

2640.10.05 GENERAL APPLICABILITY OF TRANSFER OF PROPERTY LAW

The transfer of property provision is applicable to applicants/recipients who are either:

- Inpatients of nursing facilities or other medical institutions in which they are receiving equivalent nursing facility services, or
- **PACE participants, or**
- Receiving Home and Community-Based Services (HCBS).

If an applicant/recipient does not meet one of the above conditions a transfer penalty is not invoked. If such an individual has transferred property, the worker is to record the occurrence but will not require verifications nor attempt to determine whether the transfer was violative. However, if the individual later enters a nursing facility or begins receiving HCBS, the worker would then be required to determine whether the transfer was violative.

When a spouse transfers an asset that results in a penalty for the client, the penalty period must be apportioned between the spouses. Both spouses must be eligible for Medicaid Institutional service or home/community-based waiver services during the same time for apportionment to occur. When one spouse is no longer subject to a penalty (for example, the spouse no longer receives institutional or waiver services or the spouse dies), the remaining penalty period applicable to both spouses must be served by the remaining spouse.ⁱ

If the applicant/recipient claims that a theft of funds has occurred, see 2605.45.00.

Transfers are potentially violative made by the following:ⁱⁱ

- Applicant/recipient
- The spouse of the applicant/recipient
- Anyone with legal authority to act on behalf of the applicant/recipient or spouse, such as a parent or legal guardian (including a court or administrative body)
- Anyone acting at the direction or request of the applicant/recipient or spouse (including a court or administrative body).

Federal law defines assets as both income and resources (real and personal property) owned by the applicant/recipient and spouse. Refer to Section 2640.10.15.05 regarding transfers of homes and income-producing real property.

Also included as an asset are income and resources, which the applicant/recipient is entitled to receive but doesn't because of their actions or those of their spouse, a person with legal authority to act on the applicant or their spouse's behalf, including a court or administrative

body, or any other person, court or administrative body acting at the direction or request of the individual.

Examples of actions which would cause income or resources not to be received are:

- Irrevocably waiving pension income
- Waiving the right to receive, or failing to take the necessary action to receive an inheritance
- Not accepting injury settlements.

Each individual circumstance of an individual failing to take an action to obtain assets must be carefully examined, as this may not always be considered a violative transfer. A transfer of property penalty will not be imposed in the following circumstances:

- The applicant/recipient, or the person with the legal authority to act on behalf of the applicant/recipient is unaware of the right to receive assets or becomes aware after the deadline for taking action has passed. If the DFR or other division of FSSA informs the individual of their right to receive assets prior to the deadline for taking action, the individual will be presumed to be aware of his rights.
- A physician who is knowledgeable of the medical condition of the applicant/recipient provides a written statement that the applicant/recipient is not capable of taking the necessary action to receive the asset. A physician's statement can only be used for this purpose if the applicant or recipient has no legal guardian or other person who has the authority to act on the individual's behalf in whatever action is needed to receive the assets.
- The expense of collecting the assets would exceed the value of the assets. In the case of a surviving spouse who fails to take a statutory share of a deceased spouse's estate, a penalty is not imposed if the deceased spouse made other equivalent arrangements to provide for the surviving spouse's needs, including but not limited to setting up a trust.

ⁱ 405 IAC 2-3-1.1 (a)(1)

ⁱⁱ 405 IAC 2-3-1.1 (1) (A) (B) (C)