by the State Board of Education under the general supervision of the State Land Commissioner. Generally each county Board of Supervisors has the authority to approve or renew leases on the land. An individual who leases such land does not own the property and has limited rights. The value of the lease decreases as the expiration date nears. Lease rights to 16th section or lieu lands are negotiable. These rights may be sold to another person provided the governing authority which approves such leases is agreeable to such a sale.

B. Incorporeal Interests.

1. No ownership of the physical property;

2. The owner has certain rights to use the property without the right to dispose of property;

3. Applies to mineral rights, timber rights and easements, which may be sold by the owner.

   a) Mineral Rights. Ownership in natural resources, usually obtained from the ground, such as coal, oil, sulphur, sand or natural gas, etc., coming from the property.

   b) Timber Rights. These rights permit one party to cut and remove trees from property owned by another, as designated by a contract with the owner of the land on which the timber stands.

   c) Easements. Property right whereby one has the right to use the land of another person for a special purpose.

C. Valuation of leaseholds and incorporeal interests.

1. They may be countable resources under both SSI and liberalized resource policy if they have a cash value available to the individual upon disposition.

2. However, in some cases these property rights are not saleable and would not be a countable resource:

   a) An individual may own an easement to pass through another person's property to get to his own property. There would be little or no market for the sale of this property right.

   b) Timber rights to land which has been stripped of its trees or mineral rights to land with no viable natural resources would have little or no market value.

3. To verify the value of property ownerships such as mineral rights or timber rights, determine the CMV from a knowledgeable source. If the property right is under production, it is necessary to obtain a copy of the land lease to determine if the lease is transferrable in order to determine if the property right is a countable resource.

4. Under liberalized policy, 16th Section land leases and mineral rights, timber rights and leaseholds that are not under production are excluded in the resource determination regardless of value. If one of these types of ownership is income-producing, net annual return is tested against the 6% income-producing rule when applicable.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 2.7 Other Rights to Use of Real Property.

A. Homestead Rights

1. Under state law a surviving spouse (widow or widower) is entitled to the homestead on the real property used as the home at the time of the death of the spouse and to receive income from it for his lifetime. This is not a life estate interest in the property, but is quite similar.This situation occurs when spouses jointly or commonly own property without the right of survivorship clause in the property.The surviving spouse has homestead rights to the portion of the property that belonged to the deceased spouse. The surviving spouse would also own his/her own interest in the property. A homestead right does not have value and cannot be sold.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Rule 2.8 Evidence of Real Property Ownership.

A. Property ownership must be verified. Obtain a copy of the official document used to verify ownership and file it in the case record. The following official records may be used to establish real property ownership:

1. Current Deed. If the client does not have a copy of the current deed, a copy may be obtained from records in the Chancery Clerk's office in the county where the property is located. Any discrepancies which exist between a deed and a tax receipt must be resolved in order to determine the true ownership situation. A deed must be recorded in the appropriate county office to be considered a true deed documenting ownership.

2. Tax Assessment Notice or Most Recent Tax Receipt. Tax records and receipts describe the property. Phrases such as "Et al" and "Et ux" beside the name on a tax receipt indicate joint or common ownership in some form. Current Mortgage Statement. Mortgages are recorded in the Chancery Clerk's office; however, the name of the mortgage holder must be known. Report of Title Search Wills, Court Records or Relationship Document.- Which show rights of an heir to the property after death of the former owner.

Source: Miss. Code Ann. 43-13-121.1 (Rev. 2005).

Rule 2.9 Verifying Current Market Value (CMV).

A. Once ownership or ownership interest in property has been verified, the current market value (CMV) of the client's ownership interest is determined based on the coverage group of the applicant or beneficiary and whether Supplemental Security Income (SSI) or liberalized resource policy is applicable.

B. Under liberalized resource policy, the CMV is established using the most recent county property tax assessment notice unless a tax assessment for a prior time period is needed, such as to establish CMV when a transfer of assets occurred.

1. The true value of the property as shown on the county property tax assessment notice is

used to establish CMV. If the true value is not shown, the property tax assessed true value is calculated as follows:

a) A tax assessed value divided by the county tax assessment ratio is the CMV based on the assessment. Class 1 property is home property and Class 2 property is non-home property. Class 2 property may adjoin home property and therefore be included in the definition of home property.

b) Property in Mississippi is assessed at ten percent (10%) for Class 1 (home) property and fifteen percent (15%) for Class 2 (non-home) property.

c) The assessed value divided by the applicable assessment ratio is used to arrive at the true value of property. For example, Class 1 (home) property has an assessed value of five thousand dollars ($5,000.00). Divide five thousand dollars ($5,000.00) by ten percent (10%). The true value is fifty thousand dollars ($50,000.00) based on the county tax assessment.

2. If the individual disagrees with the true value as shown on the appropriate county property tax assessment notice or calculated using the county property tax assessed value, the individual must obtain a knowledgeable source estimate to establish CMV as required under SSI policy.

C. SSI Policy requires obtaining a knowledgeable source estimate to establish the CMV of real property. Knowledgeable sources include, but are not limited to:

1. Real estate brokers,

2. Local office of the Farmer's Home Administration (for rural land),

3. Local office of the Agricultural Stabilization and Conservation Service (for rural land),

4. Banks, savings and loan associations, mortgage companies and similar lending institutions, and

5. An official of the local property tax jurisdiction (must obtain an estimate rather than the office's assessment).

6. Licensed Mississippi real estate appraisers.

D. When CMV has an impact on eligibility and applicants or beneficiaries disagree with the CMV evidence submitted or obtained by the Medicaid specialist, a rebuttal determination must be made.

1. The rebuttal determination must take into account:

a) All the evidence previously in the file including, but not limited to, the individual's original allegation, any tax assessment notices and any estimates from knowledgeable sources,
b) Any additional evidence the individual wishes to submit including, but not limited to, evidence that the individual's ownership interest in the property is worth less than the CMV determined total value of the property divided by the number of owners, and

c) Any other facts about the property or about market conditions where it is located.

2. The rebuttal must be supported by a preponderance of the evidence which may require one (1) or more additional estimates from knowledgeable sources.

E. For both SSI and liberalized policy, the CMV less any legally binding debts against the property is the countable equity value for real property that cannot be excluded under any real property exclusion.

Source: Miss. Code Ann. § 43-13-121.

History: Revised to correspond to SPA 16-0009 (eff. 01/01/2016) eff. 01/01/2017.

Part 103 Chapter 3: Non-Countable Resources

Rule 3.1 Retirement Funds.

A. Retirement funds are annuities or work-related plans that are designed to provide income when employment ends. These funds can be held with a company or held privately at a bank or other financial institution. Listed below are some examples:

1. Pensions, disability, or retirement plans administered by an employer or union 401K;

2. Individual Retirement Account (IRA);

3. Keogh plans (plans for self-employed individuals); and

4. Some profit sharing plans

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 3.2 Treatment of Retirement Funds.

A. The terms IRA and Keogh refer only to the type of retirement account and do not identify the underlying investment vehicle for the account, which may be a bank account, Certificate of Deposit, mutual fund, etc.

1. If retirement benefits are being received out of such accounts, the principal is not considered a resource.

2. Otherwise, IRAs and Keogh accounts are developed according to the resource policy applicable to the underlying investment vehicle.

B. Retirement benefits are payments made at some regular interval (i.e., monthly) and result from entitlement to a retirement fund.

 1. Periodic payments must be of uniform rate, principal and interest (principal must equal or exceed amount of interest) and are counted as unearned income.

C. If an individual owns a retirement fund, determine whether he is eligible for periodic payments.

 1. If so, he must apply for those benefits under the utilization of other benefits provision. If he has a choice of periodic payments or a lump sum, he must take the retirement benefit payments.

D. If an individual owns a retirement fund and is not eligible for periodic payments, determine whether he can make a lump sum withdrawal.

 1. If he can withdraw any of the retirement fund, the value of the fund is a resource in the month the funds become available for withdrawal.

E. The value of the retirement fund is the amount that can currently be withdrawn. If there is a penalty for early withdrawal, the fund's value is the amount available after the penalty is deducted. However, any taxes which may be due are not deductible in determining the fund's value.

F. A retirement fund is a resource when the individual has the option of withdrawing a lump sum, even if he is not eligible for periodic payments. When this is the case:

 1. If the individual applies for periodic payments and is denied, the value of the fund becomes a countable resource the month after the month periodic payments are denied.

 2. A delay in payment beyond the individual's control (e.g., an organization's processing time) does not mean the fund is not a resource since the individual is legally able to obtain the money.

G. A retirement fund is not a resource when a person must terminate employment to obtain payment or when a person is eligible for and receiving periodic payments.

H. Retirement funds owned by an ineligible spouse or parent are excluded from resources for deeming purposes.

I. A previously unavailable retirement fund is subject to resource rules in the month after the month the funds first become available.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 3.3 Loans, Promissory Notes & Property Agreements – General.

A. This section provides resource policies that primarily apply when the client or spouse is the creditor (lender or seller) and is, therefore, the owner of a loan agreement, promissory note or a property agreement. The principal amounts of these items are evaluated under appropriate SSI or liberalized resource policy.

B. Definitions.

1. Bona Fide Agreement. An agreement which is legally valid and made in good faith.

2. Negotiable Agreement. A type of agreement where legal title or the amount of the agreement can be transferred (sold) to another party.

    a) Generally, promissory notes, loan agreements and personal and real property agreements can be sold to a third party.

    b) An agreement may be assumed to be non-negotiable if there is a legal bar to its sale.

3. Loan. A transaction in which one party advances money to, or on behalf of another party, who promises to repay the lender in full, with or without interest.

    a) The loan agreement must be enforceable under state law and be in writing.

    b) A written loan agreement is a form of promissory note.

4. Informal Loan. With formal loans (e.g., commercial), there is rarely a question about whether the loan agreement is bona fide. An informal loan is a loan between individuals who are not in the business of lending money or providing credit. An informal loan must be written and is bona fide if:

    a) It is legally binding under state law;

    b) It was in effect at the time of the transaction (money given with no obligation to repay cannot become a loan at a later date) ;

    c) There is an acknowledgement of an obligation to repay, with or without interest, by the lender and the borrower;

    d) There is a plan or schedule for repayment and the borrower's express intent to repay by pledging real or anticipated future income; and

    e) The repayment plan is feasible.

5. Promissory Note. Written, unconditional agreement where one person promises to pay another party a specific amount at a specific time (or on demand). It can be repayment for goods, money loaned or services rendered.

6. Property Agreement. A piece of property is used to secure payment of a debt or performance of services within a specified period of time. Other names for property agreements include:

    a) Mortgages;

    b) Real estate or land contracts;

    c) Contracts for deed;

    d) Deeds of trust;

    e) Personal property agreements, e.g., pledges of crops, fixtures, inventory, etc., are known as chattel mortgages.

C. Property Agreements Prior to Settlement. A person holding a contract for sale of real estate (seller or creditor) owns two items until the settlement of the sale is completed:

1. The real estate, which is not a resource since it cannot be sold while encumbered by the contract, and

2. The value of the contractual agreement.

D. Determining the Value of a Contract. The status and value of a contract, i.e., loan agreement, promissory note or property agreement, must be evaluated to determine if it is a resource under appropriate SSI or liberalized resource policy.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 3.4 Treatment of Loans, Promissory Notes & Property Agreements (SSI).

A. SSI policy when the individual is the seller or creditor:

1. Obtain a copy of the agreement and assume, absent evidence to the contrary, that the written agreement is bona fide and negotiable.

2. A bona fide, negotiable agreement is a resource. The goods or money represented in the agreement are not a resource because they are not accessible.

3. The debtor's payments against the principal are a conversion of a resource, not income.

4. The interest portion received by the lender is unearned income.

5. If retained, principal and interest are counted as the lender's resource the month following the month of receipt.

    a) Example: Debtor pays $500 per month - $350 toward principal and $150 in interest. The $350 is a converted resource. The $150 is unearned income.

6. If including the original principal balance (the amount owed to the creditor when the agreement was established) causes ineligibility on resources, obtain verification of the outstanding principal balance, i.e., the balance in the month for which a determination is being made.

7. If including the outstanding principal balance causes ineligibility on resources use the outstanding principal balance in determining resources unless one of the following is submitted:

    a) Evidence of a legal bar to the sale of the agreement ; or

    b) An estimate from a knowledgeable source (in the business of making estimates, such as banks, other financial institutions, private investors, real estate brokers, etc.) showing that the CMV of the agreement is less than its outstanding principal balance.

        1) The estimate must show name, title, and address of the source.

8. For agreements determined to be Non-Bona Fide or Non-Negotiable:

    a) A non-bona fide or non-negotiable agreement is not a resource under SSI policy;

    b) The principal and interest paid to the lender are income, not a resource ; and

    c) The goods or money represented in the agreement may be a resource to the seller if the seller/creditor has access for his own use

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 3.5 Treatment of Loans, Promissory Notes and Property Agreements (Liberalized).

A. For the borrower under both SSI and liberalized resource policy, if the agreement is bona fide and negotiable:

    1. Cash paid by the lender to the borrower is not income;

    2. However, cash retained (or property received) may be a resource to the borrower the month following the month of receipt.

B. Liberalized policy when individual is the seller or creditor:

1. Obtain a copy of the agreemen and assume, absent evidence to the contrary, that the written agreement is bona fide and negotiable.

2. Determine if the bona fide, negotiable note or agreement produces at least 6% net annual return of the principal balance.

    a) Loans, promissory notes and property agreements can be excluded as a resource if the note, loan or agreement produces at least a 6% net annual return of the principal balance.

    b) The income must be received by the client/spouse and counted as income in order for the exclusion to apply.

    c) If the above criteria are not met, the note or agreement cannot be excluded as a resource.

C. Policy for institutionalized individuals in SSI or liberalized programs.

1. Even though the 6% rule is in effect and establishes a minimum acceptable payment when compared to the principal balance, the following conditions must also be met for a resource exclusion for all institutionalized individuals in either SSI or Liberalized programs:

    a) The repayment terms of the agreement must be actuarially sound;

    b) The payments must be of uniform rate, principal and interest, during the term of the agreement, with no deferred or balloon payments; and

    c) The agreement must prohibit cancellation of the debt upon the death of the lender.

    d) The institutional client or spouse must reasonably expect to receive full payoff of the note or loan during his/her lifetime. As with annuities, the average number of years of life expectancy remaining based on the Annuity Life Expectancy Charts must coincide with the payout of the promissory note or loan.

D. Agreements which do not meet requirements.

1. For non-institutional cases assessed under liberalized resource policy, a non-bona fide or non-negotiable agreement is not a resource. Principal and interest payments are income to the seller/creditor. The goods or money represented in the agreement may be a resource if the seller/creditor has access for his own use.

2. For institutional cases, funds used to purchase promissory notes, loans or mortgages that do not meet the 6% rule, are not actuarially sound or are not bona fide or negotiable will be considered a transfer of assets valued as the entire outstanding balance due as of the date of the application for long term care for contracts dated on or after February 8, 2006.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 3.6 Inheritances and Unprobated Estates.

A. Unprobated Estates.

1. Under SSI resource policy, an ownership interest in an unprobated state may be a resource if an individual:

    a) Is an heir of the deceased; or

    b) Receives income from the property; or

    c) Under state intestacy laws has acquired rights in the property due to the death of the deceased.

2. An ownership interest in an unprobated estate exists if:

    a) Documents such as a will or court records indicate an individual is an heir; or

    b) An individual has the use of, or income from, a deceased person's property; or

    c) Documents verify, or the individual alleges, a relationship to the deceased that awards him a share under the state's intestacy laws; or

    d) The inheritance, use of income and distributions are not contested.

3. Under liberalized policy, estates in the process of probation are excluded from the resource determination.

B. Inheritances.

1. An inheritance is cash, a right, or a noncash item(s), received as the result of a person's death.

2. Treatment under liberalized resource policy.

    a) An inheritance is not a resource until the month following the month it meets the definition of income i.e., it has a value and can be used, either directly or by sale or conversion to meet basic needs. Thereafter, if retained, the property is evaluated as a resource.

    b) If an applicant or recipient in a long term care program refuses or transfers an inheritance, the individual may be subject to penalty under the transfer of assets provisions.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 3.7 Real Property Exclusions.

A. Home Property Exclusion.

1. An individual's home is property he has ownership interest in and is his principal place of residence; and

2. It may include the shelter he lives in, the land on which the shelter is located, and all buildings on the land.

   a) A principal place of residence is the dwelling that an individual considers his/her principal home. It may be:

      1) Real or personal property;

      2) Fixed or mobile;

      3) Located on land or water.

   b) Example: If a person owns and resides in a houseboat on a lake, the boat may qualify as home property.

3. If a person owns land and intends to reside on it, it may be considered home property if there is no other principal place of residence. If a person owns the land, but not the shelter, the land is considered the residence.

   a) Example: A person owns the land he lives on, but lives in a mobile home owned by his parents. If a person owns the shelter, but not the land, the shelter is the residence.

   b) Example: A person owns the mobile home, but rents the lot on which it is located.

4. Applying the home exclusion.

   a) The home exclusion applies to:

      1) The shelter in which the individual lives;

      2) All buildings on the property;

      3) The land on which the shelter is located; and

      4) Any land adjoining it as long as it is not separated by land that neither the individual nor spouse has an ownership interest in.

(a) Easements and public rights of way (utility lines, roads, etc) do not separate other land from the home plot.

5. Home Out-Of-State.

a) If an applicant's home property is located out-of-state, policy governing state residency applies.

b) It is not permissible for the individual to intend to return to his principal place of residence out-of-state and at the same time intend to reside in Mississippi.

c) If the applicant intends to return home to another state, he cannot be considered a Mississippi resident for Medicaid eligibility purposes.

d) If the applicant intends to reside in Mississippi, home out-of-state cannot be excluded as his principal place of residence.

6. Treatment of Home Property Under SSI Resource Policy.

a) An individual's home, regardless of value, is an excluded resource if the individual:

1) Resides in the home; or

2) Is absent and intends to return to the home.

(a) An individual is residing with her children due to an illness, but intends to go home when health permits The intent is based on the person's desire to return home.

(b) If the individual leaves the home and does not intend to return home to it, it is no longer considered the person's principal place of residence.

(i) The home exclusion no longer applies as of the date the individual leaves with the intent not to return or the date the individual no longer intends to return.

(ii) The month after there is no intent to return, the property will be considered a countable resource unless another exclusion develops.

b) A home can be excluded without intent to return, if:

1) A spouse or dependent relative of an institutionalized individual continues to reside in the home while the individual is institutionalized;

(a) Dependency may be financial or medical;

(b) Relatives may include child, step-child, grandchild, parent, step-parent, grandparent, sibling, step-sibling, half sibling, aunt, uncle, cousin niece, nephew, in-laws;

2) Sale of the home would cause an undue hardship to a co-owner due to loss of housing.

(a) Obtain a statement from the dependent relative or the co-owner to apply either of the above exclusions.

c) Multiple Residences.

1) Only one residence can be excluded as home property.

2) If there are multiple residences, the principal place of residence must be determined, considering such points as how much time is spent at each residence; where the individual is registered to vote; and which address the individual uses for mail and tax purposes.

7. Treatment of Home Property Under Liberalized Resource Policy.

a) Home property can be excluded regardless of intent to return home or whether a dependent relative lives on the property.

b) Each client is allowed one home that can be excluded regardless of its use.

c) If more than one residence is owned, exclude the property that would be most advantageous to the client.

d) For long term care applications filed on or after January 1, 2006, there is a disqualification for individuals with equity interest in their home of greater than $500,000. This provision will not prevent an individual from using a reverse mortgage or home equity loan to reduce the total equity interest in the home.

1) This disqualification period means that the homeowner who is in long term care can qualify for all Medicaid services except vendor payment of nursing facility services as long as equity interest exceeds the $500,000. limit.

2) If Medicaid eligibility is dependent upon participation in the HCBS waiver, the individual is ineligible for full Medicaid services as long as equity in the home exceeds the limit; however, a Medicare Savings Program can be approved if criteria are met.

3) Undue hardship can be found to exist if a lien or legal impediment exists causing the individual to be unable to access the equity.

8. Reverse Mortgages.

a) A reverse mortgage is an agreement in which a lending company:

1) Makes a lump sum (subject to being counted as a resource the month following month of receipt);

2) Available line of credit (subject to being counted as a resource the month following month of receipt; or

3) Regular payments (treated as loan proceeds) to a homeowner during a specific period of time.

b) The amount of payment is determined by the amount of equity the homeowner has in the home.

c) The homeowner is allowed to remain in the home until his/her death. At that time, the home is sold and/or the lender is repaid.

d) Reverse mortgages are available to homeowners age 62 or older who own a debt-free or nearly debt-free home.

e) Funds received from a reverse mortgage in any form that are transferred, either in the month of receipt or subsequent months, are subject to a transfer penalty unless an allowable exception applies (such as spousal transfers).

B. Exclusion of Home Replacement Funds.

1. If an individual sells an excluded home, the proceeds may be an excluded resource if he:

a) Plans to buy another excluded home; and

b) Buys the home within 3 full calendar months following the month the proceeds are received.

C. Exclusion of Installment Sales Contracts.

1. If the proceeds from the sale of an excluded home are received under an installment sales contract, the contract is excluded if the individual:

a) Plans to use the entire down payment and the entire principal portion of a given installment payment to buy another excluded home; and

b) Purchases the new home within 3 full calendar months following the month the down payment or installment payment is received.

2. The proceeds of the sale include the following:

a) Lump sum. The net amount the seller receives at closing/settlement;

b) Installments. Down payment and principal portion of any installment payment.

3. Use of Proceeds. Use of the proceeds to buy another excluded home includes payment of any costs that stem from the purchase. These include, but are not limited to:

   a) Down payment;

   b) Closing/settlement costs;

   c) Moving expenses;

   d) Loan processing fees and points;

   e) Necessary repairs and replacement of the new home's structures and fixtures costs, if identified and documented before the new home is occupied and stem directly from the purchase or occupancy of the new home.

      1) This may include: roof, heating and cooling, plumbing, built-in appliances, etc.

   f) Mortgage payments;

   g) Use of proceeds to pay other costs will warrant their exclusion if such costs are identified and documented prior to occupancy and stem directly from the purchase or occupancy of the new home.

4. Proceeds Not Re-Invested in a Timely Manner.

   a) If the home is not replaced within the allowable 3-month period, the unused proceeds are a countable resource retroactive to the month following the month of receipt as follows:

      1) Lump sum. The exclusion of the unused funds is revoked retroactively to the date of receipt;

      2) Installment contract. The exclusion of the contract itself and the unused portion of any installments received are revoked retroactively to the date the unused proceeds were received.

      3) The exclusion of an installment contract, once revoked, will be reinstated if the individual intends to and does use the entire principal portion of a subsequent installment payment toward the purchase of another excluded home within 3 full calendar months of receiving such installment payment.

(a) The exclusion does not apply to that portion of the proceed of the sale of the original home that is in excess of the costs of the purchase and occupancy of the new home.

5. Exclusion of Jointly Owned Property Whose Sale Would Cause Undue Hardship.

a) The value of an individual's ownership interest in the jointly-owned property is an excluded resource for as long as the sale of the property would cause an undue hardship, due to loss of housing, to a co-owner.

b) Undue hardship would result if the co-owner:

1) Uses the property as his principal place of residence;

2) Would have to move if the property were sold;

3) Has no other readily available housing.

c) The exclusion ends when any one of the above conditions no longer exists.

1) Example: Mr. Allen and his son jointly own a piece of land. The son and his family live on the property and have no other place to live. Mr. Allen applies for Medicaid. The property is excluded because the sale would cause an undue hardship to his son. However, if the son owned another house nearby which was vacant and habitable, there would be other available housing. Under these circumstances, undue hardship would not exist and the value of Mr. Allen's interest would be countable.

E. Exclusion of Real Property Due to Reasonable Efforts to Sell.

1. Real property may be excluded from resources if the owner is making reasonable efforts to sell it and those efforts have been unsuccessful.

2. The individual must maintain their efforts to sell unless good cause, i.e., circumstances beyond the individual's control prevent his taking the required actions to accomplish reasonable efforts to sell, exists.

3. In addition, the individual must accept a reasonable offer for the property. The specific requirements listed below must be met in order for this exclusion to apply:

a) Reasonable Efforts To Sell.

1) Reasonable efforts to sell real property consist of taking all necessary steps to sell it through media serving the geographic area in which the property is located.

2) Reasonable efforts specifically mean that within 30 days of signing the Agreement to Sell Property, the owner(s) must:

   (a) List the property with an agent; or

   (b) Begin to advertise in at least one of the appropriate local media, place "For Sale" signs on the property (if permitted),

   (c) Begin to conduct open houses or otherwise show the property to interested parties on a continuing basis and attempt any other appropriate methods of sale; and

   (d) Except for gaps of no more than 1 week, the owner must maintain efforts the type listed above; and

   (e) The owner does not reject any reasonable offer to buy the property and accepts the burden of demonstrating to Medicaid's satisfaction that an offer was rejected because it was not reasonable.

b) Reasonable Offer To Buy.

