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 | ADMINISTRATIVE DIRECTIVE |
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TRANSMITTAL: 92 ADM-44

TO: Commissioners of
 Social Services

DIVISION: Health and
 Long Term Care

DATE: October 28, 1992

SUBJECT: Transfer of Resources: Changes in the Method of Calculating
 Transfer Penalty Periods

 SUGGESTED

DISTRIBUTION: Medical Assistance Staff
 Adult Services Staff
 Fair Hearing Staff
 Legal Staff
 Staff Development Coordinators

CONTACT

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ATTACHMENTS: There are no attachments to this ADM.

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
92 ADM-38		360-4.4(c)	366.5		
91 ADM-37		(2)			
91 ADM-31					
90 ADM-29					
89 ADM-45					

I. PURPOSE

This Directive notifies social services districts of changes in the method of calculating the Medical Assistance (MA) penalty period when a federally-participating MA-Only applicant/recipient (A/R) has made more than one prohibited transfer of resources.

II. BACKGROUND

Section 1917(c) of the Social Security Act (Act) requires a period of ineligibility for MA coverage of nursing facility services when a prohibited transfer of resources has been made within 30 months before, or at any time after, an individual's application for MA coverage of nursing facility services. Section 1917(c)(1) of the Act states: "The period of ineligibility shall begin with the month in which such resources were transferred." Therefore, when calculating the penalty period, the uncompensated value of prohibited transfers made in the same month were totaled. However, when prohibited transfers occurred in different months, a penalty period was determined for each prohibited transfer, beginning the month each transfer occurred. These concurrent multiple penalty periods resulted in significantly shorter periods of ineligibility for MA coverage of nursing facility services than would have resulted from a single transfer of the same resources.

New guidelines issued by the Health Care Financing Administration (HCFA) provide that multiple prohibited transfers may be considered as a single transfer when:

1. the transfers occurred during a period when the individual would be subject to a penalty resulting from a prohibited transfer; and
2. the transfers were made from resources which were available during the month a previous prohibited transfer occurred.

18 NYCRR 360-4.4(c)(2) has been amended to implement the new HCFA guidelines.

III. PROGRAM IMPLICATIONS

A. DEFINITIONS

For purposes of this Directive, the definitions below apply.

1. Limited coverage is coverage of all MA covered care and services except nursing facility services.
2. Nursing facility services are nursing care and related services in a nursing facility; a level of care provided in a hospital which is equivalent to the level of care provided in

a nursing facility; or care, services or supplies furnished pursuant to a waiver under Section 1915(c) of the Act.

3. Penalty period is the period of ineligibility for nursing facility services (not to exceed 30 months) under the MA program because of a prohibited transfer.
4. Prohibited transfer is the voluntary giving or sale of property or assets to another person without receiving something of equal value in return, within or after 30 months of applying for MA coverage for nursing facility services.
5. Uncompensated value is the difference between the fair market value of the resource at the time of the transfer (less any outstanding loans, mortgages or other encumbrances on the resource) and the amount received for the resource.

B. NEW POLICY

The amendment to 18 NYCRR 360-4.4(c)(2) requires social services districts to treat multiple transfers of resources as a single transfer of the total amount of the resources, with the penalty period to begin with the month of the first transfer, under the following circumstances:

1. subsequent transfers were made during a period when the individual would be subject to a penalty period; and
2. treating the transfers as separate would result in a shorter total period of ineligibility than if the transfers were considered to be a single transfer; and
3. the transferred resources were available to the individual during the month of the previous transfer.

The new policy eliminates the use of multiple transfers of resources to shorten the penalty period.

IV. REQUIRED ACTION

The treatment of multiple transfers must be determined in accordance with the provisions of this Directive for all federally-participating individuals whose MA applications are filed or pending on or after September 9, 1992. Transfers made by federally-participating MA-Only recipients on or after September 9, 1992 are also subject to this treatment.

A. CALCULATION OF THE PENALTY PERIOD WHEN MULTIPLE PROHIBITED TRANSFERS HAVE OCCURRED

The district must first identify that the A/R had assets which could have been transferred at one time but instead were divided into separate prohibited transfers. When this has occurred, the penalty period is calculated as follows:

1. Determine the month the first prohibited transfer occurred and total the uncompensated value of all transfers which occurred in that month.
2. Determine the number of months in the penalty period by dividing the total uncompensated value by the appropriate regional rate (the penalty period must not exceed 30 months).
3. Determine if any of the subsequent transfers were made in any month that falls within the penalty period determined in step 2.
 - a. If the subsequent transfer falls within the penalty period and a concurrent penalty would result in a shorter total penalty period, add the uncompensated value of the subsequent transfer to the total uncompensated value determined in step 1. Recalculate the penalty period based on the new total, and begin the penalty period with the month of the first transfer.
 - b. If the subsequent transfer does not fall within the penalty period of any previous transfers, or if treating the transfers as a single transfer would result in a shorter total penalty period, do not add the uncompensated value of the subsequent transfer to the total uncompensated value determined in step 1. Begin the penalty period in the month of the subsequent transfer.
4. Evaluate any remaining transfers based on the penalty period determined in step 3(a).

