STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: Ohio

TRANSFER OF RESOURCES

1902(f) and 1917 of the Act

The agency provides for the denial of eligibility by reason of disposal of resources for less than fair market value.

A. Except as noted below, the criteria for determining the period of ineligibility are the same as criteria specified in section 1613(c) of the Social Security Act (Act).

1. Transfer of resources other than the home of an individual who is an inpatient in a medical institution.

a. /_/ The agency uses a procedure which provides for a total period of ineligibility greater than 24 months for individuals who have transferred resources for less than fair market value when the uncompensated value of disposed of resources exceeds $12,000. This period bears a reasonable relationship to the uncompensated value of the transfer. The computation of the period and the reasonable relationship of this period to the uncompensated value is described as follows:

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b. /_/ The period of ineligibility is less than 24 months, as specified below:

c. /X/ The agency has provisions for waiver of denial of eligibility in any instance where the State determines that a denial would work an undue hardship.

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2. Transfer of the home of an individual who is an inpatient in a medical institution.

/_/ A period of ineligibility applies to inpatients in an SNF, ICF or other medical institution as permitted under section 1917(c)(2)(B)(i).

a. Subject to the exceptions on page 2 of this supplement, an individual is ineligible for 24 months after the date on which he disposed of the home. However, if the uncompensated value of the home is less than the average amount payable under this plan for 24 months of care in an SNF, the period of ineligibility is a shorter time, bearing a reasonable relationship (based on the average amount payable under this plan as medical assistance for care in an SNF) to the uncompensated value of the home as follows:

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b. /_/ Subject to the exceptions on page 2 of this supplement, if the uncompensated value of the home is more than the average amount payable under this plan as medical assistance for 24 months of care in an SNF, the period of ineligibility is more than 24 months after the date on which he disposed of the home. The period of ineligibility bears a reasonable relationship (based upon the average amount payable under this plan as medical assistance for care in an SNF) to the uncompensated value of the home as follows:

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No individual is ineligible by reason of item A.2 if--

(i) A satisfactory showing is made to the agency (in accordance with any regulations of the Secretary of Health and Human Services) that the individual can reasonably be expected to be discharged from the medical institution and to return to that home;

(ii) Title to the home was transferred to the individual's spouse or child who is under age 21, or (for States eligible to participate in the State program under title XVI of the Social Security Act) is blind or permanently and totally disabled or (for States not eligible to participate in the State program under title XVI of the Social Security Act) is blind or disabled as defined in section 1614 of the Act;

(iii) A satisfactory showing is made to the agency (in accordance with any regulations of the Secretary of Health and Human Services) that the individual intended to dispose of the home either at fair market value or for other valuable consideration; or

(iv) The agency determines that denial of eligibility would work an undue hardship.

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3. 1902(f) States

/X/ Under the provisions of section 1902(f) of the Social Security Act, the following transfer of resource criteria more restrictive than those established under section 1917(c) of the Act, apply:

See pages 6a, 6b, and 6c to Supplement 9 to Attachment 2.6-A.

B. Other than those procedures specified elsewhere in the supplement, the procedures for implementing denial of eligibility by reason of disposal of resources for less than fair market value are as follows:

1. If the uncompensated value of the transfer is $12,000 or less:

2. If the uncompensated value of the transfer is more than $12,000:

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Individuals who have been determined to have made an improper transfer of resources on or prior to December 31, 1989, shall have their resources determined according to the following:

An individual/recipient who transfers his legal interest in real or personal property during the two years prior to applicant/recipient redetermination is ineligible for assistance only when a presumption of improper transfer exists because the transfer brings his holdings within the resource limitation, safeguards his future eligibility, or constitutes a transfer of income-producing real property and when the presumption is unrebutted. The applicant/recipient meets the burden of rebutting the improper transfer by providing a full written accounting of the transfer which clearly shows that the property transfer was made for a purpose other than to qualify for Medicaid. The period of ineligibility due to an improper transfer of property begins the first day of the month subsequent to the month of transfer and continues either: for a period which would have supported the person and his dependents at a rate of $324 a month for the person and an additional $106 for each dependent until the difference between the fair market value and allowable resource limitation is reduced to zero. (If the individual is a nursing home resident, the period of ineligibility is determined by using the cost of care at a private pay rate). Or, until the property is reconveyed to the individual.

