THE FACTS & NOTHING BUT THE (MEDICAID) FACTS

Constance Burnett Renzi
Elder Law Center, P.C.
and
Mickey, Wilson, Weiler, Renzi & Andersson, P.C.

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I. INTRODUCTION.

Currently, Medicaid coverage for long-term nursing home care and supportive living care is a joint federal-state public assistance program. To properly advise Illinois clients regarding the Medicaid eligibility laws and rules for long-term care, it is critical to know the applicable federal and Illinois state laws, rules, and policies, which continue to evolve over time. By way of recent history: in 2012, the Illinois Medicaid laws, rules, and policies regarding coverage for long-term care were dramatically changed, when Illinois finalized revisions to the Administrative Code (89 Ill. Admin. Code §120, et seq.), which were necessary for Illinois to be able to begin applying the changes mandated by Public Law 109-171, the Deficit Reduction Act of 2005 (DRA). That same year Illinois also passed Public Act 97-0689, the Save Medicaid Access and Resources Together Act (SMART Act). The SMART Act made additional harsh and substantial changes to the Medicaid eligibility rules for long-term care coverage. Although it has been nearly six (6) years since the changes of 2012 were made, the policies and manner in which those changes are applied, along with the general Medicaid eligibility rules and policies, seem to continue to unfold in new ways. Accordingly, this outline is designed to provide a basic overview of the current the applicable law in Illinois regarding Medicaid eligibility for long-term care.

II. THE LAW GOVERNING MEDICAID ELIGIBILITY.

A. As set forth above, Medicaid is a joint federal-state welfare program, which includes a program that pays for long-term care in Medicaid certified nursing homes and supportive living facilities, if the applicant meets the applicable eligibility requirements.

B. The program is governed by both federal and state laws and regulations. Individual state eligibility rules may vary. For Illinois applicants, the following laws and regulations are in place:

1. Federal statutes governing Medicaid are included in Title XIX of the Social Security Act, 42 U.S.C. §1396, et seq.

2. The federal regulations promulgated by Centers for Medicare and Medicaid Services (CMS) can be found at 42 C.F.R. part 430, et seq.


4. Illinois regulations governing Medicaid are found in 89 Ill. Admin. Code, part 120, et seq.

6. The Illinois Department of Healthcare and Family Services (IDHFS), is in charge of day-to-day administration for the program. You may locate a Local office in your county using the following link: http://www.dhs.state.il.us/page.aspx?module=12.

7. For additional assistance in identifying, or making sense of the agencies and acronyms, one is likely to encounter when advising/assisting clients with obtaining Medicaid coverage for long-term care, see Exhibit A.

III. THE BASIC RESOURCE AND INCOME LIMITS.

A. Eligible individuals must be residents of Illinois and U.S. citizens, or non-citizens living in the U.S. with a specific type of Immigration and Naturalization Service status or residing under the color of law.

B. Eligible individuals must be age 65 or older, blind, or disabled.

C. Even if the above two threshold eligibility requirements are met, eligibility will only be established if an applicant is within certain resource and income limitations:

1. An applicant is limited to $2,000 or less of non-exempt, or countable, resources.

2. Certain resources are considered exempt and do not affect one’s eligibility. See Combined Policy Manual Sections 07-02-04-a through 07-02-19 of the Illinois Combined Policy Manual (which are attached hereto as Exhibit “B”) and the corresponding sections of the Worker’s Action Guide. Examples of exempt resources include, but are not limited to the following:

   - homestead property (subject to a “qualified person residing in the home; or if none, subject to the applicant’s “intent to return home” and the equity value being within the allowable limits);

   - motor vehicle (limited to $4,500 in value if not otherwise exempt; or, regardless of value if transferred to, or owned by, a community spouse);

   - personal effects and household goods (limited to reasonable value, if there is no community spouse); and

   - “inaccessible” resources (such as Medicaid compliant prepaid funeral plans; Medicaid compliant annuity, etc.).

(For the complete list of exempt resources see Exhibit “B.”)
3. The applicant's monthly income must be less than the nursing home's private pay rate, at the facility where the applicant is residing.

4. The applicant, once a Medicaid recipient, must generally pay all of his/her income to the facility less the following deductions: (89 Ill. Admin. Code §120.61(f), PM 15-05-04.)
   a. SSI benefits paid under 42 USC 1382(e)(1)(E) or (G);
   b. Personal needs allowance;
      i. $30.00 for general applicants;
      ii. $90.00 for Veteran applicants receiving VA benefits; and
      iii. $90.00 for persons/spouses residing in SLF.
   c. Dependent and spousal allowances (See Section IV, B of this outline for additional information regarding the spousal allowance.);
   d. Medical insurance premiums (one month) for certain Medicare and health insurance cost sharing not subject to payment by a third party;
   e. Medical bills not paid by Medicaid; and
   f. Amounts to maintain a residence in the community for six (6) months when:
      i. There is no spouse or dependent child in the home; and
      ii. A physician certifies that the stay is temporary and the person is expected to return home within six months.

IV. SPECIAL RULES FOR MARRIED APPLICANTS.

A. The "Community Spouse Resource Allowance" (CSRA) is the portion of total non-exempt resources owned by the "resident spouse," the "community spouse," or jointly by both which may be transferred to the "community spouse" and which will be considered as unavailable to pay for the resident spouse's care. (Combined Policy Manual PM 07-02-22) The current CSRA is $109,560. Pursuant to SMART Act, the CSRA is the greater of $109,560 or the minimum federal allowance. (305 ILCS 5/5-4(a); 89 Ill. Admin. Code § 120.379(d)(1); PM 07-02-22.)

1. This figure does not include the value of the following additional exempt resources which (regardless of value) may also be transferred to, or owned by, the community spouse: homestead; personal effects; household goods; and one motor vehicle (regardless of value). (PM 07-02-20-b; PM -07-02-22.)
B. In addition, the community spouse is entitled to a contribution of monthly income from the resident spouse to bring the community spouse’s monthly income up to the Community Spouse Maintenance Needs Allowance (CSMNA). (Combined Policy Manual PM 15-04-04-a.) The current CSMNA is $2,739. Pursuant to the SMART Act, the CSMNA is the greater of $2,739, or the minimum federal allowance. (305 ILCS 5/5-4(a); 89 Ill. Admin. Code § 120.379(e)(1)(A); PM 15-04-04-a.)

1. If the community spouse’s income exceeds this amount, then the community spouse will be required to make a monthly support payment towards the resident spouse’s monthly long-term care costs.

C. Prior to the SMART Act, the CSRA and CSMNA were typically adjusted annually. Now, per the SMART Act, both of these allowances will remain set at the current amounts, and instead, will only increase when the federal minimum allowances are greater than the current Illinois allowances.

D. For additional information regarding the community spouse rules and planning options for preserving additional resources for the community spouse (including, but not limited to: seeking increased CSRA; “refusal to use” resources; etc.), see the course materials for the “Digging Deeper: Planning for Community Spouses session of this program.

V. CURRENT ILLINOIS TRANSFER OF RESOURCES AND INCOME RULES: WHEN THEY ARE PERMITTED AND WHEN THEY WILL RESULT IN A PERIOD OF INELIGIBILITY.

A. A transfer occurs when there has been a change in the way any resource or income is held including, but not limited to, such actions as adding a name to a deed, creating a trust, opening or closing a bank account, etc. The rules regarding transfers and the manner in which the penalty period is calculated and applied are located at 89 Ill. Admin. Code §§120.387 and 120.388 and PM 07-02-20, et seq. A copy of PM 07-02-20 is attached as Exhibit “C,” which in addition to outlining actions which will be treated as transfers of resources or income, it establishes the threshold amount upon which long-term cases will be referred to the Long Term Care-Asset Discovery Investigation (LTC-ADI).

B. A penalty period will be imposed for non-allowable transfers made during the applicable “look-back” period, which pursuant to the current law is the sixty (60) months immediately preceding the filing of the application. Accordingly, transfers occurring prior to the sixty (60) month look-back period are allowable.

C. Non-allowable transfers are those transfers either made for less than fair market value; or that were made for the purpose of qualifying for assistance.

1. Fair Market Value (FMV) is the prevailing price at which the property would sell on the open market between a willing buyer and a willing seller.
2. For a resource to be considered transferred for FMV, the compensation received must be in a tangible form with intrinsic value that is roughly equivalent to (or greater than) the value of the resource transferred.

   a. Transfers of resources for "love and affection" are not considered transfers for FMV.

   b. Transfer for "past" care to a friend or relative will be considered a transfer for less than FMV.

   c. Care services provided by a friend or relative are presumed gratuitous unless rebutted with credible documentary evidence; and to qualify as FMV, compensation must be consistent with prevailing rates.