   1) Assume that an offer to buy the property at a particular price is reasonable if it is at least two-thirds of the estimated current market value (CMV), as evidenced by the tax receipt. If the owner disagrees with CMV as evidenced by the tax receipt, he must provide convincing evidence of a different CMV. Verification presented by the owner to support a CMV other than that evidenced by the tax receipt must be submitted to state office for review.

c) Good Cause.

   1) Good cause exists when circumstances beyond an individual's control prevents the required action to accomplish reasonable efforts to sell. If good cause exists for failure to meet any of the criteria specified above, the exclusion can continue provided action is taken to resume efforts to sell.

   2) Good cause includes:

      (a) No offer to buy is received;

      (b) A legitimate offer does not result in a sale;

      (c) Escrow begins, but closing does not take place within the disposal period; and

      (a) Incapacitating illness or injury, such as the individual becomes homebound or hospitalized for a prolonged period due to illness or injury and cannot take steps necessary to sell the property or to arrange for someone to sell it on his behalf.

(b) Eample: Sandy Patterson is a Medicaid recipient whose property has been excluded due to a bona fide effort to sell. She accepted a reasonable offer for the property; however, the buyer backed out of the deal at closing. Ms. Patterson immediately started sales efforts again. Good cause exists**.**

d) Failure To Make Reasonable Efforts.

1) Unless there is good cause, failure to meet any of the criteria specified above means that:

(a) An individual is not making reasonable efforts to sell the property and is not accepting a reasonable offer to buy;

(b) The individual's countable resources include the value of the property beginning with the month following the month in which reasonable efforts to sell stop or the month following the month the owner failed to accept a reasonable offer to buy; and

(c) The individual will be charged with an improper payment, if applicable.

e) Initial Verification of Efforts To Sell.

1) The effort to sell must be documented in the case record within the 30-day time period for applying the exclusion by requiring all proof such as:

(a) Copy of the listing agreement with the real estate agent in current use;

(b) Dated advertisement(s) indicating the property is for sale;

(c) Contracts with local media to advertise the property;

(d) A photograph of the "For Sale" sign on the property, in conjunction with other efforts; or

(e) Any other relevant items.

f) Effective Date of Exclusion.

1) If the appropriate proof is submitted, the exclusion is applied back to the first of the month in which the effort to sell as initiated.

2) If a reasonable effort to sell was in existence prior to the date of application, the exclusion can be applied retroactively provided the effort is documented and DOM-320A is signed.

3) If the effort to sell is just beginning, the exclusion applies effective with the first month DOM-320A is signed (provided it is signed within 30 days). If not signed within 30 days, the exclusion applies as of the first month a reasonable effort to sell is initiated.

g) Follow-Up Contacts.

1) Contacts must be scheduled at 90-day intervals until the property is sold or the exclusion ends.

2) Follow-up contacts may be by telephone to determine efforts being made to accomplish the sale and to document whether there has been any offer to buy since the prior contact.

3) If an offer to buy has been refused, a statement must be submitted explaining the refusal.

4) The refusal of an offer to buy must be evaluated under the "Reasonable Offer to Buy" guidelines. If the refusal is unacceptable, the exclusion ends beginning with or retroactive to the month after the month of the refusal to sell**.**

5) If the reasonable efforts to sell are not continuing at each follow-up contact, determine if good cause exists. If good cause does not exist, the exclusion ends beginning with or retroactive to the month after the month the reasonable efforts stopped.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 3.8 Interests of Individual Indians in Trust or Restricted Lands.

A. Certain types of Indian-specific property are excluded from being considered as resources in determining Medicaid eligibility for an individual who is an Indian. These excluded resources include the following:

1. Property Connected to the Political Relationship between Indian Tribes and the Federal Government;

a) This exclusion includes any Indian trust or restricted land, or any other property under the supervision of the Secretary of the Interior located on a reservation, including any federally-recognized Indian Tribe's reservation, pueblo or colony, and including Indian allotments on or near a reservation as designated and approved by the Bureau of Indian Affairs of the Department of the Interior; and

b) Individual Indian Monies (IIM) accounts, which are under the supervision of the Secretary of the Interior, and considered to be inaccessible; and

c) Property located within the most recent boundaries of a prior Federal reservation including former reservations in Oklahoma and Alaska Native regions established by the Alaska Native Claims Settlement Act;

d) Ownership interest in rents, leases, royalties or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally-protected rights Monies received from the lease or sale of these natural resources remain excluded while in an IIM account.

2. Property with Unique Indian Significance, such as:

   a) Ownership interest in or usage rights to items not covered under the above provisions that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or traditional lifestyle according to Tribal law or custom.

   b) While the above identified assets are excluded in determining eligibility, if the assets are converted to a non-excluded asset, they become countable.

      1) For instance money in an IIM account is excluded; however, once the money is removed from the IIM account it becomes a countable asset.

      2) Money received by Indians from the lease or sale of natural resources, and rent or lease income, resulting from the exercise of federally-protected rights on excluded Indian property, is considered an asset conversion. Therefore, this money is not considered income, but is an excluded resource in the month the money is received (This is true even if the money is taken out of the IIM account in the same month it was deposited into the account). If some or all of the money is retained at the end of the month in which received, it is either counted or excluded based on the type of resource in which the money is retained after month of receipt.

3. Distributions of per capita judgment funds or property earnings held in trust for a Tribe by the Secretary of the Interior.

   a) However, this does not include local Tribal funds that a Tribe distributes to individuals on a per capita basis, but which have not been held in trust by the Secretary of the Interior (e.g., tribally managed gaming revenues, which are countable income).

Source: P.L. 111-5 American Recovery and Reinvestment Act of 2009 § 5006.

Rule 3.9 Exclusion of Personal Property.

A. Personal property includes automobiles, life insurance, household goods and personal effects and burial funds and certain burial arrangments and items, which may be subject to a full or partial exclusion. The exclusion applicable to each is discussed under this rule.

1. Exclusion of Automobiles.

   a) An automobile is any registered or unregistered vehicle used for transportation. Vehicles used for transportation can be motorized, animal drawn or even an animal. A vehicle not used for transportation is not an automobile, but may be a countable resource. A temporarily inoperable vehicle normally used for transportation meets the definition of an automobile.

   b) If an exclusion cannot be developed for a vehicle the current market value must be determined. The CMV is the average price an automobile of that particular year, make and model and condition would sell for on the open market (to a private individual) in the particular geographic area involved. The most recent NADA Official Car Guide or Older Car Guide may be used to determine the average trade-in value. If there is debt on the vehicle, determine the equity value.

      1) If the client states the CMV is not representative of the value of the vehicle, he must be given the opportunity to provide a value rebuttal from another knowledgeable source, such as a used car/truck dealer, automobile insurance company, classic car appraiser, etc.

   c) Examples of Automobiles:

      1) Car or truck;

      2) Boat;

      3) Motorcycle;

      4) All-terrain vehicle;

      5) Horse-drawn carriage;

      6) Horse.

   d) The following are not vehicles for purposes of this exclusion:

      1) Permanently inoperable (junk) vehicle;

      2) Vehicle used exclusively for recreation, such as boats, motorcycles, RVs, dirt bikes, golf carts, etc. ;

3) Leased vehicles are not considered in the resource determination, as the individual does not own the vehicle.

e) Treatment of Vehicles Under SSI Resource Policy.

1) Effective April 2005, one automobile may be excluded, regardless of value, if is used for transportation of the individual, spouse and/or a household member.

(a) Unless there is evidence to the contrary, assume the vehicle is used for transportation.

(b) If multiple vehicles are involved, apply the exclusion in a way that is most advantageous to the applicant/recipient. That is, apply the exclusion to the vehicle with the greater value.

(c) For any vehicle that cannot be excluded wholly under this provision or another provision (e.g., property essential to self-support, etc.), the equity value is countable toward the resource limit.

(d) The equity value of junk cars and vehicles used only for recreation is a resource. The personal effects exclusion does not apply to such vehicles.

f) Treatment of Vehicles Under Liberalized Resource Policy.

1) Two vehicles may be excluded, regardless of value, if used for transportation of the individual, spouse and/or a household member.

2) Unless there is evidence to the contrary, assume the vehicles are used for transportation.

3) If multiple vehicles are involved. apply the exclusions in a way that is most advantageous to the applicant or recipient. That is, apply the exclusions to the vehicles with the greater equity value.

4) For any vehicle that cannot be excluded wholly under this provision or another provision (e.g., property essential to self-support, etc.), the equity value is countable toward the resource limit.

5) Any car that is permanently inoperable (junk car) can be totally excluded as a resource.

6) Recreational vehicles are treated as personal property. The personal effects exclusion does not apply to such vehicles.

2. Exclusion of Life Insurance.

a) A life insurance policy is a contract. The purchaser (owner) pays premiums to the company (insurer). In return, the insurer agrees to pay a specified sum to a designated person(s), known as a beneficiary, upon the death of the insured individual. The owner and the insured may or may not be the same person. The policy should state the owner's name, if different from the insured.

b) Below are some common terms associated with life insurance:

   1) Face Value (FV) is the amount of basic death benefit contracted for at the time the policy is purchased. The face page of the policy may show it as such or as the "amount of insurance", "the amount of this policy", "the sum insured", etc. A policy's FV does not include:

      (a) The FV of any dividend addition, which is added after the policy is issued;

      (b) Additional sums payable in the event of accidental death or because of other special provisions; or

      (c) The amount(s) of term insurance, when a policy provides whole life coverage for one family member and term coverage for others.

   2) Cash Surrender Value (CSV) is a form of equity value that it acquires over time. The owner of the policy can obtain in its CSV only by turning the policy in for cancellation before it matures or the insured dies. A loan against a policy reduces its CSV.

   3) Dividends are shares of any surplus insurance company earnings, which can be applied to premiums due or paid by check or by an addition or accumulation to an existing policy.

   4) Dividend Additions are the amount of insurance purchased with dividends added to the policy, increasing its death benefit and CSV. The table of CSVs that comes with a policy does not reflect the added CSV of any dividends.

   5) Dividend Accumulations are dividends that the policy owner has constructively received, but left in the custody of the insurer to accumulate at interest. They are not a value of the policy; the policy owner can obtain them without affecting FV or CSV.

      (a) Dividend accumulations cannot be excluded from resources under the life insurance exclusion, even if the policy that pays the accumulations is excluded from resources. Unless they can be excluded under another provision(e.g., as set aside for burial), they are a countable resource.

c) Verification of Life Insurance.

1) Documentary evidence is obtained to verify the value of life insurance when the client/spouse reports ownership of whole life insurance(s) on any individual with a total FV exceeding the appropriate program exclusion limit: $1500 (SSI) or $10,000 (Liberalized).

2) The individual or authorized representative must provide a copy of all the life insurance policies and the most recent dividend statement for each one.

3) After exclusions are developed, any remaining cash value must be considered in the eligibility determination. The cash surrender value of any policy that cannot be excluded is countable toward the resource limit.

d) Types of Life Insurance.

1) Term Life Insurance is usually in effect for a specific length of time such as 20 years or length of employment. It does not accrue cash value;

2) Whole Life Insurance remains in effect unless the premiums are not paid or the policy matures; and accrues cash value;

3) Burial Insurance contracts prevent the proceeds from being used for anything other than the burial expenses of the insured.

e) Owner versus Beneficiary.

1) The owner is the one who has control of the policy. An individual may own life insurance on himself or another person. The owner may take such actions as cash in a policy, take out a loan against cash value, etc. The value of life insurance policies owned must be considered in the eligibility process.

2) The beneficiary is the individual(s) who receive the proceeds of the policy at the insured individual's death. One person may be both the owner and the beneficiary.

(a) Example: Jim Jones purchases a $10,000 life insurance policy on his mother, Jane Williams, and is the beneficiary upon her death.

f) Treatment of Life Insurance Under SSI Resource Policy.

1) Term life insurance policies do not have cash value and are excluded.

2) Burial policies are excluded.

3) For all other policies determine the total Face Value (FV) of the policies owned by the individual. Do not include the Face Value of any dividend additions in determining whether a policy is a countable or excluded resource.

4) A life insurance policy is excluded if its' Face Value and the FV of any other life insurance policies the individual owns on the same insured person total $1,500 or less.

5) Even if a policy is excluded, any accumulated dividends are countable toward the resource limit unless they are excluded under another provision such as set aside for burial.

6) If the policy is a countable resource, the cash surrender values (CSV), dividend additions, dividend accumulations, outstanding loan amounts reducing the (CSV) of the policies must be verified and considered in the eligibility determination.

7) The countable cash surrender values of the policies and accumulations are countable toward the resource limit unless they can be excluded as burial assets.

8) The following are examples:

(a) Lyn Reno is the owner of four life insurance policies. Two have Face Values of $500 and two have Face Values of $250. The total of all FVs is $1500 so the policies are excluded.

(b) Jerry Mann is the owner of three life insurance policies insuring his spouse. The Face Value of each one is $750. The total Face Value is $2,250. The specialist must determine the cash values of the policies and count them toward the resource limit unless a burial exclusion is developed.

(c) Roger West is the owner of two life insurance policies on his spouse. One is whole life with a Face Value of $1,200 and the other is term life with a Face Value of $10,000. The term life policy has no cash value and is excluded. The whole life policy is excluded because the Face Value is less than $1,500.

g) Treatment of Life Insurance Under Liberalized Resource Policy.

1) Term life insurance policies do not have cash value and are excluded.

2) Burial policies are excluded.

3) For all other policies determine the total Face Value (FV) of the policies owned by the individual. Do not include the Face Value of any dividend additions in determining whether a policy is a countable or excluded resource.

4) A life insurance policy is excluded if its Face Value and the FV of any other life insurance policies the individual owns on the same insured person total $10,000 or less.

5) Even if a policy is excluded, any accumulated dividends are countable toward the resource limit unless they are excluded under another provision such as set aside for burial.

6) If the policy is a countable resource, the cash surrender values (CSV, dividend additions, dividend accumulations, outstanding loan amounts reducing the CSV) of the policies must be verified and considered in the eligibility determination.

7) The countable cash surrender values of the policies and accumulations are countable toward the resource limit unless they can be excluded as a burial asset.

8) The following are examples:

(a) Lane Ryan is the owner of four life insurance policies. Two have Face Values of $1,500 and two have Face Values of $750. The total Face Value is $4,500 so the policies are excluded.

(b) Jennifer Madison is the owner of three life insurance policies on her spouse, with Face Values of $750, $2,500 and $12,000. The total Face Values are $15,250. The specialist must determine the cash surrender values of the policies and count them toward the resource limit unless a burial exclusion is developed.

(c) Roberta Warren is the owner of two life insurance policies on her spouse. One is whole life with a Face Value of $8,500 and the other is term life with a Face Value of $25,000. The term life policy has no cash surrender value and is excluded. The whole life policy is excluded because the Face Value is less than $10,000.

h) Accelerated Life Insurance Payments.

1) Proceeds paid to a policyholder before death.

2) Plans vary from company to company; however, all involve early payout of some or all of the proceeds of the policy.

3) Most of the plans fall into three basic types depending on the circumstances that cause the payments to be accelerated:

(a) Long Term Care Model. Allows payments if the policyholder requires an extended stay in a care facility or, in some instances, healthcare services at home.

(b) Dread Disease or Catastrophic Illness Model. Allows payments if the policyholder suffers from a specified covered disease or illness such as cancer or AIDS.

(c) Terminal Illness Model. Allows payments following the diagnosis of a terminal illness where death is likely to occur within a specified timeframe.

4) These payments are also called "living needs" or "accelerated death" payments.

5) Depending on the plan, the receipt of payments may reduce the FV of the policy by the amount of the payments and may reduce the CSV in a proportionate manner. In other cases, a lien may be attached to the policy in the amount of the payments that results in a proportionate reduction in the CSV.

6) If an individual has a life insurance policy that allows them to receive their death benefit while living and the individual meets the requirements set by the insurance company to receive such proceeds, they are not required to file for the proceeds.

(a) If the individual does file and receives the benefits, the payment will be considered as follows:

(i) Consider as income in the month of receipt.

(ii) Any money remaining the following month is considered a resource.

i) Life Insurance Endowment Policies.

1) A life insurance policy's primary function is to pay out upon the death of the insured.

2) A life insurance endowment policy does not do that; rather it serves as an investment medium with a maturity date or date certain payout, i.e., 5 years from purchase, at which time a benefit is paid to a designated beneficiary. The possible death of the "insured" individual before the maturity date is a secondary consideration.

3) These policies should be treated as annuities.

3. Exclusion of Household Goods and Personal Effects.

a) Household goods are personal property found in the home and used in connection with normal maintenance, use and residency of a home. They include:

1) Furniture;

2) Appliances;

3) Television sets;

4) Carpets;

5) Cooking and eating utensils;

6) Dishes.

b) Personal effects are personal property that is worn or carried by an individual or that have an intimate relation to him or her. They include:

1) Clothing;

2) Jewelry;

3) Personal care items;

4) Prosthetic devices;

5) Educational or recreational items;

(a) Books;

(b) Musical instruments.

c) Treatment under SSI Resource Policy.

1) Household goods and personal effects as defined above, are excluded in resource determinations, regardless of their dollar value.

2) Prior to April 2005, a general exclusion of up to $2,000 applies to the total equity value of household goods and personal effects, other than those excluded regardless of value: one wedding ring, one engagement ring and prosthetic devices, wheelchairs, hospital beds, dialysis machines and other items required by a person's physical condition.

3) Personal property that an individual acquires or holds because of its value or as an investment is:

(a) A countable resource; and

(b) Not considered as household goods or personal effects for purposes of exclusion.

4) When ownership of other personal property is alleged and the property is not excludable as household goods or personal effects, the Current Market Value (CMV) or Equity Value (EV), as appropriate, of the item must be verified.

5) Example: A recreational vehicle (RV) used for vacations and other recreational activities is classified as personal property. It does not meet criteria to be an automobile or meet the definition of household goods or personal effects for exclusion. If the CMV of the RV is $10,000 and the payoff is $5,000, under SSI resource policy the equity value of $5,000 is counted as a resource.

d) Treatment Under Liberalized Resource Policy.

1) Under liberalized policy, household goods and personal effects, as defined above, are excluded in resource determinations regardless of their dollar value.

2) Personal property that an individual acquires or holds because of its value or as an investment:

(a) Is a countable resource when its equity value exceeds $5,000; and

(b) Is not considered to be household goods or personal effects for purposes of exclusion.

3) When ownership of other personal property is alleged and the property is not excludable as household goods or personal effects, under liberalized resource policy, up to $5,000 in EV is excluded for other personal property.

4) The Current Market Value (CMV) or Equity Value (EV), as appropriate, must be verified.

5) Example: A recreational vehicle (RV) used for vacations and other recreational activities is classified as personal property. The RV does not meet criteria to be an automobile, nor does it meet the definition of household goods or personal effects for exclusion. If the CMV of the RV is $12,000 and the payoff is $7,500, the RV can be excluded as a resource under liberalized policy since its equity value is $5,000 or less.

3. Exclusion of Death Benefits for Last Illness and Burial Expenses.

a) Death benefits are received because of another person's death. Examples include:

1) Life insurance proceeds;

2) Social Security death benefits;

3) Burial benefits from the Railroad or Veterans Administration;

4) Inheritances;

5) Gifts from relatives, friends or the community to help with expenses.

b) Recurring survivor benefits from a pension or retirement plan or the Social Security Administration are not death benefits.

c) Last illness and burial expenses include related hospital and medical expenses; funeral, burial plot and interment expenses; and other related expenses.

d) Death benefits provided to an individual are income to the extent that the total amount exceeds the expenses of the deceased's last illness and burial expenses paid by the individual.

e) Death benefits which are not income are also not a resource for one month following the month of receipt. If retained, the second month following receipt, death benefits are resources.

f) If death benefits are not considered income, under both SSI and Liberalized Resource policy, treatment is as follows:

1) Month of receipt. Excluded.

2) Month after receipt. Excluded.

3) Second Month following receipt/ Countable resource, if retained.

4) Exception: If the death benefits are repayment for expenses already paid, they are considered resources the month after receipt, if retained.

(a) Example: When her uncle passed away, Beth Smith received 4,000 as Beneficiary of his life insurance policy. She received it in July and anticipates spending the entire amount on his last illness and burial expenses. She has already received bills totaling $900 that she paid. On August 1, she received a funeral bill for $2,900 and a few days later received a cash gift of $500 which she also intends to apply toward last illness and burial expenses. She pays the $2,900 funeral bill in August and intends to use the remainder of the life insurance to pay some hospital expenses.

(i) Treatment: Neither the $4,000 received in July nor the $500 received in August is unearned income since it is all expected to be used for burial or last illness expenses. She used $900 of the $4,000 in July. As of August 1, she had $3,100 that is not a resource for August. During August she paid the $2,900 bill and then had $200 left. However, the $500 she receives in August gives her $700 to use for hospital expenses. She must spend $200 in August for burial or last illness expenses; otherwise, the $200 will count as a resource September 1. Any portion of the $500 remaining as of October 1 will be counted as a resource.

(b) Jane Smith has total countable resources of $1,980 consisting of a $1,000 savings account and $980 in checking. Her brother died in late October. In November she receives $3,000 as beneficiary of her brother's life insurance. She has last illness and burial expenses of $2,750 to pay. There are no other bills.

(i) Treatment: Of the $3,000 Ms. Smith received, $250 is unearned income in November because the last illness and burial expenses are only $2,750. The $2,750 is not considered unearned income and will not be a resource until January 1, if she still has it at that time. Any of the $250 remaining will be a resource for December.

4. Exclusion of Burial Spaces.

a) Burial spaces are spaces or items that are used to contain the remains of a deceased person. These include:

1) Cemetery plots, crypts, mausoleums, cremation niches;

2) Caskets, urns;

3) Headstones or other grave markers;

4) Burial containers (burial vaults or grave liners);

5) Expenses related to the opening and closing of the grave sites; and

6) Perpetual care expenses

b) Treament of Burial Spaces Under SSI and Liberalized Resource Policy.

1) A burial space or an agreement which represents the purchase of a burial space held for the burial of the individual, his or her spouse, or a member of his or her immediate family is an excluded resource, regardless of value. The burial space exclusion is in addition to, and has no effect on, the burial funds exclusion.

2) Under SSI policy, burial spaces may be excluded if intended for use of the individual, spouse or immediate family, as defined.

3) Liberalized policy includes all of the relatives in the SSI definition and extends to family members of any degree of relationship.

4) To be "held for" the burial of an individual , the item must be paid for in full and if not paid for in full, the amount paid is considered a burial fund rather than a burial space.

5) Only one item serving the same purpose may be excluded per person. For example, exclude a casket and vault for the same person, but not a casket and an urn.

6) No limit exists on the value that may be excluded.

7) Taxes paid on burial spaces are also excluded.

8) If a burial space is being held by a funeral provider in accordance with a burial agreement, whether revocable or irrevocable, then the value of the burial space(s) is excluded under the burial space exclusion

5. Exclusion of Burial Funds.

a) Burial funds are items clearly designated for an individual's burial. They include:

1) Revocable burial contracts;

2) Revocable burial trusts;

3) Other revocable burial arrangements (Including installment sales contracts for burial spaces);

4) Cash;

5) Financial accounts such as checking, saving or CDs;

6) Stocks or bonds; and

7) Life insurance cash value.

b) Burial funds must be clearly designated for the eligible individual's burial, cremation or other burial-related expenses, i.e., flowers, clothing, transportation, etc.

c) Property other than that listed above will not be considered burial funds and may not be excluded under the burial funds provision. For example, a car, real property, livestock, etc., are not burial funds.

d) Burial funds may be designated by:

1) An indication on the burial funds document, such as a revocable burial contract or the title on a bank account. Whenever burial funds are already clearly set aside as burial funds, no separate signed statement or further designation is required.

2) Completion of DOM-321B, Designation of Burial Funds, provides the information required to document a burial fund, i.e., owner, value and form of funds, date set aside for burial, etc.

3) Once a fund is designated, it remains a burial fund until eligibility terminates or the individual uses the funds for another purpose, in which case a penalty may apply. See discussion of Misuse of Burial Funds later in this section.

e) The burial fund may be excluded retroactively to the date the individual originally designated the funds for burial. The individual's allegation of the date the funds were first considered set aside for burial (even prior to application) is accepted unless there is evidence the funds were used and replaced after that date.

1) Example: Mr. Hoover applies on May 1 and signs DOM-321B designating a CD for burial. He set the account up two years ago for his burial. He is seeking coverage for February, March and April. The exclusion may be given for those months.

f) Burial funds cannot be commingled with other resources which are not intended for burial. The burial fund exclusion applies only if funds set aside for burial expenses are kept separate from non-burial funds. If excluded burial funds are mixed with resources not intended for burial, the exclusion will not apply to any portion of the funds.

1) It is possible to have excluded and non-excluded funds commingled provided all funds are intended for burial. It is not permissible, however, to have burial and non-burial funds commingled.

(a) Example: Mr. Brennan has a bank account with a balance of $2,000. He plans to use $1,500 for burial and the remaining $500 for other non-burial expenses. The burial exclusion may not be applied to this bank account. Mr. Brennan may want to consider opening another account for the $500. If he does so, he must provide verification and DOM-321B must be completed to document the burial exclusion.

g) Any amount may be designated for burial; however, only the amount up to the applicable maximum exclusion may be excluded. Once the amount of the designated burial funds equals the applicable maximum, the only additions to it that can be excluded are appreciation and interest. However, until the maximum has been reached, additional amounts can be excluded if the individual designates them for burial expenses. Interest is not included in determining if the maximum has been reached.

h) SSI policy allows up to $1,500 in funds set aside for the burial of the individual and up to an additional $1,500 in funds set aside for burial of the individual's eligible or ineligible spouse.

