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Revised: October 1, 1993

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: LOUISIANA

TRANSFER OF ASSETS/RESOURCES

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

OBRA 1993
Sect. 13611
P.L. 103-66

I. Effective October 1, 1993

A. Restricted Eligibility

Effective with services provided October 1, 1993, through December 31, 1994 (except for interspousal transfers), a period of restricted eligibility will be imposed on an institutionalized individual or an individual who seeks to participate in services provided under a Home and Community-Based Waiver who transferred assets on or after August 11, 1993, for less than fair market value during the thirty-six (36) month look-back period [or, in the case of payments from certain trusts or portions of a trust established on or after August 11, 1993, that are treated as assets disposed of by the individual during the sixty (60) month look-back period].

For institutionalized individuals the 36 (or 60, as applicable) month period is the period immediately before the date the individual became institutionalized, if entitled to medicaid on that date; or during or after the 36 (or 60, as applicable) month look-back period immediately before application, if not Medicaid eligible at the beginning of institutionalization.

For purposes of this section, the services described herein with respect to an institutionalized individual are:

1. Nursing facility services;

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2. A level of care in any institution equivalent to that of nursing facility services; and
3. Home or community-based services furnished under a waiver granted to the Bureau for provision of these services as an alternative to institutionalization.

B. Procedures

1. The Bureau uses a procedure which provides for a period of restricted eligibility for a number of months which shall be equal to the total cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) on or after the look-back date specified in A above divided by the State's average monthly cost of nursing facility services to a private-pay patient. In figuring periods of ineligibility, only full months will be counted. If the calculation results in a partial month, the days will be rounded down to the end of the preceding month. The period of restricted eligibility begins with the month in which the resources were transferred. The individual remains eligible for all Medicaid services except nursing facility services, equivalent services in a medical institution, and home and community-based services.
2. Penalty period sanctions for multiple or incremental transfers shall be cumulative and follow consecutively, rather than concurrently.

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3. Assets held in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement shall be considered transferred by the individual when any action is taken, either by the individual or by any other person, that reduces or eliminates the individual's ownership or control.

C. Additional procedures with regard to trusts:

1. For purposes of determining an individual's eligibility for Medicaid, the following additional rules shall apply to trusts established on or after August 11, 1993. An individual shall be considered to have established a trust if assets of the individual were used to form all or part of the corpus of the trust and if any of the following individuals established such trust(s):
 - a. The individual,
 - b. The individual's spouse,
 - c. A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse, or
 - d. a person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

2. Rules will be applied without regard to:

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- a. The purposes for which a trust is established,
 - b. whether the trustees have or exercise any discretion under the trust,
 - c. any restrictions on when or whether distributions may be made from the trust, or
 - d. any restrictions on the use of distributions from the trust.
3. In the case of an irrevocable trust:
- a. if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered as an available resource to the individual, and payments from that portion of the corpus or income: 1) to or for the benefit of the individual, shall be considered income of the individual, and 2) for any other purpose, shall be considered a transfer of assets by the individual subject to penalties under this section of the State Plan.
 - b. any portion of the trust from which no payment could be made to the individual under any circumstances shall be considered as of the date of establishment of the trust to be disposed assets and subject to transfer of assets sanctions.

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The above procedures in regard to trusts do not apply to trusts which provide that upon the death of such individual, the State will receive all amounts remaining in the trust up to an amount equal to the total medical assistance paid by Medicaid on behalf of the individual.

SUPERSEDES TN 03-09

D. Annuities:

Effective January 1, 2003, the following shall govern annuities.

An annuity is defined as a contract or agreement by which one receives fixed, non variable payments on an investment for a lifetime or a specified number of years. An annuity containing a balloon payment will be considered an available resource. An annuity purchased by or for an individual using that individual's assets will be considered an available resource unless it meets all of the following criteria. The annuity:

1. is irrevocable;
2. pays out principal and interest in equal monthly installments (no balloon payment) to the individual in sufficient amounts that the principal is paid out within the actuarial life expectancy of the annuitant;
3. names the State of Louisiana, Department of Health and Hospitals or its successor agency as the primary and permanent residual beneficiary of funds remaining in the annuity, not to exceed any Medicaid funds expended on the individual during his lifetime; and
4. is issued by an insurer or other body licensed and approved to do business in the jurisdiction in which the annuity is established.

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Annuities issued before January 1, 2003 which do not provide for pay out of principal and interest in equal monthly installments and for which documentation is received from the issuing company that the "pay out" arrangements cannot be changed, will be considered to meet the new requirements once amended

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to name the State of Louisiana, Department of Health and Hospitals or its successor agency as the residual beneficiary of funds remaining in the annuity, not to exceed any Medicaid funds expended on the individual during his lifetime.

