



(2) being within acceptable degree of relationship to the child (cross reference: 2515); or

c. are pregnant women.

B. Duration of Eligibility

Individuals qualify as categorically needy under this coverage group beginning with the first day of the thirty (30) continuous days of residence, for so long as the conditions above are met.

C. Income and Asset Criteria

1. The Department determines income eligibility under this coverage group by comparing the individual's gross income to the Special Categorically Needy Income Limit (CNIL), set at 300% of the maximum SSI amount for one person.
  - a. If the individual's gross income is less than the special CNIL, he or she passes the income test.
  - b. If the individual's gross income equals or exceeds the special CNIL, he or she does not qualify under this coverage group.
2. The Department uses the AFDC asset limit to determine eligibility for this coverage group.
3. The home equity limitation described in Section 4030.20 applies to this coverage group.



CONNECTICUT DEPARTMENT OF SOCIAL SERVICES  
UNIFORM POLICY MANUAL

Date: XX-XX-06

Transmittal: UP-06-XX

2540.88

Section:

Categorical Eligibility Requirements

Type:

POLICY

Chapter:

Medicaid Coverage Groups

Program:

MAABD-CN

Subject:

Long Term Care Facility Residents Eligible Under Special Income Level (L01)

2540.88 A. Coverage Group Description

This group includes residents of long term care facilities (LTCF), who:

1. meet the categorical requirements of age, blindness or disability[, and];
2. reside in the LTCF for at least thirty (30) consecutive days; and
3. have income below a special income level.

B. Duration of Eligibility

Individuals qualify as categorically needy under this coverage group beginning with the first day of the first thirty (30) continuous days of residence, and continue to qualify [for] so long as the conditions above are met.

C. Income and Asset Criteria

1. The Department determines income eligibility under this coverage group by comparing the individual's gross income to the [Special] special Categorically Needy Income Limit (CNIL), set at 300% of the maximum SSI amount for one person.
  - a. If the individual's gross income is less than the [Special] special CNIL, he or she passes the income test.
  - b. If the individual's gross income equals or exceeds the [Special] special CNIL, he or she does not qualify under this coverage group.
2. The Department uses the AABD asset limit to determine eligibility for this coverage group.
3. The home equity limitation described in section 4030.20 applies to this coverage group.

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UNIFORM POLICY MANUAL

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2540.92

Section:

Categorical Eligibility Requirements

Type:

POLICY

Chapter:

Medical Coverage Groups

Program:

MAABD-CN

Subject:

Individuals Receiving Home and Community Based Services (W01)

2540.92 A. Coverage Group Description

This group includes individuals who:

1. would be eligible for MAABD if residing in a long term care facility (LTCF); and
2. qualify to receive home and community-based services under a waiver approved by the [Health Care Financing Administration] Centers for Medicare and Medicaid Services; and
3. would, without such services, require care in an LTCF.

B. Duration of Eligibility

Individuals qualify for Medicaid as categorically needy for as long as they meet the conditions above and receive home and community-based services under a waiver.

C. Income and Asset Criteria

1. Except as described in subparagraph 3 below, the Department determines income eligibility under this coverage group by comparing the individual's gross income to the Special Categorically Needy Income Limit (CNIL), set at 300% of the maximum SSI amount for one person. To qualify as categorically needy, the individual's gross income must be less than the special CNIL.
2. Except as described in subparagraph 3 below, the Department uses the AABD asset limit to determine eligibility.
3. Individuals who are eligible for Medicaid under the "Working Individuals with Disabilities" coverage group, and who also meet the non-financial eligibility criteria described in paragraph A to receive home and community-based services under the Personal Care Assistance waiver, are considered to meet the income and asset criteria of this coverage group (Cross Reference: 2540.85).
4. The home equity limitation described in Section 4030.20 applies to this coverage group.

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UNIFORM POLICY MANUAL**

**Date:** xx-xx-06

**Transmittal:** UP-06-

**3028**

**Section:**  
**Technical Eligibility Requirements**

**Type:**  
**POLICY**

**Chapter:**  
**Transfer of Assets**

**Program:** MA

**Subject:**

3028 This chapter describes the technical eligibility requirement in the Medicaid program pertaining to the transfer of an asset for less than fair market value, for transfers that occur prior to February 8, 2006.

The material contained in this chapter pertains only to the Medicaid program. Policy and procedures concerning transfers of assets in the cash and Food Stamp programs are contained elsewhere in this section, as are the Medicaid policy and procedures existing [prior to the implementation of this policy] with respect to transfers of assets occurring on or after February 8, 2006.

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| <b>Section:</b><br>Technical Eligibility Requirements | <b>Type:</b>               | <b>POLICY</b>  |
| <b>Chapter:</b><br>Transfer of Assets                 | <b>Program:</b>            | <b>MA</b>      |
| <b>Subject:</b><br>Effective Dates                    |                            |                |

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3028.03 The Department uses the policy contained in this chapter to evaluate asset transfers, including the establishment of certain trusts, if:

1. the individual is requesting Medicaid benefits for October 1, 1993 or later; and
2. the transfer occurred or the trust was established on or after August 11, 1993 but prior to February 8, 2006.



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Date: 7-1-95

Transmittal: UP-95-15

3028.05 page 2

Section:  
Technical Eligibility Requirements

Type:  
POLICY

Chapter:  
Transfer of Assets

Program: MA

Subject:  
Basic Provisions

3028.05 C. 3. Look-Back Date for Transfers (continued)

b. the individual is either applying for or receiving Medicaid.  
(Cross Reference: 3028.11 B. 2)

4. With respect to an irrevocable trust from which, or any income generated by the corpus from which, no payment could be made to the individual under any circumstances, the look-back date is the same as described in paragraph 3 (Cross Reference: 3028.11 C. 3).

D. Transfers Attributable to Individual or Spouse

1. The Department considers transfers of assets made within the time limits described in paragraph C on behalf of an institutionalized individual or his or her spouse by a guardian, conservator, person having power of attorney or other person or entity so authorized by law to have been made by the individual or spouse.
2. In the case of an asset that the individual holds in common with another person or persons in joint tenancy, tenancy in common[,] or similar arrangement, the Department considers the asset (or affected portion of such asset) to have been transferred by the individual when the individual or any other person takes an action to reduce or eliminate the individual's ownership or control of the asset.

E. Start of the Penalty Period

The penalty period begins:

1. the first day of the month during which assets are transferred for less than fair market value, if this month is not part of any other period of ineligibility caused by a transfer of assets; or
2. the first day following a period of ineligibility caused by a previous transfer of assets, if the transfer under examination occurred during a period of ineligibility caused by a previous transfer of assets.

F. Length of the Penalty Period

1. The length of the penalty period is determined by dividing the total

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Section:

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Type:

POLICY

Chapter:

Transfer of Assets

Program:

MA

Subject:

Basic Provisions

3028.05 F. 1. Length of the Penalty Period (continued)

uncompensated value of all assets transferred on or after the look-back date described in paragraph C by the average monthly cost to a private patient for LTCF services in Connecticut.

a. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application.

b. For recipients, the average monthly cost for LTCF services is based on the figure as of:

(1) the month of institutionalization; or

(2) the month of the transfer, if the transfer involves the home, or the proceeds from a home equity loan, reverse mortgage or similar instrument improperly transferred by the spouse while the institutionalized individual is receiving Medicaid, or if a transfer is made by an institutionalized individual while receiving Medicaid. (Cross Reference: 3028.15)[.]

2. Except as described in subparagraph 3 below, each transfer is evaluated separately and a penalty period established consisting of a number of whole months [and/or] or a partial month based on that particular transfer.

3. [a.] If multiple transfers occur in the same month, the uncompensated values are added together and the transfers are treated as a single transfer for that month. A single penalty period is then calculated.

[b. If the total uncompensated value of the assets transferred during a month prior to 7/1/95 is less than the appropriate average monthly cost for LTCF services described in paragraph 1 above, there is no penalty period based on the assets transferred that month.

c. If the penalty period associated with an asset transferred prior to 7/1/95 results in a number of whole and a partial month, the penalty is based solely upon the number of whole months.]

G. Medicaid Eligibility During the Penalty Period

1. During the penalty period, the following Medicaid services are not covered:

a. LTCF services; [and]

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**Date:** 10-1-93

**Transmittal:** UP-95-15

**3028.05 page 4**

**Section:**  
Technical Eligibility Requirements

**Type:**  
POLICY

**Chapter:**  
Transfer of Assets

**Program:** MA

**Subject:**  
Basic Provisions

3028.05 G. Medicaid Eligibility During the Penalty Period (continued)

- b. services provided by a medical institution which are equivalent to those provided in a long-term care facility; and
  - c. home and community-based services under a Medicaid waiver.
2. Payment is made for all other Medicaid services during a penalty period if the individual is otherwise eligible for Medicaid.

H. Transfers Affecting Both Spouses

1. If a transfer made by an individual results in a penalty period for the individual, the penalty period is apportioned between the individual and spouse if:
  - a. the spouse either is or becomes eligible for Medicaid; [and]
  - b. the spouse is also institutionalized; and
  - c. some portion of the penalty against the individual remains at the time conditions a, and b, are met.
2. When a penalty period is apportioned between spouses as described above, the penalty period for each spouse is equal in length to one half the length remaining at the time.
3. If, for some reason, one spouse no longer is subject to his or her portion of the penalty period described in paragraph 2, the remaining portion of the penalty period applicable to both spouses is served by the remaining spouse.

**CONNECTICUT DEPARTMENT OF SOCIAL SERVICES  
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**Date:** 10-1-93

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**3028.15**

**Section:**  
Technical Eligibility Requirements

**Type:**  
POLICY

**Chapter:**  
Transfer of Assets

**Program:**  
MA

**Subject:**  
Transfer Made Exclusively for Reasons Other Than Qualifying

3028.15 An institutionalized individual or the individual's spouse is considered to have transferred an asset exclusively for a purpose other than qualifying for assistance under circumstances which include, but are not limited to, the following:

A. Undue Influence

1. If the transferor is competent at the time the Department is dealing with the transfer, the individual must provide detailed information about the circumstances to the Department's satisfaction.
2. If the transferor has become incompetent since the transfer and is incompetent at the time the Department is dealing with the transfer, the transferor's conservator must provide the information.
3. The Department may pursue a legal action against the transferee if the Department determines that undue influence caused the transfer to occur.

