

8.110.3 PERSONS IN MEDICAL FACILITIES OR OTHER RESIDENTIAL PLACEMENT

- .30 Medical assistance shall be provided to an institutionalized adult who meets the following criteria:
- A. Has attained the age of 65 years or is disabled according to the definition of disability and blindness applicable to Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI), as stated in Title 20 of the Code of Federal Regulations. This includes individuals who meet the disability requirement by virtue of age; and
  - B. Has been institutionalized for at least 30 consecutive days. The 30 day consecutive stay may be a combination of days in a hospital, nursing facility, or receiving services from a Home and Community Based Services (HCBS) program or Program of All Inclusive Care for the Elderly (PACE). Following 30 consecutive days of institutionalization, Medicaid benefits start as of the first day when institutionalization began if all other eligibility requirements were met as of that date; and
  - C. Is in a facility eligible for Medicaid reimbursement if the individual is in a hospital or nursing facility; and
  - D. Whose gross income does not exceed 300% of the current individual SSI benefit level. This special income standard must be applied for:
    - 1. A person 65 years of age or older, or disabled or blind receiving care in a hospital, nursing home, or an HCBS or PACE program or
    - 2. A person 65 years of age or older receiving active treatment as an inpatient in a psychiatric facility eligible for Medicaid reimbursement; or

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(Continued)

- E. Is in a nursing facility or in an HCBS or PACE program and whose gross income exceeds the 300% level and who establishes an income trust in accordance with the rules on income trusts in this volume; and
- F. Whose resources conform with the regulations regarding resource limits and exemptions set forth in the section on Financial Eligibility for Individuals Eligible for the Colorado Medicaid Programs in this volume; and
- G. Who has not transferred assets for less than fair market value on or after the look-back date defined in Section 8.110.53.B.4. which would incur a penalty period of ineligibility in accordance with the regulations on transfers without fair consideration in the section on Financial Eligibility for Individuals Eligible for the Colorado Medicaid Program in this volume.
- H. In addition, if the individual or the individual's spouse has transferred assets into a trust or is a beneficiary of trust, the trust document shall be submitted to the Colorado Department of Health Care Policy and Financing to determine the effect of the trust on Medicaid eligibility.

**Deleted:** within the 36 month period prior to application

..32 Medicaid programs for the aged, blind and disabled require clients under age 65 to meet the definition of disability or blindness used by the U.S. Social Security Administration for the Supplemental Security Income (SSI) Program. Those definitions are as follows:

- 1. disability means the inability to do any substantial gainful activity (or, in the case of a child, having marked and severe functional limitations) by reason of a medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of 12 months or more;
- 2. blindness means (1) vision in the better eye of 20/200 or less with the use of a correcting lens, or (2) tunnel vision to the extent that the field of vision is no greater than 20 degrees.

8.110.5 FINANCIAL ELIGIBILITY REQUIREMENTS FOR INDIVIDUALS ELIGIBLE FOR THE COLORADO MEDICAID PROGRAM

8.110.53 Transfers of assets without fair consideration

A. If an institutionalized individual or the spouse of such individual disposes of assets for less than fair market value on or after the look-back date, the individual shall be subject to a period of period of ineligibility for long term care services, including nursing facility care, Home and Community Based Services (HCBS), and the Program of All Inclusive Care for the Elderly (PACE).

B. The following definitions apply to transfers of assets without fair considerations:

1. Assets include all income and resources of the individual and such individual's spouse, including all income or resources which the individual or such individual's spouse is entitled to but does not receive because of action by any of the following:

- a. The individual or such individual's spouse,
- b. A person, a court, or administrative body with legal authority to act on behalf of the individual or such individual's spouse, or
- c. Any person, court or administrative body acting at the direction of or upon the request of the individual or such individual's spouse.

2. Fair market value is the value of the asset if sold at the prevailing price at the time it was transferred.

3. Fair consideration is the amount the individual receives in exchange for the asset that is transferred, which is equal to or greater than the value of the transferred asset.

4. ~~For transfers made before February 8, 2006, the look-back date is 36 months prior to the date of application. For transfers made on or after February 8, 2006, the look-back date is 60 months prior to the date of application.~~

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5. An institutionalized individual is one who is institutionalized in a medical facility, a nursing facility, or applying for or receiving Home and Community Based Services (HCBS) or the Program of All Inclusive Care for the Elderly (PACE).