D. Certain transfers are "allowable" and do not affect eligibility. See 89 Ill. Admin. Code §120.388(m)-(r) and PM 07-02-20-b (a copy of PM 07-02-20-b is attached hereto as Exhibit "D.") Examples of "allowable transfers" include, but are not limited to, the following:

   1. Per the current rules, transfers made more than 60 months prior to filing an application.

   2. Transfer of homestead property to:
      
      a. The applicant’s spouse.
      
      b. The applicant’s child under 21 years of age.
      
      c. The applicant’s blind or disabled child.
      
      d. The applicant’s brother or sister who has an equity interest in the home and has been living in the home for at least one year prior to application.
      
      e. The applicant’s child who provided care to the applicant and lived with the applicant in the home for the two years prior to the date the person became institutionalized provided that the following required credible tangible evidence is presented.

         i. Evidence to support that the person would have otherwise required an institutional level of care (such as a physician’s statement; Alzheimer’s or dementia related illness shall be _prima facie_ evidence);

         ii. Evidence to show the child resided with the person for the two years immediately prior to the person’s institutionalization,
such as a driver’s license, cancelled checks, tax returns, etc.; and,

iii. Evidence to show the child provided care that prevented institutionalization, such as a sworn affidavit or statement signed by the child.

3. Transfers to a community spouse or to another person for the sole benefit of the community spouse.

4. Transfers to the person’s child, to a trust for the “sole benefit” of the person’s child, or to another person for the “sole benefit” of the person’s child who is determined to be disabled; and a transfer made after August 1, 1993 to a trust created by a parent, grandparent, legal guardian, or court for the sole benefit of a disabled person under age 65. (Note: Although the rules in Illinois have not yet been amended, at the federal level Section 5007 of the recently passed Century Cures Act (P.L. 114-255), included the “Fairness in Medicaid Supplemental Needs Trusts,” which now allows individuals to create and fund their own sole-benefit pay-back trust.)

5. Transfers intended to be made for fair market value.

6. Transfers made exclusively for another reason other than to qualify for benefits.

(Note: A federal district court, interpreting the post-DRA Medicaid rules in Iowa, has held that a Medicaid applicant is entitled to a temporary restraining order so she can receive Medicaid benefits while her case is pending (Behning v. Palmer, U.S. Dist. Ct., S.D. Iowa, No. 4:11-cv-228-HDV-CFB, May 18, 2011). The court specifically found that the applicant had a likelihood of succeeding on the merits as Medicaid benefits cannot be denied to a Medicaid applicant who made a transfer for a purpose other than to qualify for Medicaid. In this case, parents took out a second mortgage on their home and loaned the money to their daughter to consolidate her debts. The daughter, although not on the loan, made all of the mortgage payments.)

7. Transfers of charitable gifts and gifts to family members which are consistent with amounts and frequency of such gifts in the past.

8. Transfers to purchase a life estate interest in another person’s home, if the purchaser resided in the home for at least twelve consecutive months.

9. Transfers for less than fair market value that are returned to the person in full.

E. Pursuant to PM 07-02-20-c there is a presumption that a transfer was made to qualify for benefits, unless the person who made the transfer can show that it was not made to qualify for benefits. Thus, in addition to considering the reason given for the
transfer, in certain circumstances, the following additional factors are to also be considered:

1. The person’s physical and mental condition at the time of the transfer;
2. The person’s financial situation at the time of the transfer;
3. The person’s need for benefits at the time of the transfer;
4. Whether any changes in living arrangements were anticipated at the time of the transfer;
5. How soon after the transfer the applicant applied for benefits; or,
6. Whether unexpected events occurred between the transfer and application.

F. Transfers made within the look-back period, which are determined to be “non-allowable,” will be subject to the applicable transfer penalty rules. (89 Ill. Admin. Code§ 120.388; PM 07-02-20-d.)

1. Specifically, transfers occurring within the 60 months prior to the filing of an application (look-back period), will trigger a period of ineligibility that will be calculated and applied as follows:
   a. The penalty period will be calculated by dividing the total value of uncompensated assets transferred by the average monthly cost of long-term care services at the private rate in the community in which the person is institutionalized at the time of application.
   b. There is no rounding down, rather, the penalty period will be calculated in number of months, days, and portion of a day.
   b. An interruption in long-term care services and/or benefits tolls the running of the penalty period. PM 07-02-20-d expressly provides for a tolling of the penalty period, and states as follows: “if the person leaves a facility and returns at a later date or stops receiving benefits and reapplies at a later date, the initial penalty period continues in effect until the end of the calculated period.” Essentially, the end date is recalculated to pick up the remaining months of the penalty.
   d. Penalty periods begin with the later of:
      i. the first day of a month during which an impermissible transfer was made; or
      ii. the date on which the person is eligible for medical assistance and would otherwise be receiving long-term care services, if
it were not for the imposition of the penalty period. ("Long-term care services" are defined as: 1) services provided in a long-term care facility as defined in § 120.61(a); and 2) services provided under a home and community based waiver. (89 Ill. Admin Code § 120.388(b).)

iii. Although the Administrative Code has not changed and includes only the above two penalty start dates, an additional provision has been added to PM 07-02-20-d, which states, "or the first month that can be affected for an ongoing case allowing for timely notice to be sent to the customer."

(Note: Any spend-down must be met before a person will be considered eligible for services.)

G. Persons subject to a penalty period arising from transfers determined to be non-allowable may apply for a hardship waiver. (89 Ill. Admin. Code § 120.388; PM 01-08-00, et seq.)

1. The applicant will be required to prove that an actual hardship exists, and not just that a potential hardship exists.

2. Hardship examples are those such as where:
   a. The applicant is unable to explain the transfer.
   b. There is evidence of fraud or elder abuse.
   c. The person will be forced to move.
   d. The person will be separated from a spouse.

VI. OTHER SIGNIFICANT MEDICAID ELIGIBILITY RULES INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING.

A. Spenddown and Backdating. The rules regarding spending down non-exempt resources and income, as well as the process for granting a request to backdate a person’s eligibility for up to 3 months prior to the filing of the application can be found at 89 Ill. Admin. Code §120.61; 89 Ill. Admin. Code §120.380; PM 15-04-00, et seq. When determining financial eligibility for retroactive months, the amount of non-exempt resources available to a person as of the first day of each backdated month for which eligibility is sought will be used. (89 Ill. Admin. Code §120.380(d)(2), PM 15-04-01). (Note: Pursuant to PM 15-07-01, eligibility for backdating will always be determined for up to 3 months prior to the application, unless the client does not want backdating for a month(s).)

B. Trusts. Any inter vivos trust created by a Medicaid applicant or spouse will be treated as an available resource, if the trustee has any discretion to distribute principal
to or for the benefit of the Medicaid applicant. Resources held in a revocable trust created by the Medicaid applicant and/or spouse will be considered as available resources; income paid to the applicant will be countable income; and any distributions to a third party will be treated as transfers of resources. Whether the principal and/or income of an irrevocable trust constitutes an available resource will depend upon whether distributions of principal and/or income may be made to the applicant. Any part of principal that is not available to the applicant will be considered a transfer of resources and subject to the transfer penalty rules, if the transfer occurred within the applicable look-back period. (PM 07-02-20-b.)

C. **Payback Trusts.** For persons under age 65, a properly established self-settled trust created for the person’s sole benefit and funded with the person’s resources will be exempt, as long as a provision is also included to payback the Department. Transfers to a pooled trust by individuals under age 65 are allowable transfers. For persons age 65 or older, however, funding and/or transfers to pooled trusts will only be allowable transfers, if made by the County Public Guardian, or the State Guardian. The rules regarding the creation and funding of these trusts are found at 305 ILCS 5/3-1.2; 89 Ill. Admin. Code § 120.347(d)(1) and (2) and PM 07-02-15-b.

D. **Annuities.** The ownership or purchase of any annuity must be disclosed, and a failure to name the State of Illinois as a remainder beneficiary will result in a denial (or termination) of eligibility for long-term care services. The State must also be named as the first remainder beneficiary, unless there is a community spouse, minor child, or child with a disability in the first position. In addition, the purchase of an annuity (or changes made to an existing annuity) during the look-back period will be reviewed to determine whether the transfer of resources to the annuity qualifies as an “allowable” transfer. (See 89 Ill. Admin. Code §§ 120.347; 120.385(b); 120.387(e)(13); 120.388(e)(n) and (o); PM 07-02-17; and PM 07-02-20.)

For additional information regarding the applicable law regarding annuities, see Anthony Ferraro’s materials in the Annuity section of the “Digging Deeper” session of this program.

