
TRANSFER OF ASSETS

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I. INTRODUCTION

When an applicant/beneficiary (a/b) requests institutional services, a transfer of assets evaluation must be completed. Transfers of real or personal property, or any other asset for less than current market value must be reviewed to determine if a sanction should be imposed. A sanction is a penalty period during which some services related to institutional coverage will not be paid by Medicaid. If a sanction is imposed the a/b is ineligible for certain Medicaid covered services.

This section contains the policy and procedures for determining the following:

- Which a/bs are subject to the transfer of assets regulations,
- Medicaid covered services subject to the transfer of assets regulations,
- The lookback date and lookback period,
- Time frames for completing the transfer of asset evaluation,
- Assets subject to the transfer of assets regulations,
- How to determine if a non-allowable transfer has occurred,
- How to determine the sanction period,
- When to impose a transfer of assets sanction,
- The applicant/beneficiary (a/b) notification procedures.

Transfer of asset regulations do not apply to all Medicaid covered services. An a/b under a transfer of assets sanction may be eligible for other services covered by the North Carolina Medicaid program.

II. POLICY PRINCIPLE

When an a/b, an a/b's financially responsible spouse, or their legal representative gives away or sells an asset, for less than current market value, the a/b may be ineligible for payment of institutional services or in-home health services and supplies. This includes any direct or indirect method of disposing of an interest in an asset whether or not the asset would have been considered excluded or exempt at the time of its disposal or transfer. The period of ineligibility is also called a sanction.

Do not delay approval of institutional services for the transfer of asset evaluation at initial request. If all other eligibility criteria are met, approve LTC, CAP, or PACE and continue

with the transfer of asset evaluation. The evaluation must be completed within the time frames outlined in this policy.

A. Terminology

1. A spouse is financially responsible when:
 - a. They are not institutionalized.
 - b. They have been living with the a/b or temporarily absent from the home for 12 months or less prior to the a/b's institutionalization.
 - c. A spouse is not financially responsible if the couple has been continuously separated for at least 12 months at the time the institutionalized spouse enters the institution.
2. In this policy institutional services are:
 - a. Services provided in a nursing facility (NF), intermediate care facility for individuals with intellectual disabilities (ICF-IID), or nursing facility level of care in a Swing bed or in an acute care hospital bed (FL-2 required),
Note: nursing facility level of care in an acute care hospital bed was formerly known as inappropriate level of care bed. An FL-2 is required for nursing facility level of care.
 - b. Services provided through the Community Alternatives Program (CAP), or
 - c. Services provided through the Program of All-Inclusive Care for the Elderly (PACE).

These services can be sanctioned due to a non-allowable transfer of assets. This does not include acute care in a hospital (not nursing facility level of care) regardless of length of stay.

3. The transfer of assets evaluation for each a/b will follow guidance based on whether the request for institutional services is an initial request or a subsequent request.
 - a. Initial Request- For transfer of asset policy, an initial request is the first application or request for institutional services for an a/b that results in an approval of institutional services.
 - b. Subsequent Request- a new application or request for institutional services submitted after a previous period of eligibility for institutional services was terminated.

B. Rules for transfer of asset evaluations

1. Transfer rules apply to MAGI and non-MAGI individuals requesting or receiving institutional services.

2. Evaluate each situation on a case-by-case basis. The evaluation may be done as part of the application process, recertification, change in circumstances, or appeal.
3. For a sanction to apply, the transfer must have occurred on or after a specific date known as the lookback date.
4. Treat a transfer that was completed in the lookback period by a financially responsible spouse or the a/b's or spouse's legal representative as though it were completed by the a/b.
5. The total cumulative value of all uncompensated transfers made within the lookback period is treated as a single transfer and a single sanction period is calculated.
6. An a/b or their authorized representative is provided with the opportunity to show evidence that the transfer was made for a reason other than to establish eligibility for NC Medicaid. They may also rebut the value of the transferred assets, or the value of compensation received. Refer to XII below.
7. Do not apply a transfer sanction when the a/b has been granted a waiver for undue hardship. Refer to MA-2245, Undue Hardship Waiver for Transfer of Assets, for procedures to determine if an undue hardship exists.

III. TRANSFER OF ASSET RULES

This section explains to whom transfer rules apply and what assets are considered in determining whether there is a transfer. All assets are considered whether they are owned jointly by the a/b and their spouse, the assets are owned individually by each spouse, or the assets were owned by one spouse prior to marriage.

A. Apply transfer rules to a/bs requesting or receiving assistance with any of the following:

1. Cost of care for institutional services under MAGI or non-MAGI rules in a:
 - a. Nursing facility (NF),
 - b. Intermediate care facility for individuals with intellectual disabilities (ICF-IID), or
 - c. Nursing facility level of care:
 - (1) in a Swing bed or
 - (2) in an acute care hospital bed,
2. Home and Community Based Services under MAABD rules:
 - a. Community Alternatives Program (CAP) waiver programs, or

- b. Program of All-Inclusive Care for the Elderly (PACE).
3. In-home health services and supplies **under MAGI or non-MAGI rules**:
 - a. **But only after** being sanctioned for **the above** services, **and**
 - b. A portion of the sanction period remains after the individual stops receiving institutional services.

B. Do Not apply transfer rules to:

1. Individuals who do not request or receive institutional services or in-home health services and supplies,
2. Individuals who request or receive in-home health services and supplies that have not been sanctioned for prior institutional services,
3. Individuals in acute care in a hospital (**not nursing facility level of care**), regardless of length of stay, and who are discharged to **a private living arrangement (PLA)** or die without ever leaving acute care. Transfer rules do not apply even though long-term care budgeting applies,
4. Individuals in the psychiatric unit of a hospital,
5. Children under age 21 admitted to a Psychiatric Residential Treatment Facility (PRTF),
6. Individuals requesting MSB, MQB-B, MQB-E, **and** MWD. **Refer to MA-200 Definitions for the acronyms.**
7. A married individual authorized for institutional services when the community spouse (CUSP) transfers an asset.

C. Apply transfer rules to the following **types of income and assets:**

Transfers of countable and excluded assets except for those listed under MA-2230, Financial Resources, I.A.6.

1. Any real or personal property including:
 - Homesite
 - Tenancy-in-common
 - Life estate interest in real property
 - Purchases of life estates, including life estates in another individual's home
 - Vehicles and liquid assets
2. Income (including a lump sum) transferred in the month of receipt,
3. Purchase of promissory note, loan, or mortgage,

4. Purchase of an annuity,
5. If an a/b or their spouse waives the right to an income, benefit, or asset, evaluate for a transfer.

Refer to **VII, VIII, IX, and X** policy below for specific criteria to determine if a transfer occurred.

D. Documentation of Explanation to the A/b

1. Document the explanation of transfers of assets rules to the a/b when:
 - a. Assistance with nursing home cost of care, CAP, or PACE is requested
 - b. A transfer is reported
 - c. When explaining right to a rebuttal/undue hardship
2. Document all the following when explaining:
 - a. How the sanction is calculated
 - b. Exceptions to the sanction
 - c. How to lift or reduce the sanction period
 - d. In-home health services and supplies will be sanctioned if the a/b is no longer eligible for institutional services and the sanction period has not expired.

IV. LOOKBACK DATE AND LOOKBACK PERIOD

When evaluating for transfer of assets, a caseworker must determine the starting point, lookback date, and lookback period. Once the lookback date is established, all transfers on or after this date are reviewed.

A. Important dates

1. The starting point marks the point in time from which the local agency must look back to determine if any transfers were made. The starting point also establishes a point that all transfers going forward are reviewed.
2. The lookback date is the earliest point in time on or after which all transfers of assets are reviewed for an a/b requesting or receiving institutional services, CAP, or PACE.
3. The lookback period is the period that begins with the lookback date and ends with the starting point.

B. Establishing the Starting Point for Determining the Lookback Date

To determine the lookback date for individuals requesting institutional services **the local agency** must establish the starting point.

1. **The starting point is the earliest date that both conditions in a. and b. are met:**
 - a. The a/b is institutionalized (See XV. Glossary for a definition of institutionalized) or requests CAP or PACE, **and**
 - b. Applies for Medicaid.
2. **A training guide located on the [DHB Medicaid Training Resources](#), A Guide to Establishing Starting Point/Lookback, provides an overview and guide to determine the starting point and lookback dates.**
3. **Scenarios**
 - a. If an individual is a **current** Medicaid applicant or beneficiary in PLA when they are institutionalized, use the day they entered the institution as the starting point to establish the lookback date.
 - b. If the a/b is currently institutionalized as private pay **and has never applied for Medicaid before**, use the date of the current application as the starting point to establish the lookback date.
 - c. For individuals applying for the CAP, or PACE programs, the starting point is the date the a/b applies for Medicaid and requests CAP or PACE.
 - d. If the a/b is an ongoing Medicaid beneficiary when they requested CAP, the lookback date is based on the date the a/b is placed on the CAP waiting list. If questionable, verify this date with the CAP case manager.

C. Establish the Lookback Date for Transfers

1. **The look back date is 5 years (60 months) from the starting point.**
2. **Review all assets owned by the a/b or their spouse within the lookback period to determine if any transfers have occurred.**
3. **In situations involving an Institutionalized Spouse (ISP) and Community Spouse (CUSP), where the CUSP later becomes institutionalized, determine the starting point and lookback date for the CUSP independently from the ISP.**

D. The Lookback Date Never Changes

1. **Once the lookback date is correctly established, it never changes. This is true regardless of any future re-applications or additional periods of institutionalization.**
 - a. Evaluate all transfers beginning on or after the lookback date.

- b. Do not consider transfers made prior to this date.
- 2. Document the lookback date in the case record.
- 3. When there has been a transfer of assets on or after the lookback date, verify the following information based on policy rules in [MA-2230, Financial Resources](#).
 - a. A description of the asset transferred (the homesite, other real property, life estate, remainder or tenancy-in-common interest in real property, cash, lump sum, vehicles, stocks, bank account, certificate of deposit, etc.).
 - b. The person who transferred the asset (a/b, spouse, legal representative).
 - c. The name of the person(s) to whom the asset was transferred.
 - d. The a/b's relationship to the individual to whom the asset was transferred.
 - e. The value of the asset at the time of the transfer.
 - f. The compensation (money or other benefit) received or expected from the transferred asset.
 - g. The date the asset was transferred.
 - h. Whether the a/b was the sole owner of the asset at the time of the transfer; if not, the name of any co-owners.
 - i. Whether the a/b still retains any ownership right in the asset.

V. EXPLORING TRANSFER OF ASSETS

When determining if any transfers have occurred the local agency must explore all assets on all applications, recertifications, and changes in circumstance for a/bs requesting or receiving institutional services. Evaluate the evidence presented. The evidence might reveal another reason for the transfer other than to establish or retain Medicaid eligibility.

Reminder, the request should not be completed until the Lookback date has been established. Therefore, a transfer of assets evaluation cannot be started until the a/b has been institutionalized for cost of care or requested CAP or PACE.

A. Criteria for requesting Transfer of Asset information:

- 1. Do not delay or deny approval of institutional services for failure to provide information requested to complete the transfer of assets evaluation when an a/b makes an initial application or request for institutional services.
 - a. Request information needed to determine transfers of assets along with other eligibility information needed.
 - b. Indicate on the request that the transfer of assets items are not required for

determination of institutional services. However, they will be required to continue receiving institutional services.