E. Exceptions to the Application of Transfer of Assets Provisions:

1. The asset transferred was a home, and title to the home was transferred to:
 - a. the spouse or the child of the institutionalized individual who is under the age of 21 or who is blind or permanently and totally disabled;
 - b. a son or daughter of the institutionalized individual who was residing in the home for at least two years immediately before the applicant was admitted to the medical institution or nursing facility or waiver program, and who provided care which enabled the institutionalized individual to remain at home during that period; or
 - c. a sibling of an institutionalized individual who has an equity interest in the home and who was residing in the home for at least one year immediately before the applicant was admitted to the medical institution, nursing facility, or waiver program.

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2. The assets were transferred to the spouse (or to another for the sole benefit of the spouse) or to the individual's child or to a trust established solely for the benefit of the child who is blind or permanently and totally disabled.
3. The assets were transferred from the individual's spouse to another for the sole benefit of the individual's spouse.
4. The individual makes a satisfactory showing to the State (in accordance with regulations promulgated by the Secretary) that:
 - a. he or she intended to dispose of the assets either at fair market value or for other valuable consideration, or
 - b. that the assets were transferred exclusively for a purpose other than to qualify for medical assistance, or
 - c. all assets transferred for less than fair market value have been returned to the individual.
5. An institutionalized spouse who (or whose spouse) transferred assets for less than fair market value shall not be found to be ineligible for nursing facility services, for a level of care in a medical institution equivalent to that of nursing facility services, or for home and community-based services where the State (in accordance with standards specified by the Secretary) determines that denial of eligibility would work an undue

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hardship on the basis of criteria established by the Secretary under the provision of Section 1917 (c)(2)(D) of the Social Security Act.

F. Loans, Mortgages, Promissory Notes, and Property Agreements or Assignments

Loans, mortgages, promissory notes, property agreements or property assignments are countable resources, regardless of any non-assignability, non-negotiability or non-transferability provisions contained therein. If any of these instruments contain self-canceling clauses or clauses that forgive a portion of the principal, balloon payments, interest only payments, or repayment terms that exceed the holder's life expectancy, or there is evidence that there is not a good faith agreement to repay the entire principal, then the loan, note, agreement or assignment shall not be considered bona fide, and shall be evaluated as a transfer of resources. Pursuant to rules and regulations, the State may establish what constitutes a bona fide transaction for establishing Medicaid eligibility. An opportunity to rebut the treatment of such instruments as countable resources or transfer of resources shall be provided to the applicant/recipient through the appeals process.

G. The agency will comply with the mandatory provisions under Section 1917 of the Social Security Act as amended by the Deficit Reduction Act of 2005.

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Section 303(b)
P.L. 100-360

II. Effective July 1, 1988

A. Restricted Eligibility

Section 608(d)
(16)B(i)
P.L. 100-485

Effective for dates of service from July 1, 1988, to October 1, 1993 (except for interspousal transfers), a period of restricted eligibility will be imposed on an institutionalized individual or an individual who seeks to participate in services provided under a Home and Community-Based Waiver who transferred resources before August 11, 1993, for less than fair market value, during or after the thirty (30) month period immediately before the date the individual became institutionalized, if entitled to Medicaid on that date; or during or after the thirty (30) month period immediately before application, if not Medicaid eligible at the beginning of institutionalization.

B. Procedure

The Bureau uses a procedure which provides for a period of restricted eligibility that will be the lesser of thirty (30) months or a number of months determined by dividing the total uncompensated value of the transferred resource by the State's average cost of nursing facility services to a private-pay patient. In figuring period of ineligibility, only full months will be counted. If the calculation results in a partial month, the days will be rounded down to the end of the

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preceding month. The period of restricted eligibility begins with the month in which the resources were transferred. The individual remains eligible for all Medicaid services except nursing facility services, equivalent services in a medical institution, and home and community-based services.

C. Exceptions to the application of Transfer of Resources Provisions:

1. The resource transferred was a home, and title to the home was transferred to:
 - a. the spouse or the child of the institutionalized individual who is under age 21 or who is blind or permanently and totally disabled;
 - b. a son or daughter of the institutionalized individual who resided in the home for at least two years immediately before the applicant was admitted to the medical institution or nursing facility or waiver program, and who provided care which enabled the institutionalized individual to remain at home during that period; or
 - c. a sibling of an institutionalized individual who has an equity interest in the home and who resided in the home for at least one year immediately before the applicant was admitted to the medical institution, nursing facility, or waiver program;

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2. The resources were transferred to the spouse (or to another for the sole benefit of the spouse) or to the individual's child who is blind or permanently and totally disabled;
3. The individual makes a satisfactory showing that he or she intended to dispose of the resources either at fair market value or for other valuable consideration, or that the resources were transferred exclusively for a purpose other than to qualify for medical assistance;
4. The resources were transferred to the spouse or to another for the sole benefit of the spouse, if the individual's spouse does not transfer these resources to another person for less than fair market value; or
5. An institutionalized spouse who (or whose spouse) transferred resources for less than fair market value shall not be found to be ineligible for nursing facility services, for a level of care in a medical institution equivalent to that of nursing facility services, or for home and community-based services where the State determines that denial of eligibility would work an undue hardship, under the provision of Section 1917(c)(2)(D) of the Social Security Act.

1917(c)(2)(d)
of the Act

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