B. Foreseeable Needs Met

The Department considers a transferor to have met his or her foreseeable needs if, at the time of the transfer, he or she retained other income and assets to cover basic living expenses and medical costs as they could have reasonably been expected to exist for the next 36 months, or, in the case of transfers to trusts or similar devices, the next 36 or 60 months, as described [at] in section 3028.05 C.

C. Transfer to or by Legal Owner

The Department considers a transfer to have been made to return the asset to its legal owner if:

1. the individual proves with clear and convincing evidence that the transferee had entrusted the asset to him or her with the intent of retaining beneficial interest; or
2. the individual who receives the asset or who actually makes the transfer:
  - a. holds the asset jointly with the assistance unit at the time of the transfer; and
  - b. is a legal owner of the asset. (Cross Reference: 4010)[.]

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Section:

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Type:

POLICY

Chapter:

Transfer of Assets

Program: MA

Subject:

Transfer Made Exclusively for Reasons Other Than Qualifying

3028.15 D. Transferred Asset Would Not Affect Eligibility if Retained

The Department considers a transfer to be made for purposes other than to qualify when:

1. the institutionalized individual would have been eligible if the transferor had retained the asset; [and]
2. the transferred asset was not the institutionalized individual's or the spouse's home[.]; and
3. the transferred asset was not the proceeds of a home equity loan, reverse mortgage or similar instrument that reduces the institutionalized individual's or the spouse's equity in his or her home.

E. Post Eligibility Transfers Made by the Institutionalized Individual's Spouse

The Department considers a transfer to be made for purposes other than to qualify when:

1. the spouse transferred the asset after the first month of eligibility for the institutionalized individual has passed; [and]
2. the transferred asset was not the institutionalized individual's or the spouse's home[.]; and
3. the transferred asset was not the proceeds of a home equity loan, reverse mortgage or similar instrument that reduces the institutionalized individual's or the spouse's equity in his or her home.

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| <b>Section:</b><br>Technical Eligibility Requirements | <b>Type:</b>               | <b>POLICY</b>  |
| <b>Chapter:</b><br>Transfer of Assets                 | <b>Program:</b>            | <b>MA</b>      |
| <b>Subject:</b><br>Undue Hardship                     |                            |                |

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3028.25 A. General Statement

An institutionalized individual is not penalized based on a transfer of assets made by the individual or his or her spouse if denial or discontinuance of payment for services would create an undue hardship.

B. Undue Hardship Conditions

When an individual would be in danger of losing payment for LTCF or equivalent services [described at] as described in section 3028.05 B. solely because of the imposition of a penalty period, the Department does not impose such penalty under the following conditions:

1. a. The long-term care facility or medical institution has threatened the individual with eviction due to non-payment and the individual has exhausted all legal methods to prevent the eviction; or
- b. The medical provider has threatened to terminate home and community-based services being provided under a Medicaid waiver; and
2. The transferor establishes that the transferee is no longer in possession of the transferred asset and the transferee has no other assets of comparable value with which to pay the cost of care; and
3. There is no family member or other individual or organization able and willing to provide care to the individual.

C. Notice of Undue Hardship Provision

The Department notifies individuals applying for LTC services that an undue hardship provision exists. This notification is part of the preliminary decision notice that the Department sends to the individual when it determines that he or she has made an improper transfer of assets resulting in a penalty period. (Cross Reference: 3028.35)

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Transfer of Assets

Program: MA

Subject:  
Undue Hardship

3028.25 D. Undue Hardship Determinations

1. The individual has ten days from the date of the notice described in section 3028.25 C. to claim undue hardship or to otherwise rebut the Department's decision to impose a penalty period. The Department may grant an extension if the individual so requests and the request is reasonable.
2. If the individual does not claim undue hardship or rebut the Department's preliminary decision to impose a penalty period, the Department sends the individual a final decision notice regarding the penalty period at the time of the disposition of the Medicaid application. This notice contains all the elements of the preliminary notice, and a description of the individual's appeal rights. (Cross Reference: 3028.35)
3. If the individual claims undue hardship or rebuts the Department's preliminary decision to impose a penalty period, the Department has ten days from the receipt of such claim or rebuttal to send an interim decision notice to the individual stating that it is either upholding or reversing its preliminary decision.
4. The notification described in section 3028.25 D. 3. informs the individual that:
  - a. the Department is reversing its preliminary decision, and is not imposing a penalty period with respect to LTC services; or
  - b. the Department's preliminary decision is upheld, and a penalty period is being established, during which Medicaid will not pay for LTC services.
5. The Department sends a final decision notice regarding the undue hardship/rebuttal issue at the time of the mailing of the notice regarding the disposition of the Medicaid application.

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3028.35

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Technical Eligibility Requirements

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POLICY

Chapter:

Transfer of Assets

Program:

MA

Subject:

Notification and Rebuttal

3028.35 A. Notification

1. Prior to denial or discontinuance of LTC Medicaid benefits, the Department notifies the individual and his or her spouse of its preliminary decision that a transfer of an asset is determined to have been improper.
2. The notification includes a clear explanation of both:
  - a. the reason for the decision; and
  - b. the right of the individual or his or her spouse to rebut the issue within [the time limit established by the Department.] ten days.

B. Rebuttal

1. An institutionalized individual, or his or her spouse, who is notified of the Department's determination that an asset transfer was improper, [may rebut] has ten days from the date of the notice to rebut this determination prior to the implementation of the negative action. The Department may grant an extension if the individual so requests and the request is reasonable.
2. Rebuttal must include:
  - a. a statement from the individual or his or her spouse as to the reason for the transfer; and
  - b. objective evidence, which is:
    - (1) evidence which rational people agree is real or valid; and
    - (2) documentary or non-documentary.
- [3. A successful rebuttal clears this eligibility requirement.]

C. Rebuttal Process

1. If the individual does not rebut the Department's preliminary decision to impose a penalty period, the Department sends the individual a final decision notice regarding the penalty period at the time of the disposition of the Medicaid application. This notice contains all the elements of the preliminary notice, and a description of the individual's appeal rights.
2. If the individual rebuts the Department's preliminary decision to impose a penalty period, the Department has ten days from the receipt of the rebuttal

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Transfer of Assets

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Subject:  
Notification and Rebuttal

3028.35 C. 2. Rebuttal Process (continued)

to send an interim notice to the individual stating that it is either upholding or reversing its preliminary decision.

3. The notification described in section 3028.35 C. 2, informs the individual that:

a. the Department is reversing its preliminary decision, and is not imposing a penalty period with respect to LTC services; or

b. the Department's preliminary decision is upheld, and a penalty period is being established, during which Medicaid will not pay for LTC services;

4. The Department sends a final notice regarding the rebuttal issue at the time of the mailing of the notice regarding the disposition of the Medicaid application.

D. Undue Hardship

Regardless of whether the individual rebuts the Department's decision, the individual may claim that a denial or discontinuance of LTC benefits will cause undue hardship. (Cross Reference: 3028.25)

**CONNECTICUT DEPARTMENT OF SOCIAL SERVICES  
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**Date:** xx-xx-06

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**3029**

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**Section:**  
Technical Eligibility Requirements

**Type:**  
POLICY

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**Chapter:**  
Transfer of Assets

**Program:** MA

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**Subject:**

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(NEW) 3029 This chapter describes the technical eligibility requirement in the Medicaid program pertaining to the transfer of an asset for less than fair market value. The policy material in this chapter pertains to transfers that occur on or after February 8, 2006.

The material contained in this chapter pertains only to the Medicaid program. Policy and procedures concerning transfers of assets in the cash and Food Stamp programs are contained elsewhere in this section, as are the Medicaid policy and procedures that pertain to transfers occurring prior to February 8, 2006.





3029.05 D. Transfers Attributable to Individual or Spouse (continued)

2. In the case of an asset that the individual holds in common with another person or persons in joint tenancy, tenancy in common, or similar arrangement, the Department considers the asset (or affected portion of such asset) to have been transferred by the individual when the individual or any other person takes an action to reduce or eliminate the individual's ownership or control of the asset.

E. Start of the Penalty Period

The penalty period begins as of the later of the following dates:

1. the first day of the month during which assets are transferred for less than fair market value, if this month is not part of any other period of ineligibility caused by a transfer of assets; or
2. the date on which the individual is eligible for Medicaid under Connecticut's State Plan and would otherwise be eligible for Medicaid payment of the LTC services described in paragraph B based on an approved application for such care but for the application of the penalty period, and which is not part of any other period of ineligibility caused by a transfer of assets.

F. Length of the Penalty Period

1. The length of the penalty period consists of the number of whole and/or partial months resulting from the computation described in subparagraph 2 below.
2. The length of the penalty period is determined by dividing the total uncompensated value of all assets transferred on or after the look-back date described in paragraph C by the average monthly cost to a private patient for LTCF services in Connecticut.
  - a. For applicants, the average monthly cost for LTCF services is based on the figure as of the month of application.
  - b. For recipients, the average monthly cost for LTCF services is based on the figure as of:
    - (1) the month of institutionalization; or
    - (2) the month of the transfer, if the transfer involves the home, or the equity derived from the home, improperly transferred by the spouse while the institutionalized individual is receiving Medicaid, or if a transfer is made by an institutionalized individual while receiving Medicaid (Cross Reference: 3029.15).
3. Uncompensated values of multiple transfers are added together and the transfers are treated as a single transfer. A single penalty period is then calculated, and begins on the date applicable to the earliest transfer.
4. Once the Department imposes a penalty period, the penalty runs without interruption, regardless of any changes to the individual's institutional status.

G. Medicaid Eligibility During the Penalty Period

1. During the penalty period, the following Medicaid services are not covered:

- a. LTCF services; and
  - b. services provided by a medical institution which are equivalent to those provided in a long-term care facility; and
  - c. home and community-based services under a Medicaid waiver.
2. Payment is made for all other Medicaid services during a penalty period if the individual is otherwise eligible for Medicaid.

