Transfer Penalty Determination Process

Identify if a transfer has occurred and when to apply a transfer penalty to a case using the following steps:

Action/Decision	Refer To Passage
Step 1 Is the individual applying for or receiving ICP, ICP MEDS, institutional Hospice, HCBS or PACE? If Yes, go to step 2. If No, STOP. Do not pursue transfer of assets further.	2040.0814 - 2040.0815.15, 2040.0823
Step 2 Within the look-back period or anytime thereafter, has an asset or income been given away, sold or ownership interest decreased? If Yes, go to step 3. If No, do not pursue transfer of assets further.	1640.0608
Step 3 Was the transfer allowable according to policy? If Yes, do not pursue transfer of assets further. Go to step 22. If No, go to step 4.	1640.0609.03 - 1640.0609.06 1640.0610 - 1640.0612
Step 4 Determine the fair market value (FMV) of each transferred asset or income. Is the FMV greater than $0? If Yes, go to step 5. If No, do not pursue transfer of assets further. Go to step 22.	1640.0408
Step 5 Determine the value of compensation received for the transferred asset or income. Was the compensation received greater than zero? If Yes, go to step 6. If No, the uncompensated value is equal to the FMV. Go to step 7.	1640.0609.02, 1640.0614.01 - 1640.0614.04
Step 6 Determine the uncompensated value (UV) of each transfer by deducting the amount of compensation received from the FMV of the asset at the time it was transferred. Is the UV for any transfer greater than zero? If Yes, go to step 7. If No, do not pursue transfer of assets further. Go to step 22.	1640.0615
Step 7 Were any of the assets/income transferred before 11/1/07? If Yes, go to step 8 to process pre-Deficit Reduction Act (DRA) transfers first. If No, go to step 16 to process transfers made on or after 11/1/07.	N/A
Step 8 Did pre-DRA transfers occur in more than one month? If Yes, go to step 10. If No, go to step 9.	N/A

Step 9

Add together the uncompensated value of all transfers that occurred in the pre-DRA month and divide by the average nursing home cost. Round down to the nearest whole number. The penalty period begins in the month of the transfer.	1640.0618 - 1640.0619

Go to step 15.

Step 10

Add together all uncompensated values that occurred in the same month. For example, if multiple UVs exist for January and February transfers, you will have two separate total UV amounts, one total for each month.	1640.0618

Go to step 11.

Step 11

For multiple months of UV, calculate what the penalty period would be for each individual month by dividing the total UV for each month by the average nursing home cost.	1640.0618

Go to step 12.

Step 12

Compare the penalty period months from step 11 to determine if there are any months in common (overlapping months).	1640.0619

For example, if transfers in January would result in a penalty period of January, February, and March, and transfers made in March would result in a penalty period of March and April, they have a common penalty month of March.

Do any of the individual results from step 11 have common penalty months?

If Yes, go to step 13.
If No, go to step 14.

Step 13

Add together all uncompensated transfers for all pre-DRA months that shared a common penalty month (overlapping) and divide the total by the average nursing home cost. Start the penalty period the earliest month the overlapping UV transfer occurred, or the first month following an existing penalty period if later.	1640.0618 - 1640.0619

Did any of the individual results from step 11 have penalty months that did not overlap with any other penalty period?

If Yes, go to step 14.
If No, go to step 15.

Step 14

For transfers in months that result in no overlapping penalty periods, each month must be treated separately with its own penalty period. Do not add the UV together for different months. Start the penalty periods in the months the transfers actually occurred.	1640.0619

Go to step 15

Step 15

Were any uncompensated transfers made on or after 11/1/07?	N/A

If Yes, go to step 16.
If No, go to step 20.

Step 16
Add together all uncompensated transfers made on of after 11/1/07 to obtain one total UV amount. Divide the total UV by the average nursing home cost. Do not round down the result. — 1640.0618

Go to step 17.

Step 17
Is the result from Step 16 in full months with no decimal/fraction? — N/A

If Yes, go to step 19.
If No, go to step 18

Step 18
When the penalty period includes a fractional period, the fraction of a month must be converted to days. To achieve this, multiply the decimal times 30. For example, .7 months is converted to days by multiplying .7 times 30 = 21 days. — 1640.0618

Go to step 19.

Step 19
Begin the penalty period for post-DRA uncompensated transfers on the latter of the following three dates: — 1640.0619

1. The end of an existing penalty period, or
2. The first day the individual would be eligible for long term care Medicaid were it not for imposition of a transfer penalty, or
3. The date of transfer.

Go to step 20.

Step 20
Will the penalty periods affect months for which the individual has requested long term care services (always Yes if any transfers on or after 11/1/07)? — 1640.0619

If Yes, go to step 21.
If No, no penalty period applies. Go to step 22.

Step 21
Offer the individual the opportunity to rebut the transfer of assets or income. *Mail a Notice of Determination of Asset (or Income) Transfer* form (CF-ES 2264) to the individual after determining the transfer potentially affects eligibility for long term care services. If the individual contact the Department timely, use the *Rebuttal/Undue Hardship Questionnaire (CF-ES 2264A)* to interview the individual about the transfer to develop basis for rebuttal or undue hardship. Use the *Rebuttal/Undue Hardship Evaluation* (CF-ES 2357) to evaluate rebuttal or undue hardship. — 1640.0613, 1640.0616, 1640.0617

Does the individual successfully rebut the transfer or is the hardship claim approved?

If Yes, do not apply a transfer penalty.
If No, apply the penalty period(s) as determined through above steps.

Go to step 22.

Step 22

Record on CLRC all information about the transfers, including the evaluation of a potential transfer, reason it was or was not a transfer, rebuttal/hardship issues, and affect of transfer on eligibility for long term care services. Also scan all documents used in this process in the Document Imaging System. N/A

Note: If the transfer of an asset or income on or after DRA (11/1/07) is the only reason the applicant or recipient is ineligible for ICP, ICP-MEDS, institutionalized Hospice, HCBS or PACE, approve the individual for Medicaid eligible except for transfer (MIT on FLORIDA), and deny long term care. If the applicant fails to verify all factors of eligibility, deny long term care for the specific reason or use code 370 if one does not exist.

It the applicant fails on any factor in addition to the transfer, deny for the other reason. Do not deny long term care services for transfer unless the individual meets all other factors of eligibility. The penalty period must only be applied if the individual is determined to meet all factors of eligibility except for the transfer of assets or income.