

**Operations Memorandum - Medicaid
OPS050804**

8/15/05

SUBJECT: Changes to the Computation of Penalty Periods For Asset Transfers

TO: Executive Directors

FROM: Christine M. Bowser, Director, Bureau of Operations

Purpose

The purpose of this Operations Memorandum is to provide policy and procedure changes that must be used for the calculation of penalty periods for Medicaid/Long Term Care (LTC) services including those LTC services received under one of the Home and Community-Based Services (HCBS). On July 7, 2005, the Pennsylvania legislature amended the Public Welfare Code, creating partial month penalty periods for transfers of assets for less than fair market value. These changes will take effect on August 22, 2005.

Background

The continuing rise in Medicaid costs, especially for those needing LTC services, requires that steps be taken to reduce those costs. Some individuals were disposing of assets prior to and while receiving LTC services paid for by Medicaid. Those assets could have been used to help defray the cost of those Medicaid services. Previously, Pennsylvania only had the option to determine whole month penalty periods for transfers of assets for less than fair market value (FMV). This policy change will require County Assistance Offices (CAOs) to determine partial month penalty periods for transfers less than FMV.

Discussion

This change affects the determination of eligibility for payment of LTC and contains the procedures that CAO staff is to apply in the implementation of partial month penalty periods for transfers of assets for less than FMV.

The policy provided in this memorandum takes precedence over any previous Policy Clarifications and Operations Memoranda that have been issued, as well as the policies and procedures that may be currently listed in the Long Term Care Handbook (LTCH).

Next Steps

1. Review this Operations Memorandum with appropriate staff.

2. Please make pen and ink changes to the LTCH in accordance with the instructions provided in the Attachment.
3. Follow the policy and procedures in this Operations Memorandum until the update to the LTCH is completed.
4. Contact your Area Manager if you have any questions.
5. This Operations Memorandum will become obsolete upon release of the revised Handbook pages. 6. For all LTC applicants and recipients, the partial month penalty period policy and procedures apply effective August 22, 2005.

Attachment
Partial Month Penalty Periods

Old Policy:

If	Then
The CAO determined that a transfer of assets had occurred without receiving fair market value (FMV),	The CAO would determine the period of ineligibility (penalty period) in whole months only.

Example:

- Mr. Smith was admitted to a nursing facility on July 1, 2004.
- Mr. Smith transferred \$20,000.00 without receiving FMV on July 1, 2004.
- On September 1, 2004, Mr. Smith applies for Medicaid/LTC services.
- Mr. Smith requests Medicaid/LTC benefits from the date of admission, July 1, 2004.
- The transfer of \$20,000.00 is divided by the average monthly private pay rate for nursing facility care (currently \$6,062.35) to determine the period of ineligibility.
- The CAO establishes a penalty period for LTC services for three months: July, August, and September.
- Mr. Smith is Medicaid-eligible effective July 1, 2004 for all Medicaid benefits except LTC services.
- Mr. Smith is ineligible for LTC services beginning July 1, 2004 through September 30, 2004.
- Mr. Smith's eligibility for Medicaid/LTC services would be authorized effective October 1, 2004.

New Policy:

If	Then
The CAO determines that a transfer of assets has occurred without receiving FMV,	The CAO will determine a whole month penalty period and/or a partial month penalty period.

New Policy Guidelines

- Transfers of assets for less than FMV totaling in excess of \$500.00 in a calendar month would result in a partial month penalty period.
FMV = The price for which an asset, income or resources, can be expected to sell on the open market or would have been expected to sell on the open market.

- Transfers of assets totaling \$500.00 or less in a calendar month are not subject to fair consideration requirements unless they occur during an existing penalty period. (This allows an individual to give small occasional gifts to friends, relatives, etc. without being subject to fair consideration requirements.)
- In order to determine a partial penalty period, the average monthly private pay rate (currently \$6,062.35) is converted to an average daily private pay rate (currently \$199.31). These figures are adjusted July 1 of each year.
- The following wording, approved by the Office of General Counsel, is to be used on client notices to inform individuals of the period of ineligibility for LTC services:
You disposed of a total of \$_____ in assets beginning on _____ without receiving fair market value. This results in a period of ineligibility for Long Term Care (LTC) services. You are not eligible for payment towards the cost of LTC services beginning on _____ and ending on _____. During this period, you will be responsible to pay the LTC provider for the LTC services you receive. You are eligible for all other Medicaid benefits.
Citation: 55 Pa. Code Section 178.104 and 62 Pa. C.S.A. Section 441.5.
Note: This text is to be used as both Change Text for ongoing cases and as Eligibility Text at authorization.
- The penalty period for a transfer of assets for less than FMV begins on the first day of the month in which the asset was transferred.
- A case review is required when the period of ineligibility for payment of LTC services expires. The case review is necessary to verify whether any additional transfer of assets for less than FMV has occurred during the penalty period that was imposed. A notice of eligibility/ineligibility for payment of LTC services will be issued to the applicant/recipient.
- Renewals (previously known as redeterminations) scheduled per Long Term Care Handbook, Section 476.31 still apply.
- Medicaid will be authorized (if otherwise eligible) in the three letter LTC category (i.e., PJN, PAW) during the penalty period.