- c. Approve institutional services immediately once LTC, CAP or PACE eligibility is met.
 - (1) **Do not wait** even if the transfer of assets information has not been provided or the transfer of assets evaluation is not yet completed.
 - (2) **Do not wait** while reviewing information that has been provided.
2. After approving initial LTC/CAP/PACE coverage, if additional information for the transfer of assets evaluation is still needed, follow policy [MA-2352](#) or [MA-3410 Change In Circumstance, Terminations, And Reopening](#). Send an additional request allowing 12 calendar days for the beneficiary to respond to the DHB-5097 Request for Information.
3. If the a/b is making a **subsequent** request for institutional services, review V. D. 2. below for guidance.

B. Requesting Verification

Once the lookback date has been established:

1. Gather Transfer of Assets Information

The DHB-5203 Transfer of Asset Evaluation form can be used as a tool to collect the vital information needed to assist in exploring assets that may have been owned or transferred during the lookback.

- a. Attempt to collect this information as soon as possible at application or report of change in circumstance. It is the responsibility of the local agency to gather and document all the information included on the DHB-5203. A best practice is to complete the form in person or over the phone when the request for institutional services is made.
- b. If unable to obtain the information in person or over the phone, send the a/b or their representative, a DHB-5097 Request for Information with the DHB-5203 Transfer of Assets Evaluation form. Follow the appropriate policy for application or change in circumstance and allow the appropriate time for the form to be returned (i.e., two 12- day for applications, or one 12- day for changes in circumstances).
- c. The form can be completed and returned by the a/b or their authorized representative by any of the following modalities:
 - In person
 - Telephone
 - Mail
 - Electronic/fax

- ePASS (for beneficiaries with a linked account)
- d. Caseworkers must document the evaluation for any transfers that may have occurred at recertification or a report that a transfer has occurred.
- 2. Request bank statement, investment and other financial document records for the 60 months prior to the starting point.
 - a. For MAABD, complete the AVS system request and follow applicable policy for allowing appropriate time for returned results. Follow up with the a/b utilizing the DHB-5097 Request for Information to request items not available in AVS.
 - b. For MAGI, requests must be manual. A DHB-5097 Request for Information must be sent to the a/b allowing 12 days to provide all financial records.
- 3. Check **all property** records or request copies of deeds, **if not available online**, to show current or past ownership of all real property owned **in the lookback period** by the a/b or the a/b's spouse. **Also review records of parents of the a/b, and of the a/b's spouse.**
- 4. **Review Division of Motor Vehicles (DMV) records.**
- 5. If any **portion of the lookback period** is unavailable **via electronic data sources**:
 - a. Request bank statements, investment accounts, and other financial documents that can verify the a/b's (and spouse's) assets for the **entire** lookback period. The local agency is responsible for obtaining this information if the a/b is not able to provide it.
 - (1) It is the responsibility of the a/b to provide the **local** agency with enough information to pursue obtaining the required documentation.
 - (2) **As a last resort, when no other method of verification has been successful, accept** at a minimum all of the following:
 - a financial document for the month of application, **and**
 - **a financial document** for the month prior to the month of application, **and**
 - a financial document for the first and last month of the lookback period, **and**
 - **a financial document for at least one month from** each twelve months in between.
 - (3) The **local agency** should use the DSS-3431, Request for Financial Information, to request information from **a bank or other financial institution**. In lieu of financial statements for the lookback period, the **local agency** may choose to request any of the information in (2) from

the financial institution.

Example: The lookback is Jan. 15, 2020, through Jan. 15, 2025. The caseworker runs AVS and no results are returned within 7 days. The caseworker will then request the bank statements from the a/b via the DHB-5097 Request for Information. The client states they cannot provide the statements and asks for assistance obtaining the verifications. A caseworker can then utilize the DSS-3431 Request for Financial Information to request from the institution a financial document or balance verification for at least January 2025, December 2024, January 2020 and January (or any available month) from 2021, 2022, 2023 and 2024.

These financial documents can be used to verify consistency in balances. If these exact months are not available, but the information provided is reasonably close, accept the information. The local agency may request more information but not to the point that it discourages the a/b.

- (4) **Review the** highest and lowest balances for all accounts for the entire lookback period. The highest and lowest balances can be used to verify average balance. An extremely high balance may require further documentation from the a/b.
- (5) **Look for** deposits that do not appear regular and recurring. Irregular deposits may indicate other sources of income and/or assets. Pensions and SSA are regular and recurring deposits.
- (6) **Note** the date accounts may have been closed during the lookback period and the amount of the closing withdrawal(s). This can be used to identify accounts closed during the lookback period and possibly the source of other deposits reissued.

- b. **If needed**, obtain evidence to indicate a pattern of giving regarding regular donations/gifts to charities, religious organizations, or family members. A pattern of giving can indicate intent other than to qualify for Medicaid.

For example, the a/b regularly gives each family member \$1,000 at Christmas and birthdays.

- c. Do not deny if the a/b cooperated but it is determined information is not available. Accept the a/b's statement or use the information provided to determine eligibility.
6. **Once information has been provided, refer to Section C. Reviewing Verifications.**
7. **If the a/b does not provide the information needed to complete the evaluation, refer to VI. B. below.**

C. Reviewing Verifications

1. Once the information is obtained, the caseworker must determine if a transfer occurred and whether a sanction should be imposed. Some potential indicators might be:
 - a. The interest paid to date shows a substantial amount, but the current balance does not support payment of that interest.
 - b. The balances in the past show substantially higher amounts than is currently in the account.
 - c. [DSS-3431, Request for Financial Information](#) has been obtained from the bank, and it shows a substantial past balance that is not currently in the account.
 - d. The account shows a substantial withdrawal or withdrawals over a period of time.
2. During the evaluation some potential questions to consider whether a transfer has occurred and whether it was for reasons other than to gain or retain eligibility for Medicaid are:
 - a. What is the a/b's age, general health, living arrangement, and amount of assets retained to meet future needs at the time of the transfer?
 - b. Does the case record document any inquiry by the applicant, their spouse, representative, or other interested party about asset limits for Medicaid, long-term care budgeting, etc.?
 - c. Has the a/b consulted or hired an attorney for estate planning purposes? If the individual saw an attorney, this does not necessarily mean the a/b was trying to hide assets.
 - d. Does the individual(s) who provided the knowledgeable statements stand to gain in any way from the transfer?
 - e. Is there evidence of regular donations/gifts to charities, religious organizations, or family members?
 - f. Is there evidence of one-time gifts by an a/b who did not anticipate needing institutional services?
 - g. Did the a/b attempt to dispose of the asset for its current market value?
 - h. After the transfer occurred, was there a traumatic onset (e.g., traffic accident) of disability or blindness?
 - i. After the transfer occurred, was there a diagnosis of a previously undetected disabling condition?

- j. After reviewing, there may be an indication that more information is needed. Continue to follow policy for requesting information. If the a/b fails to provide the requested information, follow steps in VI. B. below.

D. Time Frames for Completing the Transfer of Assets Evaluation

Time frames for completing the transfer of assets evaluation for institutional services will depend on if the a/b is making an initial or subsequent request. Follow instructions as outlined below.

1. Initial Request

When institutional services are approved prior to completion of the transfer of assets evaluation, the local agency must ensure that the following steps are completed no later than three full calendar months following the date of authorization.

- a. When all other eligibility criteria are met for institutional services, do not delay approval of institutional services to complete the transfer of assets review. This is true even when an a/b notifies the agency in advance that a transfer has already occurred.
- b. All notices should be sent so the beginning date of a prospective sanction period, if applicable, can be applied by the first day of the fourth month following the date institutional services are authorized and activated by the caseworker. For example, institutional services are authorized and activated in July. The agency has August, September and October to complete the evaluation. The sanction must start no later than November 1.
- c. If the evaluation is completed earlier, the sanction will start the first day of the month following timely notice.
- d. If the beneficiary fails to provide information needed to evaluate for transfer of assets follow procedures in VI. B. below.

2. Subsequent Request

A subsequent request can occur after a termination for failure to provide requested information to evaluate for a transfer of assets or an individual went home and was re-admitted.

- a. If an a/b has already received institutional services and was terminated for failure to provide information requested to complete the transfer of assets evaluation.
 - (1) They may **NOT** receive another approved period of institutional services before completing the transfer of assets evaluation.
 - (2) Complete the entire transfer of assets evaluation prior to authorizing a new institutional services period.

- b. If a discharged a/b **has** cooperated and completed the transfer of assets evaluation in the past and was re-admitted,
 - (1) Approve a new institutional services period while conducting the transfer of assets evaluation for the additional months since discharge.
 - (2) This additional transfer of assets evaluation must be completed no later than three full calendar months following the date of activation and authorization.
- c. If the a/b was discharged and re-admitted following a previously authorized institutional services period and a sanction was already imposed, the sanction must continue until it ends.
 - (1) Only budget for PLA programs during the sanction.
 - (2) In-Home Health Services and Supplies and Personal Care Services costs are sanctioned during this period and will not be paid.
- 3. **Ongoing LTC, CAP or PACE Beneficiary has reported transfer or a transfer is discovered**
 - a. This could be reported or discovered at recertification or change in circumstance. Always evaluate information found during the exparte process that may indicate any changes that a transfer has been made.
 - b. The evaluation should be completed no later than three full calendar months following the date of the reported or discovered transfer.
 - c. Follow instructions in D.1. a. above.
 - d. If the beneficiary fails to provide information needed to evaluate for transfer of assets follow procedures in VI. B. below.

E. Procedures When a Transfer Cannot be Determined

Institutional Services **cannot continue** to be paid if a transfer evaluation cannot be completed.

- 1. If the a/b fails to provide the information requested to complete the transfer of assets evaluation, follow timely notification policy in [MA-2420, Notice and Hearings Process](#).
- 2. Terminate institutional services. The a/b cannot continue to receive institutional services and will not be eligible for institutional services to resume unless a complete transfer of assets evaluation can be made.
- 3. If an ongoing PLA beneficiary terminated from institutional services for failure to provide information to complete the transfer of assets evaluation makes a subsequent request for institutional services:
 - a. Do not approve additional months of institutional services until a complete

transfer of assets evaluation has been completed and any applicable sanctions have been applied and expired.

- b. Follow the procedures above to complete a transfer of assets evaluation.
- c. Refer to D. above for timeframes to complete the transfer of assets evaluation.
4. If a new application or new request for institutional services is submitted for an individual who was previously terminated from institutional services for failure to provide information to determine a transfer of assets evaluation:
 - a. Do not approve additional months of institutional services until the transfer of assets evaluation has been completed.
 - b. Follow the procedures above to complete a transfer of assets evaluation.
 - c. Follow application processing requirements until evaluation is complete.
 - d. Follow application processing requirements for requesting information.
5. Ensure all actions are thoroughly documented. Refer to III. D. above.

VI. TRACKING TRANSFER OF ASSETS EVALUATION PERIOD

Do not delay LTC, CAP or PACE eligibility decisions for a pending transfer of assets evaluation, unless the a/b has already had a period of institutional services authorized and did not provide information to complete a transfer of assets evaluation.

A. Local Agency Responsibility

When a transfer of assets evaluation is completed **after** authorizing institutional services, the local agency must ensure that the process is completed timely.

1. **It is the responsibility of the local agency** to have procedures in place to ensure the evaluation is completed **no later than** three full calendar months following the date institutional services are authorized and activated by the caseworker.
2. Counties may be liable for charge backs of Medicaid expenditures when ineligible beneficiaries continue to receive institutional services longer than 3 full calendar months to complete the transfer of asset evaluation.

B. Penalties for Failure to Provide TOA Information

If the a/b fails to provide the information requested to complete the transfer of assets evaluation:

1. Send timely notice and terminate institutional services only.
 - a. Notify the a/b and authorized representative, if applicable.

