

COMMONWEALTH OF PENNSYLVANIA
Department of Public Welfare

OPERATIONS MEMORANDUM

Medical Assistance

SUBJECT: Transfer of Assets for Less Than Fair Market Value

TO: Executive Directors

FROM: Joanne Glover
Director
Bureau of Operations

PURPOSE

To provide policy and procedure that must be used when an applicant, recipient or spouse of an applicant for Long Term Care (LTC) services has transferred assets for less than Fair Market Value (FMV).

The information provided in this Operations Memorandum takes precedence over any previous Policy Clarifications that have been issued or the policies and procedures that may be currently listed in the LTC Handbook. To ensure that all County Assistance Offices (CAOs) receive and apply the same policy and procedures on these topics, this information is issued by an Operations Memorandum versus a Policy Clarification.

BACKGROUND

The Deficit Reduction Act (DRA) of 2005 (Public Law 109 - 171) became law on February 8, 2006. This legislation amended the asset transfer rules regarding eligibility for payment of LTC services.

DISCUSSION

The DRA contains changes regarding the determination of the period of ineligibility to be imposed on an applicant or recipient when the applicant or recipient or the spouse of the applicant transfers assets for less than FMV. One of these changes, the partial month penalty period, was already implemented in Pennsylvania on August 22, 2005 as a result of the Pennsylvania legislature amending the Public Welfare Code on July 7, 2005. The DRA allows states some options that they can consider when imposing a penalty period. Pennsylvania has elected to adopt the following options:

- A. Changing the Way the Period of Ineligibility Is Calculated;
- B. Lengthening the Look-Back Period;
- C. Accumulating Multiple Transfers into One Penalty Period;
- D. Changing the Beginning Date for Period of Ineligibility;
- E. Imposing Partial Month Penalty Periods for All Assets Transferred Without Receiving FMV; and Imposing the Penalty Period to Begin the First Day of a Month Following the Month of Transfer for Recipients.

The new policy applies to:

- Applicants who submit an application for payment of LTC services on or after March 5, 2007 and who transferred assets on or after February 8, 2006; and
- Recipients who transfer assets on or after March 5, 2007.

The new policy does not apply to:

- Applicants who submit an application for payment of LTC services on or after March 5, 2007 and who transferred assets prior to February 8, 2006;
- Applicants who submitted an application for payment of LTC services prior to March 5, 2007; and
- Recipients who transferred assets prior to March 5, 2007.

A. Changing the Way the Period of Ineligibility is Calculated

- Effective March 5, 2007, all periods of ineligibility will be calculated in days.
- The CAO will divide the Uncompensated Value (UV) by the Average Daily Private Pay Rate (currently \$222.17) to determine the period of ineligibility in days.
- Periods of ineligibility no longer require separate calculations for whole months and days.
- The Average Daily Private Pay Rate is adjusted each calendar year on July 1.

B. Lengthening the Look-Back Period

The look-back period for a transfer of assets for less than FMV made on or after February 8, 2006 has been increased from 36 months to 60 months.

Old Policy

If	Then
An individual or spouse transferred an asset (not involving a trust) and the date of the application for LTC services was prior to March 5, 2007,	The look-back period for that transfer was 36 months.

New Policy

If	Then
An applicant or spouse transferred assets on or after February 8, 2006 and the date of the application for LTC services is on or after March 5, 2007,	The look-back period is 60 months for those transfers occurring on or after February 8, 2006 . The increase in the look-back-period will have no practical impact until February 9, 2009 (see note).

NOTE: Any application made prior to February 8, 2009 which involves a transfer of assets occurring on or after February 8, 2006 would still be within 36 months of the date of the transfer. It is not until February 9, 2009 that applicants who transferred assets will be impacted by the lengthening of the look-back period. The look-back period increases on a daily basis from February 9, 2009 until the full 60-month look-back period is effective February 9, 2011.

C. Accumulating Multiple Transfers Into One Penalty Period

The period of ineligibility for payment of LTC services will now be determined by accumulating the UV of **all** assets transferred on or after February 8, 2006 by the individual or the spouse of the individual during the look-back period (see Section A, Lengthening the Look-Back Period).