   1) Example: Mr. Brown designates $1,500 in a bank account for burial. The entire amount may be excluded. Mr. Brown designates an account with a $2,000 balance for burial. Since $1,500 is the maximum exclusion, the remaining designated funds are not excluded and count toward the resource limit.

i) Under liberalized policy, the maximum that can be excluded for burial of the individual is $6,000. In addition, up to $6,000 is allowed for burial of the eligible or ineligible spouse.

j) The $1,500 or $6,000 maximum exclusion is reduced by:

   1) Any amount held in an irrevocable trust or burial contract or other revocable arrangement for the individual or spouse, if applicable, except to the extent it represents excludable burial spaces.

   2) Face Value of any excluded life insurance policy on the individual or spouse, if applicable

      (a) Example (SSI): Greta Mann has a savings account designated for burial. It has a balance of $2,000. She also has an irrevocable burial contract with Hartfield Funeral Home that represents burial space items worth $2,500 and burial funds of $1,500. The burial fund portion of the burial contact totally offsets the $1,500 SSI burial exclusion: $1,500-$1,500 = 0; therefore, the entire $2,000 balance in the savings account is not excluded and counts toward the resource limit.

      (b) Example (Liberalized): Greta Mann has an excluded life insurance policy with a Face Value of $5,000. She also has a savings account with a balance of $4,000 that she designates for burial. The $6,000 burial exclusion is partially offset by the Face Value of her policy: $6,000-$5,000 = $1,000. Therefore, $1,000 of her savings may be excluded and the remaining $3,000 in non-excluded burial funds is a countable resource.

k) Irrevocable burial arrangements are not resources and are not subject to the $1,500 or $6,000 maximums; however, as indicated above, they do reduce the amount of the burial fund exclusion allowed. Burial insurance is considered an irrevocable arrangement.

l) The value of the irrevocable burial arrangements purchased by the individual must be equal to the value of the funding source used to make the purchase, e.g., cash prepayment, life insurance or annuity irrevocably assigned to the funeral home. If the value of the burial arrangement is not equal to the value of the prepayment, a penalty may be assessed under the transfer of assets provision for institutionalized clients.

m) The maximum amount that can be excluded when a burial fund is initially designated is $1,500 under SSI resource rules or $6,000 under liberalized policy. Interest earned on excluded burial funds and appreciation in the value of excluded burial arrangements are excluded as income and resources if left to accumulate and become part of the separate burial fund.

n) Changes in the individual's circumstances may raise or lower the amount that can be excluded for burial, such as:

   1) The purchase of additional life insurance with cash surrender value may change the allowable exclusion. In addition, cashing in life insurance may raise or lower the allowable exclusion.

   2) The face amount of life insurance may change, thereby changing the allowable exclusion.

   3) An irrevocable burial contract may be purchased, thereby reducing the allowable burial exclusion.

   4) Deposits made to bank accounts designated for burial will change the allowable exclusion.

   5) If the amount designated is less than the maximum exclusion, the individual may add additional funds to the burial fund to bring up the original amount to the maximum exclusion amount.

o) The burial fund exclusion once applied must be reevaluated whenever a change bcomes becomes known that would affect the exclusion amount or at each redetermination.

p) If the fund contains both excluded and non-excluded amounts, use the formula below to determine the excludable portion:

   1) Original exclusion amount ÷ Original fund amount x Present fund amount = Excluded Portion;

   2) Example: An individual, subject to SSI rules, designated $2000 (original fund amount) as a burial fund, $1500 (original exclusion amount) was excluded and $500 is non-excluded. At the most recent review, the account had grown to $2200 (present fund amount) due to accumulated interest. The excluded amount is $1650. (1500 ÷ 2000 x 2200 = 1650)

q) If funds, including interest, that were excluded under the burial fund exclusion are used for any purpose other than burial expenses for the designated individual, a penalty for misuse is imposed only if the client would have excess resources without the burial exclusion. Upon discovery of the misuse of excluded burial funds, verification must be obtained (which may be in the form of a statement from the client or representative) that all or a portion of the funds have been used for another purpose other than burial to determine the effect the misuse will have on eligibility.

1) If the client would have excess resources without the burial fund exclusion, the amount used inappropriately is counted as income the next possible month after the month in which the misuse is discovered.

2) The misused funds will be included as income in the eligibility computation; however, misused burial funds are not counted as income in the Medicaid Income computation for the institutionalized individual unless the funds are available to the recipient.

3) If the misused funds include non-excluded burial funds, assume the funds were used in this order: non-excluded interest; non-excluded designated amount; excluded interest and excluded designated amount. The penalty only applies to excluded interest and designated amounts.

4) If ineligibility results, the case will be closed in accordance with ongoing policy, i.e., advance notice issued, etc.

5) If the misuse of burial funds does not result in excess income because the client's resources would not exceed limit even if the burial funds were not excluded or if applicable, the funds are not available to the client to include in the Medicaid Income computation, no action is required other than documenting the case record.

6) There must be a new redesignation of funds when there is a change in the amount of funds originally designated, not including accumulated interest or appreciation.

7) If eligibility is lost, the burial fund exclusion must be developed if the individual reapplies later.

(a) Example: Jennifer Shows originally designated $1,500 as a burial fund. Interest accumulated and the account grew to $1,750. In May, she withdrew $500 to repair her car. If her other resources plus the $1750 burial fund, which is now non-excluded, exceed the program resource limit, the penalty applies. In addition, she must redesignate the amount of funds for burial because the amount in the account ($1,250) is now below the original amount designated. In the alternative, she could add $250 to the account and the original designation would be accurate; however, any penalty would still apply.

6. Exclusion of Pre-Need Burial Contracts.

   a) A pre-need burial contract is an agreement between an individual and a funeral home where the buyer pays in advance for his or another person's burial arrangements.

   b) If an applicant's resources exceed the allowable limit, he is allowed to establish a pre-need contract to reduce his resources below the limit.

   c) Many pre-need contracts include both burial space and burial fund items:

      1) Expenses related to the burial space include: casket, vault, opening/closing costs at the cemetery; and

      2) Expenses related to the burial fund include: embalming, clothing, visitation room, transportation, flowers.

   d) Payment for a contract has taken place when an applicant/recipient transfers a liquid resource to the funeral provider or when specific life insurance policies have been designated on the pre-need burial contract.

   e) A liquid resource designated, but not transferred to the funeral provider as payment for a contract, is counted as an available resource.

   f) A resource cannot be designated for future payment of a pre-need contract and that resource be excluded as a resource.

   g) There are two types of pre-need burial contracts: revocable and irrevocable.

      1) Revocable contracts may be sold or the money may be refunded. They are considered resources; however, a full or partial exclusion may be developed.

         (a) Revocable Contracts That Are Paid in Full.

            (i) If the value of all the items is provided, both the burial space and the burial fund exclusion may be developed. If the value of the burial space items is not provided, only the burial fund exclusion may be developed.

         (b) Revocable Contracts That Are Not Paid In Full.

            (i) Only the burial fund exclusion may be developed unless the contract verifies the burial space items are paid for and the burial funds items are being paid on.

         (c) Under SSI and Liberalized Resource Policy, revocable pre-need burial contracts are considered a resource; however, a burial exclusion may be developed.

(d) If the revocable contract is paid in full:

(i) Any portion of the contract clearly representing burial spaces may be excluded entirely, regardless of value

(ii) Up to $1,500 (SSI) or $6,000 (Liberalized) of the remaining portion of the contract may be excluded as a burial fund

(e) If the contract is not paid in full, it should be treated as a burial fund unless it is verified that the burial spaces themselves are paid in full and considered "held for" the individual

(f) Example: Mr. Allen applies for Medicaid. He has just purchased a revocable contract at Land of Lakes Funeral Home. The contract verifies it is paid in full and includes the following:

$1,500	Casket
$1,000	Vault
$1,000	Headstone
$500	Opening/closing costs
$200	Embalming
$300	Visitation Room
$1,000	Funeral service

Because the contract is paid in full, the first four items, which are burial space items, may be excluded under the burial space exclusion. The remaining $1,500 may be excluded under the burial fund exclusion.

2) Irrevocable pre-need contracts under SSI and liberalized resource policy are not a resource since the money cannot be refunded or the contract sold without significant hardship. If the contract is irrevocable, it is not a resource retroactive to the date of purchase. The portion that represents burial funds offsets that exclusion. If the contract is not paid in full, the portion paid represents burial funds up to the maximum.

3) Life Insurance Funded Burial Contracts.

(a) A life insurance funded burial contract involves an individual purchasing a life insurance policy on his own and then assigning, revocably or irrevocably, either the proceeds or ownership of the policy to a funeral provider. The purpose of the assignment is to fund a burial contract. Life insurance funded burial contracts are not considered burial insurance.

7. Effect of the Assignment of Ownership on Burial Exclusion.

a) Revocable Assignment.

1) The burial space exclusion does not apply because the items are not paid for until the death of the individual and therefore are not being “held for” the individual. The burial fund exclusion may apply.

2) The resource value of the burial contract is equal to the Cash Surrender Value of the life insurance, subject to the maximum burial funds exclusion amount.

b) Irrevocable Assignment.

1) The burial space exclusion may apply if the values of the items are provided.

2) The life insurance policy is not a resource because the individual no longer owns it.

3) The contract is not a resource because the individual no longer owns it.

4) The value of the burial fund items offsets the value of any other burial funds items up to the allowable maximum

8. Effect of the Assignment of Proceeds on Burial Exclusion.

a) When life insurance proceeds are assigned, the burial space exclusion does not apply because the provider will not be paid until the death of the individual and spaces are not being “held for” the individual.

b) The resource value of the contract is the cash surrender value of the life insurance policy.

1) If the Face Value of all life insurance policies for the individual total $1,500/$6,000 or less, exclude the CSV under the life insurance exclusion.

2) If the FVs total more the $1,500/$6,000, verify and count the CSV toward the resource limit. The burial fund exclusion may apply.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 3.10 Exclusion of Property Essential for Self-Support.

A. The exclusion of property essential to self-support may apply to real or personal property.

1. All property must be in current use or, if not in use for reasons beyond the individual’s control, there must be a reasonable expectation that the required use will resume.

2. The income generated by income-producing property is <u>not</u> excluded under this provision. Income is either earned or unearned, depending on the type of income-producing property involved.

B. Resources excluded under this provision generally fall into four categories:

1. Property Essential to Self Support;

2. Property Used to Produce Goods and Services;

3. Non-Business, Income-Producing Property; and

4. Essential Property Exclusion under Liberalized Policy.

C. For exclusion under this provision, the property must be in current use in the type of activity that qualifies it for exclusion.

1. Current use is evaluated on a monthly basis.

2. Property not in current use may be excluded only if it has been in use and

3. There is expectation that the use will resume within 12 months of last use.

    a) This 12-month period can be extended for an additional 12 months if non-use is due to a disabling condition and resumption of the self-support activity can reasonably be expected to occur within that time.

        1) If the individual does not intend to resume the self-support activity, the property is a countable resource for the month after the month of last use.

        2) If there is a change of intent after the exclusion has been applied, the exclusion no longer applies as of the date of the change of intent. The property becomes a resource for the following month unless a different exclusion is met.

D. Exclusion Principles and Types of Property.

1. Properties essential to self-support which are excluded regardless of value or rate of return are discussed in this section.

2. The properties essential to self-support described in this section include necessary capital and operating assets of a business, e.g., real property, buildings, inventory, equipment, machinery, livestock, motor vehicles, etc.

3. The properties must be in current use or if not in current use due to circumstances beyond the individual's control, there must be a reasonable expectation that the required use will resume.

4. The following types of properties essential to self-support are excluded regardless of value or rate of return:

a) Property used in a trade or business;

b) Government permits which represent authority to engage in an income-producing activity; and

c) Personal property used by an employee in his work

5. Property essential to self-support used in a trade or business is excluded from resources, regardless of the value or rate of return. This is applicable to programs subject to both SSI and liberalized resource policy.

   a) When the individual alleges owning a trade or business property, a statement must be obtained in regard to:

      1) Description of the trade or business;

      2) Description of the assets of the trade or business;

      3) The number of years the business has been operated;

      4) Names of any co-owners; and

      5) Estimated gross and net earnings of the trade or business for the current tax year.

   b) A copy of the current year tax return (Form 1040 with schedules and attachments) must also be obtained.

      1) The tax forms are used to determine net self employment earnings and validity of the trade or business.

      2) If the current year return is not available, obtain the latest return available.

6. Government permits represent authority granted by a government agency to engage in an income-producing activity. They are excluded regardless of value or rate of return. This is applicable to programs subject to both SSI and liberalized resource policy.

   a) Examples are commercial fishing permits or tobacco crop allotments.

   b) When the individual alleges owning a government license, permit or other property which represents government authority to engage in an income producing activity, and which has value as a resource, the following information is needed:

      1) Type of license, permit or other property;

      2) Name of the issuing agency, if appropriate;

3) If license is required for engaging in this activity;

4) How the license, permit or property is being used; or

5) If not being used, why not.

c) A copy of the license, permit and/or other applicable documents is required.

7. Personal property used by an employee for work is excluded from resources. This is applicable to programs subject to both SSI and liberalized resource policy.

a) Excluded items include tools, safety equipment, uniforms, etc.

b) If the individual alleges owning items that are used in his work as an employee, obtain a statement regarding the following:

1) Name, address and telephone number of employer;

2) General description of the job duties and the items; and

3) Whether the items are currently in use

c) Absent evidence to the contrary, the individual's statement may be accepted.

8. Non-business property, real or personal property (but not cash or bank accounts), used to produce goods or services essential to daily living is excluded as follows:

a) No specified rate of return is required.

b) Property must be in use or, if not in use for reasons beyond the individual's control, there must be a reasonable expectation that the required use will return.

c) If the equity value of the property exceeds $6000, the excess is not excluded; it is countable toward the resource limit.

1) Example: If the resource is valued at $7000, then $6000 is excluded and $1000 is counted.

d) Non-Business Property, real or personal, includes:

1) Property used to grow produce or livestock raised solely for personal consumption in the individual's household;

2) Property used in activities essential to the production of food for home consumption, such as a tractor used for plowing or a boat for subsistence fishing.

(a) This does not include any vehicle that qualifies as an automobile.

e) When an individual alleges owning property that he uses to produce goods or services necessary for daily activities, the following must be obtained:

1) A description of the property;

2) How it is used; and

3) Estimate of the CMV; and

4) Any legal encumbrances.

f) The client's statement may be accepted regarding use of the property.

9. Non-business, income-producing property is excluded as follows:

a) This property is defined as property which includes land that produces rents or other land-use fees (e.g., non-liquid notes or mortgages, ownership or timber rights, mineral or oil exploration) or other non-liquid property which provides rental or other income, but is not used as part of a trade or business.

b) When an individual alleges owning non-business real property that produces income, the following must be documented:

1) The number of years he has owned the property;

2) Any co-owners of the property;

3) A description of the property;

4) The estimated CMV of the property;

5) Any encumbrances; and

c) The estimated net and gross income from the property for the current tax year. Must be obtained to establish that the property is producing income.

1) If available, a copy of the tax return for the year must be obtained.

2) When no tax returns are available, other evidence may be obtained, e.g., a person leasing land for mineral or oil exploration should have a copy of the lease agreement for the period in question.

d) The equity value of the property must be verified.

e) Under SSI policy, treat as follows:

   1) This exclusion applies to non-business, income-producing property.

   2) Up to $6000 of the equity value can be excluded from resources if the property produces a net annual return equal to at least 6% of the excluded equity value.

   3) Any equity that exceeds $6000 counts toward the resource limit.

   4) If the net annual return is less than 6%, the entire equity value is counted.

   5) Example: At review, Mr. Cameron reports that he lives in an apartment and is renting out his formerly excluded home, which has an equity value of $13,000. Even if the property produces a 6% net annual return, $7000 of his equity cannot be excluded and counts as a resource under SSI policy.

   6) Exceptions: If the property produces less than a 6% net annual return, the exclusion may be allowed only if the following apply; otherwise, none of the EV is excluded under this provision:

      (a) Lower return that is beyond the individual's control, such as:

         (i) Crop failure;

         (ii) Fire;

         (iii) Illness; and

      (b) There is a reasonable expectation that the property will again produce a 6% Return.

   7) If earnings decline for reasons beyond the client's control, up to 24 months is allowed for resumption of a 6% net annual rate of return.

      (a) This 24-month period begins with the first day of the tax year following the one in which the rate dropped below 6%.

      (b) The individual's progress with the business must be checked.

      (c) The individual can have the additional 12 months to achieve the 6% net annual rate of return if he is actively pursuing the activity**.**

      (d) If the individual has stopped actively pursuing the activity, the value of the property counts as a resource the month following the review.

(e) If the property is still not producing at least a 6 percent net annual return at the end of the 24-month period, the exclusion is discontinued.

(f) The value of the property counts as a resource the month following the month the 24-month period ends.

8) If an individual owns more than one piece of property, the 6% return rule applies individually to each piece.

(a) The $6000 equity value limit applies to the combined equity values of properties meeting the 6% return rule.

(b) If all the properties meet the 6% test, but total EV exceeds $6000, that portion of the total in excess of $6000 is not excluded under this provision.

(i) Example: Mr. Green has a piece of land on which he grows corn for sale at market. The equity value of the land is $7000. He nets $500 per year in sales. $500 ÷ $7000 = 7.14%; therefore, $6000 of the EV is excluded and $1000 counts as a resource. Last year his crop was struck by lightning and caught on fire. He made no money, but expects to plant and sell again next year at the regular rate. The $6000 may still be excluded because Mr. Green had no control over the fire. His 24-month period begins January 1 of the tax year following the year in which the loss occurred. A tickler is set to check on his progress in 12 months.

(ii) Example: Mr. Green owns three non-connected acres of pastureland. He rents them to different horse and cattle owners for $500 per year each. The land has equity values of $2000, $3500 and $1200 for a total of $6700. The 6% rule is met: $500 ÷ $2000 = 25% return; $500 ÷ $3500 = 14% return; $500 ÷ $1200 = 42% return. Since the 6% rule is met, $6000 is excluded and $700 is countable

10. The essential property exclusion is applied using liberalized policy as follows:

a) Property essential to self-support, defined as property used in a trade or business, government permits and personal property used by an employee for his job, is excluded regardless of value or rate of return.

b) The $6000 exclusion cap is lifted under liberalized policy; therefore, property used to produce goods or services essential to daily living is also excluded regardless of value or rate of return.

c) With the $6000 exclusion cap lifted under liberalized policy, non-business, income-producing property must produce a net annual return of 6% of the EV of each property.

d) If multiple properties are involved, each must be evaluated under the 6% rule.

e) Property that a client sells via a property settlement agreement must meet the 6% net annual return criteria and the agreement must be actuarially sound in order to avoid a possible transfer of resources penalty for the institutional client.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994)

Rule 3.11 Resources Set Aside As Part of A Plan To Achieve Self-Support (Pass).

A. The Social Security Act authorizes the exclusion of income and resources of an individual who has a disability or is blind (but not aged) when the individual needs the income and resources to fulfill a Plan to Achieve Self-Support (PASS) approved by the Social Security Administration.

B. Resources set aside as part of an approved PASS are excluded.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994)

Rule 3.12 Exclusion of Retained Cash Payments.

A. The treatment of the following types of retained cash payments is discussed below:

1. Retroactive Supplemental Security Income (SSI) and Retirement, Survivors and Disability Insurance (RSDI).

a) The unspent portion of retroactive SSI benefits and RSDI benefits is excluded from resources for nine (9) calendar months following the month in which the individual receives the benefits.

b) Retroactive SSI benefits are SSI benefits issued in any month after the calendar month for which they are paid.

1) Benefits for January that are issued in February are retroactive.

c) Retroactive RSDI benefits are those issued in any month that is at least two calendar months after the calendar month for which they are paid.

2. Disaster Assistance.

a) Disaster Assistance includes assistance received from the following sources:

1) The Disaster Relief and Emergency Act (PL 100-707);

2) Another federal statute because of a presidentially-declared major disaster;

3) A state or local government's comparable assistance; or

4) A disaster assistance organization.

b) If the disaster assistance funds are excluded from income, the unspent amount is also excluded from resources.

c) Interest earned on funds excluded in this provision is excluded from income and resources.

3. Presidentially-Declared Major Disasters.

a) Some catastrophes (such as hurricanes) cause such wide-spread destruction that the President of the United States declares them major disasters.

b) Effective 2/25/96, the exclusion period may be extended for individuals who incurred damage or loss of excluded resources under certain circumstances.

1) The 18-month period (9-month initial period plus the 9-month good cause extension) may be extended up to an additional 12 months.

2) Such an extension may be granted if the excluded resource is located within the geographical area of the disaster area (this area is defined in the presidential order); the individual intends to repair or replace the excluded resource or the individual presents evidence of good cause.

4. Netherland WUV Payments to Victims of Persecution.

a) The Netherlands Act on Benefits for Victims of Persecution 1940 – 1945, WUV (Wet Uitkering Vervlgingsslachtoffers) provides payments to individuals who were victims of persecution during World War I during German and Japanese occupation of the Netherlands and the Netherlands East Indies (now the Republic of Indonesia).

b) The unspent WUV payments made by the Dutch government are excluded from resources and the interest earned on unspent WUV payments is excluded from income.

5. German Reparation Payments.

a) German reparations payments are made to certain survivors of the Holocaust under the:

1) Federal Republic of Germany's laws for compensation of National Socialist Persecution (German Restitution Act); or

2) German Reunification Act of 1990.

b) These payments may be made periodically or in a lump sum.

c) Unspent German reparations payments are excluded from income and resources. Interest earned on unspent payments is excluded from income.

6. Austrian Social Insurance Payments.

a) The nationwide class action law suit, Bondy v. Sullivan, involved Austrian social insurance payments that were based on wage credits granted under Paragraphs 500-506 of the Austrian General Social Insurance Act.

b) These paragraphs grant credits to individuals who suffered a loss; that is, were imprisoned, unemployed or forced to flee Austria, during the period of March 1933 to May 1945 for political, religious or ethnic reasons.

c) Unspent Austrian social insurance payments based, in whole or in part, on wage credits granted under Paragraphs 500-506 of the Austrian General Social Insurance Act are excluded from resources and the interest earned on unspent Austrian social insurance payments is excluded from income.

d) Austrian social insurance payments not based on wage credits granted under these paragraphs are not excluded from resources under this provision.

7. Benefits Excluded from Both Income and Resources by a Federal Statute other than Title XVI.

a) Federal statutes other than Title XVI specify many income and resources exclusions. Examples of these are discussed below:

1) Agent Orange Settlement Payments.

(a) There is no limit to the length of time unspent Agent Orange settlement funds are excluded from resources. Interest earned on conserved payments is excluded as income.

2) Victims Compensation.

(a) Some states establish funds to assist victims of crimes.

(b) Unspent payments received from such a fund are excluded for 9 months if received for expenses incurred or losses suffered because of crime, e.g., lost wages, medical expenses incurred due to injuries, etc.

(c) Interest earned on unspent victims' compensation payments is not excluded from income or resources.

3) Relocation assistance.

(a) This type of assistance is sometimes provided to persons displaced by projects which acquire real property.

(b) Relocation assistance may be provided under local, state or federal programs. Such payments may be excluded for certain lengths of time. The length of the exclusion depends on the source:

(i) State and Local Program Assistance – unspent funds are excluded from resources for 9 months;

(ii) Federal Assistance – There is no time limit on the exclusion for assistance provided under the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970

(c) Interest earned on unspent payments is not excluded from income or resources.

8. Tax Advances and Refunds related to Earned Income Tax credits (EITC) and Child Tax Credits (CTC) .

a) Unspent federal tax refunds or payments related to the Earned Income Tax Credits (EITC) or Child Tax Credits (CTC) are excluded from resources for nine (9) calendar months following the month the refund or payment is received.

b) Interest earned on any unspent tax funds related to EITC or CTC is not excluded as income or a resource.

9. Radiation Exposure Compensation Trust Fund Payments.

a) The Radiation Exposure Compensation Trust Fund (RECTF) authorized the Department of Justice to make compensation payments to individuals (or their survivors) that were found to have contracted certain diseases after exposure.

b) The payments will be made as a one-time lump sum.

c) Unspent payments are excluded from resources. Interest earned on unspent payments is excluded income.

10. Gifts of Domestic Airline Tickets.

a) The value of a ticket for domestic travel received by an individual (or spouse) is not a resource if the ticket is:

1) Received as a gift,

2) Not converted to cash, i.e., cashed in, sold, etc., and

3) Excluded from income.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 3.13 Treatment of Excluded Funds Co-Mingled with Non-Excluded Funds.

A. Otherwise excludable funds must be identifiable in order to be excluded.

B. This does not require them to be separate from other funds (such as in a separate bank account).

C. When withdrawals are made from co-mingled funds, the assumption is non-excludable funds are withdrawn first, leaving as much of the excluded funds in the account as possible.