E. **Equity of Homestead (when no qualified person resides in the home).** Pursuant to the SMART Act, and current policy provisions, an applicant who does not have a qualified person residing in the homestead, shall not be eligible if the person’s equity interest in his or her homestead exceeds $536,000 (89 Ill. Admin. Code § 120.385(c), PM 07-02-04(a)). The SMART Act provides that the federal minimum home equity allowance pursuant to 42 U.S.C.A. § 1396(f)(1)(c), shall be followed. This amount shall be subject to increases based on the Consumer Price Index.

Fair market homestead value for non-farmland property is determined as follows:

1. For Cook County property, multiply the most recent tax assessment value by 10; or

2. For all other Illinois Counties, multiply the most recent tax assessment value by 3; or
3. To dispute the value calculated by the above, the applicant must provide a reasonable alternative value from a licensed real estate professional.

For additional information, see Kristi Vetri’s materials on Planning for the Homestead and Farmland in the “Digging Deeper” session.

F. **Income Producing Property.** Non-homestead property (which includes homestead property that is no longer considered exempt), will be considered available unless it is income producing. The income producing rules regarding allowable exempt resources limit the exemption up to $6,000 of a person’s equity in the property and require that it be producing annual net income of six percent of the excluded equity value. The SMART Act removed the farmland property exception previously included in these respective provisions. (305 ILCS 5/3-1.2; 89 Ill. Admin. Code § 120.380(k) and § 120.381(a)(1)(c)(3); PM 07-02-11.)

G. **Prepaid Funeral Plans, Contracts, and Burial Spaces.** Funds in a revocable prepaid funeral or burial contract, or in a bank account owned by the person clearly identified as a burial fund, are exempt up to $1,500. Funds in an irrevocable prepaid funeral or burial contract are exempt up to $6,264, except that any portion of a contract that clearly represents the purchase of “burial space” (as that term is defined for purposes of the Supplemental Security Income program) is exempt regardless of value. In addition, a prepaid, guaranteed price funeral or burial contract funded by an irrevocable life assignment of a person’s life insurance policy to a trust, is exempt; however, among other requirements, a statement must be included that, upon death, the State will receive any excess money remaining in the trust (up to the total amount of assistance paid on behalf of the person). (305 ILCS 5/3-1.2; 89 Ill. Admin Code § 120.381(b)-(d); PM 07-02-08: PM 07-02-08 (a)-(e); PM 07-02-09: and PM 07-02-10.)

H. **Promissory Notes.** Funds used to purchase a promissory note, loan or mortgage, will be counted as a resource unless the repayment terms provide for equal, actuarially sound payments and cancellation of the debt at the lender’s death is prohibited. In addition, Illinois has added the requirement of a tangible verification record of consistent timely payments, and the requirement that any remaining balance, at the death of the lender, be assigned to the state. (89 Ill. Admin. Code §120.385(d); PM 07-02-20-b.)

I. **Entrance Fees.** A person’s entrance fee in a continuing care/life care community, under certain circumstances, will be considered as part of a person’s available resources. (89 Ill. Admin. Code §120.380(j); PM 07-02-06.)

VII. **LIENS AND ESTATE CLAIMS.**

A. Subject to certain conditions, a lien may be filed against real property of a Medicaid recipient. (Combined Policy Manual, PM 23-09-01, *et seq.*)
B. No lien may be filed against the real property of a recipient during his or her lifetime, when the property is occupied by either the recipient’s spouse, a minor or disabled or blind child of the recipient, or the recipient’s sibling who has an equity interest in the property and has legally resided in it continuously for at least one year prior to the recipient’s entry into a long-term care facility.

C. If one of the aforementioned persons is not residing in the homestead property, then the Department will file a lien on any real property owned by a recipient, who has resided in a long-term care facility for at least 120 days.

1. The presumption is that a recipient who has resided in a long-term care facility for 120 days cannot reasonably be expected to return.

2. The presumption, however, relates only to the filing of a lien and does not affect the exempt status of a recipient’s homestead property.

D. The amount expended by the State as Medicaid payments becomes a claim on behalf of Illinois against the deceased recipient’s estate. (Combined Policy Manual, PM 23-09-02, et seq.)

1. A claim may be enforced against real and/or personal property.

2. The claim, however, cannot be enforced against any property until after the death of the surviving spouse, and then only if there is no surviving child who is under 21, blind, or permanently and totally disabled.


4. To date, Illinois has not expanded the definition of “estate,” however OBRA-93 specifically permits states to expand its definition of an “estate.”

E. For additional information, see Sandra Schildgen’s materials on Liens and Estate Claims in the “Advanced Issues: The Intersection of Long Term Care Costs, Estate Planning, Asset Preservation, and Ethics” session of this program.

VIII. CONCLUSION.

The Illinois Medicaid eligibility rules include many nuances and complexities, and are subject to what seems to be frequent tweaks and/or changes. Accordingly, to properly advise clients in these matters, attorneys must maintain a thorough and detailed understanding of the current Medicaid eligibility laws and rules in effect in Illinois.
Exhibit "A"

Quick Guide: Alphabet Soup of State Agencies & Common Abbreviations related to Illinois Medicaid

DHS (or IDHS) -- Illinois Department of Human Services (The state of Illinois agency in charge of delivering human services through various public assistance programs to Illinois residents in need, including Medicaid coverage for long-term care for eligible persons.)

HFS (or IDHFS) -- Illinois Department of Healthcare and Family Services (HFS is responsible for providing healthcare coverage for adults and children who qualify for Medicaid, and is in charge of the day-to-day administration of Medicaid in Illinois. HFS was formerly the Illinois Department of Public Aid.)

FCRC -- Family Community Resource Center (DHS local offices, where applications may be filed.)

OIG -- Office of Inspector General (The OIG is maintained within HFS, but functions as a separate, independent entity reporting directly to the governor's office. Among other duties, OIG is responsible for preventing, detecting and eliminating fraud, waste, abuse, misconduct and mismanagement in programs administered by HFS and the DHS, including audit and/or the review of certain applications for long-term care coverage. There are certain triggers, as promulgated by HFS policy, which will result in an application being sent to OIG for review.)

LTC-ADI -- Long-term Care-Asset Discovery Investigation (This project began in 1996 when the Department of Public Aid Office of Inspector General (OIG) conducted investigations of long term care medical assistance (LTC) applications meeting certain error-prone criteria as identified by Family Community Resource Centers (FCRCs), and was expanded on a statewide basis in 2005.)

PM -- Combined Policy Manual (The manual which compiles the policies for the Cash, SNAP, and Medical assistance programs for Illinois residents.)

WAG -- Worker's Action Guide (The procedures which tell how to implement the policies set forth in the PM.)

MR -- Manual Release (A MR provides details regarding recent manual updates to the PM and WAG.)

BAH -- Bureau of Assistance Hearing/Bureau of Hearings (The department of DHS responsible for processing, hearing, and deciding appeals.)

BOC -- Bureau of Collections (The department of DHS responsible for collecting payments owed as reimbursement/repayment to DHS for benefits paid on behalf of a recipient, including support payments, estate claims, etc.)

CMS -- Centers for Medicare and Medicaid Services (The federal agency that is responsible for administering Medicare and Medicaid, and for promulgating the federal rules.)

SSA -- Social Security Administration (The federal agency responsible for administering social security retirement and disability benefits.)

POMS -- Program Operations Manual System (The POMS is a primary source of information used by Social Security employees to process claims for Social Security benefits.)
1) Homestead property is exempt, and is the property that is owned and occupied by the person as their home. It includes any surrounding property that is not separated from the home by someone else's property.

When a person with homestead property is in a nursing home or a supportive living facility, the property remains exempt as a homestead if the person says it is their homestead and intends to return to it. If a person is in a nursing home or supportive living facility but does not intend to return to the property, it is still exempt as homestead if it is occupied by:

- the person's spouse;
- a dependent sibling of the person;
- the person's child under age 21; or
- the person's adult child who is blind or has a disability;
- the person's son or daughter who provided care to the person and resided in the home for the two years immediately before the person moved to the LTC facility.

If a person abandons homestead property with no intention of returning, it immediately becomes non-homestead property.

Homestead property transferred to a trust is not exempt unless the person, or his/her authorized representative, provides evidence that the person's spouse or minor child or child with a disability resides in the property.

2) If a resident of a nursing home (NH), supportive living facility (SLF), or a person receiving services through the Illinois Department on Aging (DoA) Home and Community Based Services (HCBS) waiver program, has equity value in their homestead property of $536,000 or more, the resident is ineligible for payment of NH or SLF charges, unless:

- the resident's spouse, dependent sibling, child under age 21, blind or disabled child, or child who provided care (as described above) resides in the home; or
- a hardship waiver is granted (see PM 01-08-00).