- b. Notify the a/b's Pre-paid Health Plan (PHP), if applicable, following procedures in XIII. D.
2. Evaluate eligibility for all other MAGI or non-MAGI programs and authorize, if eligible.
3. Enter a sanction for failure to provide transfer of asset information in NCFAST. See NCFAST Job Aid: Creating or Disregarding an Active Sanction for instructions. Institutional services cannot be approved again for the current or any future institutionalization without a complete transfer of assets evaluation.

C. Reconsideration Period

1. Institutional Services cases that have terminated for failure to provide information requested to complete the transfer of assets evaluation may be reopened if:
 - a. The request to reopen is received no later than the 90th calendar day following termination and
 - b. The a/b is not receiving in any other Medicaid program.
 - c. If the 90th calendar day falls on a non-business day, allow the a/b until the next business day to make the request.
2. The following criteria must be met prior to reopening a terminated case. Refer to [MA-2352 Change in Circumstance, Terminations and Reopening](#)
 - a. The case was terminated for failure to provide the required information needed to complete the transfer of assets evaluation.
 - b. All information needed to reopen the case must be received by the 90th calendar day following termination.
 - c. If no transfers are found, the certification begin date is the first day of the month following the month of termination. The certification end date is the end date of the certification period in the original case.
 - d. For an a/b that has an uncompensated transfer, Review XI. below to determine the sanction period and start date.
3. If the a/b continues to have coverage in another Medicaid program, and they provide the requested information at any point after termination of institutional services, treat as a change in circumstance. Reminder, authorize eligibility for no more than 12 months prior to the reported change.

VII. ALLOWABLE TRANSFERS (NON-TRUSTS)

This section will explain what types of transfers that are considered allowable. DO NOT apply a sanction to the following transfers.

A. Compensated Transfer

1. A transfer is compensated when the asset is transferred or exchanged in return for money or any other tangible object, service, or benefit that is equal to or greater than the equity of the transferred asset.
2. Some transfers that are adequately compensated may still be non-allowable transfers because of other requirements (e.g. annuities, purchases of life estates, etc.) and should be evaluated for possible sanctions.

B. Transfer of the Homesite

1. When evaluating for transfers, the homesite is defined as any property in which the a/b or financially responsible person has an ownership interest; and
 - a. Is used as their principal place of residence or the principal place of residence of their spouse or a dependent relative, or
 - b. Was used as the principal place of residence by the a/b, their spouse or dependent relative during the lookback period or
 - c. They intend to return to it or intended to return to it during the lookback period.

Once ownership is established in a new principal place of residence, even if it occurs on or after the lookback date, the former principal place of residence becomes non-homesite property.

Refer to [MA-2230, Financial Resources](#), for the definition of the homesite and contiguous property and for policy used to determine asset eligibility.

2. Transfer of the homesite without receiving compensation of equivalent value is an allowable transfer only when it is transferred to one of the following:
 - a. Legal spouse, or
 - b. Natural, adopted, or stepchild under age 21 at time of transfer, or
 - c. Blind/disabled (determined by SSA) child of any age, or
 - d. Sibling who:
 - (1) Is a co-owner of the home and
 - (2) Has been residing in the home for a period of at least one year immediately before the a/b entered a nursing facility or requests CAP or PACE.
 - e. Natural, adopted, or stepchild(ren) age 21 or over who:

- (1) Resided in the home for at least two years immediately before the a/b entered a nursing facility or requests CAP or PACE, and
- (2) Provided care to the a/b to permit them to live at home rather than in a nursing facility throughout the 2-year period, and
- (3) Provides documentation that the adult child(ren) resided in the home during the two years, and
- (4) Provides documentation that the adult child(ren) provided necessary care.

For example, four children rotate months living with and caring for their parent in **the parent's** home. They have taken turns doing this for three years when the **parent** must go into a nursing home. The **parent transfers their** home to **their** four children. This is an acceptable transfer.

3. Evaluate the transfer of a homesite that was made income producing as a non-allowable transfer. **This** is allowable only if it is transferred to a specified person as indicated in VII.B.2 above.

C. Transfer to the Legal Spouse or Blind/Disabled Child

1. Any resource or income transferred (in addition to the transfer of the homesite described above) to the legal spouse or blind/disabled child of any age is allowable.
2. The blind/disabled child must have been determined blind/disabled according to SSA standards. **Verification must be provided.**

VIII. ALLOWABLE TRANSFERS TO A TRUST

A. Transfers to a Trust for the "Sole Benefit" of an Allowable Person

1. Transfers by the a/b or any person with legal authority to act in place of or on behalf of the a/b to another party for the "sole benefit" of certain "allowable persons" may not be sanctioned.
2. An allowable person is:
 - a. The a/b's legal spouse, or
 - b. The a/b's blind/disabled (determined by SSA) natural, adopted, or stepchild of any age, or
 - c. Other unrelated disabled individual (determined by SSA) under age 65.
3. To be allowable, a transfer to a third party for the "sole benefit" must meet the following criteria:
 - a. The asset cannot benefit anyone in any way but the allowable person at the time of the transfer and in the future.

Trustee Rule: The trust may provide reasonable compensation for a trustee managing funds. Reasonable compensation is based on the time involved to manage the trust and the prevailing rate of compensation. Evaluate each situation on a case-by-case basis to determine if the compensation is reasonable.

- b. The transfer must be in the form of a trust document (or similar legal document) which legally specifies the conditions under which the transfer was made, who can benefit, and the amount of the benefit.
- c. The trust (or legal document) must provide that the transferred funds are spent on behalf of the allowable person within **their** lifetime (except for Special Needs and Pooled Trusts described below).
- d. Determine if the beneficiary is expected to live long enough to receive the transferred funds based on **their** age at the time the trust is created and the disbursement schedule of the funds. Use the [Life Expectancy Table](#) to determine the beneficiary's life expectancy at the time of the transfer.
 - (1) If the funds will be spent on the beneficiary in **their** lifetime, it is an allowable transfer.
 - (2) **If any** portion of the funds **are** not expected to be disbursed to the beneficiary, **this is a non-allowable transfer.**
4. The transferred assets/income is countable to the intended **beneficiary** if that person applies for Medicaid (or is part of a budget unit applying for Medicaid). Refer to [MA-2230, Financial Resources](#).

B. Transfers To Special Needs or Pooled Trusts

Refer to [MA-2230 Financial Resources](#) XI. C. Types of Trusts for definitions.

1. Transfers of the a/b's assets to a Special Needs or Pooled trust are an allowable transfer:
 - a. If made prior to the a/b turning age 65, and
 - b. When the terms of the trust meet all the criteria in [MA-2230, Financial Resources](#), XI.
2. Any transfer made to a Special Needs Trust or Pooled Trust after the a/b turns age 65 must be evaluated as a Transfer of Assets.
3. A Special Needs Trust may be established by the parent, grandparent, legal guardian, court, or by the disabled individual. The disabled individual must establish the trust on and after December 13, 2016, to be a Special Needs Trust. Prior to the date, the trust will not be considered as a Special Needs Trust.

4. Forward a copy of the trust document to **DHB**, Third Party Recovery Section, 2508 Mail Service Center, Raleigh, N.C. 27699-2508.

C. Purchase of An Irrevocable Burial Contract

Assets used to purchase an irrevocable burial contract are an allowable transfer and create a trust when:

1. The contract is purchased for the benefit of the a/b, **their** spouse, child under 21, or blind/disabled child of any age, and
2. The contract lists each burial item and/or service, and
3. **The services are equal to the transferred assets' value.**

IX. NON-ALLOWABLE TRANSFERS

This section will explain the types of transfers that are non-allowable. Some transfers have special rules based on the type of asset transferred. Apply the following rules.

A. Date of Transfer for Real Property or Interest in Real Property

The date of transfer for real property is the day the deed is signed by the grantor, delivered, and accepted by the grantee. Unless fraud is suspected, it is presumed this is the date recorded on the front of the deed. The deed does not have to be notarized or registered to be a valid title transfer. However, a deed of gift must be registered within 2 years to remain valid.

B. Transfer of Contiguous Property When The A/B or A/B's Spouse Does Not Have Ownership Interest in the Principal Place of Residence.

Refer to XV. Transfer of Assets Glossary definition for Contiguous Property.

1. Up to \$12,000 value of contiguous property is excluded in determining resource eligibility (See [MA-2230, Financial Resources](#)) when the a/b or the a/b's spouse does not have ownership interest in the principal place of residence. This exclusion is not a homesite exclusion. For contiguous property to be excluded as the homesite, the a/b must have an ownership interest in the principal place of residence.
2. If a non-allowable transfer of contiguous property is made and the a/b or the a/b's spouse does not have an ownership interest in the principal place of residence, determine the sanction period using the total uncompensated value of the property. Do not subtract the \$12,000 in determining the value of the property.

C. Joint Ownership of Liquid Assets

1. Evaluate for transfer of assets when the a/b takes any action that eliminates **their** ownership or reduces **their** control of a liquid asset. Examples include when the a/b adds another individual(s) to a bank account or certificate of deposit.

2. Determine if a resulting trust exists. The transfer is a resulting trust **if**:
 - a. The asset is in another person's name, but it is held for the benefit of the a/b and
 - b. The person holding the asset retains no legal interest in the asset and will not benefit from the disposal of the asset.
 - c. If a resulting trust is verified, there is no sanctionable transfer.
3. The date of transfer depends on the action:
 - a. The date of transfer for an "or" account is the date the asset is actually reduced.
 - b. The date of transfer for an "and" account is the date the a/b reduces **their** control of the asset.

D. Transfers Involving Countable Trusts

Any time the a/b, financially responsible spouse, or parent creates a trust or becomes the beneficiary of a trust, report it to DHB, Third Party Recovery Section. The telephone number is **(919) 527-7690. The fax number is (919) 831-1812.**

1. Except for the specific trusts described in VIII. above, evaluate trusts created by the a/b with **their** funds as either:
 - a. An available asset to the a/b, or
 - b. A transfer of asset.
2. Refer to MA-2230, Financial Resources, to determine what portion of the trust is an available asset to the a/b. The amount that is unavailable to the a/b is subject to a transfer sanction.
3. Revocable Trust

Refer to XV. Transfer of Assets Glossary definitions for Revocable and Irrevocable Trusts.

 - a. The date of transfer for a revocable trust is the date a disbursement from the trust is made to someone other than the a/b.
 - b. The uncompensated value of the transfer is the actual amount paid to an individual other than a/b.
4. Irrevocable Trusts
 - a. The date of transfer is the date the trust is established.
 - b. The uncompensated value is the portion of the trust that was made unavailable

to the a/b on the date the trust is established. Do not subtract any payments made from the trust after the trust was established.

- c. Additions to existing trusts **are considered** a new transfer based on the date of the addition. Additions include undistributed interest earned on the trust principal.

E. Stream of Income

1. A stream of income is income received on regular basis such as a pension or rental income from property.
2. **Income produced from a life estate is countable to the life estate holder regardless of who receives the income. Refer to [MA-2230 Financial Resources](#) VII. A. 4.a.**
3. When a stream of income is transferred or diverted, each payment is considered as a separate transfer.

F. Transfer of Income Producing Property

1. If a homesite becomes income producing, it remains a homesite for transfer of asset purposes if it meets the criteria in VII.B.1. Evaluate transfer of home sites, including those that have become income producing.
2. If income producing property that meets the 6% net annual income test (See [MA-2230, Financial Resources](#), for policy on the 6% net annual income test.), is transferred, evaluate for transfer of assets.
The uncompensated value is the value of the property less any compensation received less any amount used to pay off an encumbrance. Do not deduct \$6,000.
3. When evaluating a transfer of income producing property, do not consider as a stream of income.