D. If excluded funds are withdrawn, the excluded funds left in the account can only be added to by deposits of subsequent funds excluded under the same provision and excluded interest

E. Example: An individual deposits an $800 retroactive RSDI check in a checking account. The account already contains $300 in non-excluded funds.

1. Of the new $1,100 balance, $800 is an excluded retroactive RSDI payment;

2. The individual withdraws $300. The remaining $800 is still excluded;

3. The individual withdraws another $300, leaving the $500 balance excluded;

4. The individual deposits $500, creating a new $1000 balance. Only $500 of the new balance is excluded.

F. Example: An individual deposits $200 in excluded funds in a non-interest bearing checking account that already contains $300 in non-excluded funds.

1. The individual withdraws $400. The remaining $100 is excluded;

2. The individual then deposits $100 in non-excluded funds. Of the resulting $200 balance, $100 remains excluded;

3. The individual next deposits $100 in excludable funds. Of the resulting $300 balance, $200 is now excluded.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Part 103 Chapter 4: Countable Resources

Rule 4.1 Cash.

A. Cash is a countable resource.

B. Cash is defined as money on hand that is in the form of coin or currency.

   1. Foreign currency or coins are cash to the extent they can be exchanged for U.S. currency.

   2. Coin collections are not considered cash, even though they are a resource.

      a) The value of coin collections is based on a collector's value and determined by knowledgeable source estimate.

         1) Treat a coin collection as other personal property.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994)

Rule 4.2 Checking/Savings Accounts.

A. Funds maintained in checking and savings accounts are usually payable on demand.

B. When an individual has unrestricted access to an account, all of the funds in the account are considered as a resource to the owner of the account, regardless of who deposited the funds.

C. A fiduciary or trustee is authorized to act on behalf of or for the benefit of another person. A fiduciary's right to withdraw funds is the same as the account owner's right to withdraw them.

D. Bank accounts must be verified eith from the client's own records (statements, print-outs, etc.) or agency verification to establish activity on the account and account balances.

   1. The person designated as the owner in the account title is assumed to own all the funds in the account.

   2. Absent evidence to the contrary, the person shown as the owner in the account title is assumed to have the legal right to withdraw funds and use them for support and maintenance.

      a) Example: An account is titled "In trust for John Jones and Mary Smith, subject to sole order of John Jones, balance at death of either to belong to survivor". Since John alone has unrestricted access, none of the funds in the account could be considered Mary's resources unless John is her fiduciary or his resources are deemed available to her.

b) Example**:** An account is titled” George Dahey, restricted Individual Indian Money Account”. Mr. Dahy cannot withdraw funds from the account without the authorization of the Bureau of Indian Affairs. Therefore, the account is not his resource.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 4.3 Joint Checking/Savings Accounts.

A. Except for account ownership, all instructions in the above rule also apply to joint bank accounts. The information in this section pertains only to ownership of joint bank accounts.

B. Ownership Assumptions for Joint Accounts.

1. Ownership is assumed as follows when the individual has unrestricted access to the account as follows:

a) Ownership When Medicaid Client is Joint Owner with an Ineligible Individual(s):

1) Count the total value of the account when the Medicaid applicant/recipient holds funds jointly with an ineligible individual(s), regardless of the source of the funds.

b) Ownership When More Than One Medicaid Client is an Account Holder:

1) Count an equal share of the account if two or more Medicaid applicants/recipients are holders of the same joint account, regardless of the source of the funds.

2) If the account is also jointly-held with ineligible individuals, do not allow a share of the funds to ineligible individuals.

c) Deemors.

1) If one or more account holders is a deemor and none of the account holders is a client, all of the funds in the account are assumed belong to the deemor or in equal shares if more than one deemor.

2. Rebuttal of Joint Checking/Savings Accounts.

a) An applicant or recipient may rebut ownership of part or all of the funds in a jointly-held account and must provide verification surrounding establishment of the account and ownership and expenditure of funds to support this claim.

b) Any funds that the evidence establishes were owned by the other account holder(s), and that the client can no longer withdraw from the account, were not and are not the client’s resources. Rebuttal is both retrospective and prospective.

c) The funds can be deemed to be available to the client if the account holder to whom the funds belong is a deemor.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 4.4 Funds Held in Another Individual's Account.

A. The value of funds deposited or held for an applicant/recipient in an account that does not have the client's name on it are countable if:

   1. The holder(s) of the account agrees that the funds on deposit, or a portion thereof, belong to the applicant/recipient, and

   2. The funds are available to the client.

B. If some or all of the funds are acknowledged as belonging to the client and are available, the account is treated as a countable resource to the extent the funds belong to the client.

C. Documentation will include written statements from the client and the holder(s) of the account.

D. Entitlement income deposited into an account which is not owned by the client does not alter the fact that the income belongs to the client and is used to determine eligibility and Medicaid Income (if applicable).

E. Funds belonging to the client (including non-entitlement income) deposited into another person's account and not accessible to the client are subject to a transfer penalty, if applicable.

   1. A transfer may exist even if the funds are not acknowledged as belonging to the client when evidence indicates the client's funds are deposited and retained in the account.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 4.5 Time Deposits.

A. A time deposit is a contract between an individual and a financial institution whereby the individual agrees to leave funds on deposit for a specified period of time (six months, two years, five years, etc.) and the financial institution agrees to pay interest at a specified rate for that period.

   1. Certificates of Deposit and savings certificates are common forms of time deposits.

   2. The ownership assumptions regarding ownership of bank accounts apply to time deposits.

B. Withdrawal of a time deposit before the specified period expires incurs a penalty which is usually imposed against the principal. The penalty does not prevent the time deposit from being a resource, but it does reduce its value as a resource.

   1. The resource value of a time deposit at any given time is the amount the owner would receive upon withdrawing it at that time, excluding interest paid that month. Generally this is:

      a) Amount originally deposited;

      b) Plus accrued interest for all but the current month; and

      c) Minus any penalty for early withdrawal.

C. On rare occasions, the terms of a time deposit may prohibit early withdrawal altogether. When early withdrawal is prohibited, principal and interest are treated as follows:

   1. Principal.

      a) If the owner of a time deposit cannot under any circumstances withdraw the principal before it matures, the principal is not a resource. It becomes a resource (not income) on the date it matures and may affect countable resources for the following month.

   2. Interest.

      a) If the owner has no access to the interest before the deposit matures, accrued interest is also not a resource. The interest is not counted as income in the month the deposit matures, but as a resource the month after maturity.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 4.6 Conservator Accounts.

A. The term "conservatorship account" refers to a financial account in which a person or institution has been appointed by a court to manage and preserve the assets of an individual which are held in the account.

B. Absent evidence to the contrary, the funds are available for the individual's support and maintenance and are countable as that person's resource.

C. The court order establishing the account verifies it.

   1. The fact that an individual has to petition the court for withdrawal of funds does not mean the funds may be assumed to be unavailable.

2. The denial of a request for withdrawal of funds by the court does not necessarily mean the funds in the account are unavailable for the individual's support or maintenance.

   a) A history of the petitions for and approvals and denials of funds may reveal the court approves petitions to withdraw funds to provide maintenance and support and only denies non-essential items; or

   b) The court's denial of a request is the exception rather than the rule. In either instance, the funds are considered an available resource.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 4.7 Patient Accounts.

A. A nursing home patient account is a financial account set up by the nursing home for the convenience of the patient.

B. These accounts are similar to a checking and/or savings account. The facility holds funds belonging to the patient for the patient's use.

C. For Medicaid purposes, a patient account is treated in the same manner as a checking or savings account.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 4.8 Charitable Funds Bank Accounts.

A. The value of funds in an account set up to receive and hold charitable contributions (fundraisers) is counted if the name of the applicant/recipient is on the account and the funds are available to the applicant/recipient for support and maintenance.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 4.9 Contents of Safety Deposit Box.

A. Some or all of the contents of a safety deposit box may be countable as resources based on the appropriate policy applicable to the type of resource, i.e., stock certificated, coins, jewelry, life insurance policy, etc.

B. If a recipient's possessions are stored in another person's' safety deposit box, access to the contents must be deteremined. Access would be determined the owner's statement.

C. Contents are determined from statements of the applicant/recipient, spouse or authorized representative. Access tp or owner of the .

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 4.10 Non-Home Real Property.

A. This type of property is land and any permanent buildings/immovable objects attached to it that are not considered a principal place of residence.

B. Generally, this type of property is a countable resource; however, an exclusion may be developed if there is a bona fide effort to sell.

C. Ownership and Current Market Value must be determined.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 4.11 529 Plan.

A. This is a state-sponsored investment program in which parents may fund accounts to pay for a child's college education.

B. Parents are owners and the account is considered a resource.

   1. Withdrawal for reasons other than to pay for qualified college education is subject to income tax and an additional 10% penalty.

   2. Account statements may be used to verify ownership and value of a 529 Plan..

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 4.12 Stocks.

A. General.

   1. Shares of stocks represent ownership in a business corporation. The term "stock" includes:

      a) Preferred stock,

      b) Warrants and rights; and

      c) Options to purchase stock:

B. Treatment.

   1. To determine value:

      a) Absent evidence to the contrary, assume each owner of a stock owns an equal share of stock; and

b) Can sell the stock at will, at current value.

1) Broker fees do not reduce the value that stocks have as a resource.

2. Ownership is determined using the stock certificate or most recent account statement (including dividend account) from the brokerage firm that issued or is holding the stock.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 4.13 Mutual Fund Shares.

A. General.

1. A mutual fund is a company whose primary business is buying and selling securities and other investments.

2. Types of mutual funds include growth funds, income funds, balance funds, municipal bonds, money market funds, load funds, no load funds.

B. Treatment

1. Shares in a mutual fund represent ownership in the investments held by the fund and their value is a countable resource.

2. Such investments may be pooled assets (such as stocks or bonds, managed by an investment company). In this event, a mutual fund share represents ownership interest in this pool as opposed to a specific stock.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 4.14 US Savimgs Bonds.

A. General.

1. A US Savings Bond is an obligation of the federal government, is not transferable and can only be sold back to the federal government.

B. Treatment.

1. Ownership Determination.

a) The individual(s) in whose name the bond is registered is the owner and retains sole ownership rights during his lifetime, even if a beneficiary is also named.

2. Valuation.

a) The redemption value of US bonds must be determined through the US Treasury and counts as a resource.

1) If there are joint owners, each individual owns equal shares of the bond's redemption value.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 4.15 Corporate Bonds.

A. General.

1. Corporate bonds are the obligation of a private corporation. Corporations sell bonds to raise capital.

2. There are two type of corporate bonds:

a) Debenture**s** are backed by the issuer's full faith and credit; and

b) Mortgage-Backed bonds are backed by a lien on the company's assets.

3. Corporate bonds are issued in two forms:

a) Registered bonds pay interest to their registered owner; and

b) Bearer or coupon bonds pay interest to whomever holds the bond.

B. Treatment.

1. Ownership is determined by the receipt of purchase.

2. The bond value is obtained from the issuer, i.e., broker, securities dealer, etc., and is a countable resource.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 4.16 Municipal Bonds.

A. General.

1. Municipal bonds are to city, county and state governments what corporate bonds are to corporations.

2. Most municipal bonds are of two types:

a) General Obligation Bonds are backed by the full faith and credit of the issuing municipality and supported by the taxing power; and

b) Revenue Bonds are backed by the project being financed and the revenue or user fees it generates.

c) Other types of municipals are limited-tax bonds, anticipation notes, industrial development bonds and life-care bonds.

B. Treatment.

1. Ownership is determined by the receipt of purchase.

2. The bond value is obtained from the issuer, i.e, broker, securities dealer, etc., and is a countable resource.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 4.17 Government Bonds/US Securities.

A. General.

1. A government bond, distinct from a US Savings Bond, is a transferable obligation issued or backed by the federal government.

2. Examples are:

a) Treasury Bills are short-term obligations that require a minimum investment of $10,000 and can be sold before maturity.

b) Treasury Notes and Bonds are similar to T-Bills but they have longer maturities and lower minimum investment requirements. They have been registered in book form since July 1986, but were sometimes issued as bearer bonds before then.

c) TIGER (Treasury Investors Growth Receipt) and CATS (Certificate of Accrual on Treasury Securities) are government securities issued with a zero coupon concept and can be sold before maturity. y.

d) Some Federal Agencies have charters to issue securities known as Federal Agency Securities. Minimum investments range from $1,000 to $25,000. Some of these federal agencies are: the Federal Home Loan Bank Board, Federal Home Loan Mortgage Corporation (FREDDIE MAC), the Export-Import Bank and the Government National Mortgage Association (GINNIE MAE).

B. Treatment.

1. The government securities discussed above are countable resources.

2. Ownership is determined from the receipt of purchase.

3. The value is determined from the issuer and counts as a resource.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 4.18 Cash to Purchase Medical or Social Services.

A. General.

1. An individual cannot always disburse cash given to him/her to purchase medical or social services in the month of receipt.

2. To permit use of the funds as intended, it is reasonable to assume, for a limited time, that the individual will use them to pay for approved services and, therefore, that they are not available for support and maintenance.

B. Treatment.

1. A cash payment for medical or social services that is not income also is not a resource for the month following month of receipt.

2. Exception: Even though it is not income, cash received as repayment for bills an individual has already paid is a resource and if retained, is counted the month after receipt.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 4.19 Retroactive in-home Supportive Services.

A. General.

1. In limited circumstances, governmental programs will pay a spouse or parent to provide a disabled spouse or child with certain in-home supportive (attendant, homemaker) services (IHSS). IHSS payments are income when received by the ineligible spouse or parent, but are not included as income for deeming purposes. In addition, a period of time is allowed during which retroactive IHSS payments are not considered resources.

B. Treatment.

1. A payment is considered retroactive if the payment is made after the month it was due.

   a) If payment is made in the month due, but following the month services were rendered, the payment is not retroactive.

2. An IHSS retroactive payment is excluded as a resource the month of receipt and the calendar month after receipt.

3. Beginning the second calendar month after receipt, it is a resource and subject to resources deeming.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 4.20 Uniform Gifts to Minors Act.

A. General.

1. Most states have adopted the Uniform Gifts to Minors Act (UGMA) that permits making gifts that are tax free to minors. The UGMA is sometimes called the Uniform Transfers to Minors Act.

2. Under the UGMA legislation:

   a) An individual (donor) makes an irrevocable gift of money or other property to a minor (the donee);

   b) The gift plus any earnings it generates is under the control of a custodian until the donee reaches the age of majority established by state law;
   c) The custodian has discretion to provide to the minor or spend for the minor's support, maintenance, benefit or education as much of the assets as he/she deems equitable; and

   d) The donee automatically receives control of the assets when he/she reaches the age of majority established by state law (age 21 in Mississippi).

3. A custodian of UGMA assets cannot legally use any of the funds for his/her own personal benefit. Therefore, the assets are not the custodian's resources and additions to, or earnings on the principal are not income to the custodian who has no right to use them for his/her own support and maintenance.

4. According to Mississippi state law, gifts that are valid under the Mississippi Uniform Transfer to Minors Act must reflect that the gift is being made under this Act. This means the gift(s), e.g., annuity, CD, property, life insurance, etc., must be assigned in writing and substantially worded to show the custodian's name, minor's name and the designation that the gift is authorized under the Uniform Transfer to Minors Act (in Mississippi, MS Code Ann., Section 91-20-19).

B. Treatment.

1. Additions to principal may be income to the donor before becoming part of the UGMA principal.

a) Example: If the donor is a deemor who receives rental income and adds it to a child's UGMA funds, consider the rental income as income for deeming purposes.

2. Gifts made under the UGMA may involve a countable transfer of resources to the donor, if applicable.

3. For minor donee, consider as income:

   a) Custodian's disbursements to the minor; and

   b) Disbursements on behalf of the minor used to make certain third party vendor payments.

4. For the minor donee, the following is not income to the minor: :

   a) The UGMA property; and

   b) Any additions or earnings.

5. For the donee at age 21, the following is applicable:

   a) All UGMA property will become available to him/her; and

   b) All funds in the UGMA will count as income the month the minor reaches age 21 and is a resource thereafter.

6. The document designating a UGMA transfer and ownership assigned in writing and complying with the requirements of state law must be provided. If there is no document designating a UGMA transfer, treat as though there is no UGMA.

Source: Social Security Act §1902 (r) (2); 42 CFR § 435.601(b) (Rev 1994).

Rule 4.21: Entrance Fees to Continuing Care Retirement Communities

A. Continuing Care Retirement Communities (CCRC) or life care communities provide a range of living arrangements from independent living assistance to skilled nursing care.

   1. Some CCRC's include Medicaid certified nursing facilities while others do not participate in Medicaid.

   2. An individual or couple may be required to pay substantial entrance fees and sign detailed contracts before moving into the CCRC.

   3. The entrance fee paid to a CCRC is treated as a resource under certain circumstances for the purpose of determining Medicaid eligibility.

B. The entrance fee paid to a CCRC is a countable resource if all of the following conditions are met:

    1. The entrance fee can be used to pay for care under the terms of the entrance contract if other resources of the individual become insufficient. If only a portion of the fee is refundable, this condition is met.

    2. The entrance fee is refundable when the individual dies or terminates the contract and leaves the CCRC. If the individual is eligible for a refund of any remaining entrance fee, this condition is met.

    3. The entrance fee does not confer an ownership interest in the CCRC.

Source: Social Security Act § 1917(g); The Deficit Reduction Act of 2005.

History: New to correspond with the Deficit Reduction Act of 2005 (eff. 07/01/2008), eff. 09/01/2014.

Rule 4.22: Disqualification for Long Term Care Assistance for Individuals with Substantial Home Equity

A. Reimbursement for nursing facility services and other long term care services must be denied for an individual who has substantial home equity. In 2009, equity interest in home property could not exceed $500,000. This amount is subject to increase based on the annual percentage increase in the urban component of the consumer price index beginning in 2011, rounded to the nearest $1,000.

B. The disqualification for substantial home equity will not apply to an individual who has a spouse, child under age 21 or adult blind or disabled child residing in the individual's home.

C. The substantial home equity limitation provision can be waived in cases of undue hardship as defined in Miss. Admin. Code, Part 103, Chapter 7.

Source: Social Security Act § 1917(f); Title XVI; Deficit Reduction Act; Omnibus Budget Reconciliation Act of 1993.

History: New to correspond with SPA 2008-003 (eff. 07/01/2008), eff. 09/01/2014.

Part 103 Chapter 5: Trust Provisions

Rule 5.1: Classification of Trusts

The three classifications of trusts are as follows:

A. OBRA-93 Trusts:

1. Are trusts established on or after August 11, 1993, the date mandated by OBRA-93 Federal legislation.

2. Must meet certain criteria. If OBRA-93 criteria are not met, another trust policy applies.

3. Rules were amended by The Deficit Reduction Act of 2005 (DRA) which provides current operating procedures for trust issues.

B. Medicaid Qualifying Trusts (MQT) are trusts established on or after March 1, 1987, through August 10, 1993, that meet MQT criteria. If MQT criteria are not met, defer to Miss. Admin. Code Part 103, Rule 5.1.C.

C. Standard Trusts are trusts established prior to March 1, 1987, and/or trusts that do not meet the criteria of OBRA-93 or MQT trusts, regardless of the date established.

Source: 42 CFR § 435.601(b); Social Security Act § 1902 (r)(2); Omnibus Reconciliation Act (OBRA-93) of 1993 § 13611(Rev. 1993); Deficit Reduction Act of 2005 §6016 (Rev. 2006); Consolidated Omnibus Reconciliation Act of 1985 § 9506 (Rev. 1985).

History: Revised eff. 11/01/2014.

Rule 5.2: Clearing Trusts, Guardianships, and Conservatorships

A. Trusts, guardianships/conservatorships are often complex documents involving state law and legal principles.

B. Trust documents must be referred to the state office for clearance whenever an individual or spouse either creates a trust or is the beneficiary of one.

   1. Pertinent materials needed to evaluate the terms of the trust include a copy of the trust agreement and applicable material.

   2. The terms of the trust will be evaluated based on the trust provisions described in this chapter. Trusts are subject to income, resource and/or transfer of assets rules, as appropriate.

Source: Miss. Code Ann. §43-13-121.1.

History: Revised eff. 11/01/2014.

Rule 5.3: General Trust Definitions

A. Introduction.

   1. The definitions in this rule apply to any/all types of trusts.

2. Each type of trust has definitions which are specific to that trust classification that are discussed under other rules.

B. Trust Definitions

1. A trust is a property interest whereby property is held by an individual (trustee) subject to a fiduciary duty to use the property for the benefit of another (the beneficiary).

2. A grantor (also called a settlor or trustor) is a person who creates a trust. An individual may be a grantor if an agent, or other individual legally empowered to act on his/her behalf (e.g., a legal guardian, person acting under a power of attorney or conservator), establishes the trust with funds or property that belong to the individual. The terms grantor, trustor, and settlor may be used interchangeably.

3. A trustee is a person or entity who holds legal title to property for the use or benefit of another. In most instances, the trustee has no legal right to revoke the trust or use the property for his/her own benefit.

4. A trust beneficiary is a person for whose benefit a trust exists. A beneficiary does not hold legal title to trust property but does have an equitable ownership interest in it.

    a) Primary Beneficiary is the first person or class of persons to receive the benefits of a trust.

    b) Secondary Beneficiary is a person or class of persons who will receive the benefits of the trust after the primary beneficiary has died.

    c) Contingent Beneficiary is a person or class of persons who will receive benefits only if a stated event occurs in the future.

5. The trust principal (corpus) is the property placed in trust by the grantor which the trustee holds, subject to the rights of the beneficiary plus any trust earnings paid into the trust and left to accumulate.

6. Trust earnings (or income) are amounts earned by trust principal. They may take such forms as interest, dividends, royalties, rents, etc. These amounts are unearned income to the person (if any) legally able to use them for personal support and maintenance.

7. A Totten trust is a tentative trust in which a grantor makes himself trustee of his own funds for the benefit of another. The trustee can revoke a Totten trust at any time. Should the trustee die without revoking the trust, ownership of the money passes to the beneficiary.

8. A grantor trust is a trust in which the grantor of the trust is also the sole beneficiary of the trust.

9. A mandatory trust is a trust which requires the trustee to pay trust earnings or principal to or for the benefit of the beneficiary at certain times. The trust may require disbursement of a specified percentage or dollar amount of the trust earnings or may obligate the trustee to spend income and principal, as necessary, to provide a specified standard of care. The trustee has no discretion as to the amount of the payment or to whom it will be distributed.

10. A discretionary trust is a trust in which the trustee has full discretion as to the time, purpose and amount of all distributions. The trustee may pay to or for the benefit of the beneficiary, all or none of the trust as he or she considers appropriate. The beneficiary has no control over the trust.

11. A testamentary trust is a trust that is an integral part of a will and takes effect upon the death of the individual making the will.

Source: 42 CFR § 435.601(b); Social Security Act § 1902 (r)(2).

History: Revised eff. 11/01/2014.

Rule 5.4: General Trust Definitions - OBRA-93 and DRA Trust Policy

A. Introduction.

1. Section 13611 of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) amended Section 1917(d) of the Social Security Act to revise the treatment of trusts effective with trusts established after the date of enactment of OBRA-93, which was August 11, 1993. Trusts established before this date, but added to or otherwise augmented after this date, are treated under OBRA-93 Trust rules.

2. OBRA-93 Transfer of Assets policy is used in conjunction with OBRA-93 Trust policy and provisions of the Deficit Reduction Act of 2005 (DRA), which amended rules on transfer of assets for less than fair market value by broadening the spectrum of what is considered a transfer, the length of the penalty period, the look back period for transfers, the definition of assets and how penalty periods run consecutively rather than concurrently.

B. Trust Definitions (OBRA-93 and DRA).

1. For purposes of this rule, a trust is any arrangement in which a grantor transfers property to a trustee or trustees with the intention that it be held, managed, or administered by the trustee(s) for the benefit of the grantor or certain designated individuals (beneficiaries). The trust must be valid under State law and manifested by a valid trust instrument or agreement. A trustee holds a fiduciary responsibility to hold or manage the trust's corpus and income for the benefit of the beneficiaries. The term "trust" also includes any legal instrument or device that is similar to a trust. It does not cover trusts established by will. Such trusts must be dealt with using Standard Trust policy.

2. A Legal Instrument or Device Similar to Trust is any legal instrument, device, or arrangement which may not be called a trust under State law but which is similar to a trust. That is, it involves a grantor who transfers property to an individual or entity with fiduciary obligations (considered a trustee for purposes of this section). The grantor makes the transfer with the intention that it be held, managed, or administered by the individual or entity for the benefit of the grantor or others. This can include (but is not limited to) escrow accounts, investment accounts, pension funds, and other similar devices managed by an individual or entity with fiduciary obligations.

3. A trustee is any individual, individuals, or entity (such as an insurance company or bank) that manages a trust or similar device and has fiduciary responsibilities.

4. A grantor is any individual who creates a trust. For purposes of this rule, the term "grantor" includes:

   a) The individual;

   b) The individual's spouse;

   c) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; and

   d) A person, including a court or administrative body, acting at the direction or upon the request of the individual, or the individual's spouse.

