The Honorable Charlie Daniels
Secretary of State
State Capitol, Room 026
Little Rock, AR 72201-1094
(501) 682-3527

Re: Emergency Promulgation-MSP 3334.3 and 3336.10 - Transfer of Resources

Dear Mr. Daniels:

Pursuant to Ark. Code Ann. 20-76-201, et Seq. and Ark. Code Ann. 20-15-201, et Seq., we are requesting an emergency promulgation of the attached rule that updates the divisor used to determine uncompensated value and period of ineligibility for Medicaid facility vendor payments due to transfer of assets for less than market value. The new rule will also put in place a procedure for yearly updates of the divisor.

The new divisor is a more accurate representation of the average cost of nursing facility care for one month and will result in a more equitable period of ineligibility for individuals who have transferred assets without compensation.

Sincerely,

Joni Jones
Director

JJ:LG:LW:JT/DT

Attachments

cc: Files

ARKANSAS REGISTER

Transmittal Sheet

Charlie Daniels
Secretary of State
State Capitol Room 026
Little Rock, Arkansas 72201-1094
(501) 682-3527

For Office Use Only: Effective Date ____________ Code Number ____________

Name of Agency: Arkansas Department of Human Services

Department: Division of County Operations

Contact: Linda Greer E-mail: linda.greer@mail.state.ar.us Phone: 682-8257

Statutory Authority for Promulgating Rules: AR Code Annotated 20-76-201 et Seq., AR Code Annotated 20-15-201 et Seq.,

Rule Title: MS 3334.3 and 3336.10 Transfer of Resources - Updating Divisor for Determining Uncompensated Value and Period of Ineligibility

Intended Effective Date		Date
	Legal Notice Published	____________
☒ Emergency - 4-1-04	Final Date for Public Comment	____________
☐ 10 Days After Filing	Reviewed by Legislative Council	____________
☐ Other	Adopted by State Agency	____________
April 1, 2004		____________

☐ Electronic Copy of Rule Provided (per Act 1648 of 2001)

☐ Electronic Copy of Rule to be e-mailed from ________ Diana Teal diana.teal@mail.state.ar.us

Contact Person   Email Address

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 As Amended.

____
Signature

Director, Division of County Operations

682-8375   joni.jones@mail.state.ar.us

Phone Number   E-mail Address

____
Date

3334.3 Determination of Uncompensated Value and Period of Consideration

The uncompensated value from an asset transfer is the difference between the fair market value of the asset at the time of transfer (Re. MS 3331-3331.5 for real property and MS 3332-3332.3 for personal property) and the value of compensation received for the asset (Re. MS 3334.4).

The period of time that the uncompensated value from a resource transfer is considered is determined by dividing the uncompensated value by the amount specified for the period of time in which ~~the transfer was made~~the individual applied. The result will be the number of months that an individual will be ineligible for Medicaid. ~~For example, the value of a transfer made between 9/1/81 and 6/30/88 will be divided by $1000. If $30,000 has been transferred, the period of ineligibility will be 30 months ($30,000 divided by $1000 = 30).~~Please refer to MS 3336.10 for further explanation of determining period of ineligibility.

The period of ineligibility due to the uncompensated value of an income transfer is determined according to MS 3336.11. Amounts of uncompensated value and their periods of consideration may be affected by the receipt of compensation at a later time. Refer to MS 3334.8 for treatment.

~~NOTE: This section does not apply to individuals who applied and/or were receiving assistance prior to 9-1-81, for whom the agency determined eligibility, and who have remained continuously eligible.~~

~~When eligibility was determined by SSA for SSI prior to 9/1/81, and eligibility has not been determined by this agency, the date that the individual applies with this agency (e.g. for nursing facility services) will determine which transfer policy is applicable.~~

3336.10 Determination of Uncompensated Value and Period of Ineligibility for Resource Transfers

The number of months of ineligibility for facility/Waiver services will be determined by dividing the uncompensated value of all resources transferred by the individual or spouse on or after the look back date by the current divisor (see Appendix R)~~$1700~~.

The Division of Medical Services will determine the amount of the divisor. The divisor is defined as the weighted average per diem Medicaid rate multiplied by 30.42 and rounded to the nearest dollar to obtain a monthly amount, calculated from cost reports submitted for the cost reporting period from July to June, and then applied to the following calendar year. The weighted average rate is calculated annually. Medicaid LTC resident days reported on each facility's cost report will be multiplied by each facility's per diem rate. The sum of the calculated amounts will be divided by the total resident days to get the weighted average rate. The divisor will be redetermined yearly with any resulting changes taking effect on April 1st. The divisor for the current year is indicated on Appendix R.

The divisor will be redetermined each year and any changes in the divisor will be effective on April 1st. When there is a change in the divisor, the penalty period will be reassessed at the next reevaluation, or earlier if requested, or at reapplication.

- If the client is currently eligible in a LTC Medicaid case, but not receiving a vendor payment due to penalty, the client will be reassessed at reevaluation or earlier if requested. If the client is now eligible for facility services, facility services will be approved beginning the month of reassessment.

