



APPLE HEALTH (MEDICAID) MANUAL REVISION

Revision #	031
Chapter / Section	Asset Transfers
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Summary of Revision

Revised and streamlined content, included more examples and clarified some rules.

Apple Health (Medicaid) Manual revision via track changes:

Current page: <http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/transfer-asset>

Asset Transfers

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Revised [REVISION DATE HERE]

Purpose: Describe and clarify the rules regarding assets transfer and long-term care.

[INSERT WAC HERE - WAC 182-513-1363 Evaluating an asset transfer for people applying for or receiving long-term care (LTC) services]

Clarifying Information

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GENERAL

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What is a transfer? Why do transfers matter?

A transfer occurs anytime ownership of an asset changes from one person to another, regardless of whether compensation is received.

EXAMPLE: all of these are transfers – buying a cup of coffee, giving away a car, purchasing a house, selling used clothing.

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Transfers matter because if a client, or their spouse, transfers an asset away, and does not receive adequate compensation in return, it may result in a penalty period during which the client cannot receive Medicaid-funded long-term care (LTC) services. The length of the penalty is based on the "uncompensated value" that was transferred away. The idea is that the client should have used the asset to provide for their LTC, rather than transferring it away, and Medicaid would not pay for LTC for the time the transferred assets could have paid.

When do transfer rules and penalties apply?

Transfer rules and penalties apply to applicants for or recipients of:

- Institutional Medicaid services (for people physically in a medical institution), except those on the hospice program or the program for all-inclusive care for the elderly (PACE).
- Home and community-based (HCB) waiver services through home and community services (HCS) or the developmental disability administration (DDA).

NOTE: the term "LTC" is used to describe the subset of long-term services and supports (LTSS) that use institutional Medicaid rules. Institutional Medicaid rules require application of transfer rules and penalties.

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NOTE: SSI recipients are also subject to transfer penalties if they are applying for or receiving LTC.

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Transfer rules and penalties **DO NOT** apply to applicants for or recipients of:

- Medicaid with no LTSS

- Non-institutional LTSS (i.e., receiving LTSS under a non-institutional Medicaid categorically needy or alternative benefits plan (ABP) program):
 - Medicaid personal care (MPC)
 - Community first choice (CFC)
- Specifically exempted LTSS:
 - Hospice
 - PACE
 - Roads to community living (RCL)

Does it matter when the transfer occurred?

The date of a transfer is the date the ownership of the asset changed. The WAC specifies what the date of transfer is depending on whether the asset is real or personal property. The agency reviews all transfers in the “look-back” period to determine whether adequate compensation was received for the transferred asset. The look-back period:

- The agency reviews transfers made within the 60-month period before the month the client attained institutional status and applied for LTC.
- The agency also reviews all transfers made on or after the date a client applied and began receiving LTC.

Any transfers made outside of the look-back period do not affect LTC Medicaid eligibility.

Transfers made by someone other than the client or their spouse.

Uncompensated transfers made by the client or their spouse affect LTC Medicaid. Many authorized representatives are attorneys-in-fact (AIF) for clients. AIFs are granted powers under a power of attorney (POA) or durable power of attorney (DPOA) document. However, not all AIFs have authority to transfer a client's assets. In order for an AIF to transfer a client's assets, the POA document must specifically state the AIF has the authority to make transfers on behalf of the client. If the POA document does not contain language that gives the representative specific authority to transfer assets, then the case may need to be referred to Adult Protective Services (APS) for potential financial exploitation.

Transfers made by a guardian (so long as the guardian is given the power by the court) are treated just as if the client transferred the asset themselves. Guardians who have this power are

generally referred to “guardians of the estate.”

Transfers made by others, by the direction of or on the behalf of the client, are also treated as if the client transferred the asset.

What is an asset?

- A resource that the client or spouse owns.
- A source of income, not generated by a resource, that the client or spouse owns.
- Either a resource or source of income that the client or spouse does not own, but is entitled to. For example:
 - Waived pension income;
 - Waived right to receive an inheritance;
 - Not accepting or accessing injury settlements;
 - Diverting tort or other court payments; or
 - Refusing to take legal action to obtain court ordered payments.

What if the client transfers a stream of income to their spouse?

When a client transfers a resource to their spouse, the income that is generated by that transferred resource becomes the separate income of the spouse - it is no longer the client's income.

EXAMPLE: If the client transfers ownership of a rental property to his or her spouse, then any income received from the rental property is now the spouse's income.

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If the client transfers a stream of income to his or her spouse, but there is no resource generating that income, then the income is still considered the client's, even if it was transferred to the spouse or into a trust for the spouse. See [WAC 182-513-1330\(7\)](#).