NOTE: The CAO shall not include in the aggregate amount transfers totaling \$500 or less in a calendar month.

NOTE: Effective March 5, 2007, divide the total UV by the average private daily rate (currently \$222.17) to determine the period of ineligibility for transfers of assets. Periods of ineligibility no longer require separate calculations for whole months and days.

Old Policy

If	Then
An applicant, recipient and/or the spouse of an applicant made multiple transfers of assets for less than FMV,	The CAO determined separate periods of ineligibility for each month assets were transferred and would only aggregate transfers if they were made when the periods of ineligibility overlapped.

New Policy

If	Then
An applicant or the spouse of an applicant made multiple transfers of assets on or after February 8, 2006 for less than FMV during the look-back period and the date of application is on or after March 5, 2007,	The CAO will aggregate the UV of all assets transferred on or after February 8, 2006 during the look-back period to determine the period of ineligibility, except for transfers occurring in months in which the total UV is \$500 or less.
A recipient makes multiple transfers of assets for less than FMV on or after March 5, 2007,	The CAO will aggregate the UV of all assets transferred during the look-back period to determine the period of ineligibility, except for transfers occurring in months in which the total UV is \$500 or less.

NOTE: The aggregating of transfers only applies to assets transferred on or after February 8, 2006 based on an application dated on or after March 5, 2007 or for a recipient, to the assets transferred on or after March 5, 2007.

D. Changing the Beginning Date for Period of Ineligibility

For an **applicant**, the beginning date for a period of ineligibility for payment of LTC services due to a transfer of assets for less than FMV is the **date on which an individual would otherwise be eligible for Medicaid/LTC based on an approved application**, if not for the transfer and which does not occur during any other period of ineligibility.

For a **recipient**, the beginning date for a period of ineligibility for payment of LTC services due to a transfer of assets for less than FMV, will be the **first day of the month following the date indicated in the *Appeal and Fair Hearing* section of the *Advance Notice*** and which does not occur during any other period of ineligibility.

Old Policy

If	Then
An applicant or applicant's spouse transferred assets prior to March 5, 2007 and the date of application for Medicaid/LTC is prior to March 5, 2007; or A recipient transferred assets prior to March 5, 2007,	The period of ineligibility began the first day of the month of the transfer.

New Policy

If	Then
An applicant or applicant's spouse transferred assets for less than FMV on or after February 8, 2006 and the date of the application for Medicaid/LTC is on or after March 5, 2007,	The period of ineligibility begins on the date the individual would otherwise be eligible if not for the transfer of assets, provided that an existing penalty period does not exist.
A recipient transferred assets for less than FMV on or after March 5, 2007,	The period of ineligibility begins on the first day of the month following the date indicated in the <i>Appeal and Fair Hearing</i> section on the Advance Notice and which does not occur during any other period of ineligibility.

REMINDER: The change in the effective date of the penalty period does not apply to:

- 1.) Applicants for Medicaid/LTC who transferred assets prior to February 8, 2006; and
- 2.) Applicants who submit an application for Medicaid/LTC services prior to March 5, 2007.

The effective date of the beginning of the penalty period for these two situations remains the first day of the month of the transfer.

E. Imposing Partial Month Penalty Periods For All Assets Transferred Without Receiving FMV

The DRA requires states to implement a partial-month penalty period for transfers of assets for less than FMV. The DRA does not provide for a threshold or exception amount for the transfer of an asset. However,

guidance that has been received from the Centers for Medicare and Medicaid Services does permit states, under their operational procedures, to allow a threshold amount. The CAO will not impose a partial-month penalty against an applicant or a recipient for asset transfers that total \$500 or less in a calendar month.

Note: The partial penalty period applies to the ineligibility for payment of LTC services received both in an LTC facility, as well as those LTC services received in the community under a Home and Community-Based Service (HCBS) Program.

Old Policy

If	Then
An applicant, recipient or spouse of an applicant transferred assets on or after the look-back date exceeding \$500 in a calendar month,	The CAO would impose a penalty period using whole and/or partial months of ineligibility for payment of LTC services.