H. Transfers Affecting Both Spouses

1. If a transfer made by an individual results in a penalty period for the individual, the penalty period is apportioned between the individual and spouse if:
  - a. the spouse either is or becomes eligible for Medicaid; and
  - b. the spouse is also institutionalized; and
  - c. some portion of the penalty against the individual remains at the time conditions a and b are met.
2. When a penalty period is apportioned between spouses as described above, the penalty period for each spouse is equal in length to one half the length remaining at the time.
3. If, for some reason, one spouse no longer is subject to his or her portion of the penalty period described in paragraph 2, the remaining portion of the penalty period applicable to both spouses is served by the remaining spouse.



3029.10 B. Transfers Made to or for the Benefit of Spouses

1. Subject to the provisions in 3029.10 B. 2, an individual may transfer assets of any type without penalty to his or her spouse, or to a third party for the sole benefit of such spouse.
2. Subject to the provisions in subparagraphs a. and b. below, in or after the month of initial Medicaid eligibility, an institutionalized spouse may transfer assets without penalty to his or her community spouse, or to a third party for the sole benefit of such spouse.
  - a. The amount of the assets transferred must be no greater than that amount needed to raise the community spouse's assets up to the CSPA.
  - b. The transfer must be made as soon as practicable, allowing for such time as necessary for the community spouse to obtain a court order for support.
3. The individual's spouse may transfer assets of any type without penalty to a third party for the sole benefit of himself or herself.

C. Transfers to a Disabled Child

An institutionalized individual, or his or her spouse, may transfer assets of any type without penalty to:

1. his or her child who is considered to be blind or disabled under the criteria for SSI eligibility; or
2. a trust, including a trust described at 4030.80 D. 6, established for the sole benefit of his or her child who is considered to be blind or disabled under criteria for SSI eligibility.

D. Transfers to Certain Trusts

An institutionalized individual or his or her spouse may transfer assets of any type without penalty to a trust, including a trust described at 4030.80 D. 6, established for the sole benefit of an individual under age 65 who is considered to be disabled under criteria for SSI eligibility. If assets are transferred into such trust after the trust is already established and the individual is age 65 or older, the transfer is subject to a penalty, except as specified in 3029.11D.3.

E. Transfers Made Exclusively for Reasons Other than Qualifying

An otherwise eligible institutionalized individual is not ineligible for Medicaid payment of LTC services if the individual, or his or her spouse, provides clear and convincing evidence that the transfer was made exclusively for a purpose other than qualifying for assistance.

F. Transferor Intended to Transfer at Fair Market Value

An institutionalized individual, or his or her spouse, may transfer an asset without penalty if the individual provides clear and convincing evidence that he or she intended to dispose of the asset at fair market value.

G. Transfer Made for Other Valuable Consideration

An institutionalized individual, or his or her spouse, may transfer an asset without

penalty if the individual provides clear and convincing evidence that he or she intended to dispose of the asset in return for other valuable consideration. The value of the other valuable consideration must be equal to or greater than the value of the transferred asset in order for the asset to be transferred without penalty. (Cross Reference: 3029.20)

#### H. Return of Transferred Asset

1. An institutionalized individual is not penalized for the transfer of an asset or assets if all or the entire amount of the asset or assets has been returned to the individual.
2. If a portion of the transferred asset is returned to the individual, the start date of the penalty period is adjusted. The ending date of the penalty period as originally determined is not changed. Any adjustment to the penalty period shall not result in Medicaid payments being made for any period of time for which a nursing facility has received payment for services.
3. The returned assets is considered to be available to the individual from the date of the return of the transferred asset. The individual shall not be determined to be ineligible in the month that the transferred asset is returned provided the individual reduces the returned asset in the month received.
4. If there are multiple transfers of assets by the individual to the same or different transferees, a return of anything less than all of the assets from all of the separate transferees or the total amount of the assets are considered partial returns and do not constitute a return of all or the entire amount of the assets.

#### I. Transferor Subject to Undue Hardship

The Department waives the penalty period associated with the transfer of an asset if the Department determines that denial of payment for services would create an undue hardship. In such cases, the Department may pursue recovery against the transferee, if appropriate (Cross Reference: 3029.25).

#### J. "For the Sole Benefit of"

The phrase "for the sole benefit of" an individual, as described in 3029.10 B, C and D, means that the asset, trust or similar device benefits no one but the individual, either at the time of the transfer or establishment of the trust, or at any time in the future, except as described below.

1. With respect to the establishment of a trust, the trust may provide for a reasonable fee to be paid to the trustee for managing the trust.
2. If a beneficiary is named to receive the transferred asset, or whatever is left of it, at the time of the individual's death, the transfer or trust is still considered to have been made for the sole benefit of the individual if:
  - a. the Department is named as the primary beneficiary of the asset, up to the amount of Medicaid payments paid on behalf of the individual; and
  - b. the designated beneficiary or beneficiaries receive any amount that remains.

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UNIFORM POLICY MANUAL**

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**3029.11**

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**Section:**

**Technical Eligibility Requirements**

**Type:**

**POLICY**

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**Chapter:**

**Transfer of Assets**

**Program:**

**MA**

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**Subject:**

**Transfers Involving Trusts**

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(NEW) 3029.11 A. General Principles

1. The Department considers the converting of an asset into the form of a trust or similar asset to be a transfer to the extent that it is no longer available to the individual.
2. The Department considers payments made from trusts other than those made to or for the benefit of the individual to be transfers of assets.

B. Revocable Trusts

1. The Department does not consider the converting of an asset into the form of a revocable trust to be a transfer of the asset because the assets in the trust are considered available to the individual since he or she can revoke the trust.
2. The Department considers payments from a revocable trust other than those made to or for the benefit of the individual to be assets transferred by the individual as described in this chapter.

C. Irrevocable Trusts

1. The Department does not consider the converting of an asset into the form of an irrevocable trust to be a transfer to the extent that payments from the trust can be made to the individual under any circumstances, and are therefore considered available assets.
2. The Department considers payments from that portion of the corpus or income generated by the corpus of an irrevocable trust described in paragraph 1, other than those made to or for the benefit of the individual, to be a transfer of assets by the individual as described in this chapter.
3. The Department considers the converting of an asset into the form of an irrevocable trust from which no payment could be made to the individual under any circumstances as a transfer of assets, as described in this chapter; effective the later of the following dates :
  - a. the date of the establishment of the trust; or
  - b. the date on which payment to the individual is made unavailable.
4. The Department considers the following as separate transfers of assets as of the date they are added to an irrevocable trust described in section 3029.11 C. 3.:

- a. additional funds placed into the trust by the individual, spouse or other person or entity described in section 4030.80 D., to the extent that the additional funds cannot be paid to or for the benefit of the individual under any circumstances; and
- b. income generated by the corpus of the trust, to the extent that this income cannot be paid to or for the benefit of the individual under any circumstances.

D. Exceptions

Assets transferred to the following types of trusts do not cause a penalty if:

1. the trust meets the following conditions:
  - a. the trust contains the assets of an individual who is
    - i. under age 65, both at the time the trust is established and at the time of any subsequent transfer to the trust; and
    - ii. disabled under criteria for SSI eligibility; and
  - b. the trust is established for the sole benefit of such individual, by his or her parent, grandparent, legal guardian or by a court; and
  - c. the trust specifies that the State will receive all amounts remaining in the trust upon the death of the individual, up to an amount equal to the total amount of Medicaid benefits paid on behalf of the individual; or
2. the trust meets the following conditions:
  - a. the trust contains the assets of an individual who is
    - i. under age 65 both at the time the trust is established and at the time of any subsequent transfer to the trust; and
    - ii. disabled under criteria for SSI disability; and
  - b. the trust is established and managed by a non-profit association; and
  - c. a separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of the funds, the trust pools these accounts; and
  - d. accounts in the trust are established solely for the benefit of individuals who are disabled, under criteria for SSI eligibility, by the individuals, their parent, grandparent, legal guardian or by a court; and
  - e. to the extent that the amounts remaining in the individual's account upon his or her death are not retained by the trust, the trust pays to the State from such remaining amount an amount equal to the total amount of Medicaid benefits paid on behalf of the individual; or
3. the trust otherwise meets the conditions in D.2 of this section and the disabled individual is age 65 or older, either at the time the trust is established or at the time of any subsequent transfer to the trust; and
  - a. the individual transfers to the trust, monthly, an amount less than the amount equivalent to the average cost for one day's stay incurred by a

private pay resident of a long-term care facility; or

- b. the individual transfers to the trust, monthly, an amount greater than the amount in D.3.a., and expends the excess in its entirety within six months in accordance with a plan that must be approved by the department. The plan must demonstrate that the individual will receive fair market value for these excess funds; or
- c. the individual transfers an asset to the trust with the intent of expending the asset during his or her lifetime in accordance with a plan that must be approved by the department. The plan must contain a timeframe and demonstrate how the individual will use the asset and that the individual will receive fair market value for the expended asset.

E. Undue Hardship

1. The Department waives the penalty period associated with a transfer of assets involving a trust upon determining that to do so would cause an undue hardship on the individual.
2. The Department uses the criteria described in this chapter to determine whether undue hardship exists. (Cross Reference: 3029.25)

**CONNECTICUT DEPARTMENT OF SOCIAL SERVICES  
UNIFORM POLICY MANUAL**

|                 |   |                     |                 |                 |
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| <b>Date:</b>    | <b>X-X-XX</b>                             | <b>Transmittal:</b> | <b>UP-XX-XX</b> | <b>3029.12</b>  |
| <b>Section:</b> |   |                     |                 | <b>Type:</b>    |
|                 | <b>Technical Eligibility Requirements</b> |                     |                 | <b>POLICY</b>   |
| <b>Chapter:</b> |   |                     |                 | <b>Program:</b> |
|                 | <b>Transfer of Assets</b>                 |                     |                 | <b>MA</b>       |
| <b>Subject:</b> |   |                     |                 |                 |
|                 | <b>Treatment of Annuities</b>             |                     |                 |                 |

(NEW) 3029.12 A. Annuities Purchased by or on Behalf of Annuitants Applying for Medical Assistance for Nursing Facility or Other Long-Term Care Services

The Department shall consider the purchase of an annuity by, or on behalf of, an annuitant who has applied for nursing facility or other long-term care services to be a transfer for less than fair market value unless:

1. the annuity is:
  - a. an annuity described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986; or
  - b. purchased with proceeds from an account or trust described in subsection (a), (c), or (p) of section 408 of such Code; a simplified employee pension (within the meaning of section 408(c) of such Code); or a Roth IRA described in section 408A of such Code; and
  - c. the Department is:
    - i. named as a remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant; or
    - ii. named as a remainder beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if such spouse or a representative of such child disposes of any such remainder for less than fair market value; or
2. the annuity:
  - a. is irrevocable and non-assignable; and
  - b. is actuarially sound ( as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration); and
  - c. provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made; and
  - d. the Department is:

- i. named as a remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the institutionalized individual; or
- ii. named as a remainder beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if such spouse or a representative of such child disposes of any such remainder for less than fair market value.