5. A revocable trust is a trust which can under State law be revoked by the grantor. A trust which provides that the trust can only be modified or terminated by a court is considered to be a revocable trust, since the grantor (or his/her representative) can petition the court to terminate the trust. Also, a trust which is called irrevocable but which terminates if some action is taken by the grantor is a revocable trust for purposes of this instruction.

6. An irrevocable trust is a trust which cannot, in any way, be amended or revoked by the grantor. Being irrevocable does not make the trust unavailable as a resource for Medicaid purposes.

7. A beneficiary is any individual or individuals designated in the trust instrument as benefiting in some way from the trust, excluding the trustee or any other individual whose benefit consists only of reasonable fees or payments for managing or administering the trust. The beneficiary can be the grantor himself, another individual or individuals, or a combination of any of these parties. For purposes of this rule, the beneficiary of a trust must be the applicant or Medicaid beneficiary or another allowable person, as described in the trust and transfer of assets rules, and under specified conditions. A transfer of assets will result if the trust beneficiary named is not an allowable person and the trust is funded with assets belonging to an applicant or Medicaid beneficiary and/or spouse.

8. For purposes of this rule, a payment from a trust is any disbursal from the corpus of the trust or from income generated by the trust which benefits the party receiving it. A payment may include actual cash, as well as noncash or property disbursements, such as the right to use and occupy real property.

Source: Omnibus Reconciliation Act (OBRA-93) of 1993 § 13611 (Rev. 1993); Deficit Reduction Act of 2005 §6016 (Rev. 2006).

History: Revised eff. 11/01/2014.

Rule 5.5: Medicaid Trust Provision

The following apply to any individual who establishes a trust, and who is an applicant for or recipient of Medicaid:

A. An individual is considered to have established a trust if his or her assets (regardless of how little) were used to form part or all the corpus of the trust and if any of the parties described as a grantor established the trust, other than by will;

B. When a trust corpus includes assets of another person or persons as well as assets of the individual, the rules apply only to the portion of the trust attributable to the assets of the individual. Thus, in determining countable income and resources in the trust for eligibility and post-eligibility purposes, any amounts of income and resources will be prorated, based on the proportion of the individual's assets in the trust to those of other persons. This general rule, however, is subject to the provisions of Miss. Admin. Code Part 103, Rule 5.7.A.

C. This rule applies to trusts without regard to:

   1. The purpose for which the trust is established;

   2. Whether the trustee(s), has or exercises any discretion under the trust;

   3. Any restrictions on when or whether distributions can be made from the trust; or

   4. Any restrictions on the use of distributions from the trust.

D. Any trust which meets the basic definition of a trust can be counted in determining eligibility for Medicaid. No clause or requirement in the trust, no matter how specifically it applies to Medicaid or other Federal or State programs (i.e., an exculpatory clause), precludes a trust from being considered under these rules.

E. Exceptions to the countability of trusts as a resource do exist and are discussed in Rule 5.13.

F. Trust assets includes both resources and income the individual or individual's spouse own or that would have become the individual's or spouse's resources or income but for actions taken to direct the assets elsewhere.

G. All assets held in a trust must be verified and the value of the assets established.

Source: Omnibus Reconciliation Act of 1993 (OBRA-93) § 13611(Rev. 1993); Deficit Reduction Act of 2005 §6016 (Rev. 2006).

History: Revised eff. 11/01/2014.

Rule 5.6: Treatment of Revocable Trusts

A. The entire corpus of a revocable trust is counted as an available resource to the individual. Any income earned by the trust and paid into the trust is also an available resource.

B. Any payments from the trust made to or for the benefit of the individual are counted as income to the individual, provided the payment is counted as income under SSI cash assistance rules.

C. Any payments from the trust which are not made to or for the benefit of the individual are considered assets disposed of for less than fair market value. [Refer to Miss. Admin. Code Part 103, Chapter 7]

D. Home property placed in a revocable trust loses its excluded status if the client is in an institution.

E. Changes made to a revocable trust that restrict or limit its use for the individual or spouse may be a transfer of assets. [Refer to Miss. Admin. Code Part 103, Chapter 7]

Source: 42 CFR § 435.601(b); Social Security Act §1902 (r) (2); Omnibus Reconciliation Act (OBRA-93) of 1993 § 13611(Rev. 1993); Deficit Reduction Act of 2005 §6016 (Rev. 2006).

History: Revised eff. 11/01/2014.

Rule 5.7: Treatment of Irrevocable Trusts

A. In the case of an irrevocable trust, where there are any circumstances under which payment can be made to or for the benefit of the individual from all or a portion of the trust, the following rules apply to that portion.

   1. Payments from income or from the corpus made to or for the benefit of the individual are treated as income to the individual, provided the payment is counted as income under SSI cash assistance rules.

2. Income received by the trust which could be paid to or for the benefit of the individual is treated as a resource available to the individual.

3. The portion of the corpus that could be paid to or for the benefit of the individual is treated as a resource available to the individual; and,

4. Payments from income or from the corpus that are made, but not to or for the benefit of the individual, are treated as a transfer of assets for less than fair market value. [Refer to Miss. Admin. Code Part 103, Chapter 7]

B. If no payment can be made to or for the benefit of the individual from either all of the trust or from some portion of the trust, treat the trust or the unavailable portion as a transfer of assets. The value of the trust or the value of the unavailable portion is not an available resource if it is treated as a transfer of assets. [Refer to Miss. Admin. Part 103, Chapter 7]

1. The sixty (60) month look back period for transfer of assets applies. When all or portion of the corpus or income on the corpus of a trust cannot be paid to the individual, treat all or any such portion or income as a transfer of assets under OBRA-93 transfer policy.

2. In treating these portions as a transfer of assets, the date of the transfer is considered to be either the date the trust was established or, if later, the date on which payment to the individual was foreclosed.

3. In determining for transfer of assets purposes the value of the portion of the trust which cannot be paid to the individual, do not subtract from the value of the trust any payments made, for whatever purposes, after the date the trust was established or, if later, the date payment to the individual was foreclosed. The value of the transferred amount is no less than its value on the date the trust is established or payment is foreclosed.

4. If the trustee or the grantor adds funds to that portion of the trust which cannot be paid to the individual after these dates, the addition of those funds is considered to be a new transfer of assets, effective on the date the funds are added to that portion of the trust which cannot be paid to the individual.

Source: 42 CFR § 435.601(b) (Rev 1994); Social Security Act §1902 (r) (2); Omnibus Reconciliation Act (OBRA-93) of 1993 §13611 (Rev. 1993); Deficit Reduction Act of 2005 §6016 (Rev. 2006).

History: Revised eff. 11/01/2014.

Rule 5.8: Payments Made From Revocable or Irrevocable Trusts

A. Payments are considered to be made to the individual when any amount from the trust, including an amount from the corpus or income produced by the corpus, is paid directly to the individual or to someone acting on his/her behalf, e.g., a guardian or legal representative.

B. Payments made for the benefit of the individual are payments of any sort, including an amount from the corpus or income produced by the corpus, paid to another person or entity such that the individual derives some benefit from the payment.

C. A payment to or for the benefit of the individual is counted under this provision only if such a payment is ordinarily counted as income under the SSI program.

Source: 42 CFR § 435.601(b); Social Security Act §1902 (r) (2); Omnibus Reconciliation Act (OBRA-93) of 1993 § 13611(Rev. 1993); Deficit Reduction Act of 2005 §6016 (Rev. 2006).

History: Revised eff. 11/01/2014.

Rule 5.9: Circumstances Under Which Payments Can/Cannot Be Made.

In determining whether payments can or cannot be made from a trust to or for an individual, any restrictions on payments must be taken into account, such as use restrictions, exculpatory clauses, or limits on trustee discretion that may be included in the trust.

A. Example: If an irrevocable trust provides that the trustee can disburse only $1,000 to or for the individual out of a $20,000 trust, only the $1,000 is treated as a payment that could be made. The remaining $19,000 is treated as an amount which cannot, under any circumstances, be paid to or for the benefit of the individual.

B. On the other hand, if a trust contains $50,000 that the trustee can pay to the grantor only in the event that the grantor needs, for example, a heart transplant, this full amount is considered as payment that could be made under some circumstances, even though the likelihood of payment is remote. Similarly, if a payment cannot be made until some point in the distant future, it is still payment that can be made under some circumstances.

Source: Omnibus Reconciliation Act (OBRA-93) of 1993 § 13611 (Rev. 1993); Deficit Reduction Act of 2005 §6016 (Rev. 2006).

History: Revised eff. 11/01/2014.

Rule 5.10: Placement of Excluded Assets in Trust

A. Section 1917 of the Act provides that, for trust and transfer purposes, assets include both income and resources.

B. Section 1917 of the Act further provides that income has the meaning given that term in Section 1612 of the Act and resources has the meaning given that term in Section 1613 of the Act (income and resources as defined in SSI policy).

C. Transferring an excluded asset (either income or a resource, with the exception of the home of an institutionalized individual) for less than fair market value does not result in a penalty under the transfer provisions because the excluded asset is not an asset for transfer purposes.

Similarly, placement of an excluded asset in a trust does not change the excluded nature of that asset; it remains excluded, except for the home property of an institutionalized individual.

D. Transfer of title to the home of an institutionalized individual in a revocable trust results in the home becoming a countable resource. Transfer of title to the home property of an institutionalized individual in an irrevocable trust results in the home either being treated as a countable resource or shall be considered a transfer of assets. However, if there are circumstances where payment from the irrevocable trust could be made to or for the benefit of the individual, those payments shall be treated as a countable resource for the individual. The Division will look to the terms of the trust to make this determination.

Source: Social Security Act §§ 1612, 1613 and 1917; Omnibus Reconciliation Act (OBRA-93) of 1993 § 13611(Rev. 1993); Deficit Reduction Act of 2005 §6016 (Rev. 2006).

History: Revised eff. 11/01/2014.

Rule 5.11: Undue Hardship Provision

When application of the Trust provisions would work an undue hardship, the provisions will not apply.

A. Undue hardship exists when:

   1. Application of the trust provisions would deprive the individual of medical care such that his/her health or his/her life would be endangered.

   2. Application of the trust provisions would deprive the individual of food, clothing shelter, or other necessities of life causing severe deprivation.

   3. The applicant or spouse or representative has exhausted all legal action to have the transferred assets that caused the penalty returned.

B. Undue hardship does not exist when:

   1. Application of the trust provisions merely causes the individual inconvenience or when such application might restrict his or her lifestyle but would not put him or her at risk of serious deprivation.

   2. The resource was transferred to a person (spouse, child, or other person) who was handling the financial affairs of the client or to the spouse or children of a person handling the financial affairs of the client unless it is established that the transferred funds cannot be recovered even through exhaustive legal measures.

C. Each case situation must be reviewed individually to determine if undue hardship exists.

D. Generally, this provision is limited to financially and medically needy individuals with no possible means of accessing funds placed in a trust.

Source: Omnibus Reconciliation Act (OBRA-93) of 1993 § 13611 (Rev. 1993); Deficit Reduction Act of 2005 §6016 (Rev. 2006).

History: Revised eff. 11/01/2014.

Rule 5.12: Reviewing Trust Documents

In reviewing a trust:

A. Trust documents, including amendments and the required number of accountings must be obtained;

B. The type of trust, i.e., OBRA-93 Trust, Medicaid Qualifying Trust, or Standard Trust, ~~is~~ must be determined;

C. The trust must be determined to be revocable or irrevocable; and

D. Establish whether any income is released from the trust; and

E. The applicable policy and procedural requirements for clearing the trust and the treatment of the trust are applied.

Source: Miss. Code Ann. §43-13-121.1.

History: Revised eff. 11/01/2014.

Rule 5.13: Trust Exceptions

A. The following types of trusts are treated as exceptions to the trust provisions outlined above provided the trust is established according to criteria specific to the trust type. The trust exceptions are:

   1. Special Needs Trust;

   2. Pooled Trust; and

   3. Income Trust.

B. Funds entering and leaving these trusts are generally treated according to SSI rules or more liberal rules under Section 1902(r) (2) of the Act, as appropriate.

C. As noted under the rule for each type of trust, one common feature of all of the excepted trusts is a requirement that the trust provide that, upon the death of the individual or upon termination of the trust for any other reason, any funds remaining in the trust go to the MS Division of Medicaid, up to the amount paid in Medicaid benefits on the individual's behalf.

Source: 42 CFR § 435.601(b); Social Security Act §1902 (r) (2); Omnibus Reconciliation Act (OBRA-93) of 1993 §13611 (Rev. 1993); Deficit Reduction Act of 2005 §6016 (Rev. 2006).

History: Revised eff. 11/01/2014.

Rule 5.14 Special Needs Trusts (SNT)

A. A Special Needs Trust (SNT) contains the assets of an individual under age sixty-five (65) who is disabled and which is established for the sole benefit of the disabled individual by a parent, grandparent, legal guardian of the individual, or a court.

B. To qualify for an exception to the rules governing trusts, the SNT must contain a provision stating that, upon the death of the individual or upon termination of the trust for any other reason, the MS Division of Medicaid receives all amounts remaining in the trust, up to an amount equal to the total amount of medical assistance paid on behalf of the individual.

C. When a SNT is established for a disabled individual under age sixty-five (65), the SNT exception for the trust continues even after the individual becomes age sixty-five (65). However, a SNT cannot be added to or otherwise augmented after the disabled individual reaches age sixty-five (65). Any such addition or augmentation after age sixty-five (65) involves assets that were not the assets of an individual under age sixty-five (65) and therefore, those assets are not subject to the SNT exception.

D. A SNT must be established for a disabled individual, as defined under the SSI Program in section 1614(a)(3). When the individual in question is receiving either Title II or SSI benefits as a disabled individual, the disability determination made for those programs is accepted. If the individual is not receiving - SSI or title II based on disability, a determination concerning the individual's disability must be made. If disability is not established using SSI criteria, the SNT exception cannot apply.

E. Establishment of a SNT as described above does not constitute a transfer of assets for less than fair market value if the transfer is made into a trust established solely for the benefit of a disabled individual under age sixty-five (65). However, if the trust is not solely for the benefit of the disabled person or if the disabled person is over age sixty-five (65) at the time the SNT is established, transfer penalties may apply.

Source: 42 U.S.C. § 1396p(d)(4).

History: Revised eff. 11/01/2014.

Rule 5.15: Pooled Trusts

A. A pooled trust is a trust containing the assets of a disabled individual that meets the following conditions:

   1. The trust is established and managed by a non-profit entity that has been granted that status by the Internal Revenue Service (IRS);

   2. A separate account is maintained for each beneficiary of the trust but for purposes of investment and management of funds the trust pools the funds in these accounts;

   3. Accounts in the trust are established solely for the benefit of disabled individuals by the individual, by the parent, grandparent, legal guardian of the individual, or by a court; and

   4. To the extent that any amounts remaining in the beneficiary's account upon the death of the beneficiary or upon the termination of the trust for any other reason are not retained by the trust, the trust pays to the MS Division of Medicaid the amount remaining in the account up to the amount equal to the total amount of medical assistance paid on behalf of the beneficiary. To meet this requirement, the trust must include a provision specifically providing for such payment.

B. To qualify as an excepted trust, the trust account must be established for a disabled individual, as defined in Section 1614(a)(3) of the Act. When the individual in question is receiving either Title II or SSI benefits as a disabled individual, the disability determination made for those programs is accepted. If the individual is not receiving SSI or title II benefits based on disability, a determination concerning the individual's disability must be made. If disability is not established using SSI criteria, the pooled trust exception cannot apply.

Source: 42 U.S.C. §1396p(d)(4); Social Security Act §1614(a).

History: Revised eff. 11/01/2014.

Rule 5.16: SNT and Pooled Trust Guidelines and Restrictions

The MS Division of Medicaid has established guidelines and restrictions regarding payments and distributions from a SNT or pooled trust that must be followed in order for either type of trust to meet or continue to meet the conditions for exception. Medicaid eligibility of the disabled individual may be affected if these guidelines are not followed.

A. Payments for medical expenses that are not paid by Medicaid are allowed to be made from the trust. One exception is the cost differential between that of a private room and a semi-private room in an institutional setting is not an allowable expense.

B. Gifts must not be made from either type of trust,

C. Compensation must not be paid to a family member from either type of trust for services rendered as a trustee.

D. Compensation must not be paid to a family member from either type of trust for services rendered as a caretaker to the disabled beneficiary.

E. The purchase of residential real property by the trust is allowable only if the residence is specially equipped to meet the needs of the disabled beneficiary and the property serves as the disabled beneficiary's place of residence. Examples of "specially equipped" are: wider doorways to accommodate wheelchairs, ramps, handrails, etc. If the disabled beneficiary does not require a home to be specially equipped, the purchase of residential real property will not be allowed as an expense from either type of trust. The trust must be the owner of any real property purchased by the trust. Additions or improvements to an existing property will be allowed only if needed to accommodate the special needs of the disabled beneficiary.

F. The payment of advalorem taxes and/or insurance premiums on real property will be allowed only if the property has been specially equipped to meet the needs of the disabled beneficiary. Payment of utility expenses is considered as a part of maintenance and support and is not a special need; therefore, payment of utilities by either type of trust is not allowed.

G. The purchase of a vehicle by the trust is allowed only if it is specially equipped to allow the disabled beneficiary to operate the vehicle or to be transported in the vehicle; otherwise the purchase of a vehicle by either type of trust is not allowed. If the purchase of a non-specially equipped vehicle is considered a medical necessity, the MS Division of Medicaid will take into consideration an undue hardship request for the purchase of a vehicle prior to the purchase of such a vehicle. The payment for tags, insurance and repairs on a vehicle will be allowed only if the vehicle is specially equipped. Payments for gasoline and other operating expenses are not considered special needs but are considered as a part of basic maintenance and support. The trust must not be the owner of any vehicle that is purchased by funds from either type of trust.

H. Payments for vacations and other non-medical trips must not exceed $2,000 during any calendar year.

I. Payments for recreational opportunities, family visits or visits to friends must not exceed $2,000 during any calendar year.

J. Payments for non-medical expenses such as radios, televisions, audio or video equipment, computer equipment or other electronic devices and/or equipment are limited to one purchase of each type every five (5) years and the total expenditures for these types of expenses must not exceed $5,000 during any calendar year.

K. The payment of burial expenses, the purchase of pre-need burial contracts or the payment of burial insurance premiums are not considered special needs and are not to be made from either type of trust until after the MS Division of Medicaid has been reimbursed upon the termination of the trust.

L. Payments for food, clothing, rent, mortgage payments, furniture, appliances and household help are considered to be items of basic maintenance and support and not special needs. Such payments must not be made from either type of trust.

M. Distributions from either type of trust directly to the disabled beneficiary or to the beneficiary's bank account will be considered income to the disabled beneficiary in the month in which the distribution is made.

Source: Miss. Code Ann. § 43-13-121.

History: Revised eff. 11/01/2014.

Rule 5.17: Income Trusts

A. The purpose of an Income Trust is to allow an individual with excess income who has exhausted all available resources to become eligible for Medicaid. The trust may be used only for income belonging to the individual. No resources (assets) may be used to establish or augment the trust. Inclusion of resources voids the trust exception. It is intended to assist individuals with excess recurring monthly income who have income that exceeds the Medicaid institutional limit in effect at the time eligibility is requested but have insufficient income to pay the private cost of institutional care. Individuals with income above the private pay rate for the facility in which the individual resides will not be eligible for Medicaid under the Income Trust provision.

B. This type of trust established for the benefit of the individual is limited to institutionalized individuals, not those in an acute care hospital setting. Persons participating in the home and community-based services (HCBS) waiver may also utilize an Income Trust for eligibility purposes.

C. An Income Trust must meet all the following requirements:

   1. The trust is composed only of the pension(s), Social Security, and other income due the individual from all sources, including accumulated interest in the trust. Total income does not include income that is not countable under Medicaid rules, such as payments from the Veterans' Administration for Aid and Attendance (A&A) and payments for unreimbursed medical expenses.

   2. Income Trusts, once accepted by the Division of Medicaid, cannot be modified without the Division of Medicaid's approval. An Income Trust must specify that the trust will terminate at the individual's death, when Medicaid eligibility is terminated, when the trust is no longer necessary or in the event the trust is otherwise terminated. Trusts may need to be terminated prior to an individual's death due to changes in the individual's income or changes in Medicaid policy regarding how certain income must be counted or in the event the individual is discharged from the nursing facility.

3. A portion of the individual’s income may be protected in the month of entry into a nursing facility. When income protection is applicable, there is no cost of care payable to the nursing facility for beneficiaries whose income is less than the institutional income limit. However, income above the amount that is one dollar ($1.00) less than the Medicaid institutional limit is payable to the Division of Medicaid for beneficiaries eligible under an Income Trust within thirty (30) days after receipt of the notice approving eligibility issued by the Division of Medicaid. The approval notice informs the Trustee of the amount payable for the month of entry.

4. For all subsequent month(s), if income of the individual is less than the individual’s cost of care at the nursing facility, all income of the individual, less authorized deductions, must be paid directly to the nursing facility. In that case no funds will be retained in the trust. If the income of the individual exceeds the cost of care at the nursing facility in any month the individual is eligible under an Income Trust, the trust must retain the income in excess of the cost of care until such time that payment of the accumulated Income Trust fund is requested by the Division of Medicaid.

5. Income Trusts for HCBS Waiver enrollees require that the trust must distribute to the individual, or for his/her benefit, an amount equal to not more than one dollar ($1.00) less than the then current Medicaid income limit as approved by the Division of Medicaid. The trust should not specify the amount of the individual’s income as this amount may change each year and the amount to be released from the trust will change to an amount equal to one dollar ($1.00) less than the current Medicaid income limit.

6. At the dissolution or termination of an Income Trust, the death of the individual, loss of the individual's Medicaid eligibility or in the event that the individual's income no longer exceeds the current Medicaid income limits, the trust agreement must provide that all amounts remaining in the trust up to an amount equal to the total medical assistance paid by the Division of Medicaid on behalf of the individual that has not previously been repaid will be paid to the Division of Medicaid.

7. The trust agreement must provide that at the time of each review of the individual's Medicaid eligibility (at least annually) while this trust is in existence, when notified by the Division of Medicaid, the Trustee must pay to the Division of Medicaid the amount that should be accumulated in the trust up to the amount expended by the Division of Medicaid on behalf of the individual that has not previously been repaid. Failure to make the requested payments will result in the loss of Medicaid eligibility for the individual.

8. The trust agreement must provide for an accounting of all receipts and disbursements of the trust during the prior calendar year when requested by the Division of Medicaid.

9. No fees are allowed to be paid to the Trustee for their service. In the event funds are retained in the trust, administrative fees are limited to ten dollars ($10.00) per month and are intended to cover any bank charges required to maintain the trust account.

10. Any disbursements not approved by the Division of Medicaid or provided for by the trust agreement will result in a loss of the trust exemption.

11. The trust agreement must specify an effective date. Unless the applicant is requesting retroactive eligibility of up to ninety (90) days, which will require that the applicant have the funds necessary to fund the trust for that period, the effective date will be the date of execution. If a retroactive date is being sought, the effective date will be determined through consultation with the Division of Medicaid's Regional Office. In that case the Regional Office should be consulted to determine the effective date prior to execution of the agreement.

D. An Income Trust will not be allowed on a temporary or intermittent basis except in instances when monthly excess income will be reduced at a future date. In such a case, an Income Trust will be allowed until such time as the excess monthly income no longer requires an Income Trust to allow eligibility. Income received less than monthly does not qualify as recurring excess monthly income that allows the use of an Income Trust. Income received irregularly or infrequently must be converted to monthly income before evaluating the need for an Income Trust.

E. The Division of Medicaid will provide model Income Trust agreements for individuals in need of an Income Trust. Model agreements are provided for individuals in institutional care and for individuals enrolled in an HCBS waiver that need an Income Trust in order to qualify for Medicaid based on income. The only changes to these legally binding documents that the Division of Medicaid will accept are to add language regarding a successor trustee or co-trustee. Changes must be approved by the Division of Medicaid prior to execution of the trust. In completing the Income Trust document, the individual cannot be the Trustee of the Income Trust.

F. It is possible to have an Income Trust during the time a transfer of assets penalty is in effect. Although the Division of Medicaid will not pay for an individual’s room and board during a transfer penalty period, the Income Trust will allow an individual with excess income who otherwise requires an Income Trust in order to be eligible to qualify for all Medicaid covered services other than payment of room and board and will allow the penalty period to be implemented.

G. An applicant or beneficiary requiring an Income Trust who has a court appointed conservator must furnish a copy of the Chancery Court Order authorizing the conservator to establish the Income Trust. The court must be made aware of the Income Trust requirement to pay the Division of Medicaid any accumulated trust funds up to an amount expended by the Division of Medicaid under the terms of the trust.

Source: 42 U.S.C. § 1396p; Miss. Code Ann. § 43-13-121.

History: Revised to correspond to SPA 16-0009 (eff. 01/01/2016) eff. 01/01/2017; Revised eff. 11/01/2014.

Part 103 Chapter 6: Annuities

Rule 6.1: Annuities Defined for Medicaid Purposes

A. Annuities – General (Applies Regardless of Purchase Date)

1. An annuity is defined as a contract or agreement by which one receives fixed, non-variable payments on an investment for a lifetime or a specified number of years.

    a) An individual may buy an annuity by making payments over a period of time or purchase an immediate annuity by paying a lump sum to a bank or insurance company in return for regular payments of income in certain amounts.

    b) When an annuity is "annuitized," the investment is converted into periodic income payments.

    c) These payments may continue for a fixed period of time or for as long as the individual or another beneficiary lives.