New Policy

If	Then
An applicant or spouse of an applicant transfers assets exceeding \$500 in a calendar month on or after February 8, 2006 and the date of application is on or after March 5, 2007,	The CAO will impose a penalty period using partial months of ineligibility for payment of LTC services. The CAO will base the penalty period on the UV of all transfers on or after February 8, 2006 during the look-back period, except for transfers occurring in months in which the total UV is \$500 or less.
A recipient transfers assets exceeding \$500 in a calendar month on or after March 5, 2007,	The CAO will impose a penalty period using partial months of ineligibility for payment of LTC services. The CAO will base the penalty period on the UV of all transfers on or after March 5, 2007 during the look-back period, except for transfers occurring in months in which the total UV is \$500 or less.

F. Imposing the Penalty Period for Recipients

Eligibility for payment of LTC services for recipients is discontinued the first day of the month following the date indicated in the *Appeal and Fair Hearing* section of the Advance Notice.

Old Policy

If	Then
A recipient transferred assets exceeding \$500 in a calendar month,	The period of ineligibility began the first day of the month of the transfer.

New Policy

If	Then
A recipient transfers assets exceeding \$500 in a calendar month,	The period of ineligibility begins the first day of the month following the date indicated in the <i>Appeal and Fair Hearing</i> section on the Advance Notice and which does not occur during any other period of ineligibility.

Policy Guidelines

- Transfers of assets for less than FMV totaling \$500 or less per month are not subject to a penalty period of ineligibility for LTC services.
- In order to determine a partial penalty period, the Average Daily Private Pay Rate (currently \$222.17) will be used to arrive at the number of days of ineligibility for payment of LTC services. This figure is adjusted each calendar year on July 1.
- The partial penalty period applies to the ineligibility for payment of LTC services received both in an LTC facility, as well as those LTC services received in the community under a Home and Community-Based Service (HCBS) Program
- For an applicant (application submitted on or after March 5, 2007), the penalty period begins on the date that the individual would otherwise be eligible based on an approved application for Medicaid/LTC but for the imposition of the penalty period (see Example 3 on page 13).
- For a recipient, the penalty period begins on the first day of the month following the date indicated in the *Appeal and Fair Hearing* section on the Advance Notice. The CAO may not discontinue eligibility for payment for LTC services until the date indicated on the Advance Notice.
- The following wording is to be used on the Notice to Applicant to inform an applicant of the period of ineligibility for payment of LTC services in a facility:

You disposed of a total of \$ _____ in assets without receiving fair market value. This transfer results in a period of ineligibility for payment of Medicaid/services in a Long Term Care (LTC) facility. You are not eligible for payment towards the cost of Medicaid/services in an LTC facility, beginning on _____ and ending on _____. During this period, you will be responsible to pay the LTC facility for the LTC services

you receive. You are eligible for all other Medicaid benefits. You can request an undue hardship waiver if the denial of payment of Medicaid/services in an LTC facility would deprive you of medical care which would endanger your health or life or if the denial of payment of Medicaid/services in an LTC facility would deprive you of food, clothing, shelter, or other necessities of life.

Citations: Pub. L. 109-171, §§ 6011 and 6016,
Pub. L. 31, No. 21 § 41.5 and 55 Pa. Code § 178.104 (d)

- The following wording is to be used on the Notice to Applicant to inform an applicant of the period of ineligibility for payment of LTC services in an HCBS program:

You disposed of a total of \$ _____ in assets without receiving fair market value. This transfer results in a period of ineligibility for payment of Medicaid/Home and Community Based Services (HCBS). You are not eligible for payment towards the cost of Medicaid/HCBS, beginning on and ending on _____. During this period, you will be responsible to pay the HCBS provider for the services that you receive. You are eligible for all other Medicaid benefits. You can request an undue hardship waiver if the denial of payment of Medicaid/HCBS services would deprive you of medical care which would endanger your health or life, or if the denial of payment of Medicaid/HCBS would deprive you of food, clothing, shelter, or other necessities of life.