G. Inheritance

A transfer also occurs when an individual takes action to waive or renounce an inheritance to which **they are** entitled.

X. TRANSFERS THAT MAY OR MAY NOT BE ALLOWED

A. Annuities

Evaluate all annuities held by the a/b, or the a/b's spouse to determine if they are a resource. (See [MA-2230, Financial Resources](#).) If the annuity is a countable resource, do not evaluate for transfer of assets sanction. If the annuity is not a resource, evaluate for a possible transfer of asset following the policy below. Use the **additional resource**, [Annuities](#) located on the [DHB Medicaid Training Resources](#), as a guide.

1. **The uncompensated value for non-allowable purchases of annuities is the full purchase price. Use the full purchase price to calculate the sanction.**

2. Annuities that are purchased or changed during the lookback period, that do not meet the criteria below are considered an uncompensated transfer. **Determine a sanction period for the purchase amount** plus any additions to the annuity.

- a. The following requirements apply to all annuities whether they are determined to be a resource or not:

- (1) North Carolina Medicaid must be named remainder beneficiary in the first position for all annuities created or changed on or after November 1, 2007, when the a/b is applying for or receiving institutional services, CAP services, or PACE services. This requirement also applies to annuities held by the **a/b's** spouse. Use the information obtained from the DHB-5111, Annuity Verification Form.

- (a) If there is a community spouse and/or any child under age 21 or a disabled child of any age when the purchase or change takes place, North Carolina Medicaid may be named in the next position after those individuals.

- (b) If North Carolina Medicaid is not named as a remainder beneficiary or not named in the correct position within the time frames for providing necessary information, the purchase, or change to the annuity is a transfer of assets for the original full purchase price plus any additions.

The amount North Carolina Medicaid can receive, as a beneficiary, is limited to the amount that Medicaid paid on behalf of the Medicaid beneficiary.

- (2) Changes include any action(s) taken by an individual that changes the course of payment of the annuity or that changes the treatment of the income or principal of the annuity. Changes include but are not limited to:

- (a) Additions to principal
- (b) Elective withdrawals
- (c) Requests to change the distribution of the annuity
- (d) Elections to annuitize the contract- **(convert into a series of payments)**

- (3) Changes do not include:

- (a) address changes,
- (b) death or divorce of a remainder beneficiary,
- (c) child turning 21, or

- (d) changes beyond the control of the individual such as change in the policy of the issuer.
- (4) If the annuity is a countable resource, the a/b will likely be ineligible for Medicaid due to excess resources. In this case no transfer of assets sanction can be applied.
- b. The following requirements apply to annuities not determined to be a resource:
 - (1) Assets of an a/b used to purchase or change an existing annuity **after November 1, 2007**, will not be considered as a transfer of assets if, in addition to North Carolina's Medicaid program named as a beneficiary, the annuity meets the following conditions: (Note: This requirement does not apply to an annuity held by the a/b's spouse).

The annuity was sold by a bank, insurance company, or other person engaged in the business of the sale of commercial annuities and

- (a) The annuity is considered either:
 - 1) An individual retirement annuity, or
 - 2) A deemed Individual Retirement Account (IRA) under a qualified employer plan. or
- (b) The annuity is purchased with proceeds from one of the following:
 - 1) A traditional IRA; or
 - 2) Certain accounts or trusts which are treated as traditional IRAs; or
 - 3) A simplified retirement account; or
 - 4) A simplified employee pension account; or
 - 5) A Roth IRA.

Note: To determine if an annuity is established under any of the provisions in a. and b. above, rely on verification from the financial institution, employer, or employer association that issued the annuity. It is the responsibility of the a/b, or the a/b's representative to produce this documentation.

OR

- (c) The annuity meets all the following requirements:
 - 1) The annuity is irrevocable and does not allow the policy holder to assign or transfer the ownership or income of the

policy to a third party; and

- 2) The purchase price of the annuity is expected to be paid back in full during the actual or expected lifetime of the annuitant, (Follow procedures in IX.A.1. a. (2) above to determine if the beneficiary is expected to live long enough to receive full payments), and
- 3) The annuity provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments.

B. Promissory Notes, Loans, Mortgages, or Other Property Agreements

A promissory note, loan, mortgage, or other property agreement must have a **current** market value at least equal to the value of the transferred asset. Consider a promissory note, loan, mortgage, or other property agreement that does not meet all the criteria below a transfer of assets.

1. Determine the sanction period using the remaining balance owed on the note, loan, mortgage, or other property agreement at the date of application **or request** for institutional services.
2. The purchase/establishment or receipt of a promissory note, loan, mortgage, or other property agreement is considered an uncompensated transfer unless the repayment agreement meets the criteria below.
 - a. The total value of the note, loan, mortgage, or other property agreement is expected to be paid back in full during the actual or expected lifetime of the lender/beneficiary, and
 - b. Repayment must be made in equal amounts during the term of the note, loan, mortgage, or other property agreement with no deferral payments and no balloon payments, and
 - c. The agreement prohibits the cancellation of the balance upon the death of the lender.

Use the [Life Expectancy Table](#) to determine the lender/beneficiary's life expectancy at the time of purchase to determine if note, loan, mortgage, or other property agreement is expected to be paid back in full during the individual's lifetime.

C. Life Estate

Life estate is a limited interest in real property. A life estate holder does not have full title to the property but has the right to use the property for **their** lifetime or for a specified period.

1. Exclude a life estate interest as an asset in determining eligibility for Medicaid.
2. Evaluate for transfer of assets when the a/b, or the a/b's spouse transfers real

property and retains a life estate. (See X.D. below for transfers of remainder interest in real property.)

- a. The date of transfer is the day the deed is signed by the grantor, delivered, and accepted by the grantee.
 - b. The uncompensated value is the equity of the remainder interest granted, less compensation received. Refer to MA-2230, Financial Resources, for instructions on determining the equity value of a remainder interest.
3. Evaluate for transfer of assets when an a/b, or the a/b's spouse transfers a life estate interest.
 - a. The date of transfer is the day the deed is signed by the grantor, delivered, and accepted by the grantee.
 - b. Determine if **current** market value was received for the life estate. Refer to the Life Estate and Remainder Interest Tables website, <https://secure.ssa.gov/poms.nsf/lnx/0501140120>.
 - c. Multiply the tax value of the real property on the date the life estate is transferred by the corresponding life estate value for the age of the individual whose life determines the length of the life estate. The result is the value of the transferred life estate.
 - d. Determine the sanction period. See **XI.** below.
4. Evaluate the purchase of a life estate in another individual's home for a transfer of asset sanction.
 - a. At the time of application for institutional services the purchaser has not resided in the home for a period of at least 12 consecutive months following purchase of the life estate. The 12 months begins the date the purchaser moves into the home and ends on the 365th day.

Vacations, overnight visits, and acute hospital stays should not be deducted from the 12-month period provided this continued to be the individual's residence.

 - (1) Determine the sanction period based on the purchase price.
 - (2) Continue the sanction period until it is complete even if the person continues to reside in the home beyond 12 months.
 - b. At the time of application for institutional services they had resided in the home for at least 12 consecutive months following purchase of the life estate and:
 - (1) The purchaser paid equal or more than **current** market value of the life estate

- (2) Determine the sanction period based on the difference between the amount paid and the **current** market value of the life estate. See IX.C.5. below to determine the uncompensated value.
5. Evaluate the purchase of a life estate in any property that is not the home of another individual.
 - a. Count any amount paid over **current** market value as a transfer.
 - b. The value of the life estate at the time of purchase must at least equal the amount paid. The uncompensated value is the purchase price minus the value of the life estate at the time of purchase.
6. **Ladybird Deed or Life Estate with Powers-** The owner of the property creates a life estate for themselves, retaining the power to sell the property, with a remainder interest to someone else, e.g., a child.
 - a. Since the life estate holder retains the power to sell the property, its value as a resource is its full equity value. In this situation, the individual has not transferred anything of value, because they can terminate the life estate at any time and restore full ownership to themselves.
 - b. Instead, the full value of the asset is considered as a countable resource to the individual (assuming, of course, that it is not an otherwise excluded resource).

D. Remainder Interest in Real Property

1. When the a/b, or the a/b's spouse obtains a remainder interest in real property, determine if the value of the remainder interest is at least equal to the value of the compensation given in return.
 - a. Determine if current market value was received for the remainder interest.
 - b. Multiply the tax value at the time the remainder interest was obtained by the remainder decimal factor that corresponds to the age of the individual whose life determines the length of the life estate. Subtract any encumbrances applicable to the remainder interest. Refer to the [Life Estate and Remainder Interest Tables](#) website. The result is the equity value of the transferred remainder interest.
 - c. Compare the equity value of the remainder interest to the value of the compensation received. If the compensation received is less than the equity value of the remainder interest received, this is an uncompensated transfer.
 - d. The date of transfer is the date the remainder interest is purchased.
2. When the a/b or the a/b's spouse transfers a remainder interest in real property,

whether or not a life estate interest was retained, evaluate to determine if the a/b or the a/b's spouse received compensation at least equal to current market value of the transferred remainder interest in real property.

E. Tenancy-in-Common Interest

1. When the a/b, or the a/b's spouse obtains a tenancy-in-common interest in real property, determine if the **current** market value of the tenancy-in-common interest is at least equal to value of resources given by the a/b, or the a/b's spouse.
 - a. Determine the value of the tenancy-**in**-common interest on the date it is obtained. Multiply the tax value of the property at the time of transfer by the tenancy-in- common interest in the property.
 - b. Multiply the amount of encumbrance on the property by the tenancy-in-common interest and subtract this amount from the **value** determined in a. above. The result is the **current** market value of the tenancy-in-common interest.
 - c. If the **current** market value of the tenancy-in-common interest is less than the value of the compensation given by the a/b, or a/b's spouse, this is an uncompensated transfer.
 - d. The date of transfer is the date the tenancy-in-common interest is obtained.
2. When the a/b, or the a/b's spouse transfers a tenancy-in-common interest in real property, determine if the value of compensation received is at least equal to **current** market value of the tenancy-in-common interest in real property.
 - a. Determine the value of the tenancy-in-common interest on the date of transfer. Multiply the tax value of the property at the time of transfer by the **tenancy-in-common** interest in the property.
 - b. Multiply the amount of encumbrance on the property by the **tenancy-in-common** interest in the property and subtract this amount from the value determined in a. above. The result is the **current** market value.
 - c. **If the current market value of the tenancy-in-common interest is more than the value of the compensation received**, this is an uncompensated transfer.
 - d. The date of transfer is the date the tenancy-in-common was transferred.
3. **When the a/b, or a/b's spouse changes ownership interest in property from fee simple or tenancy-by-the-entirety to tenancy-in- common interest, evaluate for a transfer of assets.**
 - a. The uncompensated value is the equity in the tenancy-in-common interest, less any compensation received.
 - b. For Medicaid eligibility purposes, encumbrances on real property that is held

by tenancy-in-common apply to the entire property. The equity in the tenancy-in-common interest in real property is:

- (1) The **current market value** of the property multiplied by the tenancy-in-common share,
 - (2) Less the encumbrances on the property multiplied by the tenancy-in-common share.
- c. In the event there is an encumbrance that applies to only the tenancy-in-common interest, subtract the full amount of the encumbrance from the result of the **current market value** of the property multiplied by the tenancy-in-common share. If an encumbrance applies only to the other tenancy-in-common share, do not deduct from the a/b's tenancy-in-common interest.