**B. Annuities Purchased By or On Behalf of the Community Spouses of An Individual Applying for Medical Assistance for Nursing Facility or Other Long-Term Care Services**

The Department shall consider the purchase of an annuity, by or on behalf of the community spouse of an individual who has applied for medical assistance with respect to nursing facility services or other long-term care services, to be a transfer for less than fair market value unless:

1. the Department is named as a remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the institutionalized individual; or
2. the Department is named as a remainder beneficiary in the second position after the minor or disabled child and is named in the first position if such child or a representative of such child disposes of any such remainder for less than fair market value.

**C. Payments Made from an Annuity**

The department shall evaluate any payments made from an annuity purchased with the assets of an applicant or recipient of long-term care medical services, or his or her spouse, in accordance with the provisions of section 3029.10. Any such payments made to the following recipients shall not be considered assets transferred for less than fair market value:

1. the applicant or recipient of long-term care medical services; or
2. the spouse of an applicant or recipient of long-term care medical services; or
3. the child of an applicant or recipient of long-term care medical services or his or her spouse, provided such child is considered blind or disabled under the criteria for SSI eligibility; or
4. a trust as defined in 4030.80, D.1.

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| <b>Date:</b>    | 4-1-07                             | <b>Transmittal:</b> | UP-07-02 | 3029.13                |
| <b>Section:</b> | Technical Eligibility Requirements |                     |          | <b>Type:</b><br>POLICY |
| <b>Chapter:</b> | Transfer of Assets                 |                     |          | <b>Program:</b><br>MA  |
| <b>Subject:</b> | Purchase of Life Use               |                     |          |                        |

3029.13 Unless the purchaser of a life use of another person's home resides in the home for at least one year after the date of the purchase of the life use, the [F]unds used to purchase life use of another person's home are considered to be a transfer of assets for less than fair market value [if the purchaser resides in the home for less than one year after the date of the purchase]. The one-year period need not be continuous. The time that the person is not residing in the home, however, shall not be counted toward the one-year period.

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| <b>Date:</b>    | <b>4-1-07</b>  | <b>Transmittal:</b> | <b>UP-07-02</b> | <b>3029.14</b>  |
| <b>Section:</b> |  |                     |                 | <b>Type:</b>    |
|                 | <b>Technical Eligibility Requirements</b>                        |                     |                 | <b>POLICY</b>   |
| <b>Chapter:</b> |  |                     |                 | <b>Program:</b> |
|                 | <b>Transfer of Assets</b>  |                     |                 | <b>MA</b>       |
| <b>Subject:</b> |  |                     |                 |                 |
|                 | <b>Purchase of a Mortgage Note, Loan or Installment Contract</b> |                     |                 |                 |

- 3029.14
- A. If an individual or his or her spouse uses his or her funds to purchase a mortgage note, loan, installment contract or similar financial instrument, the Department may consider such a transaction a transfer of assets for less than fair market value.
  - B. The purchase of a bona fide mortgage note, loan, installment contract or similar financial instrument is not considered a transfer of assets for less than fair market value if the mortgage note, loan, installment contract or similar financial instrument:
    - 1. has a repayment term that is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration); and
    - 2. provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments; and
    - 3. prohibits the cancellation of the balance upon the death of the lender.
  - C. A mortgage note, loan, installment contract or similar financial instrument is considered bona fide only if:
    - 1. a repayment agreement is in place at the time the funds are dispersed; and
    - 2. repayment is made to:
      - a. the individual applying for or receiving LTC services under Medicaid; or
      - b. the individual's spouse; or
      - c. the child of the individual or spouse, provided the child is considered blind or disabled under the criteria for SSI eligibility.
  - D. An individual or spouse who purchases a mortgage note, loan, installment contract or similar financial instrument that does not meet the criteria described in 3029.14 B and C is considered to have made a transfer of assets for less than fair market value.
  - E. The uncompensated value involving the purchase of a mortgage note, loan, installment contract or similar financial instrument that does not meet the

criteria described in 3029.14 B and C is considered the outstanding balance due as of the date of the institutionalized individual's application for Medicaid benefits.

- F. The Department considers the individual payments derived from a mortgage note, loan, installment contract or similar financial instrument as counted income. (Cross Reference: 4030.50)

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| <b>Date:</b> X-X-XX  | <b>Transmittal:</b> UP-XX-XX | 3029.15 |
| <b>Section:</b><br>Technical Eligibility Requirements                          | <b>Type:</b>                 | POLICY  |
| <b>Chapter:</b><br>Transfer of Assets  | <b>Program:</b>              | MA      |
| <b>Subject:</b><br>Transfer Made Exclusively for Reasons Other Than Qualifying |                              |         |

(NEW) 3029.15 An institutionalized individual or the individual's spouse is considered to have transferred an asset exclusively for a purpose other than qualifying for assistance under circumstances which include, but are not limited to, the following:

A. Undue Influence

1. If the transferor is competent at the time the Department is evaluating the transfer, the individual must provide detailed information about the circumstances to the Department's satisfaction.
2. If the transferor has become incompetent since the transfer and is incompetent at the time the Department is evaluating the transfer, the transferor's conservator must provide the information.
3. The Department may pursue a legal action against the transferee if the Department determines that undue influence caused the transfer to occur.

B. Foreseeable Needs Met

The Department considers a transferor to have met his or her foreseeable needs if, at the time of the transfer, he or she retained other income and assets to cover basic living expenses and medical costs as they could have reasonably been expected to exist based on the transferor's health and financial situation at the time of the transfer.

C. Transfer to or by Legal Owner

The Department considers a transfer to have been made to return the asset to its legal owner if:

1. the individual proves with clear and convincing evidence that the transferee had entrusted the asset to him or her with the intent of retaining beneficial interest; or
2. the individual who receives the asset or who actually makes the transfer:
  - a. holds the asset jointly with the assistance unit at the time of the transfer; and
  - b. is a legal owner of the asset. (Cross Reference: 4010)

D. Transferred Asset Would Not Affect Eligibility if Retained

1. The Department considers a transfer to be made for purposes other than to qualify when:
  - a. the institutionalized individual would have been eligible if the transferor had retained the asset;
  - b. the transferred asset was not the institutionalized individual's or the spouse's home; and
  - c. the transferred asset was not the proceeds of a home equity loan, reverse mortgage or similar instrument that reduces the institutionalized individual's or the spouse's equity in his or her home.
2. The Department evaluates transfers described in sections 3029.15 D. 1. b. and c. in accordance with the provisions of this chapter.

E. Post Eligibility Transfers Made by the Institutionalized Individual's Spouse

1. The Department considers a transfer to be made for purposes other than to qualify when:
  - a. the spouse transferred the asset after the first month of eligibility for the institutionalized individual has passed;
  - b. the transferred asset was not the institutionalized individual's or the spouse's home; and
  - c. the transferred asset was not the proceeds of a home equity loan, reverse mortgage or similar instrument that reduces the institutionalized individual's or the spouse's equity in his or her home.
2. The Department evaluates transfers described in sections 3029.15 E. 1. b. and c. in accordance with the provisions of this chapter.

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**Date:** 4-1-07

**Transmittal:** UP-07-02

**3029.20**

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**Section:**

**Technical Eligibility Requirements**

**Type:**

**POLICY**

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**Chapter:**

**Transfer of Assets**

**Program: MA**

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**Subject:**

**Transfers Made in Return for Other Valuable Consideration**

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(NEW) 3029.20 A. General Principles

1. Other valuable consideration may be received either prior to or subsequent to the transfer.
2. The value of the other valuable consideration, computed as described in section 3029.20 A, 3., must be equal to or greater than the value of the transferred asset in order for the asset to be transferred without penalty.
3. The value of the other valuable consideration, as described in section 3029.20 B., is equal to the average monthly cost to a private patient for long-term care services in Connecticut, multiplied by the number of months the transferee avoided the need for the transferor to be institutionalized. (Cross Reference: P-3029.30)

B. Criteria for Other Valuable Consideration

Other valuable consideration must be in the form of services or payment for services which meet all of the following conditions:

1. the services rendered are of the type provided by a homemaker or a home health aide;
2. the services are essential to avoid institutionalization of the transferor for a period of at least two years; and
3. the services are either:
  - a. provided by the transferee while living with the transferor; or
  - b. paid for by the transferee.

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| <b>Date:</b> xx-xx-xx                                 | <b>Transmittal:</b> UP- | <b>3029.25</b> |
| <b>Section:</b><br>Technical Eligibility Requirements | <b>Type:</b>            | <b>POLICY</b>  |
| <b>Chapter:</b><br>Transfer of Assets                 | <b>Program:</b>         | <b>MA</b>      |
| <b>Subject:</b><br>Undue Hardship                     |                         |                |

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(NEW) 3029.25

**A. General Statement**

Except as provided in paragraph B. of this section, an individual, as described in section 3029.05 B, and an individual who is applying for Medicaid for services provided at a long term care facility, is not penalized based on a transfer of assets made by the individual or his or her spouse, his or her legal representative or the record owner of jointly held assets if denial or discontinuance of payment for services would create an undue hardship. Determining whether an undue hardship exists, whether a penalty period shall be imposed, or whether a penalty period may be waived is based upon the application of paragraphs A., B., and C. of this section.

