

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

Citation

1902(f) and 1917 of the Act. The agency provides for the denial of eligibility by reason of disposal of resources for less than fair market value. See page 8 & 9 of this Supplement for procedures applicable to all transfers of resources.

A. Except as noted below, the criteria for determining the period of ineligibility are the same as criteria specified in §1613(c) of the Social Security Act (Act).

1. Transfer of resources other than the home of an individual who is an inpatient in a medical institution.

a. The agency uses a procedure which provides for a total period of ineligibility greater than 24 months for individuals who have transferred resources for less than fair market value when the uncompensated value of disposed of resources exceeds \$12,000.00. This period bears a reasonable relationship to the uncompensated value of the transfer. The computation of the period and the reasonable relationship of this period to the uncompensated value is described as follows:

See pages 8 & 9 of this supplement. This transfer of resources rule includes the transfer of the former residence of an inpatient in a medical institution.

TN No. 85-03

Approval Date 11/18/86

Effective Date 04/30/85

Supersedes

TN No. _____

HCFA ID: 4093E/0002P

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

Citation

- b. The period of ineligibility is less than 24 months, as specified below.
- c. The agency has provisions for waiver of denial of eligibility in any instance where the State determines that a denial would work an undue hardship.

TN No. 85-03

Approval Date 11/18/86

Effective Date 04/30/85

Supersedes

TN No. _____

HCFA ID: 4093E/0002P

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

Citation
Citation

2. Transfer of the home of an individual who is an inpatient in a medical institution.
 - A period of ineligibility applies to inpatients in an SNF, ICF or other medical institution as permitted under §1917(c)(2)(B)(i).
 - a. Subject to the exceptions on page 2 of this supplement, an individual is ineligible for 24 months after the date on which he disposed of the home. However, if the uncompensated value of the home is less than the average amount payable under this plan for 24 months of care in an SNF, the period of ineligibility is a shorter time, bearing a reasonable relationship (based on the average amount payable under this plan as medical assistance for care in an SNF) to the uncompensated value of the home as follows:

TN No. 85-03

Approval Date 11/18/86

Effective Date 04/30/85

Supersedes

TN No. _____

HCFA ID: 4093E/0002P

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

Citation

Citation

- b. Subject to the exceptions on page 2 of this supplement, if the uncompensated value of the home is more than the average amount payable under this plan as medical assistance for 24 months of care in an SNF, the period of ineligibility is more than 24 months after the date on which he disposed of the home. The period of ineligibility bears a reasonable relationship (based upon the average amount payable under this plan as medical assistance for care in an SNF) to the uncompensated value of the home as follows:

TN No. 85-03

Approval Date 11/18/86

Effective Date 04/30/85

Supersedes

TN No. _____

HCFA ID: 4093E/0002P

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

Citation

No individual is ineligible by reason of item A.2 if--

- i. A satisfactory showing is made to the agency (in accordance with any regulations of the Secretary of Health and Human Services) that the individual can reasonably be expected to be discharged from the medical institution and to return to that home;
- ii. Title to the home was transferred to the individual's spouse or child who is under age 21, or (for States eligible to participate in the State program under title XVI of the Social Security Act) is blind or permanently and totally disabled or (for states not eligible to participate in the state program under title XVI of the Social Security Act) is blind or disabled as defined in §1614 of the Act.
- iii. A satisfactory showing is made to the agency (in accordance with any regulations of the Secretary of Health and Human Services) that the individual intended to dispose of the home either at fair market value or for other valuable consideration; or
- iv. The agency determines that denial of eligibility would work an undue hardship.

TN No. 85-03

Approval Date 11/18/86

Effective Date 04/30/85

Supersedes

TN No. _____

HCFA ID: 4093E/0000P

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

Citation
Citation

3. 1902(f) States

Under the provisions of §1902(f) of the Social Security Act, the following transfer of resource criteria more restrictive than those established under §1917(c) of the Act, apply:

- B. Other than those procedures specified elsewhere in the supplement, the procedures for implementing denial of eligibility by reason of disposal of resources for less than fair market value are as follows:
1. If the uncompensated value of the transfer is \$12,000 or less: the individual is ineligible for two years from the date of the transfer.
 2. If the uncompensated value of the transfer is more than \$12,000: the individual is ineligible two years, plus an additional 2 months for every \$1,000 or part thereof of uncompensated value over \$12,000, from the date of transfer.