Citations: Pub. L. 109-171, §§ 6011 and 6016
Pub. L. 31, No. 21 § 41.5 and 55 Pa. Code § 178.104 (d)

- The following wording is to be used on an Advance Notice to inform a recipient of the period of ineligibility for payment of LTC services in a facility:

You disposed of a total of \$ _____ in assets without receiving fair market value. This transfer results in a period of ineligibility for payment of Medicaid/services in a Long Term Care (LTC) facility. You are not eligible for payment towards the cost of Medicaid/services in an LTC facility beginning on _____ and ending on _____. During this period, you will be responsible to pay the LTC facility for the LTC services you receive. You remain eligible for all other Medicaid benefits. You can request an undue hardship waiver if the denial of payment of Medicaid/services in an LTC facility would deprive you of medical care which would endanger your health or life or if the denial of payment of

Medicaid/services in an LTC facility would deprive you of food, clothing, shelter, or other necessities of life.

Citations: Pub. L. 109-171, §§ 6011 and 6016
Pub. L. 31, No. 21 § 41.5 and 55 Pa. Code § 178.104 (d)

- The following wording is to be used on an Advance Notice to inform a recipient of the period of ineligibility for payment of LTC services in an HCBS program:

You disposed of a total of \$ _____ in assets without receiving fair market value. This transfer results in a period of ineligibility for payment of Medicaid/Home and Community Based Services (HCBS). You are not eligible for payment towards the cost of Medicaid/HCBS beginning on _____ and ending on _____. During this period, you will be responsible to pay the HCBS provider for the services that you receive. You remain eligible for all other Medicaid benefits. You can request an undue hardship waiver if the denial of payment of Medicaid/HCBS would deprive you of medical care which would endanger your health or life or if the denial of payment of Medicaid/HCBS would deprive you of food, clothing, shelter, or other necessities of life.

Citations: Pub. L. 109-171, §§ 6011 and 6016
Pub. L. 31, No. 21 § 41.5 and 55 Pa. Code § 178.104 (d)

- The applicant, the recipient, the responsible party for the applicant or recipient, or the LTC facility where the applicant or recipient is residing can request an undue hardship waiver from the Department of Public Welfare to reduce or eliminate a penalty period. The LTC facility must have authority from the applicant, recipient, or the responsible party for the applicant or recipient in order to request an undue hardship waiver. The policy and procedures that will be implemented to determine whether an undue hardship will be granted will be issued in a subsequent Operations Memorandum.
- The applicant, the recipient, or the responsible party for the applicant or recipient can appeal the imposition of a penalty period under the existing appeal and fair hearing procedures.
- A case review is required when the period of ineligibility for payment of LTC services expires. The case review is necessary to verify whether the individual is financially eligible and whether any additional transfer of assets for less than FMV occurred during the penalty period that was imposed. A current determination of payment towards cost of care needs to be completed for those individuals receiving services in an LTC facility. Upon completion of

this review a Notice to Applicant indicating eligibility/ineligibility for payment of LTC services will be issued to the applicant/recipient.

- If an individual who is ineligible for payment of LTC services because of a transfer of assets has a portion of the assets returned to him/her, he/she must complete a new application. Use the amount of transferred assets not returned to determine the period of ineligibility imposed on this new application.
- Continue to use the Third Party Liability (TPL) carrier code (903 Q) to reflect the period of ineligibility for payment of LTC services. The (903Q) can be modified to reflect any changes to the ineligibility period.

Specific Steps

Applicants:

1. Review applications for transfers of assets for less than FMV by applicant or applicant's spouse.
2. Verify if the transfer of assets for less than FMV took place on or after February 8, 2006.
3. Total all assets transferred on or after February 8, 2006.

NOTE: Assets transferred for less than FMV that are less than or equal to \$500 in a calendar month are not included in the total.

4. Treat transfers occurring prior to February 8, 2006 in accordance with procedures in place prior to this Operations Memorandum with the exception of calculating the penalty period by dividing the total of the transferred assets by the average daily private pay rate.
5. Calculate the penalty period (number of days) by dividing the value of the asset that was transferred for less than FMV by the average daily private pay rate in effect at the time of processing.
6. Begin a penalty period effective the day the individual would otherwise be eligible provided that there are no other existing penalty periods.