F. Single Premium Endowment Policies

The policy is an endowment investment instrument similar to an annuity that is not actuarially sound. The pure endowment policy pays a benefit only to those individuals who survive a certain period of time. The policy has no cash value and payments are irregular or a balloon payment at maturity.

The purchase of a single premium pure endowment policy is considered an uncompensated transfer. Count the total amount of the purchase price of the endowment policy as the uncompensated value of the transfer.

G. Regular Donations/Gifts

A pattern of giving regular donations/gifts to charities, religious organizations, or family members can indicate intent other than to qualify for Medicaid. For example, the a/b regularly gives each family member \$1,000 at Christmas and birthdays. Do not impose a sanction when an asset was transferred solely for a reason other than to become eligible for Medicaid.

1. In making the determination, consider the following:
 - a. The a/b's or the a/b's spouses' age, general health, living arrangement, and amount of assets retained to meet future needs at the time of the transfer.
 - b. How the a/b expected to meet **their** medical and other living expenses without the transferred asset.
 - c. Whether the transfer by the a/b or the a/b's spouse to a charity, religious organization, or family member was made when the a/b or the a/b's spouse did not anticipate needing long-term medical care.
2. Document the response provided to the considerations listed above. The a/b or the a/b's spouse or the a/b's or the a/b's spouse's representative must also provide a written description of the gifts/donations, including date, amount, and beneficiary.
3. In addition to the written evidence provided as listed above, evidence from other

sources may be considered. Examples of other sources include but are not limited to bank records, medical records or oral or written statements from persons knowledgeable about the a/b's or the a/b's situation and the transfer of assets.

H. Personal Services and Continuing Care Contracts

For personal services and continuing care contracts signed during the lookback, the following applies. Please note the agreed upon services may be provided by an agency, private caregiver, or family member.

1. Personal services and continuing care contracts are not asset transfers when the value of the transferred assets is an amount that is at least equal to the value of the services to be received, and all the following conditions are met.
 - a. A written contract between the a/b or the a/b's spouse and the provider of the services is signed before services are delivered and payment made. The contract is dated and either party can terminate the contract; and
 - (1) The contract is signed by the a/b or the a/b's spouse or a representative legally authorized through a power of attorney, general guardianship, or guardianship of the estate; and
 - (2) At the time the a/b or the a/b's spouse receives services provided under the terms of a personal services contract, the a/b or the a/b's spouse who is receiving the services is not residing in a nursing facility or intermediate care facility for individuals with intellectual disabilities (ICF/IID).
 - b. However, the contract is a transfer of assets if:
 - (1) The a/b receives services under the terms of a personal services contract while they are residing in a nursing facility or ICF/IID or
 - (2) The a/b's spouse receives services under the terms of a personal services contract while they are residing in a nursing facility or ICF/IID; and
 - c. At the time the contract is signed:
 - (1) Services have been recommended in writing and signed by a physician as necessary to prevent the entry of the a/b, or the a/b's spouse to a nursing facility or ICF-IID.
 - (2) Services may not include the providing of companionship, visits, or spiritual wellbeing; and
 - d. The local agency verifies the agreement by reviewing the written contract between the a/b, or the a/b's spouse, and the provider of the services.

The contract must include:

- (1) The type, frequency and duration of the services being provided to the

a/b, or the a/b's spouse, and

- (2) The amount of assets being transferred by the a/b, or the a/b's spouse to the provider of the services.
2. If the amount of assets transferred in return for the services is greater than the **current** market value of the services that can be expected to be received by the a/b, or the a/b's spouse under the terms of the contract, the a/b or the a/b's spouse will be considered to have transferred the asset for less than **current** market value.
 - a. The uncompensated amount is the value of the transferred assets that exceeds the value of the services expected to be provided under the contract.
 - b. **Establish current market value of the services expected by obtaining a written statement from an area business which provides such services.**
 - c. If the services cannot be purchased on the open market or a business that provides the service cannot be located, use the state minimum wage amount.
3. **The a/b must present a detailed statement to the local agency from the provider with the amount and type of services that were received:**
 - a. **At application or request for institutional services, local agencies should request a detailed statement from the date the contract was signed to present.**
 - b. **At recertification, local agencies should request a detailed statement for the past 12 months.**
 - c. Termination of the contract or failure to receive the services at the frequency and value specified in the contract constitutes **an uncompensated transfer**. The uncompensated amount is the amount paid which exceeds the **current market value of the services received**.
4. If the a/b, or the a/b's spouse who has a personal services contract is admitted to a nursing facility or **ICF/IID**:
 - a. From that date forward any contract or the remainder of an existing contract is considered a transfer of assets for less than **current** market value.
 - b. The uncompensated amount is the amount paid which exceeds the **current** market value of the services received.
5. 1 through 4 does not pertain to Continuing Care Retirement Communities (CCRC) that provides a continuum of care under a contract. See MA-2230, Financial Resources, X.Q. for policy concerning a CCRC.

I. Transfers for "Love and Consideration"

1. Evaluate for transfer of assets when an a/b gives cash, or other **applicable** assets to a family member, relative, or friend for care or services that were provided for free in the past.

2. Unless there was a written agreement for compensation **at the time the care or service was received**, the transfer is uncompensated.
3. If the agreement or the terms of the agreement are contradictory or inconsistent, refer to MA-2300, Application, to evaluate for conflicting information.

XI. TRANSFER SANCTION

A. Determine the Uncompensated Value of Transfer(s)

1. List each non-allowable transfer occurring on or after the lookback date through the current date.
2. Determine the date of the transfer.
3. Determine the value of each transferred asset based on policy in MA-2230, Financial Resources. For transfers of tenancy-in-common interest in real property, see **X.E.** above.
 - a. Establish the **current** market value (tax value) **at the time of the transfer for each non-allowable transferred asset**.
 - b. Subtract any encumbrances at the time of transfer to establish the equity of the asset. The remainder is the equity.
 - c. Subtract the amount or value received, if any, from the equity. **This is the uncompensated value.**
 - d. See X.A, X.B, and X.C above for exceptions to the rule when evaluating annuities, promissory notes, loans, mortgages, or other property agreements, and life estates.
 - e. **The value of certain transferred assets can be rebutted. If an asset's value has already been successfully rebutted as part of the application process, use the established rebutted value.**

B. Determine the Sanction **Period Length**

The length of the sanction period is based on the uncompensated value of the transfer. **Use DHB-5181, Calculating Penalty Period, as a tool to assist in calculating the penalty period.** Determine a sanction period on any **uncompensated transfers that occurred after the lookback date.**

1. Total the uncompensated value of all transfers in the lookback period.
 - a. Divide the total uncompensated value for all transfers by the **average monthly private NF rate as of the date of the application, institutionalization or request for CAP or PACE.** The average monthly private NF rate is \$10,317, as of January 1, 2025.

Round the amount to 2 decimals. The result is the length of the sanction period. **The resulting whole number is the length of sanction months, and any fractional remainder are additional days.**

- b. Multiply the remaining fractional amount by 31.
 - (1) The result is the additional number of days to be added to the sanction period.
 - (2) Drop any fractional portion of a day.
2. NC FAST will determine the sanction period, if applicable. Refer to NC FAST Job Aid: Sanction for Transfer of Assets.

C. When to Apply the Sanction

Use the following policy to determine the start date of the sanction. Use policy A. and B. above to determine the length of the sanction.

1. Applying the Sanction to an Ongoing Beneficiary of Institutional Services

This section explains when to start a transfer of asset sanction for a beneficiary receiving institutional services.

- a. The sanction is applied prospectively for the following beneficiaries:
 - (1) The transfer of asset evaluation was completed **after** approval of institutional services and a transfer is found, or
 - (2) An ongoing beneficiary of institutional services reports an asset was transferred or a transfer is found during recertification
- b. Start the sanction period, the first day of the month following timely notice of the sanction period.
 - (1) Determine the sanction period for the whole months calculated in **B.1.a.** above using the DHB-5181 Calculating the Penalty Period.
 - (2) Add the fractional days to the sanction determined in **B.1.b.** above.
 - (3) Authorize **MAGI and** CAP cases the day after the last day of the sanction.
 - (a) Enter the CAP effective date in NC FAST.
 - (b) When the individual becomes eligible for CAP, re-calculate the deductible for the certification period according to instructions in MA-2280, Community Alternatives Program (CAP), Medicaid Eligibility, II.A.9.d. and III.F.

- (4) For cases with PML, convert the number of days in the sanction-ending month to a dollar amount.
 - (a) Multiply the number of **sanction** days (if less than the full calendar month) by **\$343.90** (average private daily rate).
 - (b) Add this to the first month's PML amount regardless of whether the person has a zero PML.
 - (c) Do not **reduce the sanction dollar amount** by any UMN or income protected for spouse or dependents at home.
 - (d) If the full sanction period (including the fractional days) ends on the last day of the sanction-ending month, do not convert to a dollar amount. The a/b is ineligible for that entire month.
- c. For a sanction that cannot begin prior to the first day of the month that follows three full calendar months from the date of the report or discovery of a transfer:
 - (1) If the sanction **is not imposed** until after month 4, **this is considered an agency error. The period beginning with month 4 until the month the action is effective must be referred to the local DSS Program Integrity Section for recoupment. Refer to MA-2395, MA-3530 Corrective Actions and Responsibility for Errors.**
 - (2) **Impose** the remaining sanction period in **NC FAST**.

If the entire sanction period ends prior to the month the sanction can be imposed due to notice requirements, refer the entire sanction to the local DSS Program Integrity Section and do not key a sanction period.

2. **Beneficiary is Discharged Prior to Sanction Effective Date**

- a. **If the beneficiary is discharged from the facility, CAP or PACE prior to the effective date of the sanction, the sanction cannot be imposed.**
 - (1) **If the sanction has already been keyed. Cancel the sanction in NC FAST and notify the a/b and authorized representative, if applicable, of termination of institutional services and the sanction will not be imposed at this time.**
 - (2) **Enter a sanction for invalid transfer of assets in NCFast. No additional institutional services periods should be authorized. Refer**
- b. **If cost of care coverage is requested for any future institutionalization, apply the original sanction effective the date that all other eligibility criteria is met.**
 - (1) **The caseworker should not reevaluate the original sanction unless the a/b reports a change that may impact the original sanction.**

- (2) Do not allow another authorized cost of care period while completing any additional transfer of assets evaluation.

- c. Any additional sanctions found cannot be applied until the previous sanction has ended.

3. Applying the Sanction After Failure to Provide

This section explains when to start a transfer sanction after an a/b has received institutional services for a prior period and was terminated for failure to provide.

a. New Application

- (1) When the individual was terminated from institutional services for failure to provide information to complete the transfer of assets evaluation and found ineligible for **all** Medicaid programs, follow 90-day reopen procedures, when applicable. After 90 days, a new application must be submitted.
- (2) In this situation institutional services cannot be approved until the transfer of asset evaluation is completed.
- (3) Once the individual requesting CAP, PACE, or LTC has provided the requested information and an uncompensated transfer is established, the sanction period begins on the date when they:
 - (a) Meet all other eligibility criteria for LTC, CAP or PACE.
 - (b) If they had to meet a deductible, it is the date the deductible is met.
- (4) An a/b who has a deductible does not meet all other eligibility criteria and is not otherwise eligible until the day the deductible is met. The sanction period begins on the day the deductible is met.
 - (a) If a deductible is met during the month of entry into a nursing facility, the sanction period begins the day the deductible is met.
 - (b) If the deductible is not met during the month of entry into the nursing facility, the sanction period begins the first day of the next month, the first day of long-term care budgeting.
 - (c) **Start** the sanction period, beginning on the date specified in **C.2.a.** above.
 - Determine the sanction period for the whole months calculated in **B.1.a.** above.
 - Add the fractional days to the sanction determined in **B.1.b.** above.