For applicants with non-farmland homestead property in Cook County, acceptable proof of fair market homestead value is determined by multiplying the most recent tax assessment value by 10. For all other Illinois counties, multiply the most recent tax assessment value by 3. To dispute the value calculated in this way, the customer or his/her representative must provide a reasonable alternative value from a licensed real estate professional.
Non-homestead property is nonexempt, and is all real property that is not the customer's homestead.

Use the equity value of a customer's non-homestead real property when figuring initial and ongoing eligibility. For cash cases, when the equity value of non-homestead property and all other nonexempt resources exceeds the resource limit:

- SWAP the case to Medical, and
- enroll it in spenddown if otherwise eligible.

For Medical cases, enroll the case in spenddown.

Do not consider the equity value of property if the person:

- Owns only a fractional interest in property of small value and would suffer a substantial loss from the sale of their interest; or
- Lists the property for sale with a reputable local realtor. Allow the customer 6 months to find a buyer. During this 6-month period the property does not affect Cash or Medical eligibility.

If the property remains unsold after 6 months but continues to be listed for sale with a reputable local realtor and the FCRC believes an extension should be granted, refer cash cases to the Bureau of Program and Performance Management. The Bureau determines if an extension of the period to find a buyer is warranted. If the Bureau of Program and Performance Management does not grant an extension, consider the equity value of the property as a nonexempt resource. Refer medical cases to the Bureau of Medical Eligibility and Special Programs (BMESP; "HFS Policy") by completing and submitting a Request for Specific Case Guidance (IL 444-2150).
One motor vehicle is exempt regardless of value if it is:

- necessary for employment; or
- needed for transportation for medical treatment of a specific or regular medical problem; or
- modified for operation by or transportation of a handicapped person; or
- needed to provide transportation for essential daily activities because of climate, terrain, remoteness, or similar factors.

If the client's vehicle is not exempt due to one of the above factors, then exempt one vehicle with a current fair market value of no more than $4,500. Apply any excess fair market value above $4,500 to the asset limit.

Apply the equity value of all other vehicles toward the asset limit.

**Long Term Care/Supportive Living/DoA Clients - Community Spouse Cases**

When figuring the amount allowed as the Community Spouse Asset Allowance, exclude one vehicle for each spouse regardless of the vehicle's value (see PM 07-02-22).

If the client's motor vehicle is not transferred for the sole benefit of the community spouse and the vehicle is not exempt, then exempt one vehicle with a current fair market value of no more than $4,500. Apply any excess fair market value above $4,500 to the asset limit.

Apply the equity value of all other vehicles toward the asset limit.
Personal property is anything owned by a person that is not land or permanently affixed to land.

Nonexempt personal property includes such items as:

- money in checking and savings accounts;
- stocks, bonds, savings certificates, and other securities;
- farm and small business equipment, unless used for income for self-support (see PM 07-02-11);
- estate bequests; and
- miscellaneous resources that are not real property.

An entrance fee paid to a Continuing Care Retirement or Life Care Community shall be considered an available resource when:

- the entrance fee may be used to pay for care when other resources are insufficient; or
- the individual is eligible for a refund of any remaining entrance fee when the person dies or terminates the contract and leaves the community; or
- the entrance fee does not confer an ownership interest in the community.

See PM 07-02-06-b for personal items such as clothing, personal effects, and household furnishings.

Use the equity value of nonexempt personal property that a person owns or has an interest in, when figuring initial and ongoing eligibility. Verify the amount to be used.

Proceeds from the sale of personal property are considered a nonexempt resource except for estate bequests and stocks and bonds, which are considered as follows:

- **Estate Bequests** - Lump sum bequests from an estate are resources. When a bequest or interest in an estate is in the form of regular income, consider it as income rather than a resource.

- **Stocks or Bonds** - If a stock or bond is sold at a profit, the profit portion of the sale price is income and not a resource. The remainder of the money is a resource.
Money considered as income for a month is not an asset for the same month. Any income added to a bank account is income for that month, and not a part of the account's asset value for the month. To figure the asset value of the account, subtract the income from the bank balance. For the following month(s) any remaining income in the account is an asset.

**Example:** On September 5th a pension check of $600 is deposited in a savings account with a $1000 balance. The new account balance is $1,600. Subtract $600 from the account balance, leaving an asset balance of $1,000 for September. During the month of September $500 is withdrawn. On October 5th another $600 pension check is deposited. The asset balance as of October 5th is $1,100. The $100 remaining in the account from September's $600 pension check is now an asset in the month of October.
PM 07-02-06-b: Personal Effects and Household Goods

Personal effects and household goods of less than $2,000 are exempt. Regardless of their value, exclude wedding and engagement rings and items required because of a person's medical or physical condition.

Personal effects are those items worn or carried by the client or having an intimate relation to the client such as clothing, jewelry, recreational equipment, and hobby items.

Household goods are those items normally found in the home such as furnishings, appliances, television sets, and dishes.

Personal effects and household goods of a resident of a Long Term Care Facility (LTC), Supportive Living Facility (SLF), or a Medical client applying for or receiving DoA Services and/or their community spouse, are excluded when determining the amount allowed as the Community Spouse Asset Allowance (see PM 07-02-22).

If personal effects and household goods of a resident of an LTC facility, SLF, or a Medical client applying for or receiving DoA services are not transferred for the sole benefit of the community spouse, apply the equity value in excess of $2,000 to the asset limit.
PM 07-02-07: Life Insurance

WAG 07-02-07

The cash value of a life insurance policy which is owned by the client and/or spouse is counted as an asset unless:

- the policy is exempt; or
- the total face value is $1,500 or less.

The following types of life insurance policies are exempt:

- Term policies with no cash value.
- Group policies provided by an employer.
- Group policies required for employment.
- Policies on the life of an ineligible family member who is not the client's responsible relative.
- Policies on the life of an eligible client owned by someone other than the client. This disregard does not apply to policies insuring a child who is a client if the policies are owned by the child's parent who is living in the home.

Disregard the cash value of non-exempt life insurance policies when the total face value is $1,500 or less. The client and their spouse can each have non-exempt life insurance with a total face value of $1,500 or less. If the total face value of the client's or spouse's non-exempt life insurance is more than $1,500, apply the total cash value to the asset limit.

See PM 07-02-08-d for a life insurance policy that funds a prepaid burial contract.

When determining eligibility, do not use life insurance owned by someone other than the client or a responsible relative living with the client. There must be proof of ownership when a client claims that someone else owns an insurance policy.

When it appears that an insured client is eligible for disability benefits through a health and accident or life insurance policy, the client must apply for the benefits. If the client fails or refuses to apply for the benefits, the client is ineligible for cash benefits.

Disability benefits paid from a life insurance policy are nonexempt income unless they reduce the face amount of the policy. If the benefits reduce the face amount of the policy, they are a nonexempt asset that is applied to the asset limit.

Insured clients must provide information on the current beneficiary of the insurance policy.
Certain amounts set aside as a burial fund to cover the funeral and burial expenses of a client and/or their spouse are exempt. In order to be exempt, the money set aside must be separate and identifiable as a fund to cover funeral and burial expenses.

When a client prepays funeral and burial expenses to a funeral home, the funeral home provides the client with a prepaid burial agreement or contract. The money paid by the client to fund the contract can be held by the funeral home in a trust account or can be used to purchase a life insurance policy on the life of the client. The prepaid burial contract is funded by trust or by life insurance.

The amount that is exempt depends on whether the burial fund is:

- money in a bank account set aside for funeral and burial expenses; or
- a revocable prepaid burial contract with a funeral home, funded by a trust account; or
- an irrevocable prepaid burial contract with a funeral home, funded by a trust account; or
- a prepaid burial contract with a funeral home, funded by a life insurance policy.

[URL: http://www.dhs.state.il.us/page.aspx?item=14908]
PM 07-02-08-a: Money Set Aside in a Bank Account

WAG 07-02-08-a

Up to $1,500 of money set aside in a bank account, payable on death for funeral and burial expenses, or otherwise identifiable as a burial fund, is exempt. Apply any amount in excess of $1,500 to the client's asset limit.

The $1,500 burial fund limit on money set aside in a bank account is reduced by the amount of funds held in an irrevocable burial fund.

http://www.dhs.state.il.us/page.aspx?item=14910
Money in a revocable prepaid burial contract with a funeral home can be withdrawn. Unless the person agrees and states within the contract that it is irrevocable, the contract is revocable. Exempt $1,500 in a revocable prepaid burial contract. In addition to the $1,500, exempt all amounts designated for burial space, regardless of value (as defined in PM 07-02-09). Apply any remaining amount to the person's resource limit.