Individuals who have been determined to have made an improper transfer of resources on or after January 1, 1990, shall have their eligibility determined according to the following:

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An individual who transfers his legal interest in real or personal property during the 30 months prior to applying for or during receipt of Medicaid, is eligible for a period of restricted coverage only. The period of restricted Medicaid coverage is defined as the period of time that an individual is ineligible for long term care facility (LTCF) vendor payments and home and community-based services (HCBS). The individual is eligible for all other Medicaid covered services. This period of restricted coverage exists because the transfer brings the individual's holdings within the resource limitation, safeguards future eligibility, or constitutes a transfer of income-producing real property and when the presumption is unrebuttted. The individual meets the burden of rebutting the improper transfer by providing a full written accounting of the transfer which clearly shows that the property transfer was made for a purpose other than to qualify for Medicaid.

The individual may also transfer homestead property, without losing any Medicaid coverage, to the following:

- the individual's spouse
- his child under the age of 21
- his child over the age of 21 who is blind or disabled
- his adult child who was residing in the home for at least two years immediately before the individual became institutionalized and provided care which delayed the institutionalization of the individual.
- his sibling who has an equity interest in the home and was residing in the home for at least one year immediately before the individual be institutionalized.

The individual may transfer resources, without any Medicaid coverage, to the following:

- his spouse
- his child who is blind or disabled

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State: Ohio

The period of restricted coverage begins the first day of the month resources were transferred. The number of months in the restricted coverage period is equal to 30 months or less if a lesser period results when the total uncompensated value of the transferred resources is divided by the current average monthly private pay rate for a LTCF. The period of restricted coverage begins the first day of the month the resources were transferred and continues until the 30 month period ends or less if a lesser period is determined.

Individuals who have been determined to have made an improper transfer of resources on or after August 11, 1993, shall have their eligibility determined according to the following:

An institutionalized individual who transfers his legal interest in resources for less than fair market value during the 36 months (60 months for a trust) prior to applying for or during receipt of Medicaid, is eligible for a period of restricted Medicaid coverage only. The period of restricted Medicaid coverage is defined as the period of time that an individual is ineligible for nursing facility services, a level of care in any institution equivalent to that of nursing facility services, and home and community-based services (HCBS) provided under a waiver for individuals eligible for such services under Section 1915 (c) or (d) of the Act. The individual is eligible for all other Medicaid covered services. This period of restricted coverage exists because the transfer brings the individual's resources within the resource limitation, safeguards future eligibility, or constitutes a transfer of countable resources, and when the presumption is unrebutted. The individual meets the burden of rebutting the improper transfer by providing a full written accounting and verification of the transfer which clearly shows that the resource transfer was made for a purpose other than to qualify for Medicaid.

Substitute Page

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: Ohio

The period of restricted coverage begins the first day of the month the resources were transferred and continues for a period that is equal to the number of months calculated by taking the total, cumulative uncompensated value of all assets transferred by the individual or spouse, divided by the average monthly cost to a private patient of nursing facility services at the time of application. No penalty period can begin while a previous penalty period is in effect.

Improper transfers of assets that occur on or after August 11, 1993 and prior to October 1, 1993 are subject to a 30 month maximum period of restricted coverage.

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State: Ohio

3. If the agency sets a period of ineligibility of less than 24 months and applies it to all transfers of resources (regardless of uncompensated value):

4. Other procedures:

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State: OHIO

TRANSFER OF ASSETS

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

1. Institutionalized individuals may be denied certain Medicaid services upon disposing of assets for less than fair market value on or after the look-back date.

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

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

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

   Home and community-based services under a 1915 waiver.

2. Non-institutionalized individuals:

   _____ The agency applies these provisions to the following non-institutionalized eligibility groups. These groups can be no more restrictive than those set forth in section 1905 (a) of the Social Security Act:

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

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

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

   Personal care services furnished to individuals who are not inpatients in certain medical institutions, as recognized under agency law and specified in section 1905 (a) (24).