- If the client is not currently receiving LTC or Home and Community Based Waiver Medicaid, but reapplies and is under a previously imposed penalty, the penalty period will be reassessed using the current divisor. If eligible, the case will be approved with coverage not granted before April 1st or before the three-month retro period based on the recent application, whichever is later.

There is no cap on the total number of months of ineligibility. Any fraction remaining after dividing the total uncompensated value by the divisor will be dropped. The period of ineligibility will begin on the first day of the first month during which assets were transferred.

Example # 1: An applicant transferred $250,000 to his children 6 months before entering a nursing facility. As 6 months is within the 36-month look back period, there will be a penalty for non-compensated transfer. The divisor at the time of his admission was $3416. $250,000 divided by 3416 equals 73.18 months of ineligibility. The fraction remaining after dividing the total uncompensated value by 3416 will be dropped. The applicant will be ineligible for facility vendor payments for 73 months. If the divisor changes in April, the penalty will be reassessed using the current divisor at the next reevaluation, or earlier if requested.

Example # 2: An applicant for ElderChoices transferred $250,000 to his children 6 months before application. $250,000 divided by 3416 equals 73.18 months. The applicant will be ineligible for ElderChoices for 73 months. If the applicant reapplies, the penalty will be reassessed using the current divisor.

Example # 3: An applicant transferred $250,000 to his children 5 years before entering a nursing facility. No penalty will be assessed as the transfer occurred before the 36-month look back period.

Multiple Transfers Made That Do Not Result in Overlapping Penalties - If an individual has made multiple transfers that do not result in overlapping penalty periods, a separate penalty period will be assigned to each transfer. For example, a penalty period for a $6432 transfer made in December will expire at the end of January. A second transfer of $7000 made in February results in a penalty period that expires at the end of March. A $10,000 transfer in June results in a 2 month penalty period which ends in July. If the individual making these transfers applies in June, he will not be eligible until August 1st. The first two penalty periods will have expired, but the $10,000 transfer penalty will still be in effect.

Multiple Transfers Made That Do Result in Overlapping Penalties - The sum total of all transfers made will be divided by the current divisor to determine the period of ineligibility.

For example, an individual gives away $8000 in May, $10,000 in June, $12,000 in July, and $4000 in August. He applies for assistance in August 2004. The total value of uncompensated transfers ($34,000) will be divided by 3416~~1700~~, resulting in a penalty of 9~~20~~ months.

Penalty for Transfer to Annuities - If an applicant with an annuity has not yet annuitized (i.e., started receiving regular payments) and the annuity is revocable, the principal of the annuity is a countable resource. If annuity payments have begun and the contract is irrevocable, the number of years of payout of the annuity must be equal to or less than the number of years of expected life remaining for the individual, based on the life expectancy tables at MS 3336.17. If the payout years are greater than the life expectancy years, a transfer of assets for less than fair market value has been made.

For example, a male at age 65 purchases a $10,000 annuity that will be paid over the course of 10 years. Since his life expectancy according to the table is 14.45 years, he can expect to recover the full amount of his investment. However, a male at age 80 has a life expectancy of only 7.04 years. If he purchases a $10,000 annuity to be paid over the course of 10 years, the payout of the annuity for approximately three years is considered a transfer of assets for less than fair market value and the amount is subject to penalty, beginning with the first month in which the contract is annuitized. To determine the penalty, subtract the total payout for 7.04 years from $10,000. Divide the difference by $3416 (2004 divisor)~~1700~~ to determine the number of months of ineligibility.

If an annuity is made irrevocable and there will be no payout during the life of the annuitant, the full purchase price of the annuity is subject to a penalty for transfer of assets.

3336.11 Determination of Uncompensated Value and Period of Ineligibility When INCOME Has Been Diverted 11-15-97

When income has been given away, the period of ineligibility will be determined according to the amount of income not received, based on the life expectancy of the individual who is being penalized.

For example, an individual with income $300 over the NF income limit irrevocably revokes his company pension of $400. The life expectancy tables at MS 3336.17 will be utilized to determine the period of ineligibility. If he is age 76, for example, when he enters a NF and gives away his right to income, his life expectancy is 8.70 years. The income he elected not to receive is valued at $41,760 ($400 monthly x 12 months x 8.70 years). The $41,760 will be divided by 1700, resulting in a penalty of 24 months, beginning in the month he gave up his right to the income.

The above penalty does not apply in the case of an eligible IS who is allowed to give part or all of his income to a CS according to the methodology at MS 3338.3 and on the DCO-712.

3336.12 Penalty to Impose When Transfer Occurs 8/11/93 Through 9/30/93 11-15-97

If an individual has transferred assets during the period of 8/11/93 through 9/30/93, the period of ineligibility will begin in August or September, 1993, but the agency will not be allowed to withhold vendor payments until October 1, 1993, for transfers occurring during these two months. For example, if $30,000 was transferred 8/16/93, a penalty period of 17 months will be imposed ($30,000 divided by 1700) and the first month of the 17 month count will be August, 1993. However, vendor payment cannot be withheld until October 1, 1993, which, in effect, will require the state to pay the facility vendor payment from 8/16/93 through 9/30/93 if the individual is in the facility on 8/16/93, has made application on or after that date, and is otherwise eligible for services. The case would then have to be closed effective 9/30/93, as the individual is not eligible beginning 10/1/93, and the individual would not be eligible for the remaining 15 months of the penalty period.