TN No. 85-03

Approval Date 11/18/86

Effective Date 04/30/85

Supersedes

TN No. _____

HCFA ID: 4093E/0000P

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

Property Transfer - An applicant for or recipient of Medicaid is ineligible for Medicaid if he transferred or otherwise disposed of his legal equitable interest in real or personal property for less than fair market value. Transfer of property precludes eligibility for two years from the date of the transfer if the uncompensated value of the property was \$12,000 or less. If the uncompensated value was over \$12,000 an additional two months of ineligibility will be added for each \$1,000 of additional uncompensated value (see following Table). "Uncompensated value" means the current market value of the property, or equity in the property, at the time it was transferred, less the amount of compensation (money, goods, service, et cetera) received for the property.

Exceptions to this provision are:

- 1) When the transfer was not made with the intent of establishing or retaining eligibility for Medicaid or SSI. Any transfer shall be presumed to have been for the purposes of establishing or retaining eligibility for Medicaid or SSI unless the applicant/recipient furnishes convincing evidence to establish that the transfer was exclusively for some other purpose.
 - A. The applicant/recipient has the burden of establishing, by objective evidence of facts rather than statement of subjective intent that the transfer was exclusively for another purpose.
 - B. Such evidence shall include evidence that adequate resources were available at the time of the transfer for the applicant/recipient's support and medical care including nursing home care, considering his or her age, state of health, and life expectancy.
 - C. The declaration of another purpose shall not be sufficient to overcome this presumption of intent.
 - D. The establishment of the fact that the applicant/recipient did not have specific knowledge of Medicaid or SSI eligibility policy is not sufficient to overcome the presumption of intent.
- 2) Retention of the property would have no effect on eligibility unless the property is a residence of an individual in a nursing home for a temporary period.
- 3) When transfer of the property resulted in compensation (in money, goods, or services) to the applicant/recipient which approximated the equity value of the property.
- 4) When the receiver of the property has made payment on the cost of the applicant/recipient's medical care which approximates the equity value of the property.

TN No. 85-03

Approval Date 11/18/86

Effective Date 04/30/85

Supersedes

TN No. _____

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

Property Transfer continued.

- 5) When the property owner has been a victim of another person's actions, except those of a legal guardian, committee, or power-of-attorney, who obtained or disposed of the property without the applicant/recipient's full understanding of the action.
- 6) When prior to October 1, 1982, the Medicaid applicant transferred a prepaid burial account (plan) which was valued at less than \$1,500.00 for the purpose of retaining eligibility for SSI, and was found ineligible for Medicaid solely for that reason. The applicant, after reapplying, may be eligible regardless of the earlier transfer of a prepaid burial account if the applicant currently meets all other eligibility criteria.
- 7) When the property is transferred into an irrevocable trust designated solely for the burial of the transferor or his spouse. The amount transferred into the irrevocable burial trust, together with the face value of life insurance and any other irrevocable funeral arrangements, shall not exceed \$2,000 prior to July 1, 1988, and shall not exceed \$2,500 after July 1, 1988.

**PERIOD OF INELIGIBILITY DUE TO
TRANSFER OF PROPERTY
TABLE**

<u>Uncompensated Value of Property</u>		<u>Period of Ineligibility</u>
0	\$12,000.00	24 months
12,000.01	\$13,000.00	26 months
13,000.01	\$14,000.00	28 months
14,000.01	\$15,000.00	30 months
15,000.01	\$16,000.00	32 months

For each additional \$1,000.00 add two months of ineligibility.

TN No. 87-12 Approval Date 06/19/89 Effective Date 07/01/87
Supersedes
TN No. _____

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

The preceding policy applies to eligibility determinations on and before June 30, 1988. The following policy applies to eligibility determinations on and after July 1, 1988.