   _____ The following other long-term care services for which medical assistance is otherwise under the agency plan:

State: OHIO

TRANSFER OF ASSETS

3. Penalty Date–The beginning date of each penalty period imposed for an uncompensated transfer of assets is:

   _X_ the first day of the month in which the asset was transferred;

   ___ the first day of the month following the month of transfer.

4. Penalty Period - Institutionalized Individuals –
   In determining the penalty for an institutionalized individual, the agency uses:

   _X_ the average monthly cost to a private patient of nursing facility services in the agency;

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

5. Penalty Period - Non-institutionalized Individuals–
   The agency imposes a penalty period determined by using the same method as is used for an institutionalized individual, including the use of the average monthly cost of nursing facility services;

   ___ imposes a shorter penalty period than would be imposed for institutionalized individuals, as outlined below:

State: OHIO

TRANSFER OF ASSETS

6. Penalty period for amounts of transfer less than cost of nursing facility care –

a. Where the amount of the transfer is less than the monthly cost of nursing facility care, the agency:

X - does not impose a penalty:

____ imposes a penalty for less than a full month, based on the proportion of the agency private nursing facility rate that was transferred.

b. Where an individual makes a series of transfers, each less than the private nursing facility rate for a month, the agency:

X does not impose a penalty;

____ imposes a series of penalties, each for less than a full month.

7. Transfers made so that penalty periods would overlap–
The agency:

____ totals the value of all assets transferred to produce a single penalty period;

X calculates the individual penalty periods and imposes them sequentially.

8. Transfers made so that penalty periods would not overlap–
The agency:

X assigns each transfer its own penalty period;

____ uses the method outlined below:

State: OHIO

TRANSFER OF ASSETS

9. Penalty periods - transfer by a spouse that results in a penalty period for the *individual* -

(a) The agency apportions any existing penalty period between the spouses using the method outlined below, provided the spouse is eligible for Medicaid. A penalty can be assessed against the spouse, and some portion of the penalty against the individual remains.

(b) If one spouse is no longer subject to a penalty, the remaining penalty period must be served by the remaining spouse.

10. Treatment of income as an asset–
When income has been transferred as a lump sum, the agency will calculate the penalty period on the lump sum value.

_____ The agency will impose partial month penalty periods.

When a stream of income or the right to a stream of income has been transferred, the agency will impose a penalty period for each income payment.

_____ For transfers of individual income payments, the agency will impose partial month penalty periods.

_X_ For transfers of the right to an income stream, the agency will use the actuarial value of all payments transferred.

_____ The agency uses an alternate method to calculate penalty periods, as described below:

State: OHIO

TRANSFER OF ASSETS

11. Imposition of a penalty would work an undue hardship —
The agency does not apply the transfer of assets provisions in any case in which the agency determines that such an application would work an undue hardship. The agency will use the following procedures in making undue hardship determinations:

Undue hardship exists when the application of the transfer of asset provisions would deprive the individual of medical care such that his/her health or his/her life would be endangered.

When it is determined that an improper transfer of resources has occurred and the individual was unable to successfully rebut the presumption of an improper transfer, the individual is notified of the right to claim an undue hardship. The individual has the burden of proving that undue hardship exists:

The agency will use the following procedures to determine if undue hardship exists:

- The individual must provide a full written account of why undue hardship exists.
- The individual must submit any pertinent documentary evidence such as legal documents, third party statements and/or medical evidence to support a claim of undue hardship.
- The individual attempts to make the resources available by consulting with legal counsel and it has been determined that the resources no longer exist or that the cost of attempting to retrieve the resources exceeds the value of the resources.
- A court of competent jurisdiction has determined that the resources are unavailable.
- Individuals determined to be incompetent and who do not have another individual to act on their behalf, shall be referred to the county prosecutor or the agency's own legal staff.
- The agency will also refer the individual to the county's or agency's own legal staff if it is determined that the individual's private legal counsel is not acting in the individual's best interest.

Undue hardship does not exist when the application of the transfer of assets provisions merely causes the individual inconvenience but would not put him or her at risk of serious deprivation.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: Ohio

Transfer of assets

1917(c) **FOR TRANSFERS OF ASSETS FOR LESS THAN FAIR MARKET VALUE MADE ON OR AFTER FEBRUARY 8, 2006,** the agency provides for the denial of certain Medicaid services.

1. Institutionalized individuals are denied coverage of certain Medicaid services upon disposing of assets for less than fair market value on or after the look-back date.