Note: If there is an existing penalty period, the new period of ineligibility begins immediately after the expiration of the existing penalty period.

7. Authorize Medicaid eligibility if the individual would be otherwise eligible under Step 1 (see LTC Handbook Chapter 468.2).
8. Complete the following actions:
 - Authorize Medicaid in the appropriate LTC category;
 - Provide the individual with a Notice to Applicant indicating Medicaid eligibility;
 - Provide the individual with a Notice to Applicant indicating ineligibility for payment of LTC services;
 - Indicate the period of ineligibility for payment of LTC services on the Third Party Liability (TPL) screens; and
 - Provide the individual with a Notice to Applicant and the Undue Hardship insert which indicate that an Undue Hardship Waiver Request process exists.

Recipients:

1. Review information received regarding transfers of assets for less than FMV by recipient.
2. Verify if the transfer of assets for less than FMV took place on or after March 5, 2007.
3. Total all assets transferred on or after March 5, 2007.

NOTE: Assets transferred for less than FMV that are less than or equal to \$500 in a calendar month are not included in the total.

4. Treat transfers occurring prior to March 5, 2007 in accordance with procedures in place prior to this Operations Memorandum with the exception of calculating the penalty period by dividing the total of the transferred assets by the average daily private pay rate.
5. Calculate the penalty period (number of days) by dividing the value of the asset that was transferred for less than FMV by the average daily private pay rate in effect at the time of processing.

6. Begin the penalty period discontinuing eligibility for payment of LTC services effective the first day of the month following the date indicated in the *Appeal and Fair Hearing* section on the Advance Notice. This applies to transfers of assets for less than FMV occurring on or after March 5, 2007, provided that there are no other existing penalty periods.

Note: If there is an existing penalty period, the new period of ineligibility begins immediately after the expiration of the existing penalty period.

7. Provide the recipient with an Advance Notice indicating ineligibility for payment of LTC services. The recipient remains eligible for all other Medicaid benefits and remains in an LTC category.
8. Complete the following actions:
 - Indicate the period of ineligibility for payment of LTC services on the Third Party Liability (TPL) screens; and
 - Provide the individual with a Notice to Applicant and the Undue Hardship insert which indicates that an Undue Hardship Waiver Request process exists.

Example 1: Previous Asset Transfer Rules

- Mr. Green applies for Medicaid/LTC on December 31, 2006 and requests Medicaid/LTC effective December 1, 2006.
- Mr. Green indicates on the application that he transferred \$50,000 in uncompensated value (UV) on February 8, 2006.
- The date of application is prior to March 5, 2007.
- The period of ineligibility is 225 days:
 - $\$50,000 \div \$222.17 = 225.05$ days
- The begin date of the penalty period (determined by OPS 050804) is February 1, 2006.
- Mr. Green is ineligible for payment of Medicaid/LTC for the period February 1, 2006 through September 13, 2006.
- The period of ineligibility has expired prior to the requested date of Medicaid/LTC.
- Mr. Green is authorized eligible for Medicaid if otherwise eligible. The penalty period expired before the request for Medicaid coverage.