2. The annuitant is the person who will receive the payments during the term of the annuity. The annuity contract should identify the purchaser (owner) and the annuitant. The owner and the annuitant may or may not be the same; however, the policy described in this chapter applies to annuities purchased with the applicant's or recipient's own funds by the applicant/recipient, spouse, guardian or legal representative and which name the applicant/recipient or spouse as the annuitant.

3. An annuity may or may not include a remainder clause under which, if the annuitant dies, the contracting entity converts whatever is remaining in the annuity into a lump sum and pays it to a designated beneficiary.

4. Annuities, although usually purchased in order to provide a source of income for retirement, are occasionally used to shelter assets so that individuals purchasing them can be eligible for Medicaid. In order to avoid penalizing annuities validly purchased as part of a retirement plan but to capture those intended to shelter assets, a determination must be made with regard to the ultimate purpose of the annuity, i.e., whether or not it is part of a bona fide retirement plan.

5. Transfer of assets policy will be considered when an applicant or recipient's own funds are used to purchase an annuity for someone other than the applicant/recipient or their spouse. Likewise, if the right to receive payment is assigned to someone other than the applicant/recipient, spouse or to a minor or disabled child of the applicant, a transfer of assets will be considered.

B. Revocable Annuities (Applies Regardless of Purchase Date)

1. An annuity that is revocable is a countable resource unless it can be excluded under another provision, such as an income-producing asset meeting the 6% of equity provision for annuities purchased prior to 02/08/2006. Some annuities which appear irrevocable may be revocable with a penalty, reducing the total value. Generally, an annuity is revocable until the time the annuity is annuitized. Verification is needed to make a determination.

2. An annuity is a countable resource if it can be sold, cashed in, surrendered or revoked. An annuity that can be revoked is valued at the amount the purchaser would receive if canceled.

3. An annuity is a countable resource if it can be assigned to a new owner or the payments transferred to someone else. If an annuity is assignable, it is valued at the amount the annuity can be sold on the secondary market.

C. Irrevocable Annuities (Applies Regardless of Purchase Date)

1. If an annuity cannot be revoked or cashed in and the annuity contract does not allow the annuitant to transfer ownership or payments to someone else, the annuity is not a countable resource, although it may be a transfer of assets if purchased within the five (5) year look back period as outlined in this chapter.

2. If periodic payments are not being made, the individual must take all steps necessary to receive periodic payments as outlined in this chapter. If periodic payments are denied but a lump sum payment is possible, the lump sum amount is a countable resource.

D. Payments Produced by Annuities (Applies Regardless of Purchase Date)

1. Annuity payments paid to the annuitant are countable income regardless of whether the annuity itself is countable as an asset or treated as a disqualifying transfer. Certain conditions apply to the frequency and amount of the payments required in order for an annuity to avoid being treated as a transfer of assets, as described within this chapter.

E. Non-Annuitized Annuity (or any portion thereof) (Applies Regardless of Purchase Date)

1. The equity value of an annuity that is not annuitized or any part of an annuity that is not annuitized is counted as a countable resource. Verification is needed to make a determination.

Source: Social Security Act §1917 (c) and (d); Omnibus Reconciliation Act of 1993 (OBRA-93) § 13611(Rev. 1993); Deficit Reduction Act of 2005 §6011 and §6016 (Rev. 2006).

History: Revised eff. 11/01/2014.

Rule 6.2: Treatment of Annuities Purchased prior to 2/8/2006.

A. An annuity purchased before February 8, 2006, by or for an individual using that individual's assets will be considered a transfer of assets unless both of the following are met:

   1. The annuity produces a net annual return of at least 6% of its equity value; and

   2. Pays out principal and interest in equal monthly installments (no balloon payments) to the individual in sufficient amounts that the principal is paid out within the actuarial life expectancy of the individual seeking long term care services, including HCBS services.

B. An annuity that meets the criteria above will be excluded as a resource and the income paid by the annuity counted as income to the annuitant.

C. An annuity that does not meet the required conditions is a transfer of assets if purchased during the look back period. The income produced by the annuity counts as income to the annuitant during the transfer penalty period and the full payment period of the annuity.

Source: Social Security Act §1917(d); Omnibus Reconciliation Act of 1993 (OBRA-93) § 13611(Rev. 1993).

History: Revised eff. 11/01/2014.

Rule 6.3: Calculating the Uncompensated Value of Annuities Purchased prior to 02/08/2006.

The transfer penalty period for the purchase of an annuity prior to 02/08/2006 is calculated based on the value of the payments that would be beyond the actuarial life expectancy of the annuitant.

A. Divide the purchase price of the annuity by the number of payout years. This equals the annual rate.

B. Use the life expectancy tables published by the Office of the Actuary of the Social Security Administration to determine the number of years the individual is expected to live.

C. Subtract the number of years from the number of payout years.

D. Multiply the difference by the annual rate. This is the uncompensated value.

Source: Social Security Act §1917(c); Omnibus Reconciliation Act of 1993 (OBRA-93) § 13611(Rev. 1993).

History: Revised eff. 11/01/2014.

Rule 6.4: Treatment of Annuities Purchased on or after 2/8/2006.

The Deficit Reduction Act of 2005 (DRA), P.L. 109-171 adds new requirements to the Medicaid statute with respect to the treatment of annuities purchased on or after the date of enactment, February 8, 2006, by or on behalf of an annuitant who has applied for Medicaid for nursing facility services or other long-term care services. The DRA requirements also apply to certain other transactions involving annuities that take place on or after the date of enactment that are described below.

A. Disclosure Requirement

1. At each application and annual review for Medicaid eligibility, all long-term care applicants or beneficiaries are required to disclose any interest the applicant/beneficiary or community spouse may have in an annuity or similar financial instrument. Parents of a minor child must report any annuities in which the child may have an interest.

2. This disclosure is a condition for Medicaid eligibility for long-term care services, including nursing facility services and home and community-based waiver services (HCBS) and applies regardless of whether or not an annuity is irrevocable or is treated as a resource.

3. Refusal to disclose sufficient information related to any annuity will result in denial or termination of Medicaid eligibility, based on the applicant or beneficiary's failure to cooperate in accordance with existing Medicaid policies.

4. When an unreported annuity is discovered after eligibility has been established and after payment for long-term care services has been made, appropriate steps to terminate payment for long-term care services will be taken, including allowing for rebuttal and advance notice.

B. Annuity-Related Transactions Other than Purchases Made on or after February 8, 2006.

1. In addition to purchases of annuities, certain related transactions which occur to annuities on or after February 8, 2006, make an annuity, including one purchased before that date, subject to all provisions of the DRA that went into effect on February 8, 2006.

2. Any action taken on or after February 8, 2006, by the individual that changes the course of payment to be made by the annuity or the treatment of the income or principal of the annuity result in the annuity being treated as if purchased on or after February 8, 2006. These actions include:

   a) Additions of principal,

   b) Elective withdrawals,

   c) Requests to change the distribution of the annuity, and

   d) Elections to annuitize the contract and similar actions.

3. For annuities purchased prior to February 8, 2006, routine changes and automatic events that do not require any action or decision after the effective date are not considered

transactions that would subject the annuity to treatment under the DRA provisions. Routine changes could be notification of an address change or death or divorce of a remainder beneficiary and similar circumstances.

4. Changes which occur based on the terms of the annuity which existed prior to February 8, 2006, and which do not require a decision, election or action to take effect are also not subject to the DRA.

C. Requirement to Name the Division of Medicaid as Remainder Beneficiary on Annuities

1. The purchase of an annuity within the five (5) year look back-period and in all subsequent months will be treated as a transfer of assets unless the Division of Medicaid is named as a remainder beneficiary in the correct position as described herein.

a) This requirement applies to annuities purchased by the applicant or spouse and to certain annuity-related transactions other than purchases made by the applicant or spouse.

b) An annuity must name the Division of Medicaid as the remainder beneficiary in the first position for the total amount of Medicaid assistance paid on behalf of the institutionalized beneficiary who is the annuitant unless there is a community spouse and/or a minor or disabled child.

c) If there is a community spouse and/or minor or disabled child, the Division of Medicaid may be named in the next position after those individuals.

d) If the Division of Medicaid is named beneficiary after a community spouse and/or minor or disabled child, and any of those individuals or their representatives dispose of any of the remainder of the annuity for less than fair market value, the Division of Medicaid must then be named in the first position.

e) If verification is not provided which reflects the Division of Medicaid as remainder beneficiary in the correct position on annuities purchased by the institutionalized spouse or community spouse, the purchase of the annuity will be considered a transfer for less than fair market value. The full purchase value of the annuity will be considered the amount transferred.

2. An annuity purchased prior to the five (5) year look-back period is treated as a resource and/or income source, depending on the terms of the annuity as outlined in Miss. Admin Part 103, Rule 6.1.

D. Information Provided by the Division of Medicaid to Issuer

1. For any annuity disclosed for the applicant or community spouse, the Division of Medicaid must inform the issuer of the annuity of the Division of Medicaid's right to be named as a preferred remainder beneficiary and may require the issuer to notify the

Division of Medicaid regarding any changes in amount of income or principal being withdrawn from the annuity.

2. The issuer of the annuity may disclose information about the Division of Medicaid's position as remainder beneficiary to others who have a remainder interest in the annuity.

E. Treatment of Annuities in Determining Eligibility for Long-Term Care

1. In addition to the requirement for the Division of Medicaid to be named as a remainder beneficiary for an annuity purchased by the institutionalized spouse or community spouse within the five (5) year look-back period and in all subsequent months, an annuity purchased by or on behalf of an annuitant who has applied for medical assistance with respect to nursing facility or other long-term care services will not be treated as a transfer of assets if purchased within the five (5) year look-back period or any subsequent month if certain conditions are met which are described below.

2. The annuity meets one of the following conditions for employment-related annuities that are treated as retirement funds:

    a) It is an individual retirement annuity according to (b) or (q) of section 408 of the Internal Revenue Code (IRC) of 1986, or,

    b) The annuity is purchased with proceeds from an account or trust described in subsection (a), (c) or (p) of section 408 of the IRC, or,

    c) The annuity is purchased with proceeds from a simplified employee pension within the meaning of section 408 of the IRC, or,

    d) The annuity is purchased with the proceeds from a Roth Individual Retirement Account (IRA) described in section 408A of the IRC.

3. The purchase of an annuity not described in Miss. Admin. Code Part 103, Rule 6.4.E.2. above will be considered a transfer of assets unless it meets all of the following requirements for every month in which eligibility is being considered:

    a) The annuity is irrevocable and non-assignable, and,

    b) The annuity is actuarially sound as outlined in Miss. Admin. Code Part 103, Rule 6.5., and

    c) The annuity is providing payments in equal amounts during the term of the annuity with no deferred or balloon payments, and

    d) The annuity is issued by a business licensed and approved to issue commercial annuities in the state in which the annuity was purchased; and

e) The Division of Medicaid has been named as beneficiary of the annuity in the correct position as outlined in Miss. Admin. Code Part 103, Rule 6.4.C. above.

4. The purchase of a single-premium life insurance policy, endowment policy or similar instrument which has no cash value, and for which the individual receives no valuable consideration will be considered a transfer of assets if purchased within the five (5) year look-back period or any subsequent month.

5. To determine that an annuity is established under any of the various provisions of the IRC referenced above and/or meets all of the conditions required to be excluded from a transfer of assets penalty or counted as a resource, rely on verification from the financial institution, employer or employer association that issued the annuity. The burden of proof is on the individual or representative to produce needed documentation. The individual or representative must produce the annuity contract in order to evaluate the annuity. Without documentation, the purchase of an annuity will be considered a transfer of assets subject to a transfer penalty in the amount of the full purchase value of the annuity.

6. An annuity that does not meet the conditions cited above, or an annuity that is not changed to meet the necessary requirements and/or documentation that is not provided relating to an annuity will result in the annuity being treated as a transfer of assets if purchased within the five (5) year look-back period or any subsequent month using the full purchase value as the amount transferred.

7. Even if an annuity is determined to meet the requirements above and the purchase is not treated as a transfer, if the annuity or income stream from the annuity is transferred, that transfer may be subject to a penalty with the exception of transfers to a spouse or to another individual for the sole benefit of the spouse, to a minor or disabled child or to a Special Needs Trust.

F. Consideration of Income from an Annuity

1. An annuity that does not comply with the requirements described in this chapter will be treated as a transfer of assets. During the penalty period, the income produced by the annuity counts as income to the individual or spouse, as appropriate, in determining eligibility and post-eligibility cost of care and spousal allocation, as applicable.

2. The income produced by an annuity that complies with the requirements in this chapter counts as income to the individual or spouse, as appropriate, in determining eligibility and post-eligibility cost of care and spousal allocation, as applicable.

G. Requirements for the Community Spouse

1. Annuities purchased by the community spouse on or after February 8, 2006, must name the Division of Medicaid as the preferred remainder beneficiary.

2. The institutionalized spouse may not be named as a beneficiary ahead of the Division of Medicaid.

3. However, if there is a minor or disabled child, the child may be named as first beneficiary and the Division of Medicaid must be named in the next position after those individuals.

4. It does not matter if the community spouse's annuity is actuarially sound or provides payments in approximately equal amounts with no deferred or balloon payments. These provisions apply only to annuities purchased by or on behalf of the individual who has applied for medical assistance, not a community spouse.

H. Estate Recovery

1. Annuities purchased on or after February 8, 2006, will be subject to estate recovery.

2. The rules for the institutional spouse and the community spouse are the same for annuities purchased prior to February 8, 2006.

Source: 42 U.S.C. § 1396p; Miss. Code Ann. § 43-13-121.

History: Revised to correspond to SPA 16-0009 (eff. 01/01/2016) eff. 01/01/2017; Revised eff. 11/01/2014.

Rule 6.5: Determining Whether an Annuity (Purchased After 02/08/2006) is Actuarially Sound

A determination must be made on whether the purchase of annuities, other than qualifying IRS annuities, is treated as a transfer of assets for less than fair market value.

A. If the expected return on the annuity is commensurate with a reasonable estimate of the life expectancy of the annuitant, the annuity can be deemed actuarially sound. The life expectancy tables published by the Office of the Actuary of the Security Administration are used.

B. The average number of years of expected life remaining for the individual must coincide with the life of the annuity. If the individual is not reasonably expected to live longer than the guarantee period of the annuity, the individual will not receive fair market value of the annuity based on the projected return.

C. If this is the case, the annuity is not actuarially sound and a transfer of assets for less than fair market value has taken place, subjecting the individual to a penalty.

D. The penalty is assessed based on a transfer of assets that is considered to have occurred at the time the annuity was purchased, using the full purchase price as the amount transferred.

Source: Social Security Act §1917(c); Deficit Reduction Act of 2005 §6011 and §6016 (Rev. 2006).

History: Revised eff. 11/01/2014.

Part 103 Chapter 7: OBRA-93 and DRA Transfer Policy

Rule 7.1: OBRA-93 and DRA Transfer Policy Principles.

A. General.

1. Section 13611 of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66), herein referred to as OBRA-93, amended Section 1917(c)(1) of the Social Security Act to revise transfer of assets policy previously described in the Medicare Catastrophic Coverage Act (MCCA) of 1988 (P.L. 100-360). Assets disposed of on or before the enactment of OBRA-93, which was August 10, 1993, will be evaluated under MCCA policy discussed in Miss. Admin. Code Part 103, Chapter 11. Assets disposed of on or after August 11, 1993, will be evaluated under policy mandated by OBRA-93 and revised by the Deficit Reduction Act of 2005, effective February 8, 2006.

B. Definitions Applicable to OBRA and DRA Transfers and Trusts.

1. OBRA-93 added and amended the following definitions of terms used in conjunction with transfer and trust policy:

   a) Individual.

      1) As used in this instruction, the term “individual” includes the individual himself or herself, as well as:

         (a) The individual’s spouse, where the spouse is acting in the place or on behalf of the individual;

         (b) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual’s spouse, and

         (c) Any person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual’s spouse.

   b) Spouses.

      1) This is a person who is considered legally married to an individual under the laws of Mississippi.

   c) Assets.

      1) For purposes of this section, assets include all income and resources of the individual and of the individual’s spouse. This includes income or resources

which the individual or the individual's spouse is entitled to but does not receive because of any action taken to direct the assets elsewhere by:

(a) The individual or the individual's spouse;

(b) A person, including a court or administrative body, with legal authority to act in place or on behalf of the individual or the individual's spouse, or

(c) Any person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

d) For purposes of this section, the term "assets an individual or spouse is entitled to" includes assets to which the individual is entitled or would be entitled if action had not been taken to avoid receiving the assets. The following are examples of actions which would cause income or resources not be received:

1) Irrevocably waiving pension income;

2) Waiving the right to receive an inheritance;

3) Not accepting or accessing injury settlements;

4) Tort settlements which are diverted by the defendant into a trust or similar device to be held for the benefit of an individual who is plaintiff; and

5) Refusal to take legal action to obtain a court ordered payment that is not being paid, such as child support or alimony.

(a) The above actions could result in an uncompensated transfer of assets. However, the specific circumstances of each case must be examined in order to determine if a transfer has occurred.

e) Resources.

1) For purposes of this section, the definition of resources is the same definition used by the Supplemental Security Income (SSI) program, except that home property loses its exclusion if home property is transferred or ownership interest is reduced for institutionalized individuals, as addressed in transfer of assets rules.

2) In determining whether a transfer of assets or a trust involves an SSI-countable resource, use those resource exclusions and disregards used by the SSI program, except for the exclusion of the home for institutionalized individuals. Income, for purposes of this section, is the same definition used by the SSI program. In determining whether a transfer of assets involves SSI- countable income, take into account those income exclusions and disregards used by the SSI program. This is discussed in more detail in the chapter on income.

f) For the Sole Benefit of.

1) A transfer is considered to be for the sole benefit of a spouse, blind or disabled child or a disabled individual if the transfer is arranged in such a way that no individual or entity except the spouse, blind or disabled child or disabled individual can benefit from the assets transferred in anyway, whether at the time of the transfer or at any time in the future.

g) For the Sole Benefit Of.

1) Similarly, a trust is considered to be established for the sole benefit of a spouse, blind or disabled child, or disabled individual if the trust benefits no one but that individual, whether at the time the trust is established or any time in the future. However, the trust may provide for reasonable compensation for a trustee or trustees to manage the trust, as well as for reasonable cost associated with investing or otherwise managing the funds or property in the trust.

(a) A transfer, transfer instrument, or trust that provides for funds or property to pass to a beneficiary who is not the spouse, blind or disabled child or disabled individual is not considered to be established for the sole benefit of one of these individuals

(b) In order for a transfer or trust to be considered to be for the sole benefit of one of these individuals, the instrument or document must provide for the spending of the funds involved for the benefit of the individual on a basis that is actuarially sound based on the life expectancy of the individual involved.

(c) When the instrument or document does not so provide, any potential exemption from penalty consideration for eligibility purposes is void.

(d) An exception to this requirement exists for trusts discussed in "Exemptions to Treatment of Trusts." Under these exceptions, the trust instrument must provide that any funds remaining in the trust upon the death of the individual must go to the Division of Medicaid, up to the amount of Medicaid benefits paid on the individual's behalf. When these exceptions require that the trust be for the sole benefit of an individual, the restriction discussed in the previous paragraph does not apply when the trust instrument designates the Division of Medicaid as the recipient of funds from the trust.

(e) Also, the trust may provide for disbursal of funds to other beneficiaries, provided the trust does not permit such disbursals until the State's claim is satisfied.

C. Transfer Penalty Definitions.

1. General.

a) Under the transfer of assets provisions in Section 1917(c) of the Act, as amended by OBRA 1993, coverage of certain Medicaid services to otherwise eligible institutionalized individuals who transfer (or whose spouses transfer) assets for less than fair market value must be denied. This same transfer prohibition is applicable to HCBS individuals and their spouses.

2. Definitions.

a) The following definitions apply to transfers of assets.

1) Fair Market Value.

(a) Fair market value is an estimate of the value of an asset, if sold at the prevailing price at the time it was actually transferred. Value is based on criteria used in appraising the value of assets for the purpose of determining Medicaid eligibility.

(b) For an asset to be considered transferred for fair market value or to be considered to be transferred for valuable consideration, the compensation received for the asset must be in a tangible form with intrinsic value.

(c) A transfer for love and consideration, for example, is not considered a transfer for fair market value. Also, while relatives and family members legitimately can be paid for care they provide to the individual under an acceptable personal services contract, Medicaid presumes that services provided for free at the time were intended to be provided without compensation. Refer to the full discussion of personal services contracts. Thus, a transfer to a relative for care provided for free in the past is a transfer of assets for less than fair market value. However, an individual can rebut this presumption with tangible evidence that is acceptable, such as a written repayment schedule agreed to at the time services were provided.

2) Valuable Consideration.

(a) Valuable consideration means that an individual receives in exchange for his or her right or interest in an asset some act, object, service or other benefit which has a tangible and/or intrinsic value to the individual that is roughly equivalent to or greater than the value of the transferred asset.

3) Uncompensated Value.

(a) The uncompensated value is the difference between the fair market at the time of transfer (less any outstanding loans, mortgages, or other encumbrances on the asset) and the amount received for the asset.

4) Institutionalized Individual.

(a) An institutionalized individual is an individual who is:

(1) An inpatient in a nursing facility;

(2) An inpatient in a medical institution for who payment is based on a level of care provided in a nursing facility; or

(3) An inpatient in an ICF-MR facility.

5) HCBS Individual.

(a) A participant in a long-term care alternative program. Although not institutionalized, this individual is considered to be receiving long-term care services. The eligibility criteria for the HCBS individual are the same as those for the institutionalized person, including application of transfer policy.

D. Transfer of Asset Rules.

1. Transfer of asset rules apply to the following:

a) Resources.

1) Any real or personal property, annuity, liquid resource, or funds owned by the individual and his spouse that is given away, sold for less than fair market value, or used to purchase a promissory note, loan, mortgage, or life estate, waiving the right to receive any potential future resource that the individual might be entitled.

b) Income.

1) Any earned or unearned income (including lump sum) of the individual and his or her spouse that is transferred to another individual in the month of receipt, waiving the right to receive any potential future income that the individual might be entitled.

E. Effective Date of OBRA-93 Transfer Policy.

1. All transfers made on or after August 11, 1993, are treated under OBRA-93 rules with DRA amendments effective February 8, 2006.

2. Transfers made before August 11, 1993, are treated under policy in effect prior to OBRA-93.

3. While this section applies to transfers made on or after August 11, 1993, penalties for transfers for less than fair market value under OBRA-93 cannot be applied to services provided before October 1, 1993.

4. Apply pre-OBRA-1993 rules regarding transfers of assets to transfers made on or after August 11, 1993, and before October 1, 1993.

5. As indicated above, the effective date of all DRA changes is February 8, 2006. Assets disposed of on or after February 8, 2006, will be evaluated under OBRA-93 and any changes mandated by the DRA. The DRA changes are noted.

F. Individuals to Whom Transfer of Assets Applies.

1. Apply these provisions when an institutionalized individual, HCBS waiver individual or the individual's spouse disposes of assets for less than fair market value on or after the look-back date explained below.

2. For purposes of this section, assets transferred by a parent, guardian, court or administrative body, or anyone acting in place of or on behalf of or at the request or direction of the individual or spouse are considered to be transferred by the individual or spouse.

G. Verification and Documentation.

1. In addition to the initial application, look for a transfer of assets at the time of review, when a transfer is reported, or when there is a request for a change to institutional or HCBS coverage. When there has been a transfer of assets during the look-back period, the following documentation must be obtained:

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

   b) The name of the person who transferred the asset (client, spouse, legal representative.)

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

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

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

f) The date the asset was transferred.

g) Whether the applicant was the sole owner of the asset at the time of the transfer if not the name of any co-owners.

h) If applicable, documentary evidence that the individual intended to dispose of an asset at fair market value or information from knowledgeable sources to support the value (if any) at which the asset was disposed.

H. Look Back Period.

1. The Deficit Reduction Act of 2005 changed the look back period to five (5) years sixty (60) months effective for institutional applications filed on or after February 8, 2006.

2. The sixty (60) month rule applies to any type of asset transferred including assets placed in a trust. Transfers that took place during the five (5) year look back period, but prior to February 8, 2006, will be evaluated using previous transfer of assets policy and the penalty period is calculated under the rules in effect at the time of the transfer.

3. Application of the DRA transfer rules is being phased in over the sixty (60) month period starting February 8, 2006. Because the DRA implementation date will not change, the length of the look back period to evaluate transfers under DRA rules will increase each month by one month until it reaches sixty (60) months in February 2011.

4. Under OBRA-93, the look-back period for transfers other than transfers to a trust is a date that is thirty-six (36) months from the date the individual both is an institutionalized individual and has applied for Medicaid.

I. Applying the Transfer Penalty.

1. Denial of coverage or services because assets were transferred for less than Fair Market Value is known as a transfer penalty.