An undue hardship exists when:

1. a. the life or health of the individual would be endangered by the deprivation of medical care; or  
b. the individual would be deprived of food, clothing, shelter or other necessities of life;
2. the individual is otherwise eligible for LTC services;
3. if the individual is receiving LTC services at the time of the imposition of a penalty period, the LTC provider has notified the individual that the provider intends to discharge or discontinue providing LTC services to the individual due to non-payment;
4. if the individual is not receiving LTC services at the time of the imposition of a penalty period, a LTC provider has refused to provide LTC services to the individual due to the imposition of a penalty period; and
5. there is no other individual or organization willing and able to provide LTC services to the individual.

**B. Notwithstanding a finding of undue hardship as described in paragraph A. of this section, a penalty period shall be imposed when:**

1. the individual transferred or assigned assets to deliberately impoverish himself or herself in order to obtain or maintain eligibility for medical assistance; or

2. the transfer that resulted in a transfer-of-asset penalty was made by the individual's legal representative; or
3. the transfer that resulted in a transfer-of-asset penalty was made by the record owner of a jointly-held asset

C. Notwithstanding paragraph B of this section, a penalty period may be waived if:

1. the transferor suffered from dementia or other cognitive impairment at the time of application for medical assistance and cannot explain transfers that would otherwise result in the imposition of a penalty period; or
2. the transferor suffered from dementia or other cognitive impairment at the time of the transfers; or
3. the transferor was exploited into making the transfers, due to the dementia or other cognitive impairment; or
4. the transferor's legal representative or the record owner of a jointly-held asset made unauthorized transfers or assignments of assets; or
5. the transferor is the same-sex spouse of the transferee and the transfer to the transferee would otherwise be exempt under federal law.

D. Notice of Undue Hardship Provision

1. The Department notifies individuals applying for LTC services about the possibility of obtaining an undue hardship exception. This notification is part of the preliminary decision notice that the Department sends to the individual when the Department proposes to impose a penalty period resulting from an improper transfer of assets. (Cross Reference: 3029.35)
2. The notice includes a statement that the individual may contest the imposition of a penalty period by filing a claim for undue hardship or providing evidence to rebut the presumption that resulted in the imposition of a penalty.

E. Undue Hardship Determinations

1. The individual has 15 days after the date the notice described in section 3029.25 D. is postmarked to claim undue hardship or to otherwise rebut the Department's decision to impose a penalty period. The Department shall grant an initial thirty-day extension if the individual so requests, and may grant subsequent extension requests if the department receives from the applicant a documented showing of good cause for such extension. Good cause includes, but is not limited to, pursuing evidence from third parties, illness of the requestor, and death in the family.
2. If the individual or the individual's authorized representative claims undue hardship or rebuts the Department's preliminary decision to impose a penalty period, the Department has 10 business days from the receipt of such claim or rebuttal to send an interim decision notice to the individual stating that it is either upholding or reversing its preliminary decision.
3. The notification described in section 3029.25 E. 2. informs the individual that:
  - a. the Department is reversing its preliminary decision, and is not

- a. the Department is reversing its preliminary decision, and is not imposing a penalty period with respect to LTC services; or
  - b. the Department's preliminary decision is upheld, and a penalty period is being established, during which Medicaid will not pay for LTC services, specifying the projected commencement and expiration dates of such penalty.
4. The Department sends a final decision notice regarding the undue hardship/rebuttal issue at the time of the mailing of the notice regarding the disposition of the Medicaid application.
  5. If the individual does not claim undue hardship or rebut the Department's preliminary decision to impose a penalty period, the Department sends the individual a final decision notice regarding the penalty period at the time of the disposition of the Medicaid application. This final decision notice contains a statement confirming any determination the Department has made with regard to a penalty period and a description of the individual's appeal rights. (Cross Reference: 3029.35) An individual who requests an administrative hearing as part of the appeals rights following a final decision regarding a penalty period may present a claim for undue hardship as part of such request, and such claim for undue hardship shall be accepted for review by the hearing officer.
  6. In addition to the procedures for claiming undue hardship set forth in paragraphs 1-5 above, and notwithstanding the time limitations set forth in those sections, an individual may file a claim for undue hardship within 60 days after the individual receives a notice as described in paragraph A.3 or A.4 above that may establish that the individual would be deprived of medical care such that his or her health or life would be endangered or deprived of food, clothing, shelter or other necessities of life if the penalty were not waived.
  7. Not later than 10 days after receiving a claim under paragraph 6 above, the Department sends a final notice to the individual indicating its determination about whether undue hardship exists and whether the penalty period is waived. The individual shall have 60 days from the date of the final notice to request an administrative hearing.

F. Undue Hardship Requests by the LTCF

1. The individual or the individual's authorized representative may give permission for the LTCF in which he or she is residing to file a claim for undue hardship on behalf of the individual.
2. If the LTCF provides certification from a physician that the individual receiving LTCF services in its institution is incapable of caring for himself or herself or incapable of managing his or her affairs, as those phrases are defined in section 45a-644 of the general statutes, and the individual has no legal representative to act on his or her behalf, the LTCF may request, on behalf of the individual, an extension of time to file a claim for undue hardship. In such cases, the Department shall grant such extension to allow a representative to be legally appointed to act on behalf of the individual.
3. Once a conservator has been appointed, as described in F.2 of this section, the conservator shall have 60 days from the date of appointment to file a claim for undue hardship.

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hardship claim process.

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| <b>Date:</b> xx-xx-06                                 | <b>Transmittal:</b> UP-06- | <b>3029.30</b> |
| <b>Section:</b><br>Technical Eligibility Requirements | <b>Type:</b>               | <b>POLICY</b>  |
| <b>Chapter:</b><br>Transfer of Assets                 | <b>Program:</b>            | <b>MA</b>      |
| <b>Subject:</b><br>Compensation                       |                            |                |

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(NEW) 3029.30      Compensation in exchange for a transferred asset is counted in determining whether fair market value was received.

A. Compensation Which is Counted

1. When an asset is transferred, compensation is counted when it is received at the time of the transfer or any time thereafter.
2. Compensation received prior to the time of the transfer is counted if it was received in accordance with a legally enforceable agreement.
3. Compensation may include the return of the transferred asset to the extent described in section 3029.10.

B. Value of Compensation

Each form of compensation is assigned a dollar value to compare with the fair market value of the transferred asset.

1. In determining the dollar value of services rendered directly by the transferee, the Department uses the following amounts:
  - a. for all services of the type normally rendered by a homemaker or home health aid, the current state minimum hourly wage for such services;
  - b. for all other types of services, the actual cost.
2. Out-of-pocket payment by the transferee may include capital alterations necessary to allow the transferor continued use of the home to avoid institutionalization.
3. Compensation in the form of real or personal property is compared using its fair market value.

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Date: XX-XX-XX

Transmittal: UP-xx-

3029.35

Section:

Technical Eligibility Requirements

Type:

POLICY

Chapter:

Transfer of Assets

Program:

MA

Subject:

Notification and Rebuttal

(NEW) 3029.35 A. Notification

1. Prior to denial or discontinuance of LTC Medicaid benefits, the Department notifies the individual and his or her spouse of its preliminary decision that a transfer of an asset is determined to have been improper.
2. The notification includes a clear explanation of both:
  - a. the reason for the decision; and
  - b. the right of the individual or his or her spouse to rebut the issue within 15 days.

B. Rebuttal

1. An institutionalized individual, or his or her spouse, who is notified of the Department's determination that an asset transfer was improper, has 15 days from the date of the notice to rebut this determination prior to the implementation of the negative action. The Department shall grant an extension if the individual so requests, and shall grant subsequent requests if such requests are reasonable.
2. Rebuttal must include:
  - a. a statement from the individual or his or her spouse as to the reason for the transfer; and
  - b. objective evidence, which is:
    - (1) evidence which reasonable people agree is real or valid; and
    - (2) documentary or non-documentary.

C. Rebuttal Process

1. If the individual does not rebut the Department's preliminary decision to impose a penalty period, the Department sends the individual a final decision notice regarding the penalty period at the time of the disposition of the Medicaid application. This notice contains all the elements of the preliminary notice, and a description of the individual's appeal rights.
2. If the individual rebuts the Department's preliminary decision to impose a penalty period, the Department has ten days to send an interim notice to the

individual stating that it is either upholding or reversing its preliminary decision.

3. The notification described in section 3029.35 C. 2. informs the individual that:
  - a. the Department is reversing its preliminary decision, and is not imposing a penalty period with respect to LTC services; or
  - b. the Department's preliminary decision is upheld, and a penalty period is being established, during which Medicaid will not pay for LTC services.
4. The Department sends a final decision notice regarding the rebuttal issue at the time of the mailing of the notice regarding the disposition of the Medicaid application.

D. Undue Hardship

Regardless of whether the individual rebuts the Department's decision, the individual may claim that a denial or discontinuance of LTC benefits will cause undue hardship (Cross Reference: 3029.25).

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| <b>Date:</b> 4-1-87  | <b>Transmittal:</b> UP-87-1 | <b>3099.25</b>                     |
| <hr/>  |                             |                                    |
| <b>Section:</b><br><b>Technical Eligibility Requirements</b> | <b>Type:</b>                | <b>POLICY</b>                      |
| <hr/>  |                             |                                    |
| <b>Chapter:</b><br><b>Verification Requirements</b>          | <b>Program:</b>             | <b>AFDC<br/>AABD<br/>FS<br/>MA</b> |
| <hr/>  |                             |                                    |
| <b>Subject:</b><br><b>Transfer of Assets</b>                 |                             |                                    |

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- [3099.25 . A. For every asset transfer considered by the Department in determining eligibility, verification is required of the following:
1. the date of the transfer;
  2. to whom the asset was transferred;
  3. the value of the compensation received.
- B. Compensation claimed in the transfer of an asset is not credited unless it is verified to the satisfaction of the Department.
- C. For certain specific transfers, verification is required when pertinent, as follows:
1. medical documentation of disability with the date of onset, if the transferor was living in the community at the time of the transfer;
  2. the purpose of withdrawals from a bank account, which:
    - a. exceed \$500; and
    - b. are not part of a regular pattern of expenditure;
  3. medical expenses used to reduce a penalty period.
- D. Fair value of an asset is determined by the Department. The assistance unit must verify fair market value if it claims the asset has a lower value than that set by the Department.
- E. For undue hardship claims:
1. the threat of eviction from the facility due to non-payment must be in writing; and
  2. the transferor must establish with convincing evidence that the transferee:
    - a. no longer has possession of the asset; and
    - b. has no other assets to pay for care.