- (5) Authorize CAP cases the day after the last day of the sanction.
 - (a) Enter the CAP effective date in NC FAST.
 - (b) When the individual becomes eligible for CAP, re-calculate the deductible for the certification period according to instructions in MA-2280, Community Alternatives Program (CAP), V.
- (6) For cases with PML, convert the number of days in the sanction-ending month to a dollar amount.
 - (a) Multiply the number of **sanction** days (if less than the full calendar month) by **\$343.90** (average private daily rate).
 - (b) Add this to the first month's PML amount regardless of whether the person has a zero PML.
 - (c) Do not **reduce the sanction dollar amount** by any UMN or income protected for spouse or dependents at home.
 - (d) If the full sanction period (including the fractional days) ends on the last day of the sanction-ending month, do not convert to a dollar amount. The a/b is ineligible for that entire month.

b. New Request/ Transfer of Asset Information Provided After Termination

- (1) If an active Medicaid beneficiary was terminated from cost of care for failure to provide but is still receiving in another Medicaid program and has now provided the information needed for the transfer of assets evaluation:
 - (a) If an uncompensated transfer is now established, the start date of the sanction is applied the first day of the month following the termination month or the date they meet all other eligibility criteria if not the first day.
 - (b) If no uncompensated transfer is established, there is no sanction. Restore coverage for institutional services effective the first day of the month following the termination month.
- (2) Caseworkers must begin to evaluate the transfer of assets information within 30 calendar days after the local agency receives the request/information.

D. Spouses both institutionalized

1. When both spouses are institutionalized, requesting CAP, or receiving in- home health services and supplies:

- a. Divide the sanction period between the spouses.
 - b. The total sanction imposed on both spouses cannot exceed the number of months of the sanction period.
2. When the institutionalized spouse is already serving a sanction and the CUSP also becomes institutionalized, evaluate whether the transfer occurred during the CUSP's lookback. **Refer to IV. C. 3 to determine the lookback of each spouse.** If so:
 - a. Divide the remaining sanction between the two spouses. If the amount is not equal, the larger amount can be given to either spouse.
 - b. Determine what is best for both spouses. The total sanction imposed on both spouses cannot exceed the number of months of the sanction period.
 3. Evaluate for additional transfer of assets by the former **Community Spouse** (CUSP) on or after the lookback date. A non-allowable transfer by the CUSP after Medicaid eligibility is established for the **Institutionalized Spouse (ISP)** is not a sanctionable transfer for the ISP.

Example 1: A 10-month sanction period has been assigned to the institutionalized spouse. After 5 months have passed, the community spouse enters a nursing facility. Divide the remaining 5 months of the sanction period equally between the two. In this case, assign one spouse (e.g. the ISP) a 2-month sanction period and the other spouse (e.g. the CUSP) a 3-month sanction period.

After admission, it is determined that the **former** CUSP has a 4-month sanction period for additional transfers. The CUSP now has a 7-month sanction period and the ISP a 2-month sanction period.

Example 2: An 80-month sanction period has been assigned to the institutionalized spouse. After 65 months have passed, the community spouse enters a nursing facility. The transfer occurred more than 60 months prior to the former CUSP's institutionalization and application for Medicaid. The remaining sanction period cannot be divided between spouses. The ISP must serve the remaining sanction period.

E. Other Sanction Situations

1. The sanction period cannot begin until after any existing sanction period has expired.
2. A sanction period cannot be triggered by receipt of in-home health services and supplies. In-home health services can only be sanctioned if they are received in a sanction period that began due to receipt of institutional services.
3. NC FAST will determine the sanction period **based upon the evidence entered**. Refer to [NC FAST Job Aid: Sanction for Transfer of Assets](#).

F. Sanction Period When an Individual Leaves the Institution, CAP, or PACE

A sanction period runs continuously from the first date of the sanction period through the end of the sanction, regardless of whether the individual remains in or leaves the institution or continues to need CAP, PACE, or in-home health services and supplies.

G. Lifting or Reducing the Sanction Period

1. When transferred assets are returned to the a/b, evidence must be edited.
2. Assets are considered returned when:
 - a. The actual asset is transferred back to the a/b, or
 - b. The a/b receives current market value as compensation for the asset after the **transfer**. Value may be received in cash or money spent on the client's behalf. Examples of money spent on the client's behalf are:
 - children pay for private LTC,
 - buy a burial plot for their parents, or
 - pay old bills for their parents.
 - c. The cash or money spent on the client's behalf does not have to come from the person to whom the asset was originally transferred.
 - d. Verify any money spent on the client's behalf is, in fact, paid. For example, the nursing facility verifies the outstanding bill has been paid.
3. When the transferred assets (**all or a portion**) are returned after **institutional services have been denied or terminated due to** a sanction period being assigned, **the sanction period must be recalculated. This may result in the entire sanction being "erased" or a shortened sanction period.**
4. The returned assets are countable to the a/b in determining eligibility for the entire period they were previously not in the a/b's name.
 - a. **For a pending application:**
 - Determine **resource** eligibility for **institutional services** based on the date of application.
 - Reverify assets considering the returned assets as if a/b owned them throughout the sanction period.
 - Erase the sanction period beginning with the first month of the sanction period.
 - b. **For an ongoing beneficiary:**

- Reverify assets considering the returned assets as if a/b owned them throughout the sanction period.
 - Re-determine eligibility for institutional services based on the current value of all assets owned. If assets are over the allowable limit, follow procedures to allow for reduction of reserve.
 - The sanction period is erased beginning with the first month of the sanction period.
- c. When only a portion of the transferred asset is returned to the a/b, **update evidence in NC FAST and recalculate the sanction period.**
- Reverify assets considering the returned assets as if a/b owned them throughout the sanction period.
 - Re-determine eligibility for institutional services based on the current value of all assets owned. If assets are over the allowable limit, follow procedures to allow for reduction of reserve.
 - Modify the sanction period. Refer to NC FAST Job Aid: Editing or End Dating Sanctions.

H. Budgeting During Sanction Period

1. If an **a/b** is sanctioned for payment of nursing home cost of care, CAP or in- home health services and supplies due to transfer of assets, continue to determine eligibility for **all** other **MAGI and non-MAGI** Medicaid **programs**.
2. If an **a/b** is sanctioned for payment of PACE services due to transfer of assets and does not disenroll from the PACE Program, evaluate for MQB only. (Refer to MA-2275, Program of All-Inclusive Care for the Elderly.)
 - (a) **Individuals enrolled in the PACE program are ineligible for all other Medicaid programs, (excluding MQB) during the sanction period.**
 - (b) **If ineligible for MQB deny the application or terminate PACE. Notify the a/b following procedures in MA-2275, Program of All-Inclusive Care for the Elderly (PACE).**
 - (c) **Always explain that disenrollment from PACE is an option and refer them to the PACE organization. PACE a/bs that disenroll from PACE must be evaluated for all other Medicaid programs.**
3. Budget as PLA. Refer to MA-2260, Financial Eligibility Regulations-PLA and MA-2270, Long Term Care Need and Budgeting. If it is determined that an individual must meet a deductible, see **XI.C.2.** above.
4. Continue to allow the community spouse resource protection when the spouse in LTC is budgeted PLA because of a transfer of assets sanction. (However, the community spouse income allowance does not apply in PLA budgeting.)

XII. REBUTTAL

A. General

When an uncompensated transfer has occurred, the a/b must be given the right to provide a rebuttal prior to a sanction being imposed.

1. Use the DHB-5161, Transfer of Asset Below Current Market Value, to notify the a/b and authorized representative, if applicable, of the following:

- The length of the sanction period,
- The right to rebut the value of the asset transferred,
- The right to rebut the presumption or provide evidence to prove the transfer was made exclusively for a purpose other than establishing or retaining Medicaid eligibility,
- The right to prove the compensation received is greater than established,
- The right to prove the a/b has been defrauded,
- The right to prove the asset has been returned, or
- The right to prove intent to dispose asset at current market value.

2. Also advise the a/b that they may provide proof that:

- All or a portion of the asset has been returned, or
- After the date of transfer, the money was spent for the benefit of the a/b or the a/b's spouse.

Follow notification procedures in XII.B. below.

3. The a/b, or the a/b's spouse must show convincing evidence that:

- The transferred asset is less than the value established by the local agency, or
- The value of compensation received is greater than the value established, or
- At least two attempts to dispose of the asset for current market value, or
- All or a portion of the asset has been returned, or
- The money has been spent for the benefit of the a/b, or the a/b's spouse, or
- The asset was transferred solely for a purpose other than qualifying for Medicaid.

The evidence presented (written or oral) must be more persuasive than all

evidence presented to the contrary.

4. The rebuttal evidence may include:

- A/b's (spouse/legal representative) statement regarding the circumstances of the transfer, including the specific reason the asset(s) was transferred,
- The date of transfer,
- The name and relationship of the person(s) to whom the asset was transferred,
- Any compensation received.

5. Examples of evidence include:

- oral or written statements from persons knowledgeable about the situation,
- medical records,
- bank records.

B. Rebutting the Value of the Transferred Asset and Amount of Compensation Received

1. To prove that the value of transferred asset is less than the value established by the **local agency**, the a/b, or the a/b's spouse must provide a signed written statement from a knowledgeable person located in the same geographic area in which the property is located. The knowledgeable person cannot be a family member, friend or someone who stands to gain from the transaction.

a. The statement must include:

- A description of the asset that clearly identifies the asset,
- A specific statement as to the value of the asset and when the value was determined,
- The reason for establishing the lesser value,
- The basis for the source's knowledge of the value of the property.

b. A "knowledgeable person" is an individual:

- Involved in the sale or appraisal of the type of asset in question,
- Involved in the financing of sales of the type of asset in question,
- An official of the local property tax jurisdiction, or
- Other person who can establish in the written statement that they are

knowledgeable of the value of the type of asset in question.

- c. The “same geographic area in which the asset was located” is the same area as covered by local radio, television, newspaper or other media.
2. If the evidence provided proves that the value of the transferred asset is less than the value established under policy, recalculate the uncompensated value using the lesser value.
 - a. If no compensation **was received** for the transferred asset, shorten the sanction period according to the reduced value of the transferred asset.
 - b. If partial compensation was received, that is at least equal to the reduced value of the transferred asset, do not impose a sanction period.
 - c. If partial compensation **was received** that is less than the reduced value of the transferred asset, shorten the sanction period according to the reduced uncompensated value of the transfer.
3. To prove that the value of compensation received in return for a transferred asset is greater than the value established under policy, the a/b, or the a/b’s spouse must provide **convincing** evidence of the greater value.
 - a. For compensation received in the form of real or personal property, use the evidence listed in **XII.B.1.** above.
 - b. If the evidence provided proves that the value of the compensation received for a transferred asset is greater than the value established by the **local agency**, recalculate the uncompensated value of the transfer based on the greater value of the compensation.
 - c. If compensation **was received** that is at least equal to the value of the transferred asset, do not impose a sanction.
 - d. If **partial** compensation **was received** that is less than the value of the transferred asset, shorten the sanction period to the reduced uncompensated value of the transfer.
 - e. Examples of evidence include:
 - cancelled checks,
 - receipts,
 - bills of sale,
 - records of a bank or other financial institution that establishes the value of compensation received.
4. To prove that all or a portion of a transferred asset has been returned, the a/b or the a/b’s spouse must provide evidence establishing the return of the asset.
 - a. The asset may be returned beyond the time required to provide evidence. **When**

an a/b states an asset has been returned, allow the a/b an additional 12 days to provide the evidence.