2. Under the DRA, transfer penalties are applied differently to institutionalized individuals and those applying for, or receiving, Home and Community Based Services.

   a) The penalty period for an institutionalized applicant begins when the individual is receiving an institutional level of care for which he/she would be eligible if not for imposition of the transfer penalty. If the individual is otherwise eligible for Medicaid, he/she may receive Medicaid for all services except:

      1) Nursing facility services;

      2) Nursing facility services provided in an institution that is equivalent to that of nursing facility services;

b) An application for Home and Community Based Services (HCBS) cannot trigger the start of a transfer penalty period. As indicated, a penalty can only start when an individual is receiving an institutional level of care for which he/she would be eligible if not for imposition of the transfer penalty.

1) The transfer penalty does not allow an individual to enter into an HCBS waiver program; therefore, the start date for the penalty cannot be triggered and the individual remains ineligible as long as the transfer is within the five (5) year look back period.

3. If an individual or his/her spouse has a penalty as the result of a transfer, the penalty is imposed as follows:

a) Nursing Home Assistance:

1) Vendor payment (room and board) is denied or terminated for the duration of the penalty period; and

2) Medicaid is approved for all other services.

b) Home and Community Based Services

1) If Medicaid eligibility is dependent on participating in the waiver, the application is denied or the case is closed until the transfer is outside the five (5) year look back period;

2) The individual can be approved in a Medicare Savings Program (QMB, SLMB, QI) if all other criteria are met.

J. Multiple Periods of Institutionalization and Multiple Applications.

1. When an individual has multiple periods of institutionalization or has made multiple applications for Medicaid (unless the application was withdrawn), the look-back date is based on a baseline date that is the first date upon which the individual has both applied for Medicaid and is institutionalized.

a) Each individual has only one look-back date, regardless of the number of periods of institutionalization, applications for Medicaid (the exception is a withdrawn application), or periods of eligibility or transfers of assets.

K. Calculation and Imposition of the Transfer Penalty

1. Effective 02/08/06, the date of the penalty will begin with the later of the first day of a month during which assets have been transferred for less than fair market value; or

2. The date on which the individual is eligible for medical assistance based on all factors of eligibility being met and is receiving institutional level of care services (based on an approved application for such services) that, were it not for the imposition of the penalty period would be covered by Medicaid.

3. Recipients are prohibited from transferring resources after approval.

    a) For transfers discovered after approval, the penalty is imposed beginning with the month following the advance notice and rebuttal period.

4. An improper payment report will be prepared for any ineligible months before the penalty is imposed. If the penalty period has ended, the improper payment would cover all months of the penalty period.

5. For applications on or after 2-8-06~~,~~ handled under DRA rules, the penalty will begin the month that Long Term Care services are requested if the individual is otherwise eligible for Medicaid.

6. For application prior to 02/08/06, transfers are considered under the provisions of OBRA-93. The date of the penalty period is the first day of the first month during or after which assets have been transferred for less than fair market value and which does not occur in any other periods of ineligibility under this policy.

7. The number of months of ineligibility for an institutionalized individual shall be equal to:

    a) The total, cumulative uncompensated value (UV) of all assets transferred by the individual (or individual's spouse) on or after the look back period divided by:

    b) The average monthly cost to a private pay patient for nursing facility services in Mississippi at the time of application for new applicants. For active recipients, the average cost to a private pay patient at the time the penalty is being calculated is used.

    c) The average monthly cost referenced in b) above shall be calculated annually based on the average daily per diem rate from the Division of Medicaid cost reports for the previous year. Each annual calculation shall be made and distributed to Division of Medicaid staff by July 1 of each year.

8. Under the DRA, when the amount of the transfer is less than the average monthly cost of nursing facility care, a penalty is imposed for less than a full month. This is called a partial month penalty.

9. Rounding down or otherwise disregarding any fractional part of an ineligibility period when determining the penalty period is not allowed effective 02/08/06.

10. Effective 02/08/06, the average daily per diem applicable to the transfer is used in determining the partial month penalty period. The average daily per diem is calculated using the average daily cost to a private pay patient as described in 6.above for the procedures used to determine the average monthly cost.

L. HCBS and the Partial Month Penalty

1. If a transfer is discovered in an ongoing waiver case, the penalty period will be calculated the same as nursing home cases with the exception of the partial month.

2. The penalty begins the month the transfer occurred; however, the “partial month’ is extended to the end of the month for HCBS cases.

3. If the penalty period has not expired, the case will be closed and an improper payment report will be completed for the prior ineligible months.

4. If the penalty period has expired, an improper payment will be completed for the transfer penalty period and the case will remain open. The client must be given the opportunity for rebuttal prior to preparing the improper payment report.

M. Determining the Penalty When Penalty Periods Overlap.

1. All countable transfers occurring during the look-back period are totaled and the penalty period determined by dividing the total UV by the average private pay rate.

   a) The first month of the transfer penalty period is the month in which the first countable transfer occurred.

2. Transfers that occur after a penalty period is in effect are added in full to the end of the penalty period currently in effect.

3. There is no limit on the number of months a transfer penalty can be imposed.

4. The penalty period is always determined by the total UV calculated during the look back period.

N. Determining the Penalty When Penalty Periods Do Not Overlap

1. When multiple transfers are made so that the penalty periods for each do not overlap, treat each transfer as a separate event with its own penalty period.

2. An exception is consecutive transfers that occur on a regular basis must be calculated together.

O. Types of Transfer of Assets

1. Transfer of Income.

   a) Income, in addition to resources, is considered to be an asset for transfer (and trust) purposes.

      1) When an individual's income is given or assigned in some manner to another person, such a gift or assignment can be considered a transfer of assets for less than fair market value.

      2) There must be a determination as to whether amounts of regularly scheduled income or lump sum payments, which the individual received or would otherwise have received, have been transferred.

      3) When a single lump sum payment is transferred, the penalty period is calculated on the basis of the value of the lump sum payment.

      4) When a stream of income, (i.e., income received in a regular basis, such as a pension) is transferred over multiple months, calculate the penalty period by adding the income payments together and begin the penalty period on the earliest date that would otherwise apply if the transfer had been made in a single lump sum.

      5) When the transfer involves a right to income ~~(~~such as when a private pension is placed in a trust) determine ~~of~~ the total amount of income expected to be transferred during the individual's life, based on an actuarial projection of the individual's life expectancy, and calculate the penalty on the basis of the projected total income.

2. Conveyance for Less than Fair Market Value.

   a) Giving away or conveying an asset for less than fair market value within the look back period for an institutionalized or HCBS individual may be considered a transfer of assets.

3. Waiving an Inheritance or Other Entitled Benefit.

   a) Refusal to accept an inheritance or refusal to take legal action to obtain benefits an individual is entitled to receive may be considered a transfer of assets.

4. Annuities When Expected Returns Are less than Cost of Annuity.

   a) Establishing or purchasing annuities in which anticipated payments based on life expectancy of the individual are less than the cost of the annuity. The policy on annuities is explained in detail in Miss. Admin. Code Part 103, Chapter 6.

5. Irrevocable Burial Contracts Under Certain Circumstances.

a) An irrevocable burial contract or similar device established by the funeral home/director is considered a transfer of assets if the cost to the individual or spouse exceeds the value of the merchandise and/or services.

b) An itemized statement must be obtained to assist in determining whether the costs are commensurate with the value of the merchandise and/or services.

6. Transfers by a Spouse. Transfers made by the Community Spouse (CS) will create a penalty for the Institutionalized Spouse (IS).

    a) Transfers by the CS after the IS has been determined eligible will also create a penalty for the IS.

    b) If the CS becomes institutionalized and applies for Medicaid during the penalty period, the penalty must be apportioned between both spouses.

    c) If the IS has already served the penalty in full, it will not be applied a second time.

    d) If one member of the couple should leave the facility or die, the remaining portion of the penalty must be served by the remaining institutionalized spouse.

7. Transfers of Jointly-Held Assets

    a) In the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person that reduces or eliminates such individual's ownership or control of such asset.

    b) If placing another person's name on the account or asset actually limits the individual's right to sell or otherwise dispose of the assist (e.g., the addition of another person's name requires that the person agree to the sale or disposal of the asset where no such agreement was necessary before), such placement constitutes a transfer of assets.

    c) Regular Medicaid rules are used to determine what portion of a jointly held asset is presumed to belong to an applicant or recipient. This portion is subject to a transfer penalty if it is withdrawn by a joint owner.

8. Personal Service Contracts.

    a) A personal service contract should be a written contract between the recipient/applicant and the personal services provider.

b) The contract should be executed prior to the date any payments have been made to the provider.

c) If payments have been made prior to the date of the contract these payments should be considered as transfers.

d) Once an individual begins receipt of Medicaid Long Term Care (LTC) services, the individual's personal and medical needs are considered to be met by the LTC provider.

e) Payments to other individuals for services received after the individual enters LTC are considered an uncompensated transfer for Medicaid purposes.

f) The contract should be very specific as to services to be provided and the payment to be paid for the services.

g) Each service/duty should be listed with the number of hours for each service with the amount charged for each service.

h) If the contract calls for a payment of a specific amount per hour, this amount should be reasonable.

    1) Example: Nursing charges will not be allowed for non-nurses and CPA charges will not be allowed for persons who are not CPA's. Documentation of the services performed and the number of hours for each service should be submitted.

    2) All charges will be evaluated based on usual and customary charges for services in the community.

    3) The contract must not provide for payment of compensation for future services. All payments should be made only as the services are actually rendered.

    4) Any payments made for future service should be considered as transfers Contracts indicating a prior date but no payments have ever been made should be questioned as to why the payments for services were not made when the services were performed.

    5) This type of arrangement indicates services were provided for free. Services provided for free are not under obligation to be paid at a future unknown date.

9. Purchase of a Life Estate in Another Individual's Home

The purchase of a life estate interest in another individual's home is considered a transfer of assets unless the purchaser resides in the home for a period of at least one (1) year after the date of purchase.

10. Promissory Notes, Loans or Mortgages

The term “assets” includes funds used to purchase a promissory note, loan or mortgage unless such note, loan or mortgage is determined to be actuarially sound, provides for payments to be made in equal amounts during the term of the loan, with no deferral or balloon payments, and prohibits the cancellation of the balance upon the death of the lender. A note, loan or mortgage not meeting these requirements is a transfer of assets in the amount of the outstanding balance due as of the date of the individual’s application.

P. Exceptions

1. Home Property

a) The transfer penalty will not apply to the transfer of home property by an institutionalized individual to the following family members of such individual:

(1) The individual’s spouse or child under age twenty-one (21) or a disabled or blind adult child (Disability must be established and age verified); or

(2) A sibling who is part owner of the home who lived in the home for one (1) year prior to the individual entering a nursing facility; or

(3) A child who lived in the home for two (2) years before the individual entered a nursing facility and provided care to the individual which permitted the individual to remain at home.

(a) Sufficient documentary information must be provided to make a determination that:

(i) The child resided in the home for the required length of time. (This may include statements from knowledgeable individuals when other verification is not available.)

(ii) Whether the child provided care which enabled the parent to remain at home.

(iii) If the child was employed outside the home, the arrangements for care while the child was away must be determined.

2. Non-Home Property

a) The transfer penalty will not apply to the transfer of any type of non-home asset in the following situations:

(1) Assets transferred to the individual’s spouse or to another for the sole benefit of the individual’s spouse.

(2) Assets transferred from the individual's spouse to another for the sole benefit of the individual's spouse;

(3) Assets transferred to the individual's child under age twenty-one (21) or a disabled adult child or the individual's spouse; or blind adult child. If the disabled adult child is not receiving a social security disability payment, a disability determination is required;

(4) Assets transferred to a Special Needs Trust established solely for the benefit of a disabled applicant less than sixty-five (65) years of age.

(5) The resource was excluded under ongoing policy at the time of transfer.

b) In determining whether an asset was transferred for the sole benefit of a spouse, child, or disabled individual, ensure that the transfer was accomplished via a written instrument of transfer (e.g., a trust document) which legally binds the parties to a specified course of action and which clearly sets out the conditions under which the transfer was made, as well as who can benefit from the transfer.

(1) A transfer without such a document cannot be said to have been made for the sole benefit of the spouse, child, or disabled individual, since there is no way to establish, without a document, that only the specified individuals will benefit from the transfer.

3. An individual shall not be ineligible for medical assistance if an acceptable rebuttal is submitted and a satisfactory showing is made to the Division of Medicaid that:

a) The individual intended to dispose of the assets either at fair market value or for other valuable consideration;

b) The assets were transferred exclusively for a purpose other than to qualify for medical assistance;

c) All assets transferred for less than fair market value have been returned to the individual; or

d) The Division of Medicaid determines that denial of eligibility would work an undue hardship on the individual.

(1) The transfer penalty will not apply if undue hardship exists. Undue hardship exists when:

(a) Application of the transfer penalty would deprive the individual of medical care such that his/her health or his/her life would be endangered.

(b) Application of the transfer penalty would deprive the individual of food, clothing shelter, or other necessities of life and cause severe deprivation.

(c) The applicant or spouse or representative has exhausted all legal action to have the transferred assets that caused the penalty returned.

e) Undue hardship does not exist when:

(1) Application of the application of the transfer of assets provision merely causes the individual inconvenience or when such application might restrict his or her lifestyle but would not put him her at risk of serious deprivation.

(2) The assets were transferred to community spouse and the community spouse refuses to cooperate in making the resource available to the institutional spouse.

(3) The resource was transferred to a person (spouse, child, or other person who was handling the financial affairs of the client or to the spouse or children of a person handling the financial affairs of the client unless it is established that the transferred funds cannot be recovered even through exhaustive legal measures.

f) Each case situation must be reviewed individually to determine if Undue Hardship exists. Generally, this provision is limited to financially and medically needy individuals with no possible means of recovering the transferred assets.

g) A hardship waiver may be requested by a facility. Effective February 8, 2006, an undue hardship waiver may be requested by the facility in which the person resides on behalf of the individual if the facility has the individual's consent, or their person representative's consent.

(1) The hardship waiver is for the recipient, not the hardship of the facility.

(2) The agency provides that, while an application for an undue hardship waiver is pending in the case of an individual, who is a resident of a nursing facility, payments to the nursing facility to hold the bed for the individual will be made for a period not to exceed thirty (30) days.

4. Exception for Transfers to Community Spouse or Third Party.

a) Section 1924 of the Act sets forth the requirements for treatment of income and resources where there is an individual in a medical institution with a spouse still living in the community.

b) This section of the Act provides for apportioning income and resources between the institutional spouse and the community spouse so that the community spouse does not become impoverished because the individual is in a medical institution.

c) The exceptions to the transfer of assets penalties regarding inter-spousal transfers and transfers to a third party for the sole benefit of a spouse apply even under the spousal impoverishment provisions.

d) The institutional spouse can transfer unlimited assets to the community when transfers between spouses are involved.

e) The unlimited transfer exception should have little effect on the eligibility determination, primarily because resources belonging to both spouses are combined in determining eligibility for the institutionalized spouse.

f) Resources transferred to a community spouse are still considered available to the institutionalized spouse for eligibility purposes.

g) The exception for transfers to a third party for the sole benefit of the spouse may have greater impact on eligibility because resources may potentially be placed beyond the reach of either spouse and thus cannot be counted for eligibility purposes.

h) For the exception to be applicable, the definition of what is for the sole benefit of the spouse must be fully met.

i) This definition is fairly restrictive, in that it requires that any transferred funds spent for the benefit of the spouse within a time-frame actuarially commensurate with the spouse's life expectancy.

j) If this requirement is not met, this exemption is void, and a transfer to a third party may then be subject to a transfer penalty.

Q. Transfer of Assets Notification

1. The applicant/client will be notified regarding countable transfers and the penalty period.

2. The transfer and the penalty must be clearly indicated.

3. The notice should allow the client or representative time to present evidence to show that the transfer should not count.

    a) Evidence should include a written rebuttal plus any pertinent documentary evidence.

    b) If no rebuttal is offered, the penalty will be applied and the appropriate adverse action notice.

4. Individuals in nursing homes remain eligible for all other Medicaid services if the transfer penalty is the only factor of ineligibility; therefore, payment of nursing home services only will be denied or terminated.

5. If the individual is ineligible on other factors as well as the transfer, the application or case must be denied or terminated.

6. If Medicaid eligibility is dependent on participating in the HCBS waiver program, the application is denied or the case is closed until the transfer is outside the five (5) year look back period;

    a) These individuals can be approved in a Medicare Savings Program (QMB, SLMB, QI) if all other criteria are met.

R. Rebuttal Process

1. Written rebuttals require State Office review and approval of the action to be taken.

S. Return of a Transferred Resource

1. If a transferred resource is returned to, or if compensation is received by, the institutionalized individual, the UV is no longer an issue or is reduced as of the date of the return.

2. The resource or compensation is evaluated according to normal resource rules in the month of return. Any portion of a transferred resource that is not returned continues to count as UV which means the penalty period must be re-evaluated.

T. Recalculation of a Penalty Period

1. A penalty period must be recalculated from the month a portion of the resource is returned or additional compensation is received. If the resource is returned, normal resource rules apply in determining Medicaid eligibility.

U. Transfer Penalty Involving SSI Months

1. The transfer penalty can be imposed during months that an individual receives SSI or is SSI eligible in a nursing home.

2. Notices for SSI eligibles must not be sent verifying eligibility for nursing facility services until the possibility of any transfers have been developed.

Source: Miss. Code Ann. § 43-13-121.1; Social Security Act §1917(c); Medicare Catastrophic Coverage Act (MCCA) of 1988 (P.L. 100-360); Omnibus Reconciliation Act (OBRA-93) of 1993 §13611 (Rev. 1993); Deficit Reduction Act of 2005 §6011 and §6016 (Rev. 2006).

History: Revised eff. 11/01/2014.

Part 103 Chapter 8: Medicaid Qualifying Trusts (MQT)

Rule 8.1 Treatment of Medicaid Qualifying Trusts (MQT).

A. The provisions in this section are applicable to any trust or similar legal device established on or after March 1, 1987, through August 10, 1993, that meet MQT criteria. If MQT criteria are not met, defer to Standard Trust policy.

1. A Medicaid Qualifying Trust is a trust or similar device, which:

a) Is established (other than by will) with the applicant/recipient's own funds, by the applicant/recipient (or spouse);

b) Names the applicant/recipient as the trust beneficiary for all or part of the payments from the trus; and

c) Permits the trustee to exercise any discretion with respect to the distribution of such payments to the individual.

2. The MQT provision is applied without regard to whether or not:

a) The MQT is revocable or irrevocable; or

b) The MQT is established for purposes other than to qualify for Medicaid; or

c) The discretion of the trustee is actually exercised.

3. In determining whether an MQT exists, look for 3 main components:

a) The grantor is the Medicaid client or his representative (e.g., spouse, parent, guardian, conservator or anyone holding power of attorney for the client);

b) The trust was established with property belonging to the client; and

c) The client is at least one of the beneficiaries of the trust.

4. In addition, the following principles must be considered:

a) The client is considered the grantor even if the trust was established pursuant to court order issued upon the petition of the client or his representative. In this situation, the court acts as the client's agent in establishing the trust.

b) It is not necessary that there be a trust agreement, as defined by state law, for MQT trust policies to apply. MQT trust policies apply to "similar legal devices" or arrangements having all of the characteristics of an MQT, except there is no actual trust instrument.

1) Examples are:

(a) Escrow accounts;

(b) Savings accounts;

(c) Pension funds;

(d) Annuities;

(e) Investment accounts; and

(f) Other accounts managed by agent with fiduciary obligations, such as conservatorships or guardianships.

c) The MQT provision does not apply to trust agreements established by will. These trusts are treated as standard trusts. However, if a client inherits resources and in turn establishes a trust, the MQT provision could apply.

5. Each trust document must be reviewed individually to determine the resource treatment of the trust, but in general use the following criteria to determine resource treatment:

a) Revocable MQT.

1) The entire corpus of the trust is an available resource to the client. Resources comprising the corpus are subject to individual resource exclusions, if applicable, since the client can access these resources. An exception is exclusion of the home for institutionalized recipients. Home property loses its excluded status when transferred into an MQT.

b) Irrevocable MQT.

1) The countable amount of the corpus is the maximum amount the trustee can disburse to (or for the benefit of) the client, using his full discretionary power under the terms of the trust. Resources transferred to an irrevocable MQT lose individual resource consideration.

(a) Example: Home property transferred to such a trust can no longer be excluded as home property but is included in the value of the corpus.

2) If the trustee has unrestricted access to the corpus and has discretionary power to disburse the entire corpus to the client (or to use it for the client's benefit), then the entire corpus is an available resource to the client.

3) If the trust does not specify an amount for distribution from the corpus of the trust or from income produced by the corpus, but the trustee has access to and

use of both corpus and income, the entire amount is an available resource to the client.

4) If the trust permits a specified amount of trust income to be distributed to the client (or to be used for his benefit), but these distributions are not made, then client's countable resources increase cumulatively by the undistributed amount.

6. In general use the following criteria to determine treatment of income from an MQT:

a) Amounts of trust income distributed to the client are counted as income when distributed.

b) Amounts of trust income distributed to third parties for the client's benefit (including payments for medical services) are countable income when distributed.

c) Exculpatory Clauses which limit the authority of the trustee to distribute funds from a trust if such distribution would jeopardize eligibility for government programs are ignored for MQT purposes if the language explicitly or implicitly links the trustee's discretion to Medicaid requirements.

7. Handle a transfer of assets under this policy as follows:

a) If the MQT is irrevocable, a transfer of assets has occurred if the resources are no longer available to the client.

1) Resources rendered unavailable are subject to the transfer penalty based on the value of the unavailable resources without consideration of whether the resource would have been excluded under ongoing policy.

8. The MQT provision may be waived if an undue hardship is determined to exist: .

a) This means Medicaid should not be denied to an individual under this provision if the individual would be forced to go without life-sustaining services because the trust funds cannot be released.

1) This does not include situations where the trustee simple chooses not to make the trust funds available.

Source: Social Security Act §1917(c); Medicare Catastrophic Coverage Act (MCCA) of 1988 (P.L. 100-360).

Part 103 Chapter 9: Standard Trusts

Rule 9.1 Treatment of Standard Trusts.

A. Standard trust policy is applicable to trusts or conservatorships established prior to March 1, 1987, and/or trusts that do not meet the criteria of OBRA-93 or MQT trusts, regardless of the date established. Testamentary trusts where the Medicaid client is the beneficiary are also standard trusts.

B. In all situations discussed under this rule, a copy of the trust agreement or court documents must be obtained for review.

C. Whether the trust is counted as a resource depends on the client's role as beneficiary or trustee and the specific terms of the trust.

   1. Treatment When the Medicaid Client is Trustee.

      a) Generally, a person appointed as a trustee cannot use any of the funds in the trust forhis/her own benefit.

      b) Thus, an individual can be a trustee of a valuable trust and not be able to receive money from the trust since he/she has no access to the funds for personal use.

      c) When the trustee has no access to the funds for personal use, the trust is not a resource to the client who is the trustee.

      d) However, under certain circumstances the trust is a countable resource to the client who is the trustee. Count the trust as a resource, regardless of whose funds were originally deposited into the trust, if the client:

         1) Is the trustee, and

         2) Has the legal ability to revoke the trust and

         3) Use the money for his own benefit.

      e) Also, consider the trust a resource to the client if either the client or living-with spouse (eligible or ineligible) is the person who created the trust and has the right to dissolve it and use the funds for his own benefit.

      f) Where trust principal is considered a resource to the trustee, count the total value of the trust and count any interest or distributions as a resource the month following the month of receipt.

      g) Do not count as income any withdrawals made from the trust by the trustee since the funds have already been counted as a resource.

   2. Treatment When Medicaid Client is Beneficiary.

a) Any payments made to, or on behalf of, the client are counted as income unless the trustee states the client has unrestricted access to use of the trust funds; in which case, the funds are a countable resource.

1) Restricted Access to Principal.

(a) If the client is the beneficiary of the trust and the client's access to the trust principal is restricted, meaning only the trustee or the court can invade the principal, the principal of the trust does not count as a resource to the client. Count all payments made to, or on behalf of, the client from a restricted trust as income.

2) Unrestricted Access to Principal.

(a) Count the trust as a resource if the client is trust beneficiary and has unrestricted access to the principal of the trust. In this situation payments from the trust to the beneficiary are not counted as income since the funds have already been counted as a resource. The payments from the trust are conversion of a resource.

3. Authority for Discretion by Trustee.

a) The authority for discretion by the trustee in the use of trust funds, including invasion of the principal for support and maintenance of the beneficiary, does not mean that the principal is available to the client and, as such, it should not be counted as a resource. Only the income or resource(s) that is available to the client via the trustee's discretion count for purposes of determining eligibility.

1) In cases where the trustee has "full discretion" in the use of trust funds, the trustee must specify, by way of a written and signed statement for the case record, what arrangements exist or will be made to release funds or resources for the client's use.

Source: 42 CFR § 435.601(b) (Rev 1994); CMS Transmittal 64, State Medicaid Manual §3257-3259.

Part 103 Chapter 10: Conservatorships Prior to 3/1/1987

Rule 10.1 Treatment of Conservatorships Prior to 03/01/1987.