   The agency does not provide medical assistance coverage for institutionalized individuals for the following services:

   Nursing facility services;

   Nursing facility level of care provided in a medical institution;

   Home and community-based services under a 1915(c) or (d) waiver.

2. Non-institutionalized individuals:

   ___ The agency applies these provisions to the following non-institutionalized eligibility groups. These groups can be no more restrictive than those set forth in section 1905(a) of the Social Security Act:

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

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

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

   Personal care services furnished to individuals who are not inpatients in certain medical institutions, as recognized under agency law and specified in section 1905(a)(24).

   ___ The following other long-term care services for which payment for medical assistance is otherwise made under the agency plan:

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: Ohio

Transfer of assets

3. Penalty Date--The beginning date of each penalty period imposed for an uncompensated transfer of assets is the later of:

- the first day of a month during or after which assets have been transferred for less than fair market value;

_X_ The State uses the first day of the month in which the assets were transferred on or prior to initial application.

_X_ The State uses the first day of the month after the month in which the assets were transferred after the initial eligibility determination.

or

- the date on which the individual is eligible for medical assistance under the State plan and is receiving institutional level care services described in paragraphs 1 and 2 that, were it not for the imposition of the penalty period, would be covered by Medicaid;

  AND

  which does not occur during any other period of ineligibility for services by reason of a transfer of assets penalty.

4. Penalty Period - Institutionalized Individuals--
In determining the penalty for an institutionalized individual, the agency uses:

_X_ the average monthly cost to a private patient of nursing facility services in the State at the time of application;

___ the average monthly cost to a private patient of nursing facility services in the community in which the individual is institutionalized at the time of application.

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State: Ohio

Transfer of assets

5. Penalty Period - Non-institutionalized Individuals--
The agency imposes a penalty period determined by using the same method as is used for an institutionalized individual, including the use of the average monthly cost of nursing facility services;

___ imposes a shorter penalty period than would be imposed for institutionalized individuals, as outlined below:

6. Penalty period for amounts of transfer less than cost of nursing facility care--

_X_ Where the amount of the transfer is less than the monthly cost of nursing facility care, the agency imposes a penalty for less than a full month, based on the option selected in item 4.

_X_ The state adds together all transfers for less than fair market value made during the look-back period in more than one month and calculates a single period of ineligibility, that begins on the earliest date that would otherwise apply if the transfer had been made in a single lump sum.

7. Penalty periods - transfer by a spouse that results in a penalty period for the individual--

(a) The agency apportions any existing penalty period between the spouses using the method outlined below, provided the spouse is eligible for Medicaid. A penalty can be assessed against the spouse, and some portion of the penalty against the individual remains.

(b) If one spouse is no longer subject to a penalty, the remaining penalty period must be served by the remaining spouse.

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State: Ohio

Transfer of assets

8. Treatment of a transfer of income—

When income has been transferred as a lump sum, the agency will calculate the penalty period on the lump sum value.

When a stream of income or the right to a stream of income has been transferred, the agency will impose a penalty period for each income payment.

_X_ For transfers of individual income payments, the agency will impose partial month penalty periods using the methodology selected in 6. above.

_X_ For transfers of the right to an income stream, the agency will base the penalty period on the combined actuarial value of all payments transferred.

9. Imposition of a penalty would work an undue hardship--

The agency does not impose a penalty for transferring assets for less than fair market value in any case in which the agency determines that such imposition would work an undue hardship. The agency will use the following criteria in making undue hardship determinations:

Application of a transfer of assets penalty would deprive the individual:

(a) Of medical care such that the individual's health or life would be endangered; or

(b) Of food, clothing, shelter, or other necessities of life.

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State: Ohio

Transfer of assets

10. Procedures for Undue Hardship Waivers

The agency has established a process under which hardship waivers may be requested that provides for:

(a) Notice to a recipient subject to a penalty that an undue hardship exception exists;

(b) A timely process for determining whether an undue hardship waiver will be granted; and

(c) A process, which is described in the notice, under which an adverse determination can be appealed.

These procedures shall permit the facility in which the institutionalized individual is residing to file an undue hardship waiver application on behalf of the individual with the consent of the individual or the individual's personal representative.

11. Bed Hold Waivers For Hardship Applicants

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_____ days (may not be greater than 30).