- b. Do not apply a sanction when the entire transferred asset is returned.
 - c. When a portion of the transferred asset is returned, reduce the value of the transferred asset by the value of the asset returned. Recalculate the sanction period based on the reduced value of the transferred asset.
 - d. Examples of evidence include:
 - property deeds,
 - closing statements,
 - property tax records,
 - financial statements,
 - records of banks or other financial institutions,
 - deeds of trust,
 - title transfer records,
 - contracts and other legally binding agreements.
5. To prove that money has been spent for the benefit of the a/b, or the a/b's spouse after the date of the transfer, the a/b or the a/b's spouse must present **evidence showing the money has been spent on the a/b's behalf.**
- a. The asset may be returned beyond the time required to provide evidence.
When an a/b states an asset has been returned, allow the a/b an additional 12 days to provide the evidence.
 - b. Do not impose a sanction when the amount of money spent for the benefit of the a/b or the a/b's spouse after the date of the transfer is at least equal to the uncompensated value of the transfer.
 - c. Examples of evidence include:
 - cancelled checks,
 - receipts,
 - bills of sale,
 - bank or other financial institution records, or
 - other records that prove the amount of money spent,
 - the date on which it was spent,
 - any goods or services purchased for the a/b or the a/b's spouse
 - the a/b or the a/b's spouse was the beneficiary of the benefit from these expenditures.
6. When the amount of money spent for the benefit of the a/b, or the a/b's spouse after the date of the transfer is less than the value of the transferred asset:
- a. Reduce the uncompensated value of the transfer by the amount of money spent **for the benefit of the a/b or a/b's spouse.**

- b. Shorten the sanction period according to the reduced uncompensated value of the transfer.

C. Establishing That a Transfer of Assets Was for a Reason Solely Other Than to Become Eligible for Medicaid

Do not impose a sanction when an asset was transferred solely for a reason other than to become eligible for Medicaid. The following situations establish that an asset was transferred solely for a reason other than to become eligible for Medicaid:

1. The asset was stolen. **Convincing** evidence **must be provided** which may include but is not limited to a report to law enforcement officials.
2. The a/b has been defrauded.
 - a. Refer the case to protective services and/or if there is a legal representative, the clerk of court, to pursue possible reversal of the action and return of the asset to the a/b.
 - b. Do not apply a transfer sanction when Adult Protective Services investigates and determines that the a/b is a victim of fraud and did not take the action with the intent of becoming eligible for Medicaid.
 - c. **Convincing** evidence **must be provided** which may include but is not limited to a report to law enforcement officials.
3. The a/b or the a/b's spouse is a victim of exploitation. The a/b, or the a/b's spouse must provide **convincing** evidence which may include:
 - a. Proof that includes substantial evidence that the a/b, or the a/b's spouse is a victim of exploitation due to the illegal or improper use of a disabled adult or **their** assets for another's profit or advantage.
 - b. Proof of a request to the local agency for adult protective services for the a/b or the a/b's spouse.
 - c. The a/b or the a/b's spouse must provide **convincing** evidence which may include but is not limited to a report to law enforcement officials.
4. The a/b, or the a/b's spouse is a victim of actual or threatened abuse. The a/b or the a/b's spouse must provide **convincing** evidence:
 - a. Proof that includes **convincing** evidence that the a/b, or the a/b's spouse is a victim of actual or threatened abuse due to the willful infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful deprivation by a caretaker of services which are necessary to maintain mental and physical health, and
 - b. Proof of a request to the **local agency** for adult protective services for the a/b, or the a/b's spouse.

- c. The a/b, or the a/b's spouse must provide **convincing** evidence that may include but is not limited to a report to law enforcement officials.
5. The transfer of assets occurred as part of a regular, in frequency and amount, pattern of giving. The **convincing** evidence must include written records that clearly document the pattern of giving. Records include but are not limited to bank account records and property transfer records.
6. In situations other than those noted in XII.C. 1. through 5. above, when an a/b or an a/b's spouse alleges that the transfer of assets was made solely for a reason other than to become eligible for Medicaid, evaluate the evidence presented. The evidence might establish another reason for the transfer. However, if establishing Medicaid eligibility for institutional services or in-home health services and supplies after receiving institutional services was also considered, the transfer was not exclusively for a purpose other than to establish or retain Medicaid eligibility.

In making the determination, consider the following:

- a. The a/b's or the a/b's spouses' age, general health, living arrangement, and amount of assets retained to meet future needs at the time of the transfer.
- b. How the a/b expected to meet **their** medical and other living expenses without the transferred asset.
- c. Whether the case record documents any inquiry by the a/b, the a/b's spouse, representative, or other interested party about asset limits for Medicaid, or other eligibility requirements for Medicaid.
- d. Whether the a/b, or the a/b's, spouse, legal representative, or other interested party consulted or hired an attorney for estate planning purposes.
- e. Whether the individuals who provided the knowledgeable statements concerning the circumstances of the transfer stand to gain in any way from the transfer. Whether the transfer is a one-time gift by the a/b, or the a/b's spouse to a charity, religious organization, or family member made when the a/b, or the a/b's spouse did not anticipate needing long-term medical care.
- f. **Whether a traumatic event (e.g., traffic accident) of disability or blindness happened causing the need for a healthy individual to need institutional services**
 - **Example: An a/b, age 40, was in good health when they gave their vacation cottage to their nephew. The next day the a/b was in an automobile accident. Their injuries require long-term care. The transfer was not made to become eligible for Medicaid because they could not anticipate their need for LTC services.**
7. Document the response provided to the considerations listed in XIII.C.6. a. above. The a/b or the a/b's spouse or the a/b's or the a/b's spouse's legal representative must also provide a complete written accounting of the transfer, including all

relevant documentation that shows the following:

- a. The a/b or the a/b's spouse's purpose for transferring the asset
- b. The a/b or the a/b's spouse's attempts to dispose of the asset at **current** market value
- c. The a/b or the a/b's spouse's reasons for accepting less than **current** market value such as:
 - (1) A forced sale was done under reasonable circumstances
 - (2) Little or no market demand exists for the type of asset transferred; or
 - (3) The asset was transferred to settle a legal debt approximately equal to the **current** market value of the transferred assets; and
- d. The a/b, or the a/b's spouse's relationship, if any, to the persons to whom the asset was transferred.
- e. In addition to the written evidence provided, evidence from other sources may be considered. Examples of other sources include but are not limited to:
 - bank records,
 - medical records or
 - oral or written statements from persons knowledgeable about the a/b's situation and the transfer of assets.

XIII. DECISION AND NOTIFICATION PROCEDURES (DENIAL/REBUTTAL/UNDUE HARDSHIP)

When it is determined that a non-allowable transfer has occurred and a sanction period is to be applied, notify the a/b **and the authorized representative, if applicable**, in writing of the sanction period and rebuttal procedures. **Local agencies must have procedures in place to ensure that this process continues timely. Delays of required notification can significantly affect the ability to complete the transfer of assets evaluation within the required timeframes resulting in charge backs to the county for failure to complete within three full calendar months following the authorization.**

A. Determination of Medicaid Eligibility

Do not delay the determination of Medicaid eligibility, **including institutional services**, while **completing** a transfer of assets **evaluation**. **This includes all MAGI and non-MAGI programs**. An a/b may be eligible or ineligible for Medicaid regardless of a transfer of assets.

1. If the a/b is found ineligible for Medicaid, a sanction for transfer of assets cannot be applied. Stop the evaluation of the transfer of assets.
2. If the a/b is found eligible for Medicaid, is **approved for** institutional services, and

the transfer of assets evaluation is pending,

a. Notify the a/b **and authorized representative, if applicable:**

- (1) Of eligibility for **institutional** services, and
- (2) That **evaluation for transfer of assets** is still pending.

b. Once the evaluation of the transfer is complete:

- (1) If the evaluation later reveals no sanctions, **send a DSS-8110 adequate notice notifying the a/b, and authorized representative, if applicable, of continued coverage.**
- (2) If the evaluation reveals a non-allowable transfer and a sanction period, **follow procedures in XIII B. below to notify the a/b and authorized representative, if applicable, of their right to rebut.**

3. If the a/b is found eligible for PLA Medicaid, is requesting assistance **for a subsequent period of institutional services because they were terminated for failure to provide transfer of assets information** and evaluation of a transfer of assets is pending, **(remember a new institutional services period cannot be approved until the transfer of assets evaluation is completed):**

a. Notify the a/b **and authorized representative, if applicable:**

- (1) Of eligibility for non-institutional services, and
- (2) That eligibility for institutional services is still pending.

This is a manual notice.

b. Once the evaluation of the transfer is complete:

- (1) If the evaluation later reveals no sanctions, send a revised **DSS-8110** notice authorizing eligibility for nursing home cost of care, CAP or PACE.
- (2) If the evaluation reveals a non-allowable transfer and a sanction period, follow procedures in **XIII.B.** below.

B. Notifying Individual of Sanction and Right to Rebut

1. If the transfer of assets evaluation reveals that a non-allowable transfer has occurred and the sanction **length** can be determined, use the DHB-5097, Request for Information, and the DHB-5161, Transfer of Asset Below Current Market Value, to notify the a/b **and authorized representative, if applicable:**

a. **They are** ineligible for institutional services and/or in-home health services and supplies, due to transfer of assets.

b. The transfer(s) considered:

- the **length of the** sanction period,
- the right to rebut the value of the asset transferred,
- the right to rebut the presumption or provide evidence to prove the transfer was made exclusively for a purpose other than establishing Medicaid eligibility,
- the right to prove compensation has been received,
- the right to prove the a/b has been defrauded,
- The right to prove the asset has been returned, prove the money has been spent on behalf of the individual, or right to prove intent to dispose asset at current market value. See XI. above.

Refer to MA-2230, Financial Resources, for requirements to rebut the value of the asset.

2. Follow application processing procedures when requesting information from an **applicant**. Send at least two requests for information to the applicant. Refer to MA-2300, Applications.
3. Allow the **beneficiary** 12 calendar days to provide evidence to rebut the reason for the transfer, rebut the established value of the transferred asset, etc. Allow an additional 12 calendar days if evidence is not received within the first 12 days.
4. The **local agency** has 12 calendar days to make a decision after the information is received. If the **local agency** determines additional information is needed, allow an additional 12 calendar days for the a/b to provide the information.
5. If the a/b proves that the transfer was not made to become eligible for Medicaid, document the case record and notify the a/b **and authorized representative, if applicable, by DSS-8110** that the sanction will not be imposed.
6. If the a/b provides evidence that:
 - rebuts the established value of the transferred asset
 - that compensation has been received
 - that all or a portion of the asset has been returned
 - money has been spent on **their** behalf.
 - a. Recalculate the sanction period, document the case record and notify the a/b **and authorized representative, if applicable**, of the change.
 - b. If the change results in no sanction, notify the a/b **and authorized representative, if applicable**, in writing that the sanction will not be imposed.

- c. If the change results in a shorter sanction period, notify the a/b **and authorized representative, if applicable**, in writing of the new sanction period using the DHB-5113, Notification of Right to Request an Undue Hardship Waiver (Transfer of Assets).
7. If an **applicant** for institutional services fails to rebut the sanction, either by failing to provide information within the time frame described in **XIII.B.** above or the information they provide does not rebut the sanction, send a DHB-5113, Notification of Right to Request an Undue Hardship Waiver (Transfer of Assets), to notify the **applicant and authorized representative, if applicable**, of ineligibility and right to request an undue hardship waiver.
8. If a **beneficiary** of institutional services fails to rebut the sanction, either by failing to provide information within the time frame described in **XIII.B.** above or the information they provide does not rebut the sanction, send a DHB-5113, Notification of Right to Request an Undue Hardship Waiver (Transfer of Assets), to notify the applicant **and authorized representative, if applicable**, of ineligibility and right to request an undue hardship waiver.