1. The State plan provides for a period of ineligibility for nursing facility services, equivalent services in a medical institution, and home and community-based services in the case of an institutionalized individual (as defined in paragraph (3) of §1917(c) who, disposed of resources for less than fair market value, at any time during or after the 30-month period immediately before the date the individual becomes an institutionalized individual (if the individual is entitled to medical assistance under the State plan on that date) or, if the individual is not entitled on the date of institutionalization, the date the individual applies for assistance while an institutionalized individual.
 - a. 30 months, or
 - b. the total uncompensated value of the resources so transferred, divided by the average cost, to a private patient at the time of application, of nursing facility services in the State.
2. An individual shall not be ineligible for medical assistance by reason of paragraph 1. to the extent that -
 - a. the resources transferred were a home and title to the home was transferred to -
 - (1) the spouse of such individual;
 - (2) a child of such individual who is under age 21, or is blind or disabled as defined in §1614 of the Social Security Act;
 - (3) a sibling of such individual who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date the individual becomes an institutionalized individual; or

TN No. 88-18

Approval Date 06/25/89

Effective Date 07/01/88

Supersedes

TN No. _____

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

- (4) a son or daughter of such individual (other than a child described in clause 2) who was residing in such individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual; and who (as determined by the State) provided care to such individual which permitted such individual to reside at home rather than in such an institution or facility;

- b. The resources were transferred to (or to another for sole benefit of) the community spouse as defined in §1924(h)(2) of the Social Security Act, or to the individual's child who is under age 21, or is blind or disabled as defined in §1614 of the Social Security Act.

- c. A satisfactory showing is made to the State (in accordance with any regulations promulgated by the Secretary of United States Department of Health and Human Services) that
 - (1) the individual intended to dispose of the resources either at fair market value, or for other valuable consideration. To show intent to receive adequate compensation, the individual must provide objective evidence that:
 - (a) for real property, the individual made an initial and continuing effort to sell the property according to the "reasonable effort to sell" provisions of the Virginia Medicaid State Plan;
 - (b) for real or personal property, the individual made a legally binding contract that provided for receipt of adequate compensation in a specified form (goods, services, money, etc.) in exchange for the transferred property;
 - (c) an irrevocable burial trust of \$2,500 or less was established on or after July 1, 1988 as compensation for the transferred money;

TN No. 88-18

Approval Date 06/25/89

Effective Date 07/01/88

Supersedes

TN No. _____

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

- (d) an irrevocable burial trust over \$2500 was established on or after July 1, 1988, and the individual provides objective evidence to show that all funds in the trust are for identifiable funeral services; or
 - (2) the resources were transferred exclusively for a purpose other than to qualify for medical assistance; the individual must provide objective evidence that the transfer was exclusively for another purpose and the reason for the transfer did not include possible or future Medicaid eligibility; or
 - (3) Consistent with 1917(c)(2)(D), an institutionalized spouse who (or whose spouse) transferred resources for less than fair market value shall not be found ineligible for nursing facility service, for a level of care in a medical institution equivalent to that of nursing facility services, or for home and community-based services where the state determines that denial of eligibility would work an undue hardship under the provision of §1917(c)(2)(D) of the Social Security Act.
3. In this section, the term "institutionalized individual" means an individual who is an inpatient in a nursing facility, or who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility, or who is described in section 1902 (a)(10)(A)(ii)(VI).
4. In this section, the individual's home is defined as the house and lot used as the principal residence and all contiguous property up to \$5,000.00.

TN No. 91-26

Approval Date 10/01/91

Effective Date 10/01/91

Supersedes

TN No. 88-18

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

Transfers And Trusts After August 10, 1993. The following policy applies to medical assistance provided for services furnished on or after October 1, 1993, with respect to assets disposed of after August 10, 1993, and before February 8, 2006. It also applies to trusts established after August 10, 1993.

§1.0 Definitions.