3336.13 Apportionment of Penalty for Spouses 11-15-97

If the spouse of an individual has transferred resources without compensation which results in a period of ineligibility for an individual, the period of ineligibility will be apportioned between spouses if the spouse otherwise becomes eligible for medical assistance.

For example, a CS of an institutionalized individual has transferred resources valued at $17,000, which results in a period of 10 months of ineligibility for the IS ($17,000 divided by 1700 equals 10). Two months after the transfer, the CS must also enter the nursing home and she meets all the eligibility requirements for Medicaid assistance. The remaining 8 month period of ineligibility will be divided between spouses, leaving only 4 months of ineligibility remaining for the spouse first institutionalized and giving 4 months of the penalty to the spouse who entered last, thus allowing both to become eligible in 4 months.

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY Department of Human Services
DIVISION of County Operations
DIVISION DIRECTOR Joni Jones, Director
CONTACT PERSON Linda Greer, Assistant Director, OPPD
ADDRESS P. O. Box 1437, Slot S-332, Little Rock, AR 72203
PHONE NO. 682- 8257 **FAX NO.** 682-1597

INSTRUCTIONS

A. Please make copies of this form for future use.
B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
D. Submit two (2) copies of this questionnaire attached to the front of two (2) copies of your proposed rule and mail or deliver to:

Donna K. Davis
Subcommittee on Administrative Rules and Regulations
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

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1. **What is the short title of this rule?**
MS 3334.3 and 3336.10 Transfer of Resources

2. **What is the subject of the proposed rule?**
Updating the divisor for determining uncompensated value and period of ineligibility due to resource transfers and putting in place a procedure for updating annually.

3. **Is this rule required to comply with federal statute or regulations? Yes** X **No**
If yes, please provide the federal regulation and/or statute citation.

1917(C)(1)(E)(i) of the Social Security Act

4. **Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes** X **No**

If yes, what is the effective date of the emergency rule?
April 1, 2004

When does the emergency rule expire?
July 30, 2004

Will this emergency rule be promulgated under the regular provisions of the Administrative Procedure Act? Yes X **No**

5. **Is this a new rule? Yes___ No__X_**

Does this repeal an existing rule? Yes___ No_X_
If yes, please provide a copy of the repealed rule.

Is this an amendment to an existing rule? Yes_X__No__ If yes, please attach a markup showing the changes in the existing rule and a summary of the substantive changes.

Marked-up policy attached.

6. **What state law grants the authority for this proposed rule? If codified, please give Arkansas Code citation.**

AR Code Annotated 20-76-201 et. Seq., AR Code Annotated 20-15-201 et. Seq.,

7. **What is the purpose of this proposed rule? Why is it necessary?**
To update the divisor used to determine uncompensated value and period of ineligibility for Medicaid facility vendor payments for individuals who make resource transfers for less than fair market value and to put in place a procedure for annual updates of the divisor.

8. **Will a public hearing be held on this proposed rule?**
Yes__ No_X_ If yes, please give the date, time, and place of the public hearing?

9. **When does the public comment period expire?**
N/A for emergency APA.

10. **What is the proposed effective date of this proposed rule?**
April 1, 2004.

11. **Do you expect this rule to be controversial? Yes**
No_X__ If yes, please explain.

12. **Please give the names of persons, groups, or organizations which you expect to comment on these rules? Please provide their position (for or against) if known.**

None known.

PLEASE ANSWER ALL QUESTIONS COMPLETELY

July 28, 1995

DEPARTMENT Department of Human Services
DIVISION Division of County Operations
PERSON COMPLETING THIS STATEMENT Linda Greer
TELEPHONE NO. 682-8257 **FAX NO.** 682-1597

FINANCIAL IMPACT STATEMENT

To comply with Act 884 of 1995, please complete the following Financial Impact statement and file with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE: MS 3334.3 and 3336.10 Transfer of Resources

1. **Does this proposed, amended, or repealed rule or regulation have a financial impact?**
   Yes X **No**

2. **If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.**

   Not Applicable

3. **If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation.**

2003 Fiscal Year	2004 Fiscal Year
General Revenue	General Revenue
Federal Funds	Federal Funds
Cash Funds	Cash Funds
Special Revenue	Special Revenue
Other	Other
Total	Total

4. **What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation?**

   Financial Impact will be determined and included with the regular APA filing.

5. **What is the total estimated cost by fiscal year to the agency to implement this regulation?**

2003 Fiscal Year	2004 Fiscal Year

FINANCIAL IMPACT WILL BE DETERMINED AND INCLUDED IN THE REGULAR APA FILING.

July 28, 199