**CONNECTICUT DEPARTMENT OF INCOME MAINTENANCE  
UNIFORM POLICY MANUAL**

**Date: 4-1-87**

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**3099.25 page 2**

**Section:**

**Technical Eligibility Requirements**

**Type:**

**POLICY**

**Chapter:**

**Verification Requirements**

**Program:**

**AFDC**

**AABD**

**FS**

**MA**

**Subject:**

**Transfer of Assets**

- 3099.25 F. Incompetence at the time of transfer must be verified.
- G. Claims that a transfer was the result of undue influence must be in a signed statement describing the circumstances of the transfer submitted:
1. by the transferor if competent;
  2. by the transferor's conservator if not competent.
- H. Claims of undue influence, undue hardship, incompetence or sudden onset of disability are disregarded if they are not verified.]

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| <b>Section:</b><br>Treatment of Assets | <b>Type:</b>            | <b>POLICY</b>                      |
| <b>Chapter:</b>                        | <b>Program:</b>         | <b>AFDC<br/>AABD<br/>MA<br/>FS</b> |
| <b>Subject:</b><br>Definitions         |                         |                                    |

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4000.01 Non-Essential Household Item

A non-essential household item is a household item which a person or family has acquired as an investment to be sold for a profit at a later date.

Non-Home Property

Non-home property is real property which a person owns but is not using as principal residence.

Personal Effects

Personal effects are clothing, jewelry, or items used for personal care or individual education.

Personal Property

Personal property is an asset in the form of temporary or movable property as opposed to real property.

Qualified Annuity

A qualified annuity is an annuity funded (either directly or through the purchase of an annuity contract from a commercial insurance company or other financial institution) with the assets of a retirement plan described in Sections 401 to 409, inclusive, of the Internal Revenue Code of 1986, as amended. A qualified annuity shall not include any annuity that is purchased by an individual with the assets of any such plan, contract, account or annuity after the distribution of the assets from the plan, contract, account or annuity to such individual, unless such annuity is a rollover individual retirement annuity under Section 408 or a rollover Roth individual retirement annuity under Section 408A.

Real Property

Real property is an asset in the form of real estate - that is, land and buildings, or campers, trailers or mobile homes which have been permanently affixed to the land.

Record Owner

The record owner of an asset is the person who has apparent ownership interest as shown on a title, registration, or other documentation.

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Revocable Trust

A revocable trust is a trust which the settlor reserves the right to dissolve when he or she desires.

Settlor

The settlor is the person whose funds are used to establish a trust.



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| <b>Section:</b><br>Treatment of Assets         | <b>Type:</b>            | <b>POLICY</b>                        |
| <b>Chapter:</b><br>Treatment of Specific Types | <b>Program:</b>         | <b>AFDC<br/>AABD<br/>MA<br/>SNAP</b> |
| <b>Subject:</b><br>Home Property               | <b>[FS]</b>             | <b>SNAP</b>                          |

4030.20 A. All Programs

1. [Equity in home] Home property owned by a member of the assistance unit is not counted in the determination of the unit's eligibility for assistance as long as the unit uses the property as its principal residence. Subject to the provisions of paragraph E. below, certain individuals with substantial home equity may not be eligible for payment of nursing facility and other long-term care services under the Medicaid program.
2. Home property consists of:
  - a. the home itself which the assistance unit uses as principal residence, the surrounding property which is not separated from the home by intervening property owned by others[,] and any related outbuildings used in the operation of the home; or
  - b. life-use of the property the unit uses as its principal residence.
3. A multi-family dwelling is considered home property in its entirety if the assistance unit is occupying at least one unit of the dwelling as principal residence.
4. A home which the assistance unit has left temporarily unoccupied for reasons of employment, training for future employment, illness[,] or uninhabitability caused by a catastrophic event remains excluded if the assistance unit intends to return to the home.
5. A trailer, camper[,] or mobile home is considered home property if the assistance unit is using it as principal residence.

B. AFDC

The Department places a lien against the assistance unit's home property after the assistance unit has received benefits for four cumulative months. (Cross [reference: Section] Reference: section 7500)[,]

C. AABD

The Department places a lien against the assistance unit's home property as of the effective date the unit receives benefits from the Department. (Cross [reference: Section] Reference: section 7500)[,]

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**Section:** **Type:**  
**Treatment of Assets** **POLICY**

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**Chapter:** **Program:**  
**Treatment of Specific Types** **MA**

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**Subject:**  
**Home Property**

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4030.20 D. MA

1. If the individual owns home property and enters a long-term care facility, the home property retains its status as an excluded asset for as long as any of the following persons is lawfully residing in the home:
  - a. the individual's spouse; or
  - b. the individual's child who is under age 21 or blind or disabled; or
  - c. the individual's sibling if the sibling:
    - (1) [is joint owner of] has an equity interest in the home; and
    - (2) was residing in the home for at least one year immediately before the individual entered the long-term care facility.
2. If the individual enters a long-term care facility and none of the persons listed above is lawfully residing in the individual's home, the home's status as an excluded asset depends upon the expectation of the individual to return to the home.
  - a. If the individual can reasonably be expected to return to the home, the home continues to be excluded as home property.
  - b. If the individual cannot reasonably be expected to return to the home, the home is considered non-home property, and is subject to the policies and procedures described in this chapter.
3. The Department assesses the individual's expectation to return to the home, if necessary:
  - a. at the time of the initial application for assistance; and
  - b. every six months, beginning six months from the later of the following dates:

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4030.20 D. 3. b. MA (continued)

- (1) the effective date of assistance; or
  - (2) the date of admission to the long-term care facility.
4. The Department determines whether the individual can be expected to be discharged from the long-term care facility to return home based on the following:
    - a. diagnosis of the individual's medical condition as documented by the long-term care facility's authorizing physician; [and]
    - b. the physician's prognosis for the individual's recovery; [and]
    - c. availability of private care which the individual could receive at home as an alternative to institutionalization; [and]
    - d. statement from the individual, if he or she is competent, regarding the intent to return home; and
    - e. the individual's financial ability to maintain the home.
  5. The Department places a lien against the individual's home if the home loses its exclusion as home property ([cross reference: Section] Cross Reference: section 7510).
  6. The individual has the right to a Fair Hearing if he or she contests the Department's assessment of the expectation to return to the home, and the subsequent notice of intent to place a lien against the property.
  7. The property regains its excluded status, and the Department removes its lien, if the individual does return to the home.

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Chapter: Treatment of Specific Types Program: MA

Subject: Home Property

4030.20 E. MA – Effect of Substantial Home Equity on Payments for Nursing Facility and Other Long-Term Services for Applications Made On or After 1/1/06

1. The provisions of this paragraph apply only to an individual with an equity interest in his or her home of greater than \$750,000 and who applies on or after 1/1/06.
2. An individual with an equity interest in his or her home of greater than \$750,000 is ineligible for the payment of nursing facility and other long-term care services unless any of the following persons are lawfully residing in the home:
  - a. the individual's spouse; or
  - b. the individual's child who is under 21; or
  - c. the individual's child who is considered blind or disabled under the criteria for SSI eligibility.
3. Beginning in the year 2011, the home equity limit will increase each year. The increase will be based on the percentage increase in the consumer price index for all urban consumers, rounded to the nearest \$1,000.
4. The following individuals may be eligible to receive Medicaid payment for long term care services, notwithstanding possessing home equity in excess of \$750,000:
  - a. individuals who demonstrate, to the satisfaction of the Department, that they cannot obtain a reverse mortgage, home equity loan or similar instrument; or
  - b. individuals eligible for a Long-Term Care Insurance disregard in an amount greater than or equal to the amount of home equity in excess of \$750,000, plus the amount of any other counted assets. (Cross Reference: 4022.10)
5. The Department may waive application of the home equity provision if the denial of payment of nursing facility and other long-term care services would result in an undue hardship. (Cross Reference: 3029.25)

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Chapter:

Treatment of Specific Types

Program:

[FS] SNAP

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Subject:

Home Property

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4030.20 [E.] F. [Food Stamps] SNAP

1. The Department does not place a lien against the assistance unit's home property in the [Food Stamp] SNAP program.
2. One lot is considered home property, and is excluded as an asset, if the assistance unit does not already own a home but is planning to build or is building a permanent home on that lot. If the home is in the process of being built on the excluded lot, the value of the partially completed home is excluded, also, as home property.



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| <b>Section:</b>  |                                    |                     |                 | <b>Type:</b>    |
|                  | <b>Treatment of Assets</b>         |                     |                 | <b>POLICY</b>   |
| <b>Chapter:</b>  |                                    |                     |                 | <b>Program:</b> |
|                  | <b>Treatment of Specific Types</b> |                     |                 | <b>MA</b>       |
| <b>Subject :</b> |                                    |                     |                 |                 |
|                  | <b>Annuities</b>                   |                     |                 |                 |

4030.47 Annuities are evaluated as both an asset representing an investment and as income that the beneficiary may receive on a regular basis (cross reference 5050, Treatment of Specific Types). The assistance unit's equity in an annuity is a counted asset to the extent that the assistance unit can sell or otherwise obtain the entire amount of equity in the investment. Any payments received from an annuity are considered income. Additionally, the right to receive income from an annuity is regarded as an available asset if the annuity is assignable. If the terms of the annuity contract state that the annuity is non-assignable, the income stream from such annuity shall not be counted as an available asset.