"Assets" means, with respect to an individual, all income and resources of the individual and of the individual's spouse, including any income or resources which the individual or the individual's spouse is entitled to but does not receive because of action:

1. by the individual or the individual's spouse,
2. by 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
3. by any person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

"Income" has the meaning given such term in section 1612 of the Social Security Act.

"Institutionalized individual" means an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing faculty or who is described in section 1902(a)(10)(A)(ii)(VI) of the Social Security Act.

"Resources" has the meaning given such term in section 1613 of the Social Security Act, without regard (in the case of an institutionalized individual) to the exclusion described in subsection (a)(1) of such section.

TN No. 06-04

Approval Date 12/19/06

Effective Date 09/01/06

Supersedes

TN No. 93-29

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

- §2.0 Transfer of Assets Rule. An institutionalized individual who disposes of, or whose spouse disposes of, assets for less than fair market value on or after the look-back date specified in §2.2 shall be ineligible for nursing facility services, a level of care in any institution equivalent to that of nursing facility services and for home or community-based services furnished under a waiver granted under subsection (c) of §1915 of the Social Security Act.
- §2.1 Period of Ineligibility. The ineligibility period shall begin on the first day of the first month during or after which assets have been transferred for less than fair market value and which does not occur in any other period of ineligibility under this section. The ineligibility period shall be equal to but shall not exceed the number of months derived by dividing:
- A. the total, cumulative uncompensated value of all assets transferred as defined in §1.0 on or after the look-back date specified in §2.2, by
 - B. the average monthly cost to a private patient of nursing facility services in the Commonwealth at the time of application for medical assistance.
- §2.2 Look-Back Date. The look-back date is a date that is 36 months (or, 60 months in the case of payments from a trust or portions of a trust that are treated as assets disposed of by the individual pursuant to this section or Section 3,) before the first date as of which the individual both is an institutionalized individual and has applied for medical assistance under the State Plan for Medical Assistance.

TN No. 93-29

Approval Date 02/25/94

Effective Date 10/01/93

Supersedes

TN No. N/A

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

§2.3 Exceptions. An individual shall not be ineligible for medical assistance by reason of this section to the extent that:

- A. The assets transferred were a home and title to the home was transferred to:
1. the spouse of the individual;
 2. a child of the individual who is under age 21, or is blind or disabled as defined in section 1614 of the Social Security Act,
 3. a sibling of the individual who has an equity interest in the home and who was residing in the individual's home for a period of a least one year immediately before the date the individual becomes an institutionalized individual, or
 4. a son or daughter of the individual (other than a child described in clause (b)) who was residing in the individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual, and who provided care to the individual which permitted the individual to reside at home rather than in an institution or facility.
- B. The assets:
1. were transferred to the individual's spouse or to another person for the sole benefit of the individual's spouse,
 2. were transferred from the individual's spouse to another for the sole benefit of the individual's spouse,
 3. were transferred to the individual's child who is under age 21 or who is disabled as defined in §1614 of the Social Security Act, , or to a trust (including a trust described in §3.7) established solely for the benefit of such child, or
 4. were transferred to a trust (including a trust described in §3.7) established solely for the benefit of an individual under age 65 years of age who is disabled as defined in section 1614(a)(3) of the Social Security Act.

TN No. 93-29

Approval Date 02/25/94

Effective Date 10/01/93

Supersedes

TN No. N/A

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

C. A satisfactory showing is made that:

1. the individual intended to dispose of the assets either at fair market value, or for other valuable consideration, or
2. the assets were transferred exclusively for a purpose other than to qualify for medical assistance, or
3. all assets transferred for less than fair market value have been returned to the individual, or
4. the Commonwealth determines that the denial of eligibility would work an undue hardship.

§ 2.4 Assets Held In Common With Another Person. In the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or other arrangement recognized under State law, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset.

§2.5 Transfers by Both Spouses. In the case of a transfer by the spouse of an individual which results in a period of ineligibility for medical assistance, the Commonwealth shall apportion the period of ineligibility (or any portion of the period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State Plan.