EXAMPLE: A client receives a pension of \$500 and is able to change the payment so that the spouse receives the income. All \$500 is still the client's income, even though is paid to the spouse.

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Evaluate court orders that transfer a stream of income to a spouse on a case-by-case basis. You may need to obtain a legal opinion.

Referrals to APS

If you have a reasonable belief that a vulnerable adult (the client) has been financially exploited

because of an asset transfer, make a referral to APS.

EXCEPTIONS TO TRANSFER PENALTIES

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All assets transferred for less than fair market value (FMV) were returned to the client or the client's spouse.

Once a penalty is established, all assets must be returned in order to reconsider the penalty. This includes multiple assets transferred to one person, or multiple assets transferred to multiple people. If all assets are not returned, the penalty remains using all uncompensated value, including assets that were originally transferred but returned.

Likewise, if an application is made after some assets are returned, a penalty is calculated for the "net" uncompensated value, based on the total assets transferred less any assets returned (or compensation received).

EXAMPLE – Not All Assets Returned Before Penalty Established: Harry enters a nursing home in September. In October, Harry transfers \$50,000 to his son. Later in October, the son gets legal advice from attorney to transfer what is left back to Harry. In November, Harry's son gives back \$40,000. Harry uses \$20,000 to pay off his current bills, he spends \$6000 on a burial plan, and has enough left to pay privately until January. In February, he is at \$2,000 in resources and applies for Medicaid. The uncompensated transfer is \$10,000. (Original \$50,000 less the \$40,000 returned to the client to pay off his own bills equals \$10,000).

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EXAMPLE – Not All Assets Returned After Penalty Established: Paul enters a nursing home in September. In October, he transfers \$50,000 to his son. In November, Paul has \$2,000 in his bank account and applies for Medicaid. The penalty is established based on the \$50,000 transfer. A denial letter is sent in November. In December, Paul wants his period of ineligibility adjusted because the son decided to give \$12,000 back. In this scenario, we will not adjust the penalty in this example because the penalty period was already established. In order for the penalty not to apply, ALL the assets must be transferred back to Paul.

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Uncompensated value in a month does not exceed the daily private nursing facility rate in that month

As long as the uncompensated value of all transfers in one month does not exceed the daily private nursing facility rate for that month, there is no penalty in that month.

If multiple transfers, spanning several months, are involved, then each month must be individually evaluated against this exception.

There was an intent to transfer the asset at FMV

To meet this exception criteria, the client has the burden to prove by convincing evidence that there was an intent to transfer the asset at FMV, and that the asset was transferred for less than FMV.

The transfer was not made to qualify for Medicaid, continue to qualify for Medicaid, or avoid estate recovery

The presumption is that the client or spouse transferred the asset to qualify for Medicaid, continue to qualify, or avoid estate recovery. The client must rebut that presumption by providing *convincing evidence*.

In order to rebut the presumption, the client must present convincing evidence of what the specific purpose of the transfer was. Transferring for gifts, inheritance, avoiding probate, or preservation of an estate does not rebut the presumption that the transfer was to qualify for Medicaid or avoid estate recovery. Further, it is the purpose of the transfer *to the recipient*, not what recipient will be using the transferred assets for.

EXAMPLE: Mary transferred \$50,000 to her daughter Sally in 10/2015. Mary applied for Medicaid in 04/2017. It is presumed Mary transferred the \$50,000 to qualify for Medicaid. Mary provided evidence that she did not know about transfer penalties, the \$50,000 was a gift, and that Mary had no plan to need Medicaid until an incident in 04/2017. Mary did not prove the transfer was NOT to qualify for Medicaid, because the purpose of the transfer was a gift. Whether Mary knew about the rule or knew she needed Medicaid is not evidence of the purpose of the transfer.

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If there is an uncompensated transfer, and the effect of the transfer does not qualify the client for Medicaid, continue to qualify the client for Medicaid, or avoid estate recovery, then this exception is satisfied.

EXAMPLE: Frank and Jane are married, and Jane is applying for COPES. One month before application in May 2017, Frank and Jane gifted \$20,000 to their son. In June 2017, Frank and Jane have \$30,000 in resources (if the transfer never happened, they would have \$50,000 in resources). The effective resource standard (\$2,000 + CSRA) for June 2017 was \$56,726.

Because Jane would have been resource eligible before the transfer, the transfer could not have been to qualify for Medicaid. Because Jane is married to Frank, it is extremely unlikely DSHS would recover the \$20,000 had they not transferred it, therefore the transfer was not to avoid estate recovery. No penalty is this scenario.

