



## Ohio Administrative Code

### Rule 5160:1-6-06 Medicaid: transfer of assets.

Effective: September 1, 2017

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(A) This rule implements section 1917 of the Social Security Act (as in effect on October 1, 2016) and describes the treatment of transfers of assets when an institutionalized individual, as defined in rule 5160:1-6-01.1 of the Administrative Code, is seeking medicaid payment for long-term care (LTC) services. This rule, and rules 5160:1-6-06.1 to 5160:1-6-06.8 of the Administrative Code, only apply to institutionalized individuals.

(B) If the institutionalized individual (or his or her spouse) disposes of assets for less than fair market value on or after the look-back date specified in paragraph (C) of this rule, any such transfer will be presumed an improper transfer and will result in a restricted medicaid coverage period (RMCP) in accordance with rule 5160:1-6-06.5 of the Administrative Code.

(C) The look-back date is sixty months (five years) before the individual's baseline date, as defined in rule 5160:1-6-01.1 of the Administrative Code.

(1) If the individual is already eligible for medical assistance when he or she first became an institutionalized individual, the baseline date is the first day of institutionalization.

(2) If the individual is requesting enrollment in home and community-based (HCBS) waiver, the baseline date is the first date that the individual has both applied for medical assistance and requested enrollment on an HCBS waiver. These transfer of asset provisions only apply if the individual is eligible for medical assistance using the special income level (SIL).

(D) The following transfers are not considered improper:

(1) The title to the home was transferred to the institutionalized individual's spouse, child who is under the age of twenty-one, or child who is blind or disabled in accordance with section 1614 of the Social Security Act (as in effect on October 1, 2016).



(2) The title to the home was transferred to the institutionalized individual's child (other than a child described in paragraph (D)(1) of this rule) who:

(a) Provided care to the institutionalized individual which permitted the institutionalized individual to reside at home rather than in a long-term care facility (LTCF) or be enrolled in an HCBS waiver; and

(b) Resided in the home for a period of at least two years immediately before and on a continuous basis since the individual became an institutionalized individual; and

(c) Documents that he or she has fulfilled all of the requirements in paragraphs (D)(2)(a) to (D)(2)(c) of this rule by submitting the following:

(i) A written statement of the date that he or she moved into the home; and

(ii) A level of care assessment showing that the individual would have become institutionalized earlier without care provided by the child; and

(iii) A written statement from the individual's attending physician stating the kind and duration of care that was required to delay the individual's institutionalization; and

(iv) All relevant documentation of the care that delayed institutionalization and the role the child played in that care. This documentation may include (but is not limited to) one or more of the following:

(a) A written statement of the number of hours per day during which the child provided personal care, specifying the extent and type of care provided;

(b) A written statement of any part-time or full-time jobs performed by the child, and any schools or other similar institutions attended by the child, while providing care; or

(c) Written documentation from a service agency which provided care to the individual, the dates on which care was provided, and the extent and type of care provided.



(3) The title to the home was transferred to the institutionalized individual's sibling who has an equity interest in the home and who was residing in the institutionalized individual's home for a period of at least one year immediately before the date the individual was admitted into a LTCF or enrolled in an HCBS waiver.

(4) The assets were transferred to or from (i.e. between the spouses) the institutionalized individual and his or her spouse, or to another for the sole benefit of the institutionalized individual's spouse.

(5) The assets were transferred to the institutionalized individual's child who is blind or disabled in accordance with section 1614 of the Social Security Act (as in effect on October 1, 2016) (or to a trust, including an exempt trust described in rule 5160:1-3-05.2 of the Administrative Code), for the sole benefit of that child.

(6) The assets were transferred to a trust (including an exempt trust described in rule 5160:1-3-05.2 of the Administrative Code) created for the sole benefit of an individual under the age of 65 who is disabled, as defined in section 1614 of the Social Security Act (as in effect on October 1, 2016).

(7) The institutionalized individual's income transferred to a qualified income trust (QIT) in accordance with rule 5160:1-6-03.2 of the Administrative Code.

(E) For transfers described in paragraphs (D)(4) to (D)(6) of the is rule to be considered for the sole benefit of the individuals described in such paragraphs, the instrument or document must provide for the spending of the funds involved for the benefit of the individual on a basis that is actuarially sound based on the life expectancy of the individual involved. When the instrument or document does not provide for such, any potential exemption from an RMCP, in accordance with rule 5160:1-6-06.5 of the Administrative Code, is void.

(F) Rebutting the presumption that a transfer was improper.

(1) The institutionalized individual, his or her spouse, or anyone acting on the institutionalized individual's behalf may make a satisfactory showing to the agency that the institutionalized individual or such individual's spouse intended to:



- (a) Transfer the asset for fair market value or for other valuable consideration; or
  - (b) Transfer the asset exclusively for a purpose other than to qualify for medical assistance.
- (2) The institutionalized individual, his or her spouse, or anyone acting on the institutionalized individual's behalf must provide a written explanation with supporting documentation which explains the following:
- (a) The reason for transferring the asset for less than fair market value; and
  - (b) The attempts that were made to transfer the asset for fair market value; and
  - (c) The reasons for accepting less than fair market value for the asset; and
  - (d) The institutionalized individual's relationship to the person to whom the asset was transferred.
  - (e) The occurrence of one or more of the following after a transfer of the asset(s), while not conclusive, may indicate that the asset(s) was transferred exclusively for some purpose other than to qualify for medical assistance:
    - (i) Traumatic onset of disability or blindness (e.g., due to traffic accident); or
    - (ii) Diagnosis of a previously undetected disabling condition.
  - (f) Supporting documentation may include, but is not limited to, a contract, realtor agreements, sworn statements, third party statements, medical records, financial records, court records, and relevant correspondence.
- (3) If the institutionalized individual proves to the agency that a transfer was not improper then no RMCP will be imposed with respect to that transfer.
- (G) If the imposition of a RMCP would result in an undue hardship, the institutionalized individual



can request an undue hardship exemption in accordance with rule 5160:1-6-06.6 of the Administrative Code.

(H) Verification of transfers.

(1) The administrative agency shall determine at the time of application, renewal or anytime upon discovery of a transfer whether the institutionalized individual executed an improper transfer.

(2) An institutionalized individual must inform the administrative agency of any transfers of real or personal property.

(3) The institutionalized individual must provide the administrative agency with documentation verifying any transfer and the details of any exchanges or transactions. If requested the administrative agency shall assist the institutionalized individual in gathering such documentation.