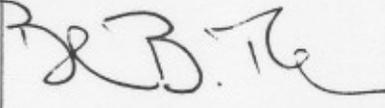


<b>Colorado Department of Health Care Policy and Financing</b> 1570 Grant St., Denver, CO 80203-1818	<b>NUMBER:</b> HCPF 06-019
	<b>CROSS REFERENCE:</b> MA-00-17-P
<b>DIVISION OR OFFICE:</b> Medical Assistance Office	<b>DATE:</b> March 31, 2006
<b>SUBJECT AREA:</b> Financial Eligibility for Medicaid Long-Term Care Services	
<b>SUBJECT:</b> Revised Rules for Transfers without Fair Consideration and Undue Hardship Exceptions	<b>APPROVED BY:</b> 
<b>TYPE:</b> I – Information P - Procedure	Barbara B. Prehmus, M.P.H.

*HCPF Agency Letters can be accessed online at:  
[www.chcpf.state.co.us](http://www.chcpf.state.co.us) >>Reference Material >>Agency Letters*

**Purpose:**

The purpose of this agency letter is to notify County Departments of Social/Human Services and Medical Assistance sites of new rules governing transfers without fair consideration and undue hardship exceptions for applicants and recipients of Medicaid long-term care services.

**Background:**

On February 8, 2006, the Deficit Reduction Act of 2005 was signed into law (Public Law 109-171). This new federal law contains several changes to the rules governing transfers without fair consideration and undue hardship exceptions. The Medical Services Board adopted emergency rules on March 10, 2006 to implement these federally mandated changes. The citation for the new regulation is 10 C.C.R. 2505-10, Section 8.110.53. A copy of all regulations that were revised as a result of this change is included.

**Procedure or Information:**

Transfers without Fair Consideration

Under the new rule, the look-back period for any transfer made **on or after February 8, 2006** is 60 months prior to the date of application. In addition, the penalty period of Medicaid ineligibility for any transfer made **on or after February 8, 2006** begins on the later of the following dates:

- 1) the first day of the month in which the transfer occurred, or
- 2) the date on which the individual would be eligible for HCBS, PACE, or institutional services based on an approved application for those services.

For transfers made before February 8, 2006, the old rules still apply. The look-back period is 36 months (60 months for transfers to a trust), and the penalty period begins in the month in which the transfer occurred.

In addition, the new federal law requires a minor change to the way in which partial months of ineligibility are calculated. 10 C.C.R. 2505-10 Section 8.110.53.C.3. requires that a partial month of ineligibility be calculated by multiplying 30 days by the decimal fractional share of the partial month. As an example, if an individual transferred \$9050 in January 2006, the penalty period would be 1.78 months ( $\$9050/\$5092$ ). Multiplying 0.78 months by 30 days yields 23.4 days, and the individual would be ineligible for one month and 23 days. For transfers occurring on or after April 1, 2006, if the calculation results in a fractional number of days of ineligibility (such as 23.4 days), the resulting number should be rounded up to the nearest whole number. In this example, 23.4 days would be rounded up to 24 days.

**Example:**

Mr. Smith transfers \$25,460 in cash to his sister on April 1, 2006. The average private pay nursing home rate in Colorado for 2006 is \$5092. He applies for Medicaid long-term care services on June 1, 2006 and meets all of the eligibility criteria as of June 1, 2006. The \$25,460 transfer results in a penalty period of Medicaid ineligibility of 5 months ( $\$25,460$  divided by  $\$5092$ ). Under the new rule, this penalty period would begin on June 1, 2006 (date of eligibility) and would end on October 31, 2006.

**Undue Hardship Exception**

The undue hardship exception provisions at 10 C.C.R. 2505-10 Section 8.110.53.K. have also been revised. These provisions allow a transfer without fair consideration penalty to be waived if the Medicaid applicant or client meets certain criteria. 10 C.C.R. 2505-10 Section 8.110.53.K.1.c. has been revised to state that an individual must show that application of the transfer penalty would deprive him or her of medical care to the extent that his or her life would be endangered or that the penalty would deprive the applicant or client of food, shelter, clothing, or other necessities of life.

In addition, the rule has been revised to allow a nursing home facility to file an undue hardship waiver application on behalf of a Medicaid client or applicant with the individual's or individual's representative's consent.

**Effective Date:**

Immediately

**Contact Persons:**

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Attachment: New Regulations for Transfers without Fair Consideration and Undue Hardship  
Exceptions