The $1,500 burial fund limit on a revocable contract is reduced by:

- the amount of funds held in an irrevocable burial fund, or any other irrevocable arrangement which is available for burial expenses,
- the face value of any disregarded non-exempt life insurance (face value $1,500 or less), and
- other burial funds.

**EXCEPTION**

When a person owns both a revocable prepaid burial contract and non-exempt life insurance with a face value of $1,500 or less, take the following steps:

1. Disregard the life insurance policy (do not apply cash value to the resource limit). Determine the amount of the prepaid burial to apply to the resource limit by reducing the $1,500 burial fund limit by the face value of the insurance.
2. If the amount applied to the resource limit does not result in spenddown, no further action is needed.
3. If the amount applied to the resource limit results in spenddown, determine countable resources by applying the cash value of the life insurance to the resource limit. Do not reduce the $1,500 burial funds by the face value of the insurance. Apply the amount in excess of $1,500 to the resource limit.
4. Use the calculation that results in the smallest spenddown amount.

When determining the amount in excess of $1,500 in a revocable burial contract, count only the amount prepaid by the customer. The customer may specify in their contract that, upon death, other resources such as Veteran's Benefits, Railroad Retirement Death Benefits, etc., are to pay the remainder.

**Example:** A person has a $5,000 prepaid burial fund (no other life insurance). The contract shows $2,500 designated for burial space. The contract shows that the person prepaid $4,000 with the remaining balance to be paid at the time of death with death benefits. The total countable resource in the burial fund is $4,000. After deducting the $2,500 for burial space and the $1,500 burial fund limit on a revocable contract, there is nothing to apply to the resource limit.
PM 07-02-08-c: Irrevocable Prepaid Burial Contract Funded by Trust

WAG 07-02-08-c

Money in an irrevocable prepaid burial contract with a funeral home cannot be withdrawn. The prepaid burial contract must show that the contract is irrevocable.

The exempt amount is limited to the price of funeral goods and services to be provided upon death as specified in the contract. The contract must include a complete description of the funeral goods and services to be provided, and the price of those goods and services. Treat any amount not specified in the contract as a transfer for less than fair market value.

Exempt $6,264, adjusted annually for any increase in the Consumer Price Index (CPI), in an irrevocable prepaid burial contract. In addition to the $6,264 prepaid burial limit for an irrevocable contract, also exempt all amounts designated for burial space, regardless of value (as defined in PM 07-02-09). Apply any remaining amount to the customer's resource limit.

Do not reduce the $6,264 burial fund limit on an irrevocable prepaid burial contract by the face value of life insurance owned by the person.
Disregard a prepaid burial contract funded by a life insurance policy when ownership of the insurance policy has been irrevocably assigned. With the irrevocable assignment of ownership of the insurance policy, the resource no longer belongs to the person.

When a life insurance policy funds a prepaid burial contract, the life insurance policy is purchased at the time the prepaid burial arrangement is made. The funeral home, acting as an agent of the insurance company, sells the person the life insurance policy. The person assigns ownership of the life insurance policy to a third party. The third party may be a trust within the insurance company. The party accepting the assignment of the life insurance policy is responsible for ensuring that the funeral home receives the proceeds of the insurance policy when they provide the funeral goods and services selected by the person.

The assignment represents the transfer of resources. If the person resides in an NH or SLF facility, or has applied for or is receiving DoA HCBS waiver services, determine if fair market value was received. The amount exempted is limited to the Insurance benefit designated for the cost of funeral goods and services to be provided upon the person's death. The contract must include a complete description of funeral goods and services to be provided and the cost of those goods and services. Treat any amount not specified in the contract as a transfer for less than fair market value.

To be considered exempt, a burial plan established on or after 07/01/12, the trust that funds the burial must also state that, upon the death of the person, the State will receive all amounts remaining in the trust up to an amount equal to the total medical assistance paid on the person's behalf.

To be valid, the irrevocable assignment of ownership of the insurance policy must be acknowledged by the insurance company. If the irrevocable assignment is not acknowledged by the life insurance company, treat the policy as the customer's policy. If the face value is greater than $1,500, apply the cash value of the policy to the customer's resource limit (see PM 07-02-07).
As an ongoing administrative expense, the funeral home is entitled to 5% of the principal (onetime only) and 5% of the annual interest. Only allow an administrative expense deduction from the value of the burial fund if they are being charged by the funeral home.

If the client defaults on a revocable contract with the funeral home prior to death, the funeral home is entitled to 25% of the amount withdrawn, or $35, whichever is larger. The actual amount the client receives after the funeral home's deduction is a nonexempt asset that is applied to the asset limit.
Burial space(s) intended for the use of a person, their spouse, or any other member of their immediate family are exempt, regardless of value.

**NOTE:** Immediate family members are a person's minor and adult children, including adopted children and stepchildren. It also includes a person's brothers, sisters, parents, adoptive parents, and their spouses. To be considered an immediate family member, the person does not have to be dependent on the customer or living with the customer.

Burial spaces are defined as:
- conventional gravesites;
- crypts;
- mausoleums;
- urns;
- caskets;
- vaults;
- burial plot;
- niches; and
- other places that are customarily and traditionally used for the burial of deceased persons.

In addition, burial spaces purchased by contract if paid in full or otherwise held for the person's use are exempt.

Also exempt are any additions to or improvements on burial spaces such as:
- vaults;
- headstones;
- markers;
- plaques;
- burial containers; and
- arrangements for opening and closing the gravesite.

This does not include such items as prayer cards and visitors registration.

The person may actually own the burial item or may have money in a prepaid burial agreement for a specific item. Money held in a prepaid burial agreement for a specific item that is exempt, is an exempt resource. The money prepaid for burial space may be separate or may be part of a prepaid agreement for funeral and burial expenses.
PM 07-02-10: Interest on Burial Funds and Burial Spaces

WAG 07-02-10

Interest earned on burial funds and funds for burial spaces and appreciation in their value is exempt starting with the earliest of: the date of first SSI eligibility, or the date of AABD Cash or Medical eligibility, but no earlier than November 1, 1982.

The increased value of the exempt burial funds and merchandise due to added interest is also exempt.
PM 07-02-11: Resources Needed for Self-Support

For AABD community and LTC cases, income-producing property is exempt up to $6,000 of the person's equity value in the property. The $6,000 exemption applies only if the property produces a net annual income of at least 6% of the excluded equity value of the property or failure to produce at least 6% is beyond the person's control.

Allow the exemption for rental property resources whether the income is considered earned or unearned. Allow the exemption for resources for self-support when considering the resources of the spouse.

PM 07-02-12: Medical Fund Raisers

Donations or benefits from fund raisers held for a seriously ill client are exempt if the client or their responsible relative does not have control of the funds or their distribution.

PM 07-02-13: Income Tax Refunds

Any Federal income tax refund received after December 31, 2009 is exempt as an asset when determining eligibility for cash and medical.

A State income tax refund is a nonexempt asset that is added to other nonexempt assets when comparing assets to the asset limit.

For joint income tax returns, use half of the return unless the client says they received less. Use the actual money that the client says was received. The portion of an income tax refund that is an Earned Income Credit (EIC) is exempt both as asset and income.
A life estate (or "life interest") is an Interest in real or personal property that is limited to the life of the client. The life interest is lost, upon the death of the client.

Do not treat the life estate as an available asset. However, a lien may be filed on real property. See PM 23-09-01 for liens.

For LTC cases, SLF cases, and for Medical cases applying for or receiving in-home care services through the Department on Aging (DoA), creating a life estate, or liquidating property in which the client has a life estate, is subject to the asset transfer policy (see PM 07-02-20). To determine if the client received fair market value:

- For transfers creating a life estate, compare the equity value of the transferred property to the value of the life estate and the amount received.
- For transfers of a client's life estate, compare the value of the life estate to the amount received.

Treat trusts in the following manner unless the trust is a Medicaid qualifying trust. See PM 07-02-16 for Medicaid qualifying trusts.
The following applies if resources of the person and/or spouse were used to form all or a part of the principal and the trust is created (other than by will) by:

- the customer;
- the customer's spouse; or
- any other person with legal authority to act on behalf of the person or the person's spouse.

Under this policy, a trust is a legal device, or a similar legal instrument (see NOTE), that is created with the customer's and/or spouse's resources. The person transfers resources to a trustee(s) in order that the assets be held, managed, or administered for the benefit of the person, or beneficiaries.