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The asset was transferred to the client's disabled child

The child must meet Social Security disability criteria, the child can be any age. You may have to complete a disability determination referral in some cases. The child must be disabled on the date of the transfer.

The asset transferred was an excluded resource (except for the home)

Any resource excluded under chapter 182-513 WAC or chapter 182-515 WAC can be transferred without penalty.

EXAMPLES: The car used for transportation, household goods, property essential to self-support, excluded life insurance policies.

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This exception does not apply to [unavailable](#) resources, only excluded resources.

The Home

- The home was transferred to the client's spouse.
- The home was transferred to the client's child who was under the age of 21 at the time of the transfer.

NOTE: No disability requirement exists for this rule.

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- The home was transferred to the client's child who had lived in the home and provided care. All elements of this exception must be met:
 - The child lived in the client's home for at least two years.

NOTE: If the transfer occurred before the child lived in the home for years, then the child was not living in the client's home, the child was living in *the child's own home*.

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- The child provided two years' of verifiable care while living in the client's home.

NOTE: These two years generally coincide with the two years living requirement, but it is a separate element. A child could live in the home, but not provide care; and the child could also

provide care, but not live in the home. Both these elements together mean the child must be living in the client's home and providing the care, each for at least two years, but only two years need to be concurrent.

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- The period of care was immediately before the client's current period of institutional status.

NOTE: There is no objective test of "immediate," only that the client must have either entered an institution (and the care by the child stopped), or the client began HCB waiver services immediately after the care was provided by the child. This element has nothing to do with the date of the transfer, and it is solely about the period of care compared to the date the client attained institutional status. Institutional status is described in detail in [WAC 182-513-1320](#).

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- The care was not paid for by Medicaid.

EXAMPLE: This transfer penalty exception will not apply if the child is the client's community first choice (CFC) individual provider for two years, and the client – for example – begins receiving nursing home services.

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- The care enabled the client to remain at home; and
- The client provided physician's documentation that the in-home care was necessary to prevent the client's current period of institutional status.

NOTE: For the most part, the timing of the transfer of the home is irrelevant. It can happen anytime after all elements above are met. The only real issue of the timing of the transfer is that it cannot happen until both two-year requirements are met, and the client has attained institutional status. This means the home can be transferred several years after the care stopped, as long as all requirements were met.

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- The home was transferred to the client's sibling or the client's spouse's sibling who had an equity interest in the home. The sibling must have had an equity interest in the home for at least one year before the client attained institutional status.

The transfer was to family for providing care

Some transfers are made in consideration of care provided to a client by a family member. Sometimes family members have entered into some sort of contract with the client for this compensation. Frequently these contracts are called "lifetime care contracts." However, not all

transfers in exchange for care will have been made through a lifetime care contract.

Only transfers to family in consideration of care that meet certain requirements will not incur a penalty. All elements of the exceptions must be met, and if not, all transfers to family in consideration of care will be determined to be uncompensated. The elements of the exception are:

- The transfer is in exchange for care services the family member provided to the client.
- The client had a documented need for the care services provided by the family member. The following list contains some acceptable means of verifying the need:
 - Doctor's statement; a statement from some other medical care provider;
 - A comprehensive assessment completed by DSHS or AAA staff; however, this must have been completed at the time the care contract was completed; or
 - Any other credible means of verifying the need for services.
- The care services provided by the family member are allowed under the Medicaid state plan or the department's home and community based waiver services. Certain services are not covered by Medicaid in an at-home setting, like 24hrs / 7 day-a-week personal care.
- The care services provided by the family member do not duplicate those that another party is being paid to provide.
- The FMV of the asset transferred is comparable to the FMV of the care services provided.
- The time for which care services are claimed is reasonable based on the kind of services provided.
- The assets were transferred as the care services were performed, or with no more time delay than one calendar month between the provision of the service and the transfer.

The transfer was to another party or a trust for the sole benefit of the spouse, disabled child, or other disable person under 65.

Sole benefit of the spouse: although the transfer may be excluded from being penalized, this does not mean that the assets are no longer resources of the client or their spouse. See manual material regarding [trusts](#).

THE PENALTY PERIOD

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Length of the penalty

The length of the penalty depends on when the transfer occurred, because it is based on the statewide average daily private cost for nursing facilities (“private rate”). This [standard](#) typically changes every year in October.

Use the private rate as of the date of the transfer, or the date of application, whichever is later.

For single transfers, or multiple transfer where the same private rate is used, add together the total uncompensated value, and divide by the private rate. The length of the penalty is rounded down to the nearest whole day.