**A. Disclosure of Annuities**

1. An applicant or recipient and his or her spouse must, as a condition of eligibility for long-term care medical services, disclose a description of any interest held in an annuity by the applicant and recipient or his or her spouse.
2. The Department shall notify an applicant or recipient of long-term care medical services that, pursuant to paragraph (2) of subsection (e) of section 1396p of the United States Code, the department must be made a remainder beneficiary under such an annuity by virtue of the provision of long-term care medical assistance services (Cross Reference 3029.12).
3. The Department shall notify the issuer of the annuity of the department's right as a preferred remainder beneficiary.
4. The Department may require the issuer to notify the department when there is a change in the amount of income or principal being withdrawn. The department shall use this information in determining the amount of the department's obligation for medical assistance or the ongoing eligibility of the applicant or recipient.

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**B. Treatment of Annuity Purchases**

The purchase of an annuity by an applicant for or recipient of long-term care medical services or his or her spouse or both shall be considered a transfer for less than fair market value unless the annuity meets the conditions described in section 3029 (Treatment of Annuities).

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| <b>Chapter:</b><br>Treatment of Specific Types                     | <b>Program:</b>         | <b>AFDC<br/>AABD<br/>MA</b> |
| <b>Subject:</b><br>Mortgage Notes, Loans and Installment Contracts |                         | <b>[FS]SNAP</b>             |

4030.50 Mortgage notes, loans, installment contracts and [annuities]similar financial instruments must be evaluated as both an asset representing an investment and as income that the beneficiary may receive on a regular basis (cross reference: 5050, Treatment of Specific Types).

A. All Programs Except [Food Stamps]SNAP

1. The assistance unit's equity in a mortgage note, loan, installment contract[,] or [annuity] similar financial instrument is a counted asset to the extent that the assistance unit can sell or otherwise obtain the entire amount of equity in the investment.
2. The right to receive income from a mortgage note, loan, installment contract and similar financial instrument is regarded as an available asset subject to the provisions of paragraphs 3 and 4 below.
3. Unless the applicant demonstrates that a mortgage note, loan, installment contract or similar financial instrument and the income stream derived from any such instruments cannot be sold, the Department regards any such instruments and the income stream derived from any such instruments as an available asset.
4. Notwithstanding any other provisions of this section, the Department may determine that it is not cost effective for the applicant to sell a mortgage note, loan, installment contract or similar financial instrument, or the income stream derived from any such instruments. The Department shall consider any or all of the following factors when making this determination:
  - a. the age and health of the assistance unit;
  - b. the date the instrument was purchased;
  - c. the number of payments remaining on the instrument;
  - d. whether the purchase of the instrument was made exclusively for reasons other than to qualify for Medicaid.

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| Subject:<br>Mortgage Notes, Loans and Installment Contracts |                  |                            |

4030.50 A. All Programs Except SNAP (continued)

5. If the Department determines that it is cost-effective for the assistance unit to sell a mortgage note, loan, installment contract or similar financial instrument or the income stream derived from any such instruments, the Department shall, until the date of the initial redetermination or one year, whichever is greater, disregard a mortgage note, loan, installment contract or similar financial instrument or the income stream derived from any such instruments as an asset if:
  - a. such exclusion does not affect the commencement date of a transfer of asset penalty; and
  - b. the applicant or recipient makes a good-faith, bona fide effort, as determined by the Department, to sell the mortgage note, loan, installment contract or similar financial instrument or the income stream derived from any such instruments; and
  - c. the applicant or recipient assigns the right to the proceeds from such sale of the mortgage note, loan, installment contract or similar financial instrument or the income stream derived from any such instruments to the Department to the extent of the medical assistance that has been provided to the individual from the date of application to the date of receipt of such proceeds.
  
6. Notwithstanding sub-paragraph 5 of this section, the Department shall not disregard a mortgage note, loan, installment contract or similar financial instrument or the income stream derived from any such instruments as an asset if the mortgage note, loan, installment contract or similar financial was
  - i. purchased for the benefit of the applicant's or recipient's community spouse; or
  - ii. purchased for the purpose of qualifying for Medicaid.

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| <b>Subject:</b> | <b>Mortgage Notes, Loans and Installment Contracts</b> |   |

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4030.50 B. [Food Stamps]SNAP

A mortgage note, loan, installment contract, or [annuity]similar financial instrument is an excluded asset if it is producing income which is consistent with its fair market value.

C. Medicaid

If an individual or his or her spouse uses his or her funds to purchase a mortgage note, loan, installment contract or similar financial instrument, the Department may consider such a transaction a transfer of assets for less than fair market value (Cross References: 3028, 3029).

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|                          |
|--------------------------|
| <b>Subject:</b>          |
| <b>Non-home Property</b> |

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4030.65 A. [Food Stamp Program] SNAP

1. Under [the Food Stamp program] SNAP, non-home property is excluded if it is producing income consistent with its fair market value.
2. If the non-home property is not producing income, it is excluded for as long as the individual is making a bona fide effort to sell it.

B. AFDC and FMA

1. For all AFDC and FMA cases, the assistance unit's equity in any type of real property which is not home property, and which would cause the assistance unit to be ineligible, is excluded for a period of up to nine calendar months. The exclusion period begins with the first month in which the assistance unit is otherwise eligible and:
  - a. the assistance unit owns the property; and
  - b. the property is available to the assistance unit; and
  - c. the assistance unit is making a bona fide effort to sell the property; and
  - d. in AFDC, the assistance unit grants the Department a security mortgage on the property pending the sale.
2. The number of months of the exclusion is cumulative for all months in which the person is otherwise eligible and receives assistance, and may not exceed a total of nine calendar months for each piece of property.
3. If the assistance unit has not sold the non-home property by the end of the ninth month:
  - a. the unit's equity in the property is considered a counted asset as of the tenth month; and
  - b. in AFDC, the amount of assistance received during the nine month disposal period is considered an overpayment.

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**Chapter:**

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**Program:**

**AFDC**

**FMA**

**AABD**

**Subject:**

Non-home Property

**MAABD**

4030.65 B. AFDC and FMA (continued)

4. If the assistance unit does not comply with the procedural requirements listed above, the unit's equity in non-home property is considered a counted asset.
5. If the assistance unit's equity in the non-home property, combined with the unit's other counted assets, would not cause the unit to be ineligible, the unit has the option of having such equity considered a counted asset. In such a case, the unit does not need to satisfy the procedural requirements described above.

C. AABD and Community MAABD

1. Non-home property of any type is excluded as long as the assistance unit is making a bona fide effort to sell it.
2. The exclusion period begins in the first month in which all of the following conditions are met:
  - a. the assistance unit is otherwise eligible for assistance;
  - b. the assistance unit owns the property;
  - c. the property is available to the assistance unit;
  - d. the assistance unit is making a bona fide effort to sell the property; and
  - e. in AABD, the assistance unit grants the Department a security mortgage on the property pending its sale.
3. The Department does not place a lien on property in community MA cases. (Cross [reference] Reference: 7510)

D. Long Term Care MAABD

1. Property Previously Used as the Primary Residence
  - a. Property previously used as a primary residence becomes non-home property when the individual enters a long-term care facility and:
    - (1) no relative of acceptable relationship is lawfully residing in the home; and
    - (2) the individual cannot reasonably be expected to return to the home. (Cross Reference: 7510)
  - b. [For individuals who apply on or after July 1, 1991 and before

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4030.65 D. 1. b. Long Term Care MAABD (continued)

July 1, 1993, non-home property that was the recipient's primary residence prior to entering the nursing home is excluded for eighteen months as long as the individual is making a bona fide effort to sell it.] Non-home property that was the recipient's primary residence prior to entering the nursing home is excluded for as long as the individual is making a bona fide effort to sell it.

c. [Subject to paragraph d below, for individuals who apply between July 1, 1993, and August 31, 1995, inclusive, non-home property that was the recipient's primary residence prior to entering the nursing home is excluded for nine months as long as the individual is making a bona fide effort to sell it.]

The exclusion period begins with the first month of eligibility during which the person owns the property, and is cumulative for all months in which the person receives assistance.

d. [For individuals who apply on or after September 1, 1995, or whose nine month exclusion described in paragraph c above expires on or after August 31, 1995, non-home property that was the recipient's primary residence prior to entering the nursing home is excluded for as long as the individual is making a bona fide effort to sell it.]

For an individual who applies on or after January 1, 2006, with an equity interest in his or her home of greater than \$750,000, the individual is ineligible for the payment of nursing facility and other long-term care services unless any of the following persons is lawfully residing in the home:

1. the individual's spouse;

2. the individual's child who is under 21; or

3. the individual's child who is considered blind or disabled under the criteria for SSI eligibility.

e. [The exclusion period begins with the first month of eligibility during which the person owns the property, and is cumulative for all months in which the person receives assistance.]

Beginning in the year 2011, the home equity limit will increase each year. The increase will be based on the percentage increase in the consumer price index for all urban consumers, rounded to the nearest

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4030.65 D. 1. e. Long Term Care MAABD (continued)

\$1,000.

f. [The Department places a lien against the property. (Cross Reference: 7510)]  
The following individuals may be eligible to receive Medicaid payment for long term care services, notwithstanding possessing home equity in excess of \$750,000:

1. individuals who demonstrate, to the satisfaction of the Department, that they cannot obtain a reverse mortgage, home equity loan or similar instrument; or
2. individuals eligible for a Long-Term Care Insurance disregard in an amount greater than or equal to the amount of home equity in excess of \$750,000, plus the amount of any other counted assets. (Cross Reference: 4022.10)

g. The Department may waive application of the property equity provision if the denial of payment for nursing facility and other long-term care services would result in an undue hardship. (Cross Reference: 3029.25)

h. The Department places a lien against the property. (Cross Reference: 7510)

2. Other Non-home Property

[a. Subject to paragraph b below, for individuals who apply prior to September 1, 1995, all other non-home property is excluded for nine months, as long as the individual is making a bona fide effort to sell it.]

[b.] a. [For individuals who apply on or after September 1, 1995, or whose nine month exclusion described in paragraph a above expires on or after August 31, 1995, all] All other non-home property is excluded for as long as the individual is making a bona fide effort to sell it.