NOTE: The term "similar legal instrument" refers to any legal arrangement, instrument, or device used to shelter resources that meets all the criteria of a trust, but is not called a trust. Examples include but are not limited to:

- escrow accounts;
- pension funds;
- investment accounts; and
- other accounts managed by persons with fiduciary obligations.

A person with "fiduciary" obligations has the legal responsibility to manage the account for the benefit of the client.

For trusts that include resources of other persons along with resources of the customer and/or spouse, consider only the portion of the resources that are attributed to the customer and/or spouse.

The creation of a trust is a transfer of resources. For an NH, SLF, and a Medical client applying for or receiving services through the DoA Home and Community Based Services (HCBS) waiver, the creation of the trust is subject to transfer policy (see PM 07-02-20).

Trusts may be revocable or irrevocable.

**Revocable Trusts**

These trusts can be changed. Treat the principal and payments from the trust as follows:

- Count the principal as an available asset; and
- Count any payments actually made to or for the benefit of the client as income; and
- Treat any other payments as a transfer.

**Irrevocable Trusts**

These trusts cannot, in any way, be changed. Some irrevocable trusts permit payments to be made and some do not. Count the principal and payments from the trust based on whether the terms of the trust permit payments from a portion of the trust as follows:

**Payments Permitted by the Irrevocable Trust**

http://www.dhs.state.il.us/page.aspx?item=14935
• Count the part of the principal, from which payments to or for the benefit of the client may be made, as an available resource; and
• Count any payments actually made to or for the benefit of the client as income; and
• Treat any other payments as a transfer.

Payments Not Permitted by the Irrevocable Trust
• Count the part of the principal from which no payment may be made as a transfer of resources; and
• The date of the transfer is the date the trust was created or, if later, the date payment to the person was stopped under the terms of the trust.
The following trusts are exempt:

- The principal and payments from a Self-Sufficiency Trust Fund established in accordance with 20 ILCS (Illinois Compiled Statutes) 1705/21.1, are exempt when determining eligibility for persons who are developmentally disabled or mentally ill.

To determine if a Self-Sufficiency Trust Fund is exempt, refer the trust to Long Term Care - Asset Discovery Investigation (LTC-ADI).

- An irrevocable trust containing the resources of a person under age 65 who is disabled as determined by the Social Security Administration, or DHS's Client Assessment Unit (CAU) is exempt, if:
  - the trust is created on or after 08/11/93; and
  - the trust is created for the benefit of the person by a parent, grandparent, legal guardian or court; and
  - the trust contains language which states any amount remaining in the trust (up to the amount paid by Medicaid) will be paid to HFS when the person dies.

  If the trust contains proceeds from a personal injury award, any HFS or DHS charge must be satisfied first from the award before the trust is treated as an exempt resource.

  The trust remains exempt after the person reaches age 65. Treat any additions to the trust after the person reaches age 65 as a transfer for less than fair market value.

- An irrevocable trust containing the resources of a person of any age who is disabled, as determined by the Social Security Administration or DHS's CAU, is exempt if the conditions listed below are met. This type of trust (known as a "pooled trust") remains exempt regardless of the age of the disabled person but any additions to the trust after the person reaches age 65 are considered a transfer for less than fair market value unless the person is a ward of the county public guardian or the State guardian. The trust is exempt if:
  - the trust is created on or after 08/11/93; and
  - the trust is created and managed by a nonprofit organization; and
  - a separate account is maintained for each person, but for management purposes the trust pools funds; and
  - the account is set up for the benefit of the person by the person, a parent, grandparent, legal guardian or a court; and
  - the trust contains language which states any amount remaining in the trust (up to the amount paid by Medicaid) that is not retained by the trust for reasonable administrative costs related to resolving the affairs of the subaccount will be paid to HFS when the person dies.

  If the trust contains proceeds from a personal injury award, any HFS or DHS charge must be satisfied first from the award before the trust is treated as an exempt resource.
WAG 07-02-16

A Medicaid qualifying trust (MQT) is a trust or similar legal device (see NOTE) set up other than by a will, using the client's and/or spouse's money or property, and meets all of the following criteria:

- The trust is set up by the client (or the client's spouse, legal guardian, or legal representative); and
- The client is the beneficiary of all or part of the trust payments; and
- The amount of potential payments from the trust is determined by one or more trustees who have discretion over how much can be distributed to the client; and
- The trustee is distributing less than the full amount allowed under the terms of the trust.

NOTE: The term "similar legal device" refers to any legal arrangement, instrument, or device used to shelter resources that meets all the criteria of a MQT, but is not called a trust. Examples of similar legal devices include but are not limited to:

- escrow accounts (a bank account generally held for a person by their agent that is returnable to the person or payable to a third party for specific reasons);
- savings accounts;
- pension funds;
- investment accounts; and
- other accounts managed by agents, custodians, or other persons with fiduciary obligations. A person with "fiduciary" obligations has the legal responsibility to manage the account for the benefit of the client.

The following trusts are Medicaid qualifying trusts if they meet MQT criteria:

- irrevocable trusts;
- education trusts; and
- medical trusts.

The creation of a Medicaid qualifying trust is a transfer of resources that is subject to transfer policy (see PM 07-02-20).

Self-sufficiency trusts and trusts set up with money and/or property other than that of the client or spouse, such as from an inheritance, are not Medicaid qualifying trusts.

When a trust is revoked, or the total principal is actually distributed to the client, it is no longer an MQT. The proceeds from the trust are considered a lump sum payment.

When the client is not legally competent (such as a child) and a trust is set up by a guardian (including a parent) using the client's assets, the trust is treated as if it had been set up by the client.

To determine if a trust or similar legal device is a Medicaid qualifying trust, request specific case guidance from LTC-ADI. If the trust is an MQT the response will provide the amount of the trust to use as a resource and the amount to budget.
monthly as income.
This policy does not apply to any trust or initial trust decree established before April 7, 1986, solely for the benefit of a mentally retarded person residing in an ICF/MR facility.

WAG 07-02-16-a

When determining initial or ongoing eligibility for a person who has a Medicaid qualifying trust, consider the maximum distributable amount as a nonexempt resource.

The "maximum distributable amount" is the current amount of principal and undistributed interest in the trust that the terms of the trust allows the trustee to distribute to the person. The resource value of the trust is only determined once, and that is when it is first evaluated by HFS and the maximum distributable amount is determined.

For current and future months, budget as nonexempt monthly income the maximum monthly amount of income that the trust allows the trustee to distribute to or on behalf of the client. Use that amount whether or not it is actually distributed.

Example: Ms. A's trust was set up in March 2011 with a principal of $50,000. The terms of the trust allow the trustee to distribute $100 monthly. The payments are to be made from the trust's Interest and from a specified portion of the principal ($25,000). The trustee can distribute $100 per month but only distributes $30.

Ms. A applied for medical assistance in May 2012. Medical backdating is requested for March and April. Medical benefits are approved effective for 03/2012. The review of the trust agreement in June determines that it is a Medicaid qualifying trust with a maximum distributable amount (resource value) of $25,210. The maximum distributable amount is determined, as follows:

- $100 monthly trust payment (income)
- $30 distributed amount
- $70 monthly undistributed amount
- x 3 months (03/2012-05/2012)
- $210 total undistributed amount
- + $25,000 distributable principal
- $25,210 maximum distributable amount.

For May the budgetable income is $210, the total undistributed amount. Beginning in June, budget $100 monthly as nonexempt income whether or not it is actually distributed from the trust. Budget $100 monthly as nonexempt income unless the terms of the trust are changed.

EXCEPTION

An exception to using the maximum distributable amount of an MQT may be granted if its use would cause an undue hardship. For example, if a person would be forced to go without life-sustaining services because these services were not being paid for by the trustee even though funds were available from the trust to do so. This could include situations where a client was forced to move from a long term care facility for nonpayment of facility charges when the full amount of funds available from the trust were not being used by the trustee for the care of the client.

For an undue hardship waiver, request specific case guidance from Long Term Care - Asset Discovery Investigation (LT C ADV).
PM 07-02-17: Annuities and Pensions

WAG 07-02-17

Annuities, pension plans and other retirement accounts that can be accessed are countable as income or as a resource.

- If the customer is drawing benefits from the plan, budget the income. The principle is exempt.
- If the customer is not drawing benefits, determine his or her ability to access the plan. If he or she can access the benefits without a penalty (but chooses not to), count the principle as a resource. If there is a penalty for accessing, count the principle minus the penalty as a resource.

If the customer cannot access the annuity, pension plan or other retirement account, the resource is exempt.

Annuities

An annuity is a contract to receive fixed, periodic payments, either for life or for a specified number of years. When an annuity is purchased, the person usually pays a lump sum premium in exchange for the guaranteed payments.