For multiple transfers that span multiple private rate standards, independently add together total uncompensated value applicable to each private rate standard, and divide each by the private rate. Add together the calculated days, and round down to the nearest whole day.

EXAMPLE: Sheila transferred \$25,000 in July 2016 and \$30,000 in November 2016 to qualify for Medicaid. She applied for Medicaid in December 2016. The penalty period will be calculated using the 10/2016 private rate, because the application date is later than the transfer dates.

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EXAMPLE: Hank has been on Medicaid for several years. The financial worker learned Hank received an inheritance, but did not report the change in resources. Hank gifted \$50,000 in July 2016 and November 2016 to remain eligible for Medicaid. The penalty would be calculated by dividing \$50,000 by the October 2015 private rate and dividing the second \$50,000 by the October 2016 private rate. The results would be added together, and rounded down to the nearest whole day.

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Penalty start date

Applicants – an applicant’s penalty period would begin on the date the client would be otherwise eligible for LTC services, but for the transfer, based on an approved application for LTC services or the first day after any previous period of ineligibility has ended.

EXAMPLE: Gary applied for nursing home in May 2016, and asked for retroactive coverage. He has been in the nursing home since 2014. Gary is eligible in all other respects, except for a transfer, back to February 1, 2016. The penalty period would start February 1, 2016.

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Recipients – a recipient’s penalty period begins the first of the month following ten-day advance

notice of the period of ineligibility.

EXAMPLE: Sarah is on LTC Medicaid, and informs her financial worker on 9/26/16 that she transferred her home to her child to avoid the state taking it when she passes away. The penalty would begin 11/1/2016, because that ensures Sarah has at least 10-day advance notice prior to the adverse action of termination.

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OTHER TOPICS

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Transferring a stream of income not generated by a resource

Total uncompensated value for a transferred income stream is calculated by determining a reasonable expected amount the income stream would have paid to the client, and reducing that by any consideration given for the income stream.

Use [Social Security's actuarial life expectancy table](#) to calculate, or the total number of payments (if paid out before life expectancy), to determine a reasonably anticipated payment total.

EXAMPLE: Jake transferred an annuity income stream to his sister in order to qualify for Medicaid. On the date of transfer, there were 50 monthly payments of \$500 remaining on the annuity. Jake's life expectancy per the SSA tables is 11 years. Because the annuity pays out before Jake's life expectancy, we calculate the uncompensated value by multiplying 50 payments by \$500 = \$25,000.

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Splitting a penalty period between spouses

A penalty period can be split evenly between spouses if both spouses would have been approved, but for the transfer, for LTC.

If one spouse is no longer subject to a penalty (in an unfortunate example – one spouse passes away), any remaining penalty is applied to the other spouse.

Civil penalties

There are potential civil penalties for a person who receives a client's assets without adequate consideration. See [RCW 74.39A.160](#).

Hardship

A client may be able to prove hardship after LTC is denied for a transfer penalty. Transfer

denial/termination letters include information about how to apply for a hardship waiver. See [WAC 182-513-1367](#).

Worker Responsibilities

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- Verification of any assets transfers within the look-back period is an eligibility requirement. Workers should request verification of any claimed assets transfers, and request verification to complete the review of the look-back period for asset transfers.
- If the client claims an exception to a transfer penalty, request verification of the elements of the exception. If you believe the transfer penalty should not be imposed, request verification of the elements of the exception rule.
- Some questions to ask yourself when reviewing verifications:
 - What asset was transferred?
 - Was it transferred in the look-back period?
 - What was the value of the asset?
 - Was anything received in return for the asset?
 - Presume the transfer was to qualify for Medicaid, continue to qualify for Medicaid, or avoid estate recovery. Did the client claim any other purpose for the transfer? Did the client provide any evidence as to that purpose? Is that evidence convincing?
 - Are there any potential exceptions to applying a penalty? What verification do we have that satisfies the exception criteria?
- Redeterminations
 - When a person is denied or terminated from LTC due to a transfer penalty, we must determine whether the client is eligible for another Medicaid program that does not have asset transfer rules. This includes:
 - SSI recipients – they should continue categorically needy (CN) Medicaid
 - Residential clients – determine CN or medically needy (MN) in an alternative living facility. [WAC 182-513-1205](#)
 - Under 65 and no Medicare – determine using the [healthplanfinder](#)
 - Most others – determine MN under SSI-related medical (S95/S99)

- Additional information for financial staff can be found on the ALTSA financial training SharePoint site, Module 5.08 of financial core training: evaluating a transfer of an asset.

Related Links

- [Medicaid Income and Resource Standards](#)
- [LTC Definitions \(WAC 182-513-1100\)](#)

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