EXAMPLE 1: Mrs. Smith, a 75-year old widow, has \$167,000 in excess resources. Mrs. Smith lives in Nassau County. On the advice of an attorney, Mrs. Smith transfers the funds to her grandchildren in three steps: \$59,000 to grandson Mike in February 1992; \$58,000 to grandson Dan in March 1992; and \$50,000 to granddaughter Jane in April 1992.

MRS. SMITH'S PENALTY PERIOD*			
Date	Amount	MA Eligibility Determined:	
		Concurrent Penalties	Single Penalty
2/92	\$59,000	2/92-1/93 (12 mos.)	2/92-1/93 (12 mos.)
3/92	\$58,000	3/92-1/93 (11 mos.)	2/92-1/94 (24 mos.)
4/92	\$50,000	4/92-1/93 (10 mos.)	2/92-7/94 (30 mos.)
* Based on the MA Regional Rate for Long Island of \$4,851 used to calculate penalty periods effective January 1, 1992 (see 92 ADM-38).			

As illustrated in the chart, breaking up the \$167,000 into several transfers no longer shortens the penalty period. When determining eligibility prior to September 9, 1992, the multiple transfers in this example resulted in a 12-month penalty period. When determining eligibility after September 9, 1992, the same multiple transfers result in a 30-month penalty period.

Once the penalty period for the first transfer is determined (February 1992 through January 1993), it can be seen that the subsequent transfers in March 1992 and April 1992 fall within this penalty period. Since the March and April transfers were made from resources which were available in February, the amounts of all three transfers are combined to determine the penalty period. Note that \$167,000 in multiple transfers divided by the Long Island MA Regional Rate of \$4,851 equals 34 months. Since a penalty period cannot exceed 30 months, the 34 months is capped at 30 months.

EXAMPLE 2: Mr. Jones, a single 78-year old living in Nassau County, decides to reduce some of his assets because of his failing health. In March of 1991, he gives \$150,000 to his three nephews (\$50,000 each), and retains \$150,000. In July of 1992, his health has deteriorated to the point where he requires admission to a nursing home. That same month, he transfers the remaining \$150,000 to his brother. In September of 1992, Mr. Jones applies for MA coverage of his nursing home care.

MR. JONES'S PENALTY PERIOD*			
Date	Amount	MA Eligibility Determined:	
		Concurrent Penalties	Single Penalty
3/91	\$150,000	3/91-8/93 (30 mos.)	3/91-8/93 (30 mos.)
7/92	\$150,000	7/92-12/94 (30 mos.)	3/91-8/93 (30 mos.)
* Based on the MA Regional Rate for Long Island of \$4,851 used to calculate penalty periods effective January 1, 1992 (see 92 ADM-38).			

In this example, treating Mr. Jones's multiple transfers as separate transfers does not result in a shorter total penalty period than if the multiple transfers are treated as a single transfer. Therefore, the penalty periods for Mr. Jones's transfers begin in the months the transfers occurred and run concurrently.

B. EXCEPTIONS

1. A prohibited transfer of a resource which was not available during the month a previous transfer occurred is not

considered part of the previous transfer. A penalty period for the subsequent transfer must be established, beginning with the month of the subsequent transfer.

EXAMPLE: Referring back to example 1 on page 4, Mrs. Smith inherits \$100,000 in June 1992 and transfers the money in July to her brother. The transfer is not considered a part of her previous transfers, since the resource was not available at the time of her previous transfers. The penalty period for the \$100,000 transfer would be for 20 months from the month of the transfer (7/92-2/94).

2. A prohibited transfer made when a penalty period is not in effect is not considered part of a previous transfer, even if the transfer is made from resources available at the time of the previous transfer. A penalty period for the subsequent transfer must be established, beginning with the month of the subsequent transfer.

EXAMPLE: Referring again to example 1 on page 4, Mrs. Smith had already transferred \$20,000 to her daughter Susan in August 1991. This resulted in a 4-month penalty period (8/91 - 11/91). The transfers in February, March, and April 1992 are not considered part of the \$20,000 transfer, since the penalty period for the \$20,000 transfer ended November 1991.

3. A penalty period must not be imposed if:
 - a. the A/R is able to make a satisfactory showing that resources were transferred exclusively for a purpose other than to qualify for MA coverage of nursing facility services; or
 - b. undue hardship will result (see 90 ADM-29).

V. SYSTEMS IMPLICATIONS

There are no systems implications.

VI. EFFECTIVE DATE

The provisions of this Directive are effective November 1, 1992, retroactive to September 9, 1992.

Gregory M. Kaladjian
Executive Deputy Commissioner