TN No. 93-29

Approval Date 02/25/94

Effective Date 10/01/93

Supersedes

TN No. N/A

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

- §3.0 For Trust(s) Created After August 10, 1993. For purposes of determining an individual's eligibility for, or amount of, medical assistance benefits, subject to §3.7, these rules shall apply.
- §3.1 Trust(s) Defined. The term "trust" includes any legal instrument or device that is similar to a trust but includes an annuity only to such extent and in such manner as the United States Secretary of Health and Human Services specifies for purposes of administration of §1917(c) or (d) of the Social Security Act.
- §3.2 Creation of Trust(s) Defined. For purposes of this subsection, an individual shall be considered to have established a trust(s) if assets of the individual were used to form all or part of the corpus of the trust(s) and if any of the following individuals established the trust(s) other than by will:
- A. The individual,
 - B. The individual's spouse,
 - 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,
 - D. A person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.
- §3.3 Proportional Interest In Trust(s). In the case of a trust(s) the corpus of which includes assets of an individual (as determined under §3.2) and assets of any other person or persons, the provision of this section shall apply to the portion of the trust(s) attributable to the assets of the individual.

TN No. 93-29

Approval Date 02/25/94

Effective Date 10/01/93

Supersedes

TN No. N/A

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

§3.4 Trust(s) Affected. Subject to §3.7, this section shall apply without regard to:

- A. The purposes for which a trust(s) is established,
- B. Whether the trustee(s) has or exercises any discretion under the trust(s),
- C. Any restrictions on when or whether distributions may be made from the trust(s), or
- D. Any restrictions on the use of distributions from the trust(s).

§3.5 Revocable Trust(s). In the case of a revocable trust(s),

- A. The corpus of the trust(s) shall be considered resources available to the individual,
- B. Payments from the trust(s) to or for the benefit of the individual shall be considered income of the individual, and
- C. Any other payments from the trust(s) shall be considered assets disposed of by the individual for the purposes of §2.0.

§3.6 Irrevocable Trust(s). In the case of irrevocable trust(s),

- A. if there are any circumstances under which payment from the trust(s) could be made to or for the benefit of the individual, the portion of the corpus from which, or the

income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual, and payments from that portion of the corpus or income:
 - 1. to or for the benefit of the individual, shall be considered income of the individual, and
 - 2. for any other purpose, shall be considered a transfer of assets by the individual subject to §2 , and

TN No. 93-29

Approval Date 02/25/94

Effective Date 10/01/93

Supersedes

TN No. N/A

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

- B. any portion of the trust(s) from which, or any income on the corpus from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the trust(s) (or, if later, the date on which payment to the individual was foreclosed) to be assets disposed by the individual for purposes of §2, and the value of the trust(s) shall be determined for purposes of such section by including the amount of any payments made from such portion of the trust(s) after such date.

§3.7 Exceptions. This section shall not apply to any of the following trust(s):

- A. A trust(s) containing the assets of an individual under age 65 who is disabled (as defined in section 1614(a)(3) of the Social Security Act) and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual or a court if the Commonwealth will receive all amounts remaining in the trust(s) upon the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual under this State Plan.
- B. A trust containing the assets of an individual who is disabled (as defined in section 1614(a)(3) of the Social Security Act) that meets all of the following conditions:
1. The trust(s) is established and managed by a non-profit association,
 2. A separate account is maintained for each beneficiary of the trust(s), but, for purposes of investment and management of funds, the trust(s) pools these accounts.
 3. Accounts in the trust(s) are established solely for the benefit of individuals who are disabled (as defined in section 1614(a)(3) of the Social Security Act) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.
 4. To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust(s), the trust(s) pays to the Commonwealth from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under this State Plan.

TN No. 93-29

Approval Date 02/25/94

Effective Date 10/01/93

Supersedes

TN No. N/A

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

§ 3.8. Transfers made on or after February 8, 2006. The following policy applies to medical assistance provided for services furnished on or after February 8, 2006, with respect to assets disposed of on or after February 8, 2006.