Refer long term care cases with annuities to HFS Long Term Care - Asset Discovery Investigation (LTC-ADI). For community cases, refer to the Bureau of Collections.

NH, SLF, and Medical Only Cases with DoA HCBS Waiver Services

The purchase of an annuity is a transfer of resources or income that is subject to the transfer policy (see PM 07-02-20). To decide if the customer received fair market value, determine if the annuity pays benefits in approximately equal periodic payments over the term of the annuity.

If the annuity pays benefits in approximately equal periodic payments over the term of the annuity, compare the lump sum premium amount to the expected return on the annuity. The expected return is the expected amount the customer will receive based on the amount of periodic payments along with the life expectancy of the customer.

If the annuity does not pay benefits in approximately equal periodic payments over the term of the annuity, fair market value is not received. The expected return is the expected amount the customer will receive based on the amount of approximately equal periodic payments along with the life expectancy of the customer. Do not consider any other payments as part of the expected return.
The following assets are exempt as long as they are kept separate from the unit's other monies, or can be separately identified if added to an existing account.

The value of benefits from the following federal nutrition programs are exempt:
- SNAP benefits from the federal SNAP program; and
- donated food (surplus commodities) from the U.S. Department of Agriculture; and
- supplemental food assistance received under the Child Nutrition Act, or special food service program for children under the National School Lunch Act.

Payments to volunteers under the 1973 Domestic Volunteer Service Act are exempt. These include:
- VISTA volunteers, and
- volunteers serving as senior health aides, senior companions, foster grandparents, or persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE).

Any grant or loan to undergraduate students for educational purposes made or insured under any program administered by the Federal Department of Education are exempt.

Any payments made by the DHS under the Family Assistance Program for Mentally Disabled Children are exempt.
PM 07-02-18-e: Disaster Relief Payments

Any disaster relief payment made by federal, state, or local governments, or by a disaster relief group are exempt.

PM 07-02-18-f: Federal Housing Payments

Experimental Housing Allowance Program payments made under Annual Contracts Contributions entered into before January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, are exempt.

PM 07-02-18-g: SSI Lump Sum Payments on Medical Cases

Supplemental Security Income (SSI) lump sum payments received by Medical clients who do not live in an LTC, SLF, DHS, or other medical facility, are exempt income for the month of receipt and an exempt asset after that. See PM 08-02-07-b for complete SSI lump sum payment policy.

PM 07-02-18-h: PASS Payments

Money received from the Social Security Administration under a Plan to Achieve Self-Support (PASS) is exempt.

PM 07-02-18-i: Earned Income Tax Credit

Earned Income Tax Credit payments are exempt whether received as a part of wages or as a refund.

PM 07-02-18-j: Special State Payment Programs

Income received under the Illinois "Senior Citizens and Disabled Persons Property and Relief Act" is exempt. This includes both the benefits known as the "circuit breaker" and the "additional grants."

Any payment made by a State administered fund for crime victims is exempt for 9 months following the month of receipt.
PM 07-02-18-k: Special Federal Payment Programs

WAG 07-02-18-k:

- Benefits received under Title VII, Nutrition Program for the Elderly of the Older Americans Act of 1965.
- Payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 are exempt for 9 months following the month of receipt.
- Payments made to veterans or their survivors from the Agent Orange Settlement Fund or any other fund referencing Agent Orange product liability under P.L. 101-201.
- Payment received under the Radiation Exposure Compensation Act (P.L. 101-426).
- German Reparations Payments made under the German Restitution Act to certain survivors of the Holocaust are exempt. The payments may be made periodically or as a lump sum.
- Payments received under Title I of P.L. 100-383 of the Civil Liberties Act of 1988, made to U.S. citizens and permanent resident aliens of Japanese ancestry who were interned during World War II.
- Payments distributed or held in trust for members of any Indian Tribe under P.L. 92-254, P.L. 93-134, or P.L. 94-540.
- Tax-exempt portions of payments made under the Alaska Native Claims Settlement Act.
- Starting October 17, 1975, payments made to certain Indian Tribunal members for marginal land held by the U.S. government.
- Payments under Title II of P.L. 100-383 of the Aleutian and Pribilof Islands Restitution Act, made to any civilian Aleut who during World War II, was relocated by authority of the United States from their home village to an internment camp, or other temporary facility or location. Also eligible are persons who were born while their natural mother was subject to the relocation.
- Individual interests of Native Americans in Indian trust lands are exempt.
PM 07-02-19: Uniform Transfers to Minors Act

WAG 07-02-19
The Uniform Transfers to Minors Act (UTMA) allows a person to make a gift to a minor child that is free of tax burdens. The UTMA was formerly called the Uniform Gifts to Minors Act.

Any money or property transferred under the UTMA is under the control of a custodian until the minor child reaches age 21. The custodian has discretion to give to the minor child, or spend for the minor child, the amount of the gift the custodian determines equitable. The child automatically receives control of the money when they reach age 21.

Review the status of the UTMA asset at redetermination and whenever assets are reviewed.

PM 07-02-19-a: Client is the Minor Child in Receipt of UTMA Gift

WAG 07-02-19-a
Do not count the UTMA asset as the child's asset while the child is under age 21. Count the UTMA asset in its entirety as the child's asset the month following the child's 21st birthday.

PM 07-02-19-b: Client is Custodian of UTMA Account

WAG 07-02-19-b
Do not count the asset transferred under the UTMA as the custodian's asset. The custodian cannot legally use any of the funds for their own personal benefit.

If the custodian is also the person who gave the asset, under the UTMA, to the minor child, the gift represents the transfer of an asset. If the client resides in an LTC or SLF facility, or has applied for or is receiving in-home care services through DoA, apply the transfer of asset policy provisions in PM 07-02-20.
For ACA Adults, see policy memorandum, The New ACA Adult Group, dated 05/07/2014 for policy guidance.

Policy regarding transfers of resources and income applies only to nursing home (NH) residents, supportive living facility (SLF) residents, and medical customers applying for or receiving services through the Department on Aging (DoA) Home and Community Based Services (HCBS) waiver. This includes residents who were living in the community at the time of the transfer. It also includes current medical customers applying for or receiving DoA HCBS waiver services who were not applying for or receiving DoA HCBS waiver services at the time of the transfer. Do not apply resource/income transfer policy to other persons living in the community.

Refer long term care cases with reported transfers totaling over $5,000 during the lookback period to Long Term Care - Asset Discovery Investigation (LTC-ADI). FCRCs will review reported transfers totaling $5,000 or less.

A transfer of resources or income occurs when a person or his/her spouse (regardless of who has an interest in the resources or income) buys, sells, or gives away real or personal property, or changes the way property is held. This includes:

- transferring ownership of a resource while retaining a life estate;
- liquidating a life estate;
- taking an action that causes a resource not to be received (for example, waiving the right to receive an inheritance);
- transfer of income in the month it is received; and
- any action by any person that reduces or eliminates the customer's ownership or control of a resource held in joint tenancy, tenancy in common, or other similar legal arrangement.

Some transfers affect eligibility and some do not. Whether eligibility is affected depends on:

- when the transfer took place;
- the type of transfer; and
- the reason for the transfer.

Transfers that do not affect eligibility are called allowable transfers. See PM 07-02-20-b for allowable transfers.
PM 07-02-20-b: Allowable Transfers

WAG 07-02-20-b

Allowable transfers of resources or income do not affect eligibility, but any money received is a nonexempt resource. Resource/income transfers may be allowable because of the date of the transfer; receipt of fair market value (FMV); who the resource or income was transferred to; or the type of transfer.

Refer long term care cases with reported transfers totaling over $5,000 during the lookback period to Long Term Care - Asset Discovery Investigation (LTC-ADI) using the HFS 3654A Long Term Care - Asset Discovery Investigation (LTC-ADI) Referral Form. FCRCs will review reported transfers totaling $5,000 or less.

If the FCRC discovers an unusually large transfer as a result of verifications received after an IL444-0267 has been sent for an application that was not initially referred to LTC-ADI, contact LTC-ADI to discuss possible referral at that time. Review by LTC-ADI in such circumstances will be on a case by case basis.

Date of Transfer

The following transfers are allowable because they were made before the relevant "lookback date":

• All transfers made before 08/11/93 (provided the date of application, entry into a nursing home (NH) or SLF, or receiving or applying for DoA HCBS waiver services is on or after 08/11/96); if reviewing an application made before that date, see WAG 25-06-14, or contact Long Term Care - Asset Discovery Investigation (LTC-ADI).

