



Policy Memo	
KDHE-DHCF POLICY NO: 2023-08-01	From: Erin Kelley, Senior Manager
Date: August 04, 2023	MKEESM Reference(s): 5721 (10)
RE: Transfer of Property (TOP) Penalty Cure	Program(s): E&D programs – NF & HCBS

The purpose of this memo is to provide implementation instructions to eligibility staff concerning a change in the transfer of property (TOP) penalty cure policy.

This policy is effective with the issuance of this memo, 8/4/2023. The MKEESM manual will be updated with this information at the next scheduled revision.

I. BACKGROUND

A transfer of property (TOP) penalty imposed due to an uncompensated transfer may be cured (in whole or in part) when the property is returned to the individual who transferred the property. The timing and value of the returned property determines how the transfer penalty is modified. A full return of the property fully cures (voids) the penalty period. Currently, a partial return of the property only partially cures (but does not void) the penalty period.

All returned property is deemed to be available back to the date of the original transfer. This may result in resource ineligibility for previous months depending on the value and nature of the property returned. This provision is intended to prevent manipulation of the Medicaid program by sheltering additional assets from the resource spenddown process. The policy as written has proven to be difficult to administer.

The partial cure policy is overly complex and, in most instances, does not actually provide a true benefit to the individual applicant/recipient genuinely trying to mitigate the penalty. In addition, while the state is federally required to void a penalty where the transferred property has been

returned in full, there is no requirement to modify a penalty where only a partial return has occurred.

II. TRANSFER OF PROPERTY (TOP) PENALTY CURE

Effective with the issuance of this memo, the TOP penalty cure policy shall be modified as follows.

A. FULL CURE

When the property subject to a TOP penalty (or the fair market equivalent of that property per MKEESM 5721(10)(d)) has been returned, the penalty shall be voided. However, instead of the returned property being deemed available back to the date of the original transfer, the month the property is returned shall determine when the penalty is effectively voided.

If the transferred property is returned in the same month the transfer occurred, the period of ineligibility does not apply. If the transferred property is returned in a subsequent month, the period of ineligibility continues through the month the property is returned with the penalty period voided beginning in the following month.

Example 1: A transfer penalty is imposed based on an inappropriate transfer which occurred on April 4. The transferred property is returned in full on April 29. Since the full return occurred in the same month the transfer occurred, the penalty is voided, and no portion of the ineligibility period is served. The returned property will be evaluated as to resource eligibility beginning April (as the transfer was voided, resources are counted in the month returned).

Example 2: A transfer penalty is imposed based on an inappropriate transfer date of June 11. The transferred property is returned in full on August 22. Since the full return occurred in a month after the month the transfer occurred, a portion of the ineligibility period will be served. The penalty will remain in effect for June, July, and August, and is voided beginning in September. The returned property will be evaluated as to resource eligibility beginning September (the month after the month returned).

Example 3: A transfer penalty is imposed based on an inappropriate transfer date of May 11. The penalty period ends October 21. The transferred property is returned in full on October 2. Since the full return occurred in the last month of the penalty period, even though the penalty has technically been cured, the full penalty is served because the penalty cannot be voided until November (the month after the month of the full return).

Example 4: A transfer penalty is imposed based on an inappropriate transfer date of January 17. The penalty period ends November 28. On April 3 a portion of the transferred assets were returned. Since only a portion of the assets were returned, the penalty period

is not adjusted or modified. The returned property will be evaluated as to resource eligibility beginning in May (the month after the month returned).

On July 6 the remainder of the transferred assets were returned. Since the transferred assets are considered fully returned as of July 6 (with the second and complete transfer back to the individual), which is a month after the month the transfer occurred, a portion of the ineligibility period will be served. The penalty will remain in effect for each month from January through July and voided beginning August. However, the returned property will be evaluated as to resource eligibility beginning in August (the month after the month returned) if the individual was not previously determined resource ineligible.

B. PARTIAL CURE

When only some or a portion (but not all) of the property (or the fair market equivalent of that property) subject to a TOP penalty has been returned, the penalty remains in place. The penalty period shall not be adjusted or modified in any manner. The penalty may only be voided when a full return of the transferred property has occurred as noted above. A partial return of transferred property may impact continuing resource eligibility depending on the value and nature of the property returned but, will have no effect on the transfer penalty which remains in place.

Example 5: A transfer penalty is imposed based on an inappropriate transfer date of March 17. The penalty period ends December 21. A partial return of property occurs on May 9. Since this is only a partial return of property, the penalty period is not adjusted or modified. The returned property will be evaluated as to resource eligibility beginning in June (the month after the month returned).

Upon review of the returned property, the worker verifies that the returned property was in fact returned to the applicant but is now considered an otherwise exempt asset. Therefore, the asset is not counted towards the programs resource limit and does not impact this individual's coverage.

Example 6: A transfer penalty is imposed due to an inappropriate transfer date of June 4. The applicant is approved for Medically Needy (MDN) with a spenddown along with Medicare Savings Program (MSP) Low Income Medicare Beneficiary (LMB). The penalty period ends February of the following year. A partial return of property occurs on August 12. As this was a partial return, the penalty period is not adjusted or modified, and the returned property is evaluated for resource eligibility beginning in September.

Upon review of the returned property, the worker determines that the individual is now resource ineligible for MDN coverage, however, is within the resource limit to continue receiving MSP/LMB. The worker proceeds with discontinuing MDN, allowing for timely and adequate notice.

Note: The spenddown is not shortened as this scenario does not meet the policy requirements to shorten a spenddown per MKEESM 7330 (1).

These changes are effective with any action taken on or after the date this memo is issued. This memo supplements but, does not supersede PM2020-06-01.

QUESTIONS

For questions or concerns related to this document, please contact the KDHE Medical Policy Staff at KDHE.MedicaidEligibilityPolicy@ks.gov.

Erin Kelley	Senior Manager
Amanda Corneliusen	Family Medical Program Manager
Jennifer Sanders	Family Medical Program Manager
Jessica Pearson	Elderly & Disabled Program Manager
Sara Reese	Elderly & Disabled Program Manager

Questions regarding any KEES issues are directed to the KEES Help Desk at KEES.HelpDesk@ks.gov.