1. Definitions.

"Assets" means, with respect to an individual, all income and resources of the individual and of the individual's spouse, including any income or resources which the individual or the individual's spouse is entitled to but does not receive because of action:

- a. By the individual or the individual's spouse,
- b. By 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
- c. By any person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

The term "assets" includes the purchase of a life estate interest in another individual's home unless the purchaser resides in the home for a period of at least one year after the date of the purchase. The term "assets" also includes funds used to purchase a promissory note, loan or mortgage unless such note, loan or mortgage:

- a. Has a repayment term that is actuarially sound (determined in accordance with actuarial publications of the Social Security Administration),
- b. Provides for payments to be made in equal amounts during the term of the loan with no deferral and no balloon payments made, and
- c. Prohibits the cancellation of the balance upon the death of the lender.

In the case of a promissory note, loan or mortgage that does not satisfy the requirements of a. through c. above, the value of such note, loan or mortgage shall be the outstanding balance due as of the date of the individual's application for medical assistance.

"Income" has the meaning given such term in section 1612 of the Social Security Act.

"Institutionalized individual" means an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility or who is described in section 1902(a)(10)(A)(ii)(VI) of the Social Security Act.

"Resources" has the meaning given such term in section 1613 of the Social Security Act, without regard (in the case of an institutionalized individual) to the exclusion described in subsection (a)(1) of such section.

TN No. 06-04

Approval Date 12/19/06

Effective Date 09/01/06

Supersedes

TN No. NEW PAGE

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

2. Transfer of Assets Rule. An institutionalized individual who disposes of, or whose spouse disposes of, assets for less than fair market value on or after the look-back date specified in subdivision 2.b. shall be ineligible for nursing facility services, a level of care in any institution equivalent to that of nursing facility services and for home or community-based services furnished under a waiver granted under subsection (c) of §1915 of the Social Security Act.

a. Period of Ineligibility. The ineligibility period shall begin on the first day of a month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the State plan and would otherwise be receiving Medicaid-covered institutional level care based on an approved application for such care but for the application of the penalty period, whichever is later, and which does not occur in any other period of ineligibility under this section. The ineligibility period shall be equal to but shall not exceed the number of months, including any fractional portion of a month, derived by dividing:

(1) The total, cumulative uncompensated value of all assets transferred as defined in §3.8.1 on or after the look-back date specified in §3.8.2 by:

(2) The average monthly cost to a private patient of nursing facility services in the Commonwealth at the time of application for medical assistance.

b. Look-Back Date. The look-back date is a date that is 60 months before the first date the individual is both an institutionalized individual and has applied for medical assistance under the State Plan for Medical Assistance.

c. Exceptions. An individual shall not be ineligible for medical assistance by reason of this section to the extent that:

(1) The assets transferred were a home and title to the home was transferred to:

(a) The spouse of the individual;

(b) A child of the individual who is under age 21, or is blind or disabled as defined in section 1614 of the Social Security Act,

(c) A sibling of the individual who has an equity interest in the home and who was residing in the individual's home for a period of a least one year immediately before the date the individual becomes an institutionalized individual, or

(d) A son or daughter of the individual (other than a child described in clause (b)) who was residing in the individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual, and who provided care to the individual which permitted the individual to reside at home rather than in an institution or facility.

(2) The assets:

TN No. 06-04

Approval Date 12/19/06

Effective Date 09/01/06

Supersedes

TN No. NEW PAGE

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

- (a) Were transferred to the individual's spouse or to another person for the sole benefit of the individual's spouse,
- (b) Were transferred from the individual's spouse to another for the sole benefit of the individual's spouse,
- (c) Were transferred to the individual's child who is under age 21 or who is disabled as defined in §1614 of the Social Security Act, or to a trust (including a trust described in 3.g.) established solely for the benefit of such child, or
- (d) Were transferred to a trust (including a trust described in 3.g.) established solely for the benefit of an individual under age 65 years of age who is disabled as defined in section 1614(a)(3) of the Social Security Act.

(3) A satisfactory showing is made that:

- (a) The individual intended to dispose of the assets either at fair market value, or for other valuable consideration, or
- (b) The assets were transferred exclusively for a purpose other than to qualify for medical assistance, or
- (c) All assets transferred for less than fair market value have been returned to the individual, or
- (d) The Commonwealth determines that the denial of eligibility would work an undue hardship.