Example 2: Multiple Transfers by Applicant Under DRA

- Mr. Green applies for Medicaid/LTC on March 5, 2007 and requests Medicaid/LTC effective January 21, 2007.
- Mr. Green indicated on the application that he made the following transfers all for uncompensated value (UV):
 - \$300 on February 8, 2006;
 - \$200 on May 25, 2006; and
 - \$50,000 on September 14, 2006.
- The date of application is on March 5, 2007. All transfers occurred on or after February 8, 2006.
- The transfer in February 2006 does not exceed \$500 and is not used to calculate the period of ineligibility.
- The transfer in May 2006 does not exceed \$500 and is not used to calculate the period of ineligibility.
- The \$50,000 transfer for less than FMV that occurred on September 14, 2006 creates a period of ineligibility of 225 days:
 - $\$50,000 \div \$222.17 = 225.05$ days
- The CAO has determined Mr. Green would otherwise be eligible for Medicaid/LTC on January 21, 2007 if not for the transfers.
- The begin date of the penalty period is January 21, 2007.
- Mr. Green is ineligible for payment of LTC services for the period January 21, 2007 through September 2, 2007.
- The CAO would complete the following actions:
 - Authorize Medicaid in the appropriate Medicaid/LTC category;
 - Provide Mr. Green with a Notice to Applicant indicating Medicaid eligibility effective January 21, 2007;
 - Provide Mr. Green with a Notice to Applicant indicating ineligibility for payment of LTC services;
 - Indicate the period of ineligibility for payment of LTC services on the Third Party screens; and
 - Provide Mr. Green with a Notice to Applicant and the Undue Hardship insert which advises him that an Undue Hardship Waiver Request process exists.
 - Since Mr. Green would not become eligible for payment of LTC services within the first two months of ongoing eligibility, set an alert for 30 days prior to the end of the period of ineligibility to complete a case review to determine eligibility for payment of LTC services.

Example 3: Pre- and Post- DRA Transfers

- Mr. Green applies for Medicaid/LTC on March 5, 2007 requesting benefits effective January 1, 2007.
- Mr. Green indicated on the application that he made the following uncompensated transfers:
 - \$90,000 on February 3, 2006; and
 - \$50,000 on October 1, 2006.
- Mr. Green meets all other Medicaid eligibility factors as of January 1, 2007.
- The application date is on March 5, 2007. One transfer occurred prior to February 8, 2006 and the other transfer occurred after February 8, 2006.
- The CAO determines that Mr. Green would otherwise be eligible for Medicaid/LTC effective January 1, 2007 if not for the transfers.
- The period of ineligibility for the \$90,000 transferred February 3, 2006 is 405 days:
 - $\$90,000 \div \$222.17 = 405.09$ days
- The \$90,000 transferred February 3, 2006 occurred prior to February 8, 2006:
 - The begin date of the penalty period under the previous policy was the first day of the month of the transfer.
 - The period of ineligibility is from February 1, 2006 through March 12, 2007.
- The period of ineligibility for the \$50,000 transferred October 1, 2006 is 225 days:
 - $\$50,000 \div \$222.17 = 225.05$ days
- The \$50,000 transferred October 1, 2006 occurred after February 8, 2006:
 - The begin date of a period of ineligibility for payment of LTC services due to a transfer of assets for less than FMV, is the date on which an individual would otherwise be eligible based on an approved application but for the transfer (January 1, 2007) **and** which does not occur during any other period of ineligibility;
 - The period of ineligibility would be January 1, 2007 through August 13, 2007.
 - Due to the existence of the 405 day penalty period, the penalty period for the \$50,000 transfer of October 1, 2006 must begin when the prior penalty period is exhausted.
 - Since the prior penalty period expired on March 12, 2007, the penalty period for the \$50,000 transfer would commence March 13, 2007 and end October 23, 2007.
- The entire penalty period would be February 1, 2006 through October 23, 2007.

- The CAO would complete the following actions:
 - Authorize Medicaid in the appropriate Medicaid/LTC category;
 - Provide Mr. Green with a Notice to Applicant indicating Medicaid eligibility;
 - Provide Mr. Green with a Notice to Applicant indicating ineligibility for payment of LTC services effective January 1, 2007;
 - Indicate the period of ineligibility for payment of LTC services on the Third Party screens; and
 - Provide Mr. Green with a Notice to Applicant and the Undue Hardship insert which advises him that an Undue Hardship Waiver Request process exists.
 - Since Mr. Green would not become eligible for payment of LTC services within the first two months of ongoing eligibility set an alert for 30 days prior to the end of the period of ineligibility to complete a case review to determine eligibility for payment of LTC services.