- A new Third Party Liability (TPL) carrier code (903Q) is available to CAOs. This TPL carrier code is used to reflect the period of ineligibility for payment of LTC services. The purpose of this carrier code is to prompt PROMISE to reject any claims submitted by a Medicaid provider for LTC services occurring during a period of ineligibility. This period of ineligibility must be entered onto the TPL Data Entry Worksheet for clerical input. In addition to County, Record Number and Case Name, complete the form by entering 903 into the Carrier Code block, the letter "Q" in the Type block in the CCITYP section, and enter the period of ineligibility in the Begin Date and End Date.

Steps To Evaluate a Transfer Greater Than \$500.00 in One Month

1. Evaluate transfers to determine if FMV was received.

2. Determine if there are any whole month periods of ineligibility by dividing the uncompensated value (UV) of the transfer by the average monthly private pay rate (currently \$6,062.35). The result is the number of whole months of ineligibility.

Example:

Mr. Smith is applying for Medicaid/LTC on August 29, 2005. He transferred \$20,000.00 on August 22, 2005 without receiving FMV. Divide the amount of the transfer (\$20,000.00) by the average monthly private pay rate (currently \$6,062.35).

Result: $\$20,000.00 \div \$6,062.35 = 3.29$ months

There are three whole months of ineligibility.

3. Determine the partial month penalty period by subtracting the value of the three whole months of ineligibility ($3 \times \$6,062.35 = \$18,187.05$) from the total amount of the transfer (\$20,000.00). Divide the result (\$1,812.95) by the average daily private pay rate (currently \$199.31).

Result: $\$20,000.00 - \$18,187.05 (3 \times \$6,062.35) = \$1,812.95$

$\$1,812.95 \div \$199.31 = 9.09$ days (round down to 9 days)

There are nine days of ineligibility.

Mr. Smith is eligible for Medicaid beginning August 29, 2005.

Mr. Smith is ineligible for payment of LTC services for three whole months (August, September and October) and nine days (November 1, 2005 through November 9, 2005). This period of ineligibility (August 1, 2005 through November 9, 2005) must be entered onto the TPL Data Entry Worksheet for clerical input.

Steps to Evaluate Multiple Transfers

1. Evaluate the first transfer to determine if FMV was received.
2. Determine if there are any whole month periods of ineligibility by dividing the UV of the transfer by the average monthly private pay rate (currently \$6,062.35). The resulting amount is the number of whole months of ineligibility.

Example:

Mr. Wilson submitted an application for Medicaid/LTC services on October 27, 2005. He is requesting Medicaid/LTC effective September 26, 2005. He made a transfer of \$10,000.00 on September 1, 2005, and then made a second transfer of \$400.00 on

October 25, 2005. Mr. Wilson did not receive FMV for either of these transfers. Divide the amount of the first transfer (\$10,000.00) by the average monthly private pay rate (currently \$6,062.35).

Result: $\$10,000.00 \div \$6,062.35 = 1.65$ months

There is one whole month of ineligibility (September).

3. Determine the partial month penalty period by subtracting the value of the whole month of ineligibility (currently \$6,062.35) from the amount of the first transfer (\$10,000.00). Divide the result (\$3,937.65) by the average daily private pay rate (currently \$199.31).

Result: $\$10,000.00 - \$6,062.35 = \$3,937.65$

$\$3,937.65 \div \$199.31 = 19.76$ days (round down to 19 days)

There are nineteen days of ineligibility in October.

4. Evaluate the second or subsequent transfer(s) to determine if FMV was received.
5. Determine a new partial month penalty period. A current period of ineligibility exists for the period September 1, 2005 through October 19, 2005. The \$400.00 transfer on October 25, 2005 occurred in a month with an existing penalty period (October). This \$400.00 transfer will be added to \$3,937.65, which is the partial month penalty amount calculated in Step 3. The total amount will be divided by the average daily private pay rate (currently \$199.31) to determine the adjusted partial month penalty period.

Result: $\$3,937.65 + \$400.00 = \$4,337.65$

$\$4,337.65 \div \$199.31 = 21.76$ days (round down to 21 days)

This results in an adjusted partial month penalty period of twenty-one days for October.

Mr. Wilson is eligible for Medicaid beginning September 26, 2005.

Mr. Wilson is ineligible for payment of LTC services for the one whole month (September) and twenty-one days (October 1, 2005 through October 21, 2005). This period of ineligibility must be entered onto the TPL Data Entry Worksheet for clerical input.