C. Undue Hardship

If, after **all** evaluation and rebuttal **steps have been completed**, it is determined that a non-allowable transfer has occurred, notify the a/b **and authorized representative, if applicable**, in writing of the sanction **length** and the undue hardship waiver process using DHB-5113, Notification of Right to Request an Undue Hardship Waiver (Transfer of Assets). The request for an undue hardship waiver must be made to the local **agency** within 12 calendar days from the date of the notice. Refer to MA-2245, Undue Hardship Waiver for Transfer of Assets, for policy and procedures for determining if a transfer of assets sanction should be waived.

1. If an applicant is not granted an undue hardship waiver because:
 - a. They failed to request the waiver, or the information provided does not establish that undue hardship exists,
 - b. **Apply the sanction as directed in XI. C. above. The individual is not eligible for institutional services until the sanction ends.**
 - c. **Select the correct denial reason**, NC FAST will send a DSS-8109, Your Application for Benefits is Being Denied or Withdrawn.
2. If an ongoing beneficiary who is requesting institutional services is not granted an undue hardship waiver because:
 - a. They failed to request the waiver, or the information provided does not establish that undue hardship exists,
 - b. **Apply the sanction as directed in XI. C. above. The individual is not eligible for institutional services until the sanction ends.**

- c. **Select the correct change reason**, NCFAST will send a DSS-8110, Notice of Modification, Termination, or Continuation of Public Assistance. **Notice must be timely.**
3. If an ongoing beneficiary that is already **receiving** institutional services is not granted an undue hardship waiver because:
 - a. **They** failed to request the waiver, or the information provided does not establish that undue hardship exists,
 - b. **Apply the sanction as directed in XI. C. above. The individual is not eligible for institutional services until the sanction ends.**
 - c. **Select the correct change reason**, NC FAST will send a DSS-8110, Notice of Modification, Termination, or Continuation of Public Assistance. **Notice must be timely.**
4. **For instructions on applying the sanction in NCFAST, refer to NCFAST Job Aid Sanctions for Transfers of Assets.**
5. After the timely notice period has expired:
 - a. Notify the facility that the beneficiary is no longer eligible for payment of nursing home cost of care.
 - b. For CAP beneficiaries, notify the CAP lead agency/case manager that the **a/b** is no longer eligible for CAP.
 - c. For PACE beneficiaries, notify the PACE organization by sending the DHB-5106, Medicaid/PACE Referral.
6. Although an **a/b** under a transfer of assets sanction may not be eligible for assistance with institutional services, **they** may be eligible for other Medicaid covered services.
 - a. Evaluate for all other programs and if the a/b remains eligible for PLA Medicaid,
 - b. Notify the a/b and authorized representative, if applicable, of the decision.
 - c. **Select the correct change reason**. NC FAST will send a DSS-8110, Notice of Modification, Termination, or Continuation of Public Assistance. **Notice must be timely.**

Note: Beneficiaries under a transfer of assets sanction and enrolled in the PACE Program are ineligible for Medicaid in any aid program/category except MQB. Refer to MA- 2275, Program of All-Inclusive Care for the Elderly.

D. Beneficiaries enrolled in a Pre-paid Health Plan (PHP)

For beneficiaries enrolled in a PHP, the PHP must be notified of changes to eligibility of institutional services. Send a copy of the DSS-8110, Notice of Modification, Termination, or Continuation of Public Assistance to the DHB Business Support by email the **same** day when:

1. A beneficiary terminates due to failure to provide information needed to complete the transfer of assets evaluation or due to a sanction being imposed.
2. A beneficiary regains eligibility due to providing the information, successfully rebutting the sanction or an appeal.

E. Hearing Process

Refer to MA-2420, Notice and Hearings Process, regarding the hearing process.

XIV. TRACKING TRANSFER OF ASSETS SANCTION PERIOD

NC FAST will track the sanction period once all evidence is updated and the recommended sanction is accepted.

1. When a sanction is accepted, eligibility for affected programs will show as ineligible until the sanction period ends.
2. The Assets Transfer evidence in NC FAST should be updated once a transfer of assets evaluation has been completed. This may occur when processing an application, a redetermination, an exparte recertification for an SSI beneficiary, reported by the a/b, or notified by any source that a transfer has occurred.
3. The Assets Transfer evidence must be updated for all cases, even if there have been no non-allowable transfers. **Example- Homesite was transferred to an allowable person. There is no transfer sanction, but the evidence should still reflect that there was a transfer.**
4. An a/b who is ineligible for institutional services due to a transfer of assets sanction may be authorized for other Medicaid covered services.
 - a. Authorize Medicaid under PLA provided the a/b meets all other Medicaid eligibility factors.
 - b. Make sure all evidence is updated to reflect any transfers made by the a/b and sanctions are correct. Refer to **NC FAST Job Aid Sanctions for Transfers of Assets.**
 - c. **Once a sanction is applied, it continues until it is completed.** The sanction period continues **and costs** for in-home health services and supplies **will not be paid** if the institutionalized a/b returns to private living.

XV. TRANSFER OF ASSETS GLOSSARY

Refer to MA-200 Definitions for additional terms relating to transfers of assets.

Actuarially Sound – A promissory note, annuity, mortgage, or loan established to pay off the entire asset value over the actual or expected lifetime of the annuitant/lender is actuarially sound. The annuitant/lender is expected to live long enough to receive an amount that is equal to or greater than the amount originally invested. The total amount of proceeds must be designed to be paid out in equal regular payments during the term of the agreement, with no deferral and no balloon payments.

Annuity - An annuity is a type of trust. An individual pays an entity a lump sum of money in return for the right to receive fixed, periodic payments, either for life or a term of years. This includes the investment portion of a single premium pure endowment life insurance policy.

Annuitant – An annuitant is the person who receives the income payments of an annuity policy at maturity date for life or for a specified period. The annuitant may or may not be the same as the owner.

Beneficiary of an annuity – The beneficiary is the person who receives any benefit that is paid upon death of the annuitant prior to the maturity date of the annuity.

Compensation - Something received as payment for an asset. Payment is usually considered to be cash, but other forms of payment include in-kind income, real or personal property, support and maintenance, services, or assumption of a legal debt.

Contiguous Property- A property that is one continuous plot of land or several plots of adjoining land. Contiguous means being in actual contact: touching along a boundary or at a point.

Cost of Care - The amount of money charged to an individual for NF or ICF-**IID** level of care, **nursing facility level of care in a Swing bed or in acute care hospital bed**, waiver services for the Community Alternatives Program or Program of All-Inclusive Care for the Elderly (PACE).

Current Market Value - The value of an asset if sold on the open market. For real and personal property, it is the tax assessed value of the property, unless that value is rebutted and a different value established. Refer to [MA-2230, Financial Resources](#), for instructions on establishing and rebutting the tax value.

Equity – The equity of real or personal property is the current market value (see definition above) less any encumbrances (mortgages, liens, or judgments) on the property.

Convincing Evidence – Refers to the quality and convincing force of the evidence rather than to the quantity of the evidence.

Homesite - When applying the transfer policy, the homesite is defined as any property the a/b or financially responsible person has an ownership interest **and**

- Which is currently used (or during the lookback period was used) as their principal place of residence, or to which they intend (or intended) to return, or
- Which is currently used (or during the lookback period was used), as the principal place of residence of their spouse or his dependent relative.

It includes the land the home sits on and all buildings and land contiguous to the home.

See [MA-2230, Financial Resources](#), for the definition of homesite when determining resource eligibility.

In-Home Health Services and Supplies – Medically necessary services provided to an applicant/beneficiary (a/b) by a Medicaid certified provider can be sanctioned due to a transfer of assets. These services include the following:

- Durable Medical Equipment (DME) and related medical supplies such as wheelchairs, walkers, canes, hospital beds, oxygen and oxygen equipment.
- Home Health Services covers home health aide services, skilled nursing, physical therapy, speech pathology and audiology, and occupational therapy provided by a Medicaid certified home health agency.
- Personal Care Services (PCS) are personal care activities such as bathing, toileting, monitoring vital signs, housekeeping and home management tasks.

Institutional Services - These services include services provided in a nursing facility (NF), intermediate care facility for **individuals with intellectual disabilities (ICF-IID)**, **nursing facility level of care in a Swing bed or in acute care hospital bed**, services provided through the Community Alternatives Program (CAP), or Program of All-Inclusive Care for the Elderly (PACE). These services can be sanctioned due to a transfer of assets. This does not include acute hospital care regardless of length of stay.

Institutionalized for Transfer of Assets – As defined for a transfer of assets review, institutionalized is an individual receiving institutional services in a nursing facility (NF), intermediate care facility for **individuals with intellectual disabilities (ICF-IID)**, **nursing facility level of care in a Swing bed or in acute care hospital bed**, services provided through the Community Alternatives Program (CAP) or Program of All-Inclusive Care for the Elderly (PACE). This is different from the definition of institutionalized for long-term care budgeting or institutional living arrangement when determining state/county residency.

Irrevocable Trust- A type of living trust, that details an individual's assets and how the individual would like them to be distributed to their beneficiaries. However, unlike a revocable trust, irrevocable trusts are pretty much set in stone. Some exceptions allow for changes if all the beneficiaries agree to them, but the proposed updates must go through a lengthy approval process, which can include going before a judge.

Legal Representative - A person acting for and legally authorized to execute a contract for the a/b, such as but not limited to a general guardian, guardian of the estate, parent of a minor child, power of attorney, fiduciary (agent), conservator or any trustee managing the a/b's resources. Legal authorization requires a separate legal document except for parents of minor children.

Lookback Date - **The beginning of the lookback period and the earliest date transfers of assets are reviewed when evaluating an a/b for institutional services.** The lookback date depends on when an individual applies for Medicaid and is admitted to a NF or ICF/IID or requests CAP or PACE services.

Lookback Period- The period that is reviewed for transfer of assets. It begins with the

lookback date and ends with the starting point. The lookback period is 60 months prior to the starting point.

Rebuttal – The process by which an a/b, the a/b's spouse or legal representative proves through a greater weight of evidence factors that eliminate or decrease a sanction period.

Remainder Beneficiary-The person(s) entitled to an annuity's principal, possibly including income that has been accumulated and added to principal, after the death of the annuitant.

Revocable Trust- A living trust that outlines the assets the individual wants to give a beneficiary and how the assets will be distributed. Revocable trusts often name the grantor as the trustee, allowing for full control of the trust.

Sanction Period - The period of time in which an a/b is ineligible for Medicaid payment of institutional services and in-home health services. The sanction period is also referred to as a penalty period.

Starting Point- The point in time determined to begin establishing a lookback date for transfer of assets review when an a/b has been admitted to a NF or ICF/IID or requested CAP or PACE services.

Transfer - To change ownership or title from one person(s) to another. A transfer also occurs when an individual takes action to waive or renounce assets or an inheritance to which they are entitled or when an individual takes any action that eliminates their ownership or reduces their control of an asset. For example, changing fee simple property to tenancy-in-common property or adding an additional owner to a savings account is considered a transfer.

Uncompensated Value - The difference between the market value less any encumbrance (the equity) of the asset at the time of the transfer and any payment or compensation received. The uncompensated value is the amount upon which the sanction is based.

Undue Hardship – The application of the sanction period would deprive the individual of medical care, such that the individual's health or life would be endangered, or of food, clothing, shelter, or other necessities of life.