Example 4: Multiple Transfers by a Recipient

- Mr. Green was determined eligible for Medicaid/LTC on March 6, 2007.
- At a later date, as required by the renewal process, Mr. Green provided his most recent monthly bank statement. In addition to the payment to the facility, there were miscellaneous checks written during the month which did not exceed \$500.
- The CAO will not pursue nor impose a period of ineligibility on Mr. Green since the total assets transferred in a calendar month did not exceed \$500.

Example 5: Transfer by a Recipient Resulting in Discontinuance

- Mr. Green was determined eligible for Medicaid/LTC on January 6, 2007.
- On August 24, 2007, the CAO verified that on July 5, 2007, Mr. Green transferred his \$40,000 residence to his son and received nothing in return.
- If the CAO issued an Advance Notice on August 24, 2007 to discontinue eligibility for payment of LTC services, the last day Mr. Green would be able to appeal the adverse action and continue to receive payment for LTC services would be September 05, 2007.
- The begin date of the penalty period for the transfer will be October 1, 2007, which is the first day of the month following the date (September 05, 2007) indicated in the *Appeal and Fair Hearing* section on the Advance Notice.
- The period of ineligibility is 180 days:
 - $\$40,000 \div \$222.17 = 180.04$ days

- Mr. Green is ineligible for the period of October 1, 2007 through March 29, 2008.
- On August 24, 2007 the CAO issued a PA 162 Advance Notice to discontinue payment for LTC services effective October 1, 2007.
- The CAO will input the period of ineligibility on the Third Party Liability screens.

Example 6: Effect of Returning A Portion of Transferred Assets

- Mr. Green had applied for Medicaid/LTC on March 5, 2007.
- The CAO had determined that a transfer of \$100,000 for less than FMV occurred in December of 2006.
- The period of ineligibility ($\$100,000 \div \$222.17 = 450$ days) began March 5, 2007 and was to last through May 23, 2008.
- On October 11, 2007 (the 225th day of the penalty period), Mr. Green's son came to the CAO with documentation that he returned \$50,000 to his father earlier that day which his father used to pay the nursing home for the period of ineligibility from March 5, 2007 through October 11, 2007. Mr. Green's son is requesting that his father be determined eligible for payment of LTC services based on the premise that half of the gift had been returned. Therefore, the penalty period should be reduced by one-half (225 days). This request should be denied since this estate planning technique (half-a-loaf) has been eliminated by the DRA.
- The CAO will require Mr. Green to complete another application which will indicate that a transfer of \$50,000 for less than FMV occurred within the look-back period.

REMINDER: A penalty period for an applicant begins on the date the individual would otherwise be eligible based on an approved application.

- Since Mr. Green received \$50,000 to privately pay for his cost of care from March 5, 2007 through October 11, 2007, he would then be otherwise eligible for Medicaid/LTC on October 12, 2007.
- Since there was still a transfer of \$50,000 for less than FMV made during the look-back period, the CAO will impose a penalty period for the \$50,000 that was not returned to Mr. Green.
- The beginning date of the penalty period is October 12, 2007. The period of ineligibility for payment of LTC services ends May 23, 2008.

Desk Guide

The following table is provided to assist the CAO in determining applicable procedures to follow based on dates of transfers and application dates.

Application Date	Transfer Date	Applicable Policy	Legal Citation
Prior to 08/22/05	Prior to 08/22/05	LTCH 440.9	55 PA Code §178.104(d)
Prior to 03/01/07	Prior to 08/22/05	LTCH 440.9	55 PA Code § 178.104(d)
	08/22/05 – 02/28/07	OPS 050804	P.L. 31, No.21 § 441.5
On or after 03/01/07	Prior to 08/22/05	LTCH 440.9	55 PA Code § 178.104(d)
	08/22/05 – 02/07/06	OPS 050804	P.L. 31, No.21 § 441.5
	On or after 02/08/06	OPS 07/01/XX	Pub. L. 109 – 171 §§ 6011 and 6016

REMINDER: Effective March 5, 2007, all periods of ineligibility are determined in days.

NEXT STEPS

1. Review this Operations Memorandum with appropriate staff.
2. Contact your Area Manager if you have questions.
3. This Operations Memorandum will become obsolete upon release of the revised Handbook pages.