A. Conservators and legal guardians are court appointed and are usually court controlled. These types of legal arrangements are initiated when the competence of an individual is at issue. Technically, a legal guardian is appointed to serve over an individual and the individual's resources, whereas a conservator is appointed only to handle an individual's resources. Regardless of the legal term used, an application or active case involving a conservator or legal guardian is handled as outlined below.

1. In the absence of evidence to the contrary, conserved liquid and non-liquid resources held by a guardian or conservator on behalf of a Medicaid applicant or recipient are countable resources to that client.

   a) The fact that the guardian/conservator manages and controls the funds, (e.g., makes the actual (withdrawals), does not alter the attribution of the resource to the client. Since the guardian/conservator legally acts on behalf of the incompetent individual, it is the same as if the individual is controlling or managing the resource.

   b) "Evidence to the contrary" that may indicate a client does not have total access to conserved resources held by a guardian or conservator is a court order which specifies the disbursement of funds and/or disposal of assets.

      1) If the court order or decree specifies the amount and frequency of funds which may be disbursed or restricts the disposal of resources, the court's decision in such matters determines the client's access.

      2) However, a "silent" court order, which does not specify disposition and/or availability of conserved resources, is not considered evidence to the contrary. Therefore, conserved funds controlled by a silent court order are considered available to the client.

2. The fact that a guardian/conservator must first petition the court in order to dispose of resources or disburse funds does not constitute "evidence to the contrary".

   a) State law requires such a petition in guardian/conservator cases making petitioning a standard practice.

   b) In all cases where petitioning is required, the conserved resources are considered available to the client unless or until the court is petitioned and rules as to the availability/disposition of assets.

   c) When a signed and dated petition is presented as evidence that a court has been petitioned for disbursement of funds and/or disposal of resources, the petition is sufficient to exclude the resources in question until the court renders a decision in the matter.

3. Eligibility Determinations Involving Conservatorship.

   a) To determine how to handle a case involving a legal guardian or conservator, it is necessary to obtain a copy of the original decree appointing an individual as guardian or conservator and any legal documents which may subsequently have been issued by the court to amend or change the original decree, if any. If a guardianship or conservatorship is in the process of being established, the client's resources are considered available until court documents are presented as outlined below:

1) If the court order specifies disbursement of funds, any payments made to or on behalf of the client count as unearned income to the client.

2) If the court order does not specify the disbursement of any non-liquid resources conserved by the court, consider the funds as a countable resource.

3) If the court order specifies that conserved non-liquid resources, such as property, may be disposed of for the benefit of the client, consider the property, etc., as a countable resource.

4) If the court order is silent on the subject of disposal of non-liquid resources, consider the resources countable unless or until the court is petitioned for disposal.

5) A court order may specify the disbursement of liquid resources and not mention disposal of any conserved non-liquid resources or vice versa.

    (a) In such a case, abide by the court's decision regarding the disbursement or disposal issue specified and count as a resource the unspecified resource.

        (i) Example: A conservatorship court order specifies the release of $100 per month from a savings account with a $5000 balance and fails to mention the disposal of 50 acres of property owned by the client. The $100 is counted as income while the balance of the account is excluded as a resource. The property is countable until the court is petitioned for the purpose of disposing of the property.

6) Court orders that are not specific on the availability of conserved resources result in the availability of the conserved resource to the client until the month the court is petitioned for use of the conserved funds or resources.

    (a) A valid petition will exclude the resource provided the petition requests the court to rule as to the disposal and/or disbursement of conserved resources. The exclusion will apply until the court rules in the matter at which time the case must be reviewed in light of the court decision.

Source: 42 CFR § 435.601(b) (Rev 1994); CMS Transmittal 64, State Medicaid Manual §3257-3259.

Part 103 Chapter 11: Medicare Catastrophic Coverage Act Transfer Policy

Rule 11.1 Treatment of Medicare Catastrophic Coverage Act Transfer Policy.

A. The Medicare Catastrophic Coverage Act of 1988 (MCAA) repealed the transfer of resources penalty for non-institutionalized individuals.

1. New transfer of resources policy created under the MCAA applies only to institutionalized individuals as defined below, who transfer resources on or after July 1, 1988 through August 10, 1993.

2. Transfers that occur after August 10, 1993, are evaluated under OBRA-93 transfer policy.

B. Under this rule, an institutionalized individual is defined as an individual who is:

1. A nursing facility inpatient,

2. An inpatient at a medical institution receiving a nursing facility level of care, or

3. A recipient of home and community-based waiver services.

a) ICF-MR residents are not included in this definition.

b) The transfer penalty resulting in ineligibility, as defined below, applies to nursing facility services and medical institution services where the level of care provided is equivalent to nursing facility care.

c) An institutionalized individual remains eligible for all other Medicaid services while a transfer penalty is in effect, provided eligibility is met on all other factors.

C. An institutionalized individual, who, at any time during the 30-month period immediately before the individual's application for medical assistance, disposed of resources for less than fair market value shall be ineligible for nursing facility services beginning with the month in which resources were transferred.

1. An institutionalized individual is also prohibited from transferring resources during the period of institutionalization, unless an exception applies.

2. Effective October 1, 1989, the transfer penalty also applies to a community spouse who transfers resources within the 30-month period preceding application and/or during the time his-her spouse remains institutionalized.

a) A transfer of resources by a community spouse to another individual will result in a transfer penalty applying to the institutionalized spouse.

D. The following describes the period of ineligibility and application of the transfer penalty:

1. The transfer penalty is equal to 30 months, or

a) The 30-month period is calculated using the month of a transfer as the first month continuing through the 30^{th} consecutive month, provided the transfer occurred on or after July 1, 1988.

b) The 30-month period of ineligibility is imposed unless the uncompensated value/private-pay calculation results in a period of ineligibility less than 30 months.

2. The transfer penalty is the number of months required to deplete the uncompensated value (UV) based on the total UV of the transferred resources divided by the average monthly cost of nursing facility services to a private pay patient if less than 30 months.

   a) The private pay calculation is based on a statewide average private pay cost of $1,456.00 per month.

   b) In calculating the period of ineligibility, divide the UV by $1,456.00 to determine the number of month that an individual will be ineligible for nursing home services.

   c) All calculations are rounded down to the nearest whole dollar.

      1) Example: If the total UV is $20,000, then $20,000 divided by $1,456 = 13.73. Rounding down, the period of ineligibility would be 13 months, which is less than the 30-month penalty.

3. In determining the penalty period, the month of the transfer is always “month one” of the period of ineligibility. As a result, the penalty period may be expired or near expiration as of the month of the application.

   a) Example: A transfer with UV of $5,000 occurs 7/5/88. Using the private pay calculation, the period of ineligibility for nursing facility services is 3 months, July through September. If the application is filed on or after October 1, 1988, the penalty period will have expired, although eligibility for all other Medicaid services is possible in the retroactive period. If the UV does not result in ineligibility for at least one month, the transfer will not count.

   b) Example: If the transfer is for $1,000, which is less than the average private pay rate, no penalty applies for the month of the transfer. Each transfer is evaluated based on the month the transfer occurred. If more than one transfer occurs in the same month, the UV is combined and the penalty period calculated on total UV for a particular month. If transfers crossover into different months, each transfer is evaluated separately and UV is not combined. The possible results would be overlapping penalty periods.

4. The transfer penalty will not apply to the transfer of home property by an institutionalized individual to the following family members:

   a) The individual’s spouse or child under age 21 **or** a disabled or blind adult child; or

   b) A sibling who is part owner of the home who lived in the home for one (1) year before the individual entered the nursing facility; or

c) A child who lived in the home for up to two (2) years before the individual entered a nursing facility and provided care to the individual which permitted the individual to remain at home.

5. The transfer penalty will not apply to the transfer of any type of resource in the following situations:

   a) Resources are transferred to or from the individual's spouse.

      1) Effective October 1, 1989, a transfer of assets from a community spouse to another individual will result in a penalty charged to the institutionalized spouse.

   b) Resources are transferred to the institutionalized individual's child who is disabled or blind.

   c) Satisfactory evidence is required to show that the individual intended to dispose of the resource(s) either at fair market value or for other valuable consideration, or, that resource(s) were transferred exclusively for a purpose other than to qualify for Medicaid.

   d) Denial of eligibility would result in undue hardship.

   e) The resource was excluded under ongoing policy at the time for the transfer.

   f) The resource was transferred by an individual other than the institutionalized applicant/recipient and that person had no legal authorization to act in the applicant's or recipient's behalf at the time of the transfer.

E. Notification of Transfer Penalty and Rebuttal.

1. The client will be notified of countable transfers and the penalty period.

2. The client or representative is allowed 10 days to present evidence to show that the transfer should not count.

   a) Evidence should include a written rebuttal plus any pertinent documentary evidence.

   b) If no rebuttal is offered, the penalty will be applied and the appropriate adverse action notice issued to deny or terminate payment of nursing home services only.

   c) The individual remains eligible for all other Medicaid services if the transfer penalty is the only factor of ineligibility.

   d) If the individual is ineligible on other factors as well as the transfer, the application or case must be denied or terminated.

3. Factors which may indicate that a transfer was made for some purpose other than establishing Medicaid eligibility are listed below. The presence of one or more of the following factors may result in an acceptable rebuttal:

   a) The occurrence after a transfer of resources of one or more of the following:

      1) Traumatic onset (e.g., traffic accident of disability or blindness;

      2) Diagnosis of previously undetected disabling condition;

      3) Unexpected loss of other resources which would have precluded Medicaid eligibility;

      4) Unexpected loss of income (including deemed income) which would have precluded Medicaid eligibility.

      5) In general, if the client was healthy and/or financially secure at the time of the transfer, with no expectation of future Medicaid need, then an acceptable rebuttal may be established.

      6) Total countable resources that would have been below the resource limit at all times from the month of transfer through the present month even if the transferred resource had been retained;

      7) Court-ordered transfer;

      8) Resource(s) sold at less than current market value in order to obtain cash quickly to meet expenses or repay a legal debt.

F. The transfer penalty can be waived if a period of ineligibility would result in undue hardship for the institutionalized individual.

   1. Undue hardship exists if a Medicaid denial of nursing home care would result in the individual's inability to obtain medical care.

   2. Each case situation must be reviewed individually to determine if undue hardship exists but the provision is geared toward financially and medically needy individuals with no possible means of recovering their transferred resource(s).

G. If a transferred resource is returned to or if compensation is received by the institutionalized individual, the UV is no longer an issue or is reduced as of the date of return.

   1. The resource of compensation is evaluated according to normal resource rules in the month of the return.

2. Any portion of a transferred resource that is not returned continues to count as UV which means the penalty period must be re-evaluated.

3. A penalty period must be recalculated from the month a portion of the resource is returned or additional compensation is received.

   a) Example: A transfer of $10,000 occurred in 10/88 resulting in a 6-month penalty period, or October 1988 – March 1989. In January 1989, $5,000 is returned to the institutionalized client. The penalty period is then recalculated using UV of $5,000 transferred in 10/88 which results in a revised period of ineligibility of 3 months or October 1988 – December 1988. If the full resource is returned, normal resource rules apply the month of the transfer.

H. The transfer penalty can be imposed during months that an individual receives SSA or is SSI-eligible in a nursing home.

1. Example, an ABD application is filed in December 1988 and a transfer is discovered during the application process. The applicant had entered the nursing home in October 1988 as an SSI eligible and SSI eligibility continued until 12/31/88. The transfer results in a 4-month penalty period. The penalty can be imposed for October 1988 – January 1989 even though SSI eligibility existed October 1988 – December 1988.

   a) This would mean no vendor payment would be authorized for the 4-month penalty period; and

   b) As a result, notices regarding ABD eligibility based on SSI will be postponed until eligibility for ABD is determined which excludes any transfers for the SSI months.

Source: Social Security Act §1917(c); Medicare Catastrophic Coverage Act (MCCA) of 1988 (P.L. 100-360); Omnibus Reconciliation Act of 1993 (OBRA-93) §13611 (Rev. 1993); Miss. Code Ann. §43-13-121.1 (Rev. 2005).

Part 103 Chapter 12: Encumbrance of a Liquid Resource

Rule 12.1 Treatment of the Encumbrance of a Liquid Resource.

A. An encumbrance is defined as a legal obligation to pay a debt.

1. If an applicant/recipient's combined resources exceed the resource limit, the amount of any encumbrances is deducted from the Current Market Value (CMV) to determine the equity value of a resource.

2. The equity value is countable toward the resource limit.

B. Under SSI policy, an encumbrance may occur when the applicant/recipient in an SSI-related coverage group has alleged a check has been written from a bank account, and it has not yet cleared the bank. If the individual has alleged a check has been written from a bank account and it has not cleared:

1. Examine evidence that the check was written, therefore legally obligating the funds from the bank account.

2. Verification must be obtained before allowing a reduced equity value of the bank account. Once verification, is received, the equity value of the bank account can be established by deducting the amount of the check written.

3. Verifications needed are a paid receipt, cancelled check, etc.

   a) Example: Mr. Timmons' bank statement shows a checking account balance of $1,250 as of May 1, which combined with other countable resources, exceeds $2000 as of the first day of the month. Mr. Timmons alleges that the balance includes his rent check of $500 which he wrote and gave to the landlord on April 25, but his landlord has not yet cashed the check.

      The specialist examines Mr. Timmons' check register and finds an annotation for check number 1345 written on 4/25 for $500. He also notes that check 1346 has already cleared the bank and has been deducted from his account according to the bank statement. Next the specialist notes Mr. Timmons has written a $500 check to his landlord for rent on or around the 25th of each month for the last six months.

      Since there is evidence that Mr. Timmons has written the check and legally obligated those funds in his account, and his records provide a complete and consistent picture of the account, the specialist can deduct the amount of the uncashed check from the 5/1 first of the month balance. The uncashed check can be deducted because SSI equity value rules state that in determining equity value, we deduct encumbrances from the CMV. The new balance of $850 permits eligibility on resources.

C. Under liberalized resource policy, an encumbrance may occur when the applicant/recipient has alleged a check has been written from a bank account, and it has not yet cleared the bank. If the individual has alleged a check has been written from a bank account and it has not cleared:

   1. Examine evidence that the check was written, therefore legally obligating the funds from the bank account.

   2. Verification must be obtained before allowing a reduced equity value of the bank account. Once verification, is received, the equity value of the bank account can be established by deducting the amount of the check written.

   3. Verifications needed are a paid receipt, cancelled check, etc.

a) Example: Mr. Jon Doe applied for Medicaid on January 4. As of January 31, Mr. Doe's bank statement shows a checking account balance of $2,350, which combined with other countable resources, exceeds $4000. Mr. Doe alleges that the balance includes his rent check of $500 which he wrote and gave to the landlord on January 22, but his landlord has not yet cashed the check.

b) The specialist examines Mr. Doe's check register and finds an annotation for check number 1345 written on January 22 for $500. Since there is evidence Mr. Doe has written the check from the account, the specialist can deduct the amount of the uncashed check since it is an encumbrance.

c) In determining equity value of the bank account, the encumbrance of $500 is deducted from the $2,350 in the bank account. Eligibility can be established for Mr. Doe for January if he is otherwise eligible.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Part 103 Chapter 13: Resource Spenddown (Liberalized Policy)

Rule 13.1 Treatment of Resource Spenddown Under Liberalized Policy.

A. Effective October 1, 1989, eligibility can exist for an entire month when an individual or couple, subject to liberalized resource policy, meets the resource test during the month.

B. The applicant is allowed to "spenddown" resources in a month to become eligible for that month.

C. Under the liberalized spenddown provisions, resources can be reduced within the applicable limit and as long as resources remain within the limit for that month, eligibility can be established. The following are considered in making the determination:

1. Do not allow payment of expenses that will be returned, refunded or reimbursed as legitimate spenddown expenses when calculating resources for a given month. Client-owned resources spent for reimbursable expenses count as an available resource in the month paid.

2. Allow outstanding checks/payments as an expense if proof is provided that the payment was authorized during the spenddown month and the expense is non-reimbursable.

3. The spenddown provision implies that an individual spends down to the resource limit and remains at or below the limit for the remainder of the month. When determining eligibility for a prior period and reviewing the resource situation for a full month, the individual or couple must have depleted resources to acceptable level and remained eligible for that month for a true spenddown to have occurred.

a) Example: An individual had $5,000 in a bank account on the first of the month and spent $3,000 on a pre-paid burial contract on the 5th of the month. However, on the 20th, he sold his car, which was excluded as a resource for $2,500. The $2,500 then becomes a resource (conversion of a resource) in the same month and unless the individual spends the excess $2,500 by the end of the month, eligibility cannot be established for that month.

D. Under liberalized resource policy, if excess liquid resources are earmarked for payment of private pay expenses for month(s) prior to a month of Medicaid eligibility, these excess resources can be excluded as a resource for any potential Medicaid months since the funds are obligated. If Medicaid will cover any months that have been paid as private pay by the client, the amount subject to reimbursement is a resource in the month paid.

1. Example: A LTC applicant enters a nursing home in June and applies for Medicaid in August. The applicant's bank account is $6,000, but $4,500 is earmarked for private pay for June/July. Medicaid is needed for August 1. Since the $4,500 is obligated for months prior to Medicaid eligibility, it can be excluded as a resource in determining eligibility for August forward, provided the earmarked funds are used to pay for the intended private pay expenses.

E. Under liberalized resource policy, income that accumulates while a Medicaid application is in process and that is obligated for payment of Medicaid income for months that will be covered by Medicaid can be excluded as a resource if excess resources result from accumulating income.

1. Example: A LTC applicant enters a nursing home in August and applies for Medicaid in October requesting benefits retroactive to August. The client's income is $1,200 per month. In November when the case is being worked up, the bank balance is $5,000. Medicaid Income for September and October would be $2,312 ($1,200 - $44 = $1,156 x 2).

2. November's income of $1,200 can be backed out of the balance plus the $2,312 obligated for September and October Medicaid Income, thus leaving $1,488 as a countable resource for November.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Part 103 Chapter 14: Deeming of Resources

Rule 14.1 Treatment of Resource Deeming.

A. For SSI and Medicaid purposes, an individual's resources are deemed to include any resources of an ineligible spouse or ineligible parent(s).

1. Resources are deemed whether or not they are actually available.

2. Deeming only applies in household situations, i.e., it only applies to an eligible with an ineligible spouse or parent(s).

   a) In deeming resources from one spouse to the other, consider only the resources of those two individuals.

   b) In deeming resources from a parent to a child, consider only the resources of the parent.

   c) Where there is more than one eligible child, the resources available for deeming are shared equally among the children.

      1) Eample: If there are two eligible children and $500 in parental resources must be deemed, deem $250 to each child.

   d) Do not include the resources of a stepparent who is not legally liable for support of the child under state law in the deeming process.

B. Effective September 1, 1987, pension funds owned by an ineligible spouse or parent(s) are excluded from resources for deeming purposes.

   1. This exclusion applies in order for an ineligible spouse or parent(s) to provide for their own future support.

   2. Pension funds are defined as monies held in a retirement fund under a plan administered by an employer or union, or an individual retirement account (IRA) or Keogh account as described by Internal Revenue Code.

C. When deeming spouse to spouse:

   1. The ineligible spouse's resources must be verified and documented as required for the eligible spouse.

   2. Total countable resources are the combination of the resources of the eligible individual and ineligible spouse after all applicable resource exclusions are applied.

   3. Total countable resources are compared to the resource limit for a couple.

   4. If the amount of the resources does not exceed the limit, the applicant/recipient meets the resource eligibility requirement.

   5. If countable resources exceed the limit for a couple, the applicant/recipient is ineligible.

   6. Eligible Spouses Not Living Together.

a) If an eligible individual and eligible spouse are not living together, the resources of both members (whether owned separately by each or jointly by both) are combined only for the month of separation.

b) Each member of the couple is treated as an eligible individual beginning with the month after the month of separation, i.e., no longer living in the same household, and the resource limit for each is the individual resource limit.

7. When a change occurs in marital status, a new resource limit is established and a new resource determination is made for the first month in which the new resource limit (individual or couple) is effective as a result of the change.

a) Make a new resource determination for the first month in which a new resource limit (individual or couple) is effective as a result of the change in marital status.

1) Example: If two eligible individuals marry in February, a new resource determination would be required for March since the individuals became a couple effective on the first day of March as a result of the marriage. For SSI or Medicaid purposes, the marital relationship of a couple can be ended by death, divorce or annulment:

(a) If a marriage ends by death, divorce or annulment in the same month the marriage begins, treat the marriage as though it had not occurred.

(b) Beginning with the month following the month of the death of one member of a couple, the surviving member will be an eligible individual if all other eligibility criteria are met.

(c) If the marital relationship of a couple terminates by divorce or annulment, each member of the couple should be treated as an individual effective the first day of the month following the month the couple no longer lives in the same household.

D. When deeming from Parent to Child to determine elgibility for a child under age 18 (or under 21, if a student), who lives with his parent(s):

1. The resources of the child include the value of the countable resources of the parent(s) or parent/stepparent to the extent that the resources of the parent(s) or parent/stepparent exceed the resource limit of:

a) An individual, if one parent lives in the household; or

b) A couple, if two parents live in the household.

2. The following should be considered:

a) Do not include the resources of the stepparent in the deeming process.

b) The value of parental resources is subject to deeming whether or not those resources are available to the child.

c) If there is more than one eligible child under 18 or (under 21, if a student) in the household, equally divide the value of the deemed resources among those children.

1) If an eligible child is later determined ineligible for any reason or is no longer subject to deeming (e.g., after attainment of age 18), divide the value of the deemed resources among the remaining eligible children effective with the first month the child is ineligible or no longer subject to deeming.

3. A child's total countable resources are the combination of the value of the deemed resources and the non-excluded resources of the child. A child's countable resources are compared with the resource limit for an individual with no spouse. If the resources do not exceed the limit, the child meets the resource eligibility requirement. If countable resources exceed the limit, the child is ineligible because of the excess resources.

4. When more than one eligible individual lives in the same household and there is a parent-child relationship, a multiple deeming situation may exist:

a) If a child under age 18 (or under 21, if a student) lives in the same household with a parent(s) applying for Medicaid or an eligible parent(s), determine the countable resources of the parent(s).

b) If the parent(s) meets the resource eligibility requirement, do not deem the value of any parental resources to the child.

c) If the parent(s) do not meet the resource eligibility requirements, follow the usual parent-to-child resource deeming rules to determine the value of the deemed parental resources.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994).

Part 103 Chapter 15: General Verification Requirements

Rule 15.1 General Verification Requirements.

A. Generally, resources must be verified for any month for which you must determine eligibility. For the following types of action, verify as follows:

1. Applications.

a) Specifically, for initial applications, verify the value of resources for the month of application and each month(s) of possible retroactive eligibility. Verify months subsequent to the month of application as necessary.

2. Redeterminations.

   a) For redeterminations, verify, as needed, the value of resources for up to 3 months prior to the review month. It is permissible for resources to be developed as of the most recent month for which verification is available for regular reviews, rather than requiring resource balances for the review month.

3. Appeals.

   a) If a client appeals a denial related to a particular resource, the evidence in the file must clearly establish the value of that resource. If must do so even if the issue under appeal is not the value itself (e.g., when the issue under appeal is ownership). This requirement ensures that at each level in the appeals process, the file contains complete documentation of the resource in question.

B. There are some exceptions to the above. Do not verify the value of resources for a given month if:

   1. The resource is totally excluded, regardless of its value;

   2. The alleged value of total countable resources exceed the applicable limit for that month; or

   3. The individual is ineligible that month for reasons other than excess resources

C. Develop the equity value of a resource (liquid or nonliquid) when an individual alleges a debt against it and the difference between equity and CMV could mean the difference between eligibility and ineligibility:

   1. Verify, at a minimum, the outstanding principal balance (payoff), the rate of interest and the schedule and amount of payments (to permit the projection of increases in equity); and

   2. Obtain a copy of the agreement or note that establishes the debt. If this does not provide all the information needed, use other records of the individual, the creditor or both.

D. At a minimum, resources owned by a client are verified at the time of application and at each regular review scheduled annually. However, circumstances may warrant re-verification of resource(s) at shorter intervals. The following describes situations which mandate re-verification of resources at shorter intervals than annually, but it is not an all-inclusive list. Any reported changes in resources or discovery of changes in resources may warrant verification or re-verification.

   1. Individuals/couples determined eligible for Medicaid who own countable resources valued within $100 of the applicable limit must have resources renewed/verified every six months, rather than annually.

a) The purpose of the 6-month special review will be to verify the value of countable resources in order to determine if the individual/couple remains eligible based on resources.

b) A tickler must be utilized to control the timing of the required special review of cases with countable resources close to the resource limit.

2. Client cases, especially long term care cases that receive excess VA income that is not countable as income must be monitored closely for excess resources.

   a) The amount of the monthly income that is not counted will determine the frequency review/re-verification is deemed necessary.

   b) Long Term Care Recipients in Medicare Beds. Individuals who are placed in Medicare-certified nursing facilities are not required to pay any of their income toward the cost of their care which means that income may be allowed to accumulate and result in excess resources during the first 100 days of possible Medicare coverage.

      This means it is necessary to re-verify resources during the period of Medicare coverage to check for possible excess resources.

Source: Social Security Act §1902 (r)(2); 42 CFR § 435.601(b) (Rev 1994); Miss. Code Ann. §43-13-121.1 (Rev. 2005).