C. If an institutionalized individual or such individual's spouse transfers assets without fair consideration ~~on or after the look-back date~~, the transfer shall be evaluated as follows:

Deleted: within 36 months prior to the date of application

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1. The fair market value of the transferred asset, less the actual amount received, if any, shall be divided by the average monthly private pay cost for nursing facility care in the state of Colorado at the time of application.
2. The resulting number is the number of months that the individual shall be ineligible for medical assistance. For transfers made before February 8, 2006, the period of ineligibility shall begin with the month in which the transfer occurred. For transfers made on or after February 8, 2006, the period of ineligibility shall begin on the later of the following dates:
  - a. The first day of the month in which the transfer occurred, or
  - b. The date on which the individual would be eligible for HCBS, PACE or institutional services based on an approved application for such assistance without regard to any penalty periods.
3. The period of ineligibility shall also include partial months, which shall be calculated by multiplying 30 days by the decimal fractional share of the partial month. The result is the number of days of ineligibility. For transfers occurring on or after April 1, 2006, the result should be rounded up to the nearest whole number.
4. There is no maximum period of ineligibility.
5. The total amount of all of the transfers are added together and the period of ineligibility begins the first day of the month in which the resources are transferred.
  - a. If the previous penalty period has completely expired, the transfers are not added together.
  - b. If the previous penalty period has not completely expired and the first day of the month in which the resources are transferred is part of a prior penalty period, the new penalty period begins the first day after the prior penalty period expires .
6. The institutionalized individual may continue to be eligible for Supplemental Security Income (SSI) and basic Medicaid services, but shall not be eligible for medical assistance for nursing facility services, Home and Community Based Services or the Program of All Inclusive Care for the Elderly due to the transfer without fair consideration.
7. If a transfer without fair consideration is made during a period of eligibility, a period of ineligibility shall be assessed in the same manner as stated above.

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J. Notice

1. The Colorado Department of Health Care Policy and Financing is an interested person according to 15-14-406, C.R.S. or a successor statute.
2. As an interested party, the department shall be given notice of a hearing in cases in which Medicaid planning or Medicaid eligibility is set forth in the petition as a factor for requesting court authority to transfer property.

K. Undue Hardship

1. The period of ineligibility resulting from the imposition of the transfer or the trust provisions may be waived if denial of eligibility would create an undue hardship. Undue hardship can be established only if all of the following conditions are met:
  - a. The individual is otherwise eligible;
  - b. The individual is unable to obtain medical care without the receipt of Medicaid benefits;
  - c. Application of the transfer penalty would deprive the individual of medical care such that the individual's health or life would be endangered or would deprive the individual of food, clothing, shelter or other necessities of life; and
  - d. The individual must also produce evidence to prove that the assets have been irretrievably lost, and that all reasonable avenues of legal recourse to regain possession of them has been exhausted.
2. Undue hardship shall not exist when the application of the trust or transfer rules merely causes the individual inconvenience or when such application might restrict his or her lifestyle but would not put him or her at risk of serious deprivation.
3. Notice of an undue hardship exception shall be given to the applicant or client, and a determination of whether an undue hardship waiver will be granted shall be given in a timely manner. An adverse determination may be appealed in accordance with the appeal process as set forth in RECIPIENT APPEALS PROTOCOLS/PROCESS in this volume.
4. The facility in which an institutionalized individual is residing may file an undue hardship waiver application on behalf of the individual with the individual's or his or her personal representative's consent.

**Deleted:** The individual is experiencing an emergency, life threatening episode and without medical care is in imminent danger of death, or the individual would be deprived of food, shelter, clothing or other necessities of life

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L. No period of ineligibility shall be assessed in any of the following circumstances:

1. Convincing and objective evidence is provided that the individual intended to dispose of the resources either at fair market value or for other valuable consideration.
2. Convincing and objective evidence is presented proving that the resources were transferred exclusively for a purpose other than to qualify or remain eligible for medical assistance.
3. All of the resources transferred for less than fair market value have been returned to the individual.
4. ~~For assets transferred before February 8, 2006, the assets were transferred more than 36 months prior to the date of application.~~
5. ~~For assets transferred before February 8, 2006, the penalty period has expired based on the following formula: The fair market value of the transferred asset is divided by the average cost of nursing facility care in the state at the time of application and the resulting number of months of ineligibility has ended prior to the date of application.~~

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