(1) Procedures for Undue Hardship Waivers: The agency has established a process under which hardship waivers may be requested that provides for:

- (i) Notice to a recipient subject to a penalty that an undue hardship exception exists;
- (ii) A timely process for determining whether an undue hardship waiver will be granted; and
- (iii) A process, which is described in the notice, under which an adverse determination can be appealed.

(2) These procedures shall permit the facility in which the institutionalized individual is residing to file an undue hardship waiver application on behalf of the individual with the consent of the individual or the individual's personal representative.

d. Assets Held In Common With Another Person. In the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or other arrangement recognized under State law, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset.

TN No. 06-04

Approval Date 12/19/06

Effective Date 09/01/06

Supersedes

TN No. NEW PAGE

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

e. Transfers by Both Spouses. In the case of a transfer by the spouse of an individual which results in a period of ineligibility for medical assistance, the Commonwealth shall apportion the period of ineligibility (or any portion of the period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State Plan.

3. Annuities: The following shall govern annuities,

a. "For purposes of this section, the purchase of an annuity by the institutionalized spouse or the community spouse will be treated as the disposal of an asset for less than fair market value unless:

1. The State is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant; or
2. The State is 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 remainder for less than fair market value.

b. The purchase of an annuity by or on behalf of an annuitant who has applied for medical assistance for long-term care services will be considered a transfer of assets for less than fair market value unless:

1. the annuity is described in subsection (b)-individual retirement annuities- or (q) deemed IRAs under qualified employer plans- of section 408 of the Internal Revenue Code of 1986; or
2. purchased with the proceeds from:
 - a. an account or trust described in subsection (a)-individual retirement account- (c)-accounts established by employers and certain associations of employees- or (p)-simple retirement accounts- of section 408 of such Code;
 - b. a simplified employee pension (within the meaning of section 408(k) of such Code, or;
 - c. a Roth IRA described in 408A of such Code, or;
3. the annuity is:
 - a. irrevocable and non-assignable;
 - b. is actuarially sound (as determined by Social Security Administration publications); and
 - c. provides for payments in equal amounts during the term of the annuity with no deferral and no balloon payments made.

TN No. 06-04

Approval Date 12/19/06

Effective Date 09/01/06

Supersedes

TN No. NEW PAGE

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

TRANSFER OF RESOURCES

4. For annuities purchased prior to February 8, 2006, certain transactions occurring on or after that date shall make an annuity subject to this section including any action taken by the individual that changes the course of payment made by the annuity or the treatment of the income or principal of the annuity. The Commonwealth shall take such changes into account in determining the amount of the state's obligation for medical assistance or in the individual's eligibility for such assistance.
 - a. These actions include additions of principal, elective withdrawals, requests to change the distribution of the annuity, elections to annuitize the contract, and similar actions.
 - b. Changes that occur based on the terms of the annuity that existed prior to February 8, 2006, and that do not require a decision, election, or action to take effect shall not be subject to this section.
 - c. Changes beyond the control of the individual, such as a change in law, in the policies of the insurer, or in the terms based on other factors, shall not cause the annuity to be subject to this section.

Treatment of entrance fees of individuals residing in continuing care retirement communities.

When determining eligibility for medical assistance, an individual's entrance fee in a continuing care retirement community or life care community that collects an entrance fee on admission from such individuals shall be considered a resource available to the individual to the extent that:

1. the individual has the ability to use the entrance fee, or the contract provides that the entrance fee may be used, to pay for care should other resources or income of the individual be insufficient to pay for such care;
2. the individual is eligible for a refund of any remaining entrance fee when the individual dies or terminates the continuing care retirement community or life care community contract and leaves the community; and,
3. the entrance fee does not confer an ownership interest in the continuing care retirement community or life care community.

TN No. 17-014

Approval Date 09/01/17

Effective Date 07/27/17

Supersedes

TN No. 06-04