[c.] b. The exclusion period begins with the first month in which all of the following conditions are met:

- (1) the assistance unit is otherwise eligible for assistance;

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4030.65 D. 2. b. Long Term Care MAABD (continued)

- (2) the assistance unit owns the property;
- (3) the property is available to the assistance unit; and
- (4) the assistance unit is making a bona fide effort to sell the property.

[d. The Department places a lien against all non-home property. (Cross Reference: 7510)]

3. RECOVERY

The Department places a lien against all non-home property. (Cross Reference: 7510)

E. Qualified Medicare Beneficiaries and Specified Low Income Medicare Beneficiaries

Non-home property of any type is excluded for as long as the assistance unit is making a bona fide effort to sell the property.

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| <b>Chapter:</b><br>Treatment of Specific Types | <b>Program:</b>            | AFDC<br>AABD<br>MA |
| <b>Subject:</b><br>Trusts                      | <b>[FS]</b>                | <b>SNAP</b>        |

4030.80 A. General Principles Pertaining to Trusts

1. The Department evaluates an individual's interest in a trust as:
  - a. a potentially counted asset in determining whether the individual's assets are within the program limits (Cross Reference: 4005); [and]
  - b. a potential source of income in determining whether the individual's income is within the program limits, and in computing the amount of benefits for which the individual may be eligible (Cross Reference: 5000); and
  - c. a possible transfer of assets by the individual or by his or her spouse in determining whether the individual will be subject to a penalty period. (Cross References: 3025, 3028, 3029).]
2. For all programs except [Food Stamps] SNAP, if the assistance unit is a beneficiary of a trust, but the funds in the trust are inaccessible to the unit, the unit shall cooperate with the Department in attempting to gain access to the funds as a condition of eligibility.
3. The Department considers the corpus of a trust that an individual can revoke as an available asset to him or her.
4. The Department considers payments from a trust to or for the benefit of the individual to be the individual's income.
5. The term "trust" includes any legal instrument or device like a trust, such as an annuity.

B. Testamentary Trusts and Certain Inter Vivos Trusts that are not Established or Funded by the Individual or by his or her Spouse during their Lifetime

The individual's interest in a testamentary trust, and the individual's interest in a trust that was not established or funded by the individual or by his or her spouse during their lifetime, are evaluated under the cash and Medicaid programs as described in this paragraph.

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4030.80 B. Testamentary Trusts and Certain Inter Vivos Trusts that are not Established or Funded by the Individual or by his or her Spouse during their Lifetime  
(continued)

1. The Department determines whether the corpus, or principal of such a trust is an available asset by referring to the terms of the trust and the applicable case law construing similar instruments.
2. The principal of such a trust is an available asset to the extent that the terms of the trust entitle the individual to receive trust principal or to have trust principal applied for his or her general or medical support.
3. Under circumstances described in subparagraph 2 above, the trust principal is considered an available asset if the trustee's failure to distribute the principal for the benefit of the individual in accordance with the terms of the trust would constitute an abuse of discretion by the trustee.
4. The Department considers the following factors in determining whether the trustee would be abusing his or her discretion by refusing to distribute trust principal to the individual:
  - a. the clarity of the settlor's intention to provide for the general or medical support of the individual; [and]
  - b. the degree of discretion afforded to the trustee; [and]
  - c. the value of the trust created, with a high dollar value tending to indicate an intent to provide for general or medical support; and
  - d. the history of trust expenditures prior to the filing of an application for assistance for or on behalf of the individual.

C. Medicaid-Qualifying Trusts -- MA

The funds in an inter vivos trust, to the extent that they may be used at the discretion of the trustee, are considered available to an individual if:

1. the trust was established by the individual or individual's spouse prior to August 11, 1993; [and]
2. the individual is a beneficiary of the trust; and

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4030.80 C. Medicaid-Qualifying Trusts -- MA (continued)

3. the trustee is able to distribute the funds to the individual at the trustee's discretion. This is true even if:
  - a. the trust is irrevocable; and
  - b. the trustee does not exercise his or her discretion.

D. Inter Vivos Trusts Established on or After August 11, 1993 - MA

For the purpose of determining an individual's eligibility under the Medicaid program, paragraph D pertains to inter vivos trusts established by the individual on or after August 11, 1993.

1. The Department considers an individual to have established a trust if the individual's assets were used to form all or part of the corpus of the trust and if any of the following individuals established the trust by means other than a will:
  - a. the individual; [or]
  - b. the individual's spouse; [or]
  - 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 a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.
2. For a trust whose corpus includes assets of an individual described in paragraph 1 and of any other person, the Department evaluates only that portion of the trust attributable to the assets of the individual.
3. The Department evaluates trusts described in paragraph D regardless of:
  - a. why the trust was established; [or]

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- b. whether the trustees have or exercise any discretion under the trust; [or]
  - 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.
4. With respect to a revocable trust, the following principles apply:
- a. The Department considers the corpus of such a trust as an available asset.
  - b. The Department considers payments from the trust made to or for the benefit of the individual as income of the individual.
  - c. The Department considers payments from a revocable trust that are neither to nor for the benefit of the individual to be assets transferred by the individual as described in [chapter] chapters 3028 and 3029.
5. With respect to an irrevocable trust, the following principles apply:
- a. The Department considers the portion of the corpus of an irrevocable trust, or the income generated by the corpus of such trust, to be an available asset of the individual if there are any circumstances under which a payment from the trust could be made to or on behalf of the individual.
  - b. The Department considers payments from that portion of the corpus or income generated by the corpus of a trust described in paragraph a. to be:
    - (1) the individual's income, if the payments are to or for the benefit of the individual; and
    - (2) a transfer of assets by the individual, as described in [chapter] chapters 3028 and 3029, if the payments are for any other purpose.

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- 4030.80 D. 5. Inter Vivos Trusts Established on or After August 11, 1993 (continued)
- c. The Department considers any portion of a trust from which, or any income generated by the corpus from which, no payment could be made to the individual under any circumstances as a transfer of assets, as described in [chapter] chapters 3028 and 3029.
6. The Department does not consider the following types of trusts in determining the individual's eligibility for Medicaid:
- a. a trust containing the assets of an individual under age 65 who is disabled, according to criteria under the SSI program, if:
- (1) the trust is established for the benefit of such individual by his or her parent, grandparent, [or] legal guardian[,] or by a court acting in accordance with the authority of state law; and
  - (2) under the terms of the trust, the state will receive all amounts remaining in the trust upon the death of the individual, up to an amount equal to the total amount of Medicaid benefits paid on behalf of the individual.
- b. a trust that meets the following conditions:
- (1) the trust is established and managed by a non-profit association; [and]
  - (2) a separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of the funds, the trust pools these accounts; [and]
  - (3) accounts in the trust are established solely for the benefit of individuals who are disabled, according to criteria under the SSI program, by the individuals, their parent, grandparent, [or] legal guardian[,] or by a court; and

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- (4) to the extent that the amounts remaining in the individual's account upon his or her death are not retained by the trust; the trust is required by its terms to pay to the state from such remaining amount, an amount equal to the total amount of Medicaid benefits paid on behalf of the individual.

7. The Department waives the policies described in paragraph D if it is determined that the application of such policies would create an undue hardship, (Cross [Reference] References: 3028.25 and 3029.25 for undue hardship criteria)[.]

E. Trusts in the [Food Stamps] SNAP Program

1. The funds in a trust are considered inaccessible to the assistance unit if:
  - a. the trust arrangement is not likely to cease during the certification period and the assistance unit has no power to revoke the trust arrangement or change the name of the beneficiary during the certification period; or
  - b. the trustee is either:
    - (1) a court or an institution, corporation or organization which is not under the direction or ownership of the assistance unit; or
    - (2) an individual appointed by the court who has court imposed limitations placed on the use of the funds; or
  - c. trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction[,] or influence of the assistance unit; and
  - d. the funds held in irrevocable trust are either:



## **Statement of Purpose**

A) The problems, issues or circumstances that the regulation proposes to address: The proposed regulation amends the Uniform Policy Manual with respect to the eligibility requirements for individuals applying for or receiving long-term care benefits under the Medicaid program to comply with, and give effect to, the DRA.

(B) The regulation amends UPM sections 2540.60, 2540.64, 2540.88, 2540.92, 3028, 3028.03, 3028.05, 3028.15, 3828.25, 3028.35, 3029.13, 3029.14, 4000.01, 4030.20, 4030.40, 4030.47, 4030.50, 4030.65, 4030.80; adds UPM sections 3029, 3029.03, 3029.05, 3029.10, 3029.11, 3029.12, 3029.15, 3029.20, 3029.25, 3029.30, 3029.35, 4030.18; and repeals UPM sections 3099.25

(C) The legal effects of the regulation, including all the ways the regulation would change existing regulation or other laws: Among the major revisions are the following:

The "look-back" period during which asset transfers may affect eligibility for long-term care ("LTC") benefits under the Medicaid program is changing from three years to five years for transfers made on or after February 8, 2006.

The "penalty period" during which Medicaid will not pay for LTC services will generally begin as of the date that the applicant is eligible for Medicaid and would otherwise be receiving payments for LTC services under the Medicaid program based on an approved application, and which does not occur during any other period of ineligibility. For a recipient of LTC Medicaid benefits, the penalty period begins as of the month of the transfer, as long as this month is not part of any other period of ineligibility. This change is also effective for transfers made on or after February 8, 2006. Previously, the penalty period generally began as of the month of the transfer for both applicants and recipients.

An individual with equity exceeding \$750,000 in his or her home property is ineligible for payment of LTC services under the Medicaid program. This change is effective for applications being made on or after January 1, 2006. The individual may reduce equity in his or her home by taking out a home equity loan or a reverse annuity mortgage. However, if he or she transfers the proceeds from the loan or mortgage, a transfer of asset penalty may be imposed.

If an individual purchases an annuity on or after February 8, 2006, he or she must make the state the remainder beneficiary, or the purchase will be considered a transfer of assets for less than fair market value.

There are other provisions, including provisions regarding undue hardship, the treatment of annuities, mortgage notes, life estates and continuing care retirement communities, that are either specifically required by, or necessary to give effect to, the DRA.