• Transfers made on or after 08/11/93 and before 02/08/06, as follows:
  o transfers from a revocable trust made more than 60 months before the date of application, entry into an NH or SLF, or receiving or applying for DoA HCBS waiver services;
  o the creation of an irrevocable trust that does not permit payment to, or for the benefit of, the person if the trust is created more than 60 months before application, entry into an NH or SLF, or receiving or applying for DoA HCBS waiver services;
  o the creation of an irrevocable trust that does not permit payment to, or for the benefit of, the person at some point after the trust is created if the date the payment was stopped is more than 60 months before application, entry into an NH or SLF, or receiving or applying for DoA HCBS waiver services; and
  o all other transfers made more than 36 months before application, entry into an NH or SLF, or receiving or applying for DoA HCBS waiver services.

• Transfers on or after 01/01/07 made more than 60 months before the date of application for medical assistance in an NH or SLF, or receiving or applying for DoA HCBS waiver services.

Fair Market Value

Transfers for fair market value (FMV) are allowable.

Fair market value is the value of the resource/income on the open market at the time of the transfer. It is not the highest value that the resource/income could be worth under ideal circumstances. Instead, it is the average value of the resource/income when all factors are considered.

Neither the FMV nor the value received for the resource/income have to be figured exactly. The two values do not have to be equal for it to be an allowable transfer. Use judgment when deciding whether fair market value was received.

Intention to transfer for FMV
Transfers that the person intended to make for fair market value are also allowable.

When a transfer is made for less than FMV, a person is presumed to have done so intentionally. This presumption may be rebutted by objective tangible evidence showing:

- reasonable, good faith efforts to sell the property on the open market were made and the compensation received was the best value offered;
- a legally binding contract was executed that provided for adequate compensation in a specified form (e.g., goods, services, cash) in exchange for the transferred resource/income;
- the person acted in good faith that he or she was receiving FMV or the best price for the item or property;
- the item or property was transferred to a person other than a related party (e.g., a person related by blood, marriage or friendship);
- the person had other adequate means or plans for support, including medical care, at the time of the transfer; and
- the transfer was made for reasons exclusive of qualifying or remaining eligible for medical assistance.

**Services**

Services received can represent value when deciding whether FMV was received if the person provides written proof that payment for services was agreed to when the services were provided.

A contract for personal care is treated as a transfer for less than FMV unless a written agreement, executed prior to the receipt of services, clearly identifies services and requested reimbursement consistent with the prevailing cost in the service area. Uncompensated transfers to loved ones are not considered transfers for FMV.

**Annuities**

The purchase of an annuity (or changes made to an annuity) by or on behalf of a person receiving LTC medical assistance or the spouse of that person is a transfer of resources. It is considered a transfer for less than FMV and not allowable unless the annuity names the State of Illinois as the remainder beneficiary in the second position (after the community spouse, minor child, or child with a disability) or in the first position (for up to the total amount of medical assistance paid on behalf of the person receiving long term care services OR if the spouse or a representative of the child disposes of any remainder for less than FMV), and:

- the annuity is considered a retirement annuity; or
- is deemed an IRA under a qualified employer plan; or
- the annuity is directly purchased with proceeds from one of the following:
  - a traditional IRA;
  - certain accounts or trusts treated as traditional IRAs;
  - a simplified employee pension described in section 408(k) of the Internal Revenue Code; or
  - a Roth IRA described in section 408A of the Internal Revenue Code; or
- the annuity meets all the following requirements:
  - was purchased from a commercial financial institution or insurance company authorized under federal or state law to issue annuities; and
  - is actuarially sound and based on the estimated life expectancy of the person (see WAG 25-03-12, the actuarial tables published by the Office of the Chief Actuary of the Social Security Administration) or
  - the annuity pays out over a period less than the person's estimated life expectancy; and
Promissory notes

The purchase of a promissory note (making a loan in exchange for a written promise to repay) is a transfer for less than FMV unless the following conditions are met:

- a written instrument recording the transaction is executed, signed and dated on the effective date of the transaction;
- the instrument provides for a repayment term that is actuarially sound (see WAG 25-03-12); instruments that provide for a repayment term that is less than the person's life expectancy shall be treated as actuarially sound;
- the instrument provides for payments in equal installments (no less than monthly) during the term of the loan with no deferral and no balloon payments;
- the instrument prohibits the cancellation of the balance upon the death of a lender;
- a tangible, verifiable record of consistent, timely payments in the amounts agreed demonstrates a good faith attempt to repay the loan. Unpaid installments delinquent three months or more will result in the Department treating the amount remaining unpaid as a non-allowable transfer; and
- the instrument provides for assignment to the State of Illinois, as of the date of death, in the second position (after the community spouse, minor child or child with a disability) or in the first position (for up to the total amount of medical assistance paid on behalf of the person receiving long term care services OR if the spouse or a representative of the child disposes of any remainder for less than FMV).

The value of a promissory note, loan, or mortgage that does not satisfy these conditions is the outstanding balance due as of the later of the date of application for medical assistance or the date of the transfer.

Recipients of Transfers

The following transfers to specified persons are allowable:

- Transfers to a community spouse or to another person for the sole benefit of the community spouse.

The LTC spouse and the community spouse may transfer resources and income to each other in any amount without penalty. However, all resources in excess of the Community Spouse Resource Allowance (CSRA), held in the name of either spouse alone or jointly by both, are considered available to the LTC spouse to pay for his or her care. [Completion of the CSRA transfer must be verified at the first redetermination. This verification involves only the resources reported at intake unless there is evidence that one or both spouses failed to accurately report resources at intake. The resources acquired, transferred, etc. by the community spouse after initial determination are not subject to review.]

In addition to the amount permitted as the CSRA (see PM 07-02-22), the LTC spouse may transfer personal effects, household goods, and one motor vehicle for the sole benefit of the community spouse, regardless of the dollar value. The transfer does not affect eligibility, and the value of the transferred items is not considered available to the LTC spouse.
Transfers from the community spouse to another person for the sole benefit of the community spouse.

A transfer of homestead property to:
- the person's spouse; or
- the person's child under age 21; or
- the person's child of any age who is blind or has a disability as determined by the Social Security Administration or the Department's Determination Review Unit; or
- the person's brother or sister who has an equity interest in the homestead property and who was living in the home for at least one year immediately before the date the person entered the LTC facility or applied for/received DoA HCBS waiver services; or
- the person's child who provided care (either nursing or support) for the person and who was living in the homestead property for at least two years immediately before the date the person entered the LTC facility or applied for/received DoA HCBS waiver services. To be allowed, tangible evidence must be presented to demonstrate:
  1. the person was in need of care that would have otherwise required an institutional level of care. The evidence may consist of a physician's statement or an evaluation conducted by a medical professional showing the need for such care. A diagnosis of Alzheimer's disease or other dementia-related illness constitutes the need for an institutional level of care; and
  2. the son or daughter resided with the person for two years immediately before the person began receiving long term care services (NH, SLF or DoA HCBS waiver). Acceptable evidence may be tax returns, driver's license, cancelled checks or other documentation demonstrating the son's or daughter's residence in the home for the time frame required; and
  3. the son or daughter provided care to the person that prevented the need for NH, SLF or DoA HCBS waiver services. The evidence may consist of a sworn affidavit or statement signed by the son or daughter.

Other transfers of homestead property should be reviewed for their effect on eligibility.

Transfers to the person's child of any age (who is blind or has a disability), or to another person for the sole benefit of the person's child (who is blind or has a disability), or to a trust created solely for the benefit of the person's child who is blind or has a disability as determined by the Social Security Administration or the Department's Determination Review Unit.

Transfers on or after 08/11/93 to a trust created by a parent, grandparent, legal guardian or court solely for the benefit of a person under age 65 who is disabled as determined by the Social Security Administration or the Department's Determination Review Unit.

Other Allowable Types of Transfers

The following types of transfers are also allowable:
- purchase of a life estate interest in another person's home, if the purchaser resided in the home for at least twelve consecutive months;
- charitable gifts and gifts to family members which are consistent with amounts and frequency of such gifts in the past;
- involuntary transfers due to bankruptcy, theft, elder abuse, death of a spouse, or because the person was mentally unable to handle their affairs;
- transfers for less than FMV that are returned to the person in full. [If a penalty period is established due to a transfer for less than FMV occurring on or after 01/01/12, and the transferred resources are returned to the person in full,
consider the transfer allowable, erase the penalty, and treat the resources as available as of the date the penalty was imposed.

- transfers for which allowability cannot be determined, because the person is physically or mentally incapable of providing the necessary information to make the determination, and no other adequate source of information is available.
- Transfers made exclusively for a